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English

## Advance unedited version

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### Human Rights Committee

#### Views adopted by the Committee under the Optional Protocol, concerning communication No. 3244/2018\*. \*\*,\*\*

<i>Communication submitted by:</i>	Edwards Kvasnevskis (represented by counsel, Mr. Jeremy McBride)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Latvia
<i>Date of communication:</i>	9 May 2015 (initial submission)
<i>Document references:</i>	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 21 September 2018 (not issued in document form)
<i>Date of adoption of Views:</i>	25 October 2023
<i>Subject matter:</i>	Impossibility of standing for election to the Parliament as independent candidate
<i>Procedural issue:</i>	Admissibility – incompatibility <i>ratione materiae</i> ; non-exhaustion of domestic remedies
<i>Substantive issue:</i>	Right to stand for election
<i>Article of the Covenant:</i>	25
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2) (b)

1. The author of the communication, submitted on 9 May 2015, is Mr. Edwards Kvasnevskis, a Latvian national born in Russia on 19 July 1938. He claims to be a victim of a violation of article 25 of the International Covenant on Civil and Political Rights (the Covenant) since he was prevented from standing for election in 2010 because he was not included in a list of candidates submitted by a legally registered political party or a legally registered political parties' association. The Optional Protocol entered into force for Latvia on 22 September 1994. He is represented by counsel.

#### Facts as submitted by the author

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- \* Adopted by the Committee at its 139th session (9 October – 3 November 2023)
- \*\* The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobayyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.
- \*\*\* An individual opinion by Committee member Rodrigo A. Carazo (dissenting) is annexed to the present Views.

2.1 The author is a co-founder of the “Latvia’s Tenants Association,” which seeks to defend the rights of tenants.<sup>1</sup> He has been the president of this association since its foundation on 6 January 2009. He is concerned by the situation of tenants living in apartments formerly used for public housing, that have been restituted to their former owners, and in particular by homelessness due to evictions, which is not adequately addressed. The state institutions have been reluctant to engage with civil society organisations such as the “Latvia’s Tenants Association.”

2.2 The author considered that the lack of interest by the authorities could be overcome by drawing the issue to the Parliament’s attention. However, none of the existing political parties appeared to be willing to respond to the Latvia’s Tenants Association’s attempts to address the situation of tenants, until the formation of the “Russian Union of Latvia” in 2014. This may be linked to the fact that many of the tenants in apartment houses that have been returned to their former owners are non-citizens and thus unable to vote in elections to the Parliament.

2.3 According to article 9 of the Parliament Election Law, inclusion in the list of candidates of a legally registered political party or a legally registered political parties’ association is a prerequisite for standing for election to the Parliament. Persons included in a list of candidates do not need to be members of the political party concerned.

2.4 The author was reluctant to belong to a political party because he feared that such membership would prevent him from raising the issues faced by tenants in restituted apartments. Therefore, he did not belong to any party until he joined from 28 February 2008 to 21 April 2010, the “Tautas Saskaņas Partija”, which was transformed into the Social Democratic Party “Saskana” in March 2010. At the time, this party was the only opposition party in Latvia and the only one that seemed willing to challenge the official indifference to the situation of tenants. However, the expectation that the opposition would be more interested than the governmental majority was incorrect.

2.5 The author’s concern about the possible constraint due to membership of a political party on his ability to represent the interests of the “Latvia’s Tenants Association” proved justified. He was expelled from the Social Democratic Party “Saskana” on 21 April 2010 after having called on 100 deputies of the Parliament whether it was justified that tenants in restituted apartments were deprived of the possibility of privatising their apartments, and whether they would accept the collective complaints procedure under the European Social Charter. This appeal was reported in a newspaper article published two days before his expulsion from the party. The author was told by the party that he had no right to engage in such activity without the party’s permission. Such action was considered to have breached the duty of a party member to care for the party’s prestige in society and to execute decisions of the party institutions.

2.6 While still a member, the author had submitted requests, on 9 December 2008 and 12 April 2010 respectively, to be included in the election lists of the party “Tautas Saskaņas Partija” and its successor - the Social Democratic Party “Saskana”. However, he never received any response regarding his requests. He had considered that by becoming a member of the Parliament it was the only way for him to raise the situation of concerned tenants.

2.7 The “Latvia’s Tenants Association” was neither a legally registered political party nor a legally registered political parties’ association, and becoming one was not an option as it was mostly composed of non-citizens.

2.8 On 30 March 2010, the author applied to the Constitutional Court of Latvia, claiming that the party list system prescribed in article 9 of the Parliament Election Law was in contradiction with article 9 of the Constitution of Latvia, which states that any citizen of Latvia, who enjoys full rights of citizenship and who is more than twenty-one years of age on the first day of election, may be elected to the Parliament. His application was rejected by the Constitutional Court on 28 April 2010, pursuant to articles 17(1) and (11) and 19(2) of the Constitutional Court Law. The Constitutional Court held that the author could not be

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<sup>1</sup> The Association seeks to defend the rights of tenants living in apartments formerly used for public housing that have been the subject of transfer of ownership (restitution) back to their former owners.

regarded as a person whose constitutional rights had been violated since he had not first made any efforts to become a candidate for election to the Parliament.

2.9 On 19 July 2010, the author submitted an application to the Central Election Commission to be included in a list of candidates for the election to the Parliament to be held on 2 October 2010. His application was rejected by the Central Election Commission on 22 July 2010. The decision stated that, pursuant to article 9 of Parliament Election Law, only political parties could lodge lists of candidates to the Commission. It would not have been practicable for the author to have sought to form his own political party after the rejection of his request to be included on the list by the Central Election Commission, given the time required for registration and the deadline of 3 August 2010 for submitting lists of candidates for the election in October 2010.

2.10 The author appealed the rejection by the Central Election Commission of his application to be included in the list of candidates for the election on 2 October 2010 before the Regional Administrative Court, but his appeal was dismissed. On 16 August 2010, the author submitted a constitutional complaint in order to review the decision of the Regional Court. In its ruling of 14 September 2010, the Constitutional Court accepted that the author had fulfilled the requirement of articles 17(1) and (11) and 19(2) of the Constitutional Court Law but held that his application contained no legal basis for the opinion that the rights guaranteed by article 9 of the Constitution were not supposed to be restricted in any way. The author had not evaluated a person's option to fulfil the legal requirement to become a member of a party in order to realize the right to be elected, as set out in article 9 of the Constitution. The Court also considered that in the author's application, there were not evaluated legitimate aims for stating such criteria, and there was no analysis offered whether the criteria of the law were appropriate, necessary and suitable for achieving legitimate aim. Therefore, the author's application contained no basis for the statement that such criteria disproportionately restricted the right to be elected, as stated by article 9 of the Constitution, or that their application created an unjustifiable violation of article 91 of the Constitution as regards the principle of equality before the law.

2.11 The author's attempts to be included in the lists of candidates by political parties for 2014 elections to the Parliament were also unsuccessful. The parties were not prepared to include persons who were not members of those parties. However, he was accepted – without becoming a member - for inclusion in the list of the newly formed "Russian Union of Latvia". Its policy relating to tenants affected by restitution was similar to the approach of the "Latvia's Tenants Association". However, the author disagreed with many policies of that association. None of the candidates of the "Russian Union of Latvia" was elected as member of the Parliament.

2.12 On 20 November 2014, the European Court of Human Rights, by a single-judge decision, declared the author's application inadmissible on the basis that "the admissibility criteria set out in Articles 34 and 35 of the Convention have not been met."

### **Complaint**

3.1 The author submits that the fact that he was prevented from standing for election to the Parliament as an independent candidate, and that he had to be on the list of candidates either presented and endorsed by a legally registered political party or by a legally registered political parties' association violated his rights under article 25 of the Covenant.

3.2 The author notes that in its General Comment No. 25, the Committee has stated that the right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties.<sup>2</sup> The Committee has found restrictions on the ability to stand for election to be compatible with article 25(a) where these were based on objective criteria and had purpose consistent with the domestic decision-making process.<sup>3</sup> In particular, it has found a violation of article 25 where a person was struck off the list of candidates for local elections on the basis of insufficient proficiency in the

<sup>2</sup> General Comment No. 25 (CCPR/C/21/Rev.1/Add.7), para. 17.

<sup>3</sup> *Debreczeny v. the Netherlands* (CCPR/C/53/D/500/1992), para. 9.3. and *Gorji-Dinka v. Cameroon* (CCPR/C/83/D/1134/2002), para. 5.6.

official language, when pursuant to a review that was not based on objective criteria and which the State party has not demonstrated to be procedurally correct.<sup>4</sup> The Committee has also underlined the importance of respect for the principle of proportionality in assessing the acceptability of restrictions.<sup>5</sup>

3.3 The author is not contesting the compatibility of a list system as such with article 25 of the Covenant and accepts that the restriction of his right under article 25 was prescribed by law. However, this restriction did not have a legitimate aim and its impact on the right to be elected was disproportionate. The author is aware that the issue he raised in his communication has not so far been considered by the Committee, but there are relevant judgments by the African Court on Human and Peoples' Rights<sup>6</sup> and the Inter-American Court of Human Rights.<sup>7</sup> The author has also referred to the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, which guarantees the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.<sup>8</sup> Relying on this guarantee, the Guidelines on Political Party Regulation by the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe and the European Commission for Democracy through Law (the Venice Commission) state that "the current legislation in the OSCE region which bans the candidacy of independent candidates should be revised, and legislation regarding political parties in elections should include specific mention of the rights of independent candidates to run for election as well."<sup>9</sup> Furthermore, in the Final Report on the parliamentary elections held in Latvia on 4 October 2014, the Office for Democratic Institutions and Human Rights of the OSCE<sup>10</sup> stated that the inability "to stand in elections as in independent candidate" was "contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document".<sup>11</sup> Consequently, it was stated that "in line with previous OSCE recommendations and commitments, which specifically protect the right of individual candidates to run for office, the legislation should be revised to enable candidates to run independently."<sup>12</sup>

3.4 The reason for introducing the requirement to be included in a list submitted by a legally registered political party or a legally registered political parties' association, which was not in the original list system in force until 1995, was not based on any scheme to enhance democracy or on any special theory regarding electoral systems. The requirement was simply introduced for the administrative convenience of the Central Election Commission. Given the significance of the right under article 25 for achieving democracy, administrative convenience cannot be regarded as a legitimate aim for the complete removal of the right that persons not belonging to parties had until then to stand for election. A legitimate aim could

<sup>4</sup> *Ignatane v. Latvia* (CCPR/C/72/D/884/1999), para. 7.4.

<sup>5</sup> *Pietraroia v. Uruguay* (CCPR/C/12/D/44/1979), CCPR/C/OP/1 at 76 (1984), 27 March 1981, para. 16, and *Gillot v. France* (CCPR/C/75/D/932/2000), para. 14.5.

<sup>6</sup> See *Tanganyika Law Society v. the United Republic of Tanzania*, No. 011/2011, 14 June 2013, which concerned a requirement that any candidate for presidential, parliamentary and local government elections had to be a member of, and be sponsored by, a political party. The applicants had sought a declaration, inter alia, that this restriction on candidacy was in violation of article 13(1) of the African Charter on Human and Peoples' Rights. The African Court concluded that the limitation could not be regarded as falling within the permissible restrictions set out in article 27(2) of the African Charter. In doing so it distinguished the earlier judgment of the Inter-American Court in *Castañeda Gutman v. Mexico*, in which such a limitation had been upheld.

<sup>7</sup> See e.g. *Castañeda Gutman v. Mexico*, judgment of 6 August 2008, series C, No. 184, wherein the Inter-American Court found that a similar restriction to that imposed in Latvia was not in violation of article 23(1) of the American Convention on Human Rights. The Court emphasized that there was a valid purpose for the restriction.

<sup>8</sup> Copenhagen Document – Second Conference on the Human Dimension of the CSCE (5 June – 29 July 1990), para. 7.5.

<sup>9</sup> CDL-AD(2010)024-e, Guidelines on political party regulation, by OSCE/ODIHR and Venice Commission, adopted by the Venice Commission at its 84<sup>th</sup> Plenary Session (Venice, 15-16 October 2010), para. 130.

<sup>10</sup> *Republic of Latvia Parliamentary Elections, 4 October 2014, OSCE/ODIHR Election Assessment Mission Final Report* (Warsaw, 18 December 2014).

<sup>11</sup> *Ibid.*, page 8.

<sup>12</sup> *Ibid.*

only be one which sought to promote democracy or to remove a threat to its existence. Even if concern for an administrative burden for the Central Election Commission could be considered as a legitimate aim for a restriction imposed on the author's right, the particular restriction was excessive given the existence of alternative means of checking for eligibility and signatures by individual voters on two or more lists and the impact on persons not belonging to political parties.

3.5 The restriction of lists of candidates by article 9 of the Parliament Election Law to those submitted by a legally registered political party or a legally registered political parties' association in effect compelled anyone wishing to seek election either to become a member of an existing party regardless of whether one shared its policies or to establish his or her own party or association.<sup>13</sup>

3.6 Furthermore, the author's experience has demonstrated that there was no political party in Latvia in 2010 that was prepared to address that an injustice was being done to the tenants of restituted apartments. Given the lack of attention from existing political parties, the author would only be able to stand as a candidate for an existing party if he was prepared to subordinate his political beliefs to those of the party concerned. Such was the situation in 2014 when he was included in the list of the "Russian Union of Latvia". This is hardly consistent with the political freedom and democratic values that the Covenant guarantees.

3.7 Although there was no formal barrier for the author to create his own political party, the requirement to belong to a party as an essential prerequisite for standing for elections amounts to a disproportionate interference with his rights under article 25 of the Covenant. Moreover, the supposed option of establishing a new party is more apparent than real. It fails to take account of the practical difficulty of establishing a party shortly before an election when he could not become a member of an existing party.

#### **State party's observations on admissibility and the merits**

4.1 On 21 March 2019, the State party submitted observations on admissibility and the merits.

4.2 As to the facts, the State party submits that the author was born in Kazan, the Russian Federation, in 1938. On 28 February 2008, the author joined the political party the People's Harmony Party (Tautas Saskaņas Partija). In 2010, the political party the Social Democratic Party the Harmony (Saskana) was formed from three political parties: The People's Harmony Party, the New Centre (Jaunais Centrs) and the Social Democrat Union (Socialdemokrātu savienība). On 21 April 2010, board members of the Social Democratic Party the Harmony (Saskana) examined the author's attitude towards the party and decided to exclude him from membership of the Social Democratic Party the Harmony for non-compliance with the rules of the party.

4.3 On an unspecified date, the author applied to the Constitutional Court, requesting it to examine the constitutionality of article 9 (1) of the Parliament Elections Law with articles 1, 9, 89 and 91 of the Constitution. The author also requested the Constitutional Court to amend article 9 of the Parliament Elections Law with paragraph 3, to establish the right for the citizens of Latvia to stand for the parliamentary elections according to the majoritarian election system. On 28 April 2010, the Constitutional Court refused to initiate the constitutional proceedings. According to the Constitutional Court, the author in his complaint had in general terms expressed his opinion that persons who are not members of a political party could be elected as members to the parliament. The author's complaint was in essence an *actio popularis*. The Constitutional Court also emphasized that the author had failed to indicate whether he wished to be elected to the parliament, and whether he had ever been a member of any political party, and whether he had attempted to stand for the parliamentary elections. The Constitutional Court also noted that the contested norm only indicates the

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<sup>13</sup> The author also mentions that the need to join an existing political party in order to stand for election is also against the freedom of association guaranteed by article 22 of the Covenant, since the right to freedom of association implies that in general no one may be forced by the State to join an association. However, the author declares that he does not invoke a violation of article 22, but simply refers to this aspect to give more weight to his claim under article 25.

subjects who may submit the list of candidates to the parliamentary elections, but it does not determine that only a member of the political party may stand for such elections.

4.4 On 19 July 2010, the author submitted an application to the Central Election Commission, requesting to include him in the lists of the Riga region for the elections to the parliament as an independent candidate. The author argued that he was a citizen of Latvia and that pursuant to article 9 of the Constitution he had a right to stand for the parliamentary elections. On 22 July 2010, the Central Election Commission informed him that in accordance with domestic legislation lists of candidates to the parliamentary elections could be submitted only by political parties or associations of political parties. The Commission submitted that its task was the coordination of the election process, that is, registration of the lists of candidates submitted to the elections by the political parties or their associations. On an unspecified date, the author lodged with the Regional Administrative Court a complaint against the decision of the Central Election Commission, requesting the court to dismiss the decision and oblige the Commission to register his independent candidacy in elections of the 10<sup>th</sup> parliament.

4.5 On 4 August 2010, the Regional Administrative Court refused to accept the author's complaint. The court established that the author had no subjective right to request the Central Election Commission for registration of independent candidacy before parliamentary elections. The court also indicated that "the proportional electoral system is based on the idea of necessity of proportional representation for the political power (political party)", and that "the proportional election system envisages voting for political parties or their associations, instead of particular independent candidates."

4.6 On 16 August 2010, the author again applied to the Constitutional Court with a request to declare article 9 (1) of the Parliament Elections Law incompatible with articles 1, 9, 89 and 91 of the Constitution. On 14 September 2010, the Constitutional Court refused to initiate the proceedings, finding that the legal argumentation was manifestly insufficient to satisfy the claim. On 11 March 2011, the author submitted an application to the European Court of Human Rights. On 27 November 2014, the Court informed the author that his application no. 18489/11 in the case of Kvasnevskis II v. Latvia had been declared inadmissible.

4.7 On 4 October 2014, the author stood for the parliamentary elections as a member of the political party the Russian Union of Latvia (Latvijas Krievu Savienība). The party received 1.58 % of electoral votes and obtained no seats in the parliament.

4.8 As regards the alleged violation of article 25 of the Covenant, the State party points to the ambiguity of its essence. On the one hand, the author appears to claim that his rights under article 25 have been restricted, as he was not able to stand for the parliamentary elections as an independent candidate. On the other hand, he submits that he "is not contesting the compatibility of a list system as such with article 25 of the Covenant". He does not complain about the electoral system of Latvia which does not allow independent candidates to submit their candidacy to the parliamentary elections, allowing instead only the political parties or associations of political parties to submit the lists of candidates. The author's complaint appears indeed closely linked with the existing electoral system of Latvia as it concerns the system of candidate lists established by article 9 of the Parliament Elections Law.

4.9 For a complaint to be compatible *ratione materiae* with the Covenant, the right relied on by the author must be protected by the Covenant. In the present case, the alleged right to stand for the parliamentary elections as an independent candidate is not covered by article 25 of the Covenant, recalling that the Covenant "does not impose any particular electoral system".<sup>14</sup> The State party notes that the Covenant only sets the general principles that the domestic regulation must comply with, but the choice of a specific electoral system rests with each national legislator. The State party clarifies that the proportional electoral system, the so-called list system of political parties, has existed in Latvia since the very first parliamentary elections in 1922.<sup>15</sup> The electoral system following the renewal of the

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<sup>14</sup> The General Comment No. 25 (CCPR/C/21/Rev.1/Add.7), para. 21.

<sup>15</sup> The election of independent candidates was not foreseen, and the regulation envisaged the right of persons to stand for the parliamentary elections only through organised political associations.

independence in 1990 was largely similar to that used before the successive occupations. When adopting the Parliament Elections Law on 25 May 1995, one of the reasons the legislator was in favour of a list of candidates to the parliamentary elections to be submitted by the political parties or their associations was the need to create prerequisites for the development of the political party system.

4.10 With amendments to the Parliament Elections Law of 26 March 1998, the legislator specified that only the political parties or associations of political parties may submit lists of candidates to the parliamentary elections, and this principle is in force at present. Since the renewal of independence of Latvia, individuals have not had the opportunity to stand for the parliamentary elections as independent candidates. Similar regulation of the electoral system is common in several European countries, and the nomination of candidates is strictly list-based and single-candidate lists are not allowed.<sup>16</sup> The State party hence firmly believes that the author has no subjective rights that would derive from the Covenant, obliging the State to introduce a particular electoral system, or to organise its electoral process in the way it would introduce the right of independent candidates to stand for the parliamentary elections. The author's communication should be declared inadmissible *ratione materiae*.

4.11 The author's complaint under article 25 should also be declared inadmissible, as it has not complied with the procedural requirements. Firstly, the author has never challenged the decision of the political party the Social Democratic Party the Harmony of 21 April 2010 on his exclusion from membership before the governing body of the said political party. Secondly, the author has failed to comply with the format for submitting a constitutional complaint to the Constitutional Court. Therefore, the author has never fulfilled formal requirements for submission of the constitutional complaint. In its decision of 14 September 2010, the Constitutional Court held that the author's legal argumentation was manifestly insufficient to initiate the constitutional proceedings. In the case of *Gubenko v. Latvia*,<sup>17</sup> the European Court established that the Constitutional Court, comparably to the present case, had informed the applicant that his constitutional complaint did not comply with article 19 of the Law on the Constitutional Court, which sets out the formal requirements. Those include that anyone submitting a constitutional complaint must substantiate the claim that an existing legal provision had infringed the fundamental right invoked. In that case, the applicant had failed to exhaust domestic remedies as he had failed to submit a proper constitutional complaint by complying with the requirements set out by the domestic law.<sup>18</sup> Accordingly, the author's complaint under article 25 should be rejected for non-exhaustion of domestic remedies.

4.12 On the merits, the State party reiterates that the Covenant does not oblige States parties to create a specific electoral system. The Covenant does not provide either a justifiable right for the author to be able to stand in the elections as an independent candidate. There has been no interference with the author's right under article 25 of the Covenant, since the author has never been prevented from creating his own political party, together with individuals sharing similar political opinions, to stand for the parliamentary elections. Indeed, the author has acknowledged that "no formal barrier" exists under the electoral system of Latvia to establish his own political party. In addition, the author has never been struck off the list of candidates to the parliamentary elections by the decision of the competent institution or the political party for the failure to comply with any formal criteria. As regards the author's allegation that "the restriction on his right under article 25 was prescribed by law", but it "did not have a legitimate aim and its impact on the right to be elected was disproportionate", the State party believes that the regulation on the submission of lists of candidates to the parliamentary elections prescribed by article 9 of the Parliament Elections Law has several legitimate aims and is reasonable. The author has failed to provide arguments as to why the alleged violation

<sup>16</sup> Ehin P. et al., Directorate General for Internal Policies, Committee on Constitutional Affairs of the European Parliament, available at:

[http://www.europarl.europa.eu/RegData/etudes/join/2013/493008/IPOL-](http://www.europarl.europa.eu/RegData/etudes/join/2013/493008/IPOL-AFCO_ET(2013)493008_EN.pdf)

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<sup>17</sup> ECtHR, Application no. 6674/06, decision of 3 November 2015, paras. 44-53.

<sup>18</sup> In that case, the applicant had failed to substantiate his grievances on the point of facts and law.

of the right to stand for the parliamentary elections through the list system of political parties is to be considered unreasonable.

4.13 Members of the Parliament are elected based on a party-list proportional representation system, reflecting the idea of proportional representation of political forces. Political parties are a political instrument of expression of the interests of the majority of people. The Parliament Elections Law specifies the procedure of submitting candidates to the parliamentary elections (article 9). The author's allegations that the Central Election Commission should have registered him as an independent candidate are misconstrued as the Commission may not register independent candidate for the parliamentary elections. Accordingly, the Administrative Regional Court refused to accept the author's complaint against the decision of the Commission of 22 July 2010. The Court in its decision of 4 August 2010 established that the author had no subjective rights that would derive from objective rights to request the Central Election Commission the registration of independent candidacy before parliamentary elections.

4.14 In practice, political parties nominate to the elections their members, supporters or persons that are recognizable to the public, to secure a greater representation of the party in the parliament. The order of a candidate on the list does not play a role, given the possibility of preferential votes. The general requirements for establishing a political party in Latvia are not overly high. Under the current legislation on electoral system of the State party, it is possible to stand for the parliamentary elections without being a member of a political party; and such examples exist in practice. The State party submits that in Western countries, understanding of the obligation to ensure free elections is inextricably linked to a multi-party system, and it is assumed that only multi-party system can guarantee free choice between several genuine alternatives.<sup>19</sup> The functioning of the parliament of Latvia is adapted to a party-based electoral system to avoid overly fragmented partisanship and contribute to a more efficient and stable political process.

4.15 Strong political parties are an essential factor in strengthening parliamentarism that could be characterised as a traditional form of democracy in the State party. The exercise of the right to stand for the parliamentary elections through the list system of political parties is aimed to strengthen the system of political parties, the political culture and the parliamentarism in Latvia, and subsequently the system of a democratic state.

4.16 Finally, the Committee should conclude that the author's claims are manifestly ill-founded, or that there has been no violation of article 25 of the Covenant in the present case.

#### **Author's comments on the State party's observations**

5.1 On 22 July 2019, the author submitted comments on the State party's observations on admissibility and the merits, asserting that his communication is admissible, and that there has been a violation of article 25 of the Covenant.

5.2 As regards the scope, the author claims that his communication concerns the current electoral system which bars individuals and him in particular from standing for election unless he or she is included in a list submitted by a legally registered political party or a legally registered political parties' association. Independent candidates were able to submit their candidacy and stand in parliamentary elections until the legislative change of the electoral system in 1995.

5.3 The State party's objection that his communication should be held inadmissible *ratione materiae* relies upon a reference in General Comment No. 25 that article 25 does not impose any particular electoral system, and the practice of some of the states including the State party. However, this assertion ignores the provision in General Comment No. 25 (para. 17) that "the right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties". If a candidate is required to have a minimum number of supporters for nomination, this requirement should be reasonable and not act as a barrier to candidacy. The possibility of any individual to stand for election without being a member of a specific party therefore falls within the scope of the

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<sup>19</sup> M. Nowak, UN Covenant on Civil and Political Rights, ICCPR Commentary, 2<sup>nd</sup> Revised Edition, Norbert Paul Engel Verlag, 2005, p. 584.

right guaranteed by article 25 of the Covenant. This provision recognizes that there may be justifications for imposing restrictions on the ability of individuals to stand for election. Any such restrictions must, to be compatible with article 25 (a) of the Covenant, be based on objective criteria, have purpose consistent with the domestic decision-making process, and respect the principle of proportionality.<sup>20</sup> Accordingly, the author's communication should be considered admissible *ratione materiae*.

5.4 Furthermore, the State party's objections to exhaustion of domestic remedies are misconceived. A challenge to the author's expulsion from the Social Democratic Party the Harmony cannot be regarded as an available domestic remedy which should have been exhausted since his complaint concerns inability of persons who do not belong to political parties to be also allowed under the electoral system of Latvia to stand as candidates in parliamentary elections.

5.5 Secondly, the ruling of the Constitutional Court of 14 September 2010 affirms that the merits of the author's constitutional complaint was that the first paragraph of article 9 of the Parliament Election Law was unconstitutional. The author had argued that there was no provision other than age that allowed restriction on a person's ability to stand for election, and that there was discrimination in the treatment of "non-party fellow-citizens, compared to those who belong to a party". These were the sufficient legal grounds for the author's complaint, yet they were rejected peremptorily without any opportunity to respond to submission from the State party as to the possible justifications for the restriction on a right to stand for election. In addition, his submissions to the Constitutional Court were not general, unlike those in the referred decision in *Gubenko v. Latvia*. His claim that article 9 of the Parliament Election Law was unconstitutional was, in fact, supported by fourteen paragraphs of pertinent arguments. This is not a genuine instance of failing to substantiate the grounds of constitutionality but a situation in which the Constitutional Court refused to consider the submissions regarding the unconstitutionality of the legislative provision concerned. The State party's assertion that he had failed to exhaust domestic remedies by not fulfilling the formal requirements for submission of a constitutional complaint is unwarranted, and his communication should be considered admissible.

5.6 As to the merits, the author refers to the State party's argument that the author has not been prevented from creating his own political party together with other individuals. The author has never disputed that it was open to him to establish a political party, but his complaint is not about being so prevented. He is complaining about not being able to stand for election without being a member of a political party, referring to article 9 of the Parliament Election Law.

5.7 As to the State party's objection that the author has not provided arguments as to why the inability to stand for election through the list system of political parties is to be considered unreasonable, the author reiterates arguments from the initial communication: there was no legitimate aim for excluding the possibility of independent candidates standing for election alongside candidates on the lists of political parties, the system entailed a compulsion to associate and the undue burden of establishing a party prior to election. In addition, the State party has sought to portray the exclusion of the possibility of independent candidates from standing for election since 1995 as the way to strengthen the political party system. This assertion is incorrect as the Parliament Election Law was changed in 1995 for reasons of administrative convenience of the Central Election Commission, which could have been addressed by means not affecting the rights under article 25 of the Covenant. Prior to this change, there was a possibility for independent candidates to stand for election, if their nomination was signed by 100 voters. Moreover, under the present list system, there is no requirement that a member of the Parliament, after having been elected, retain a membership of the party or association on whose list of candidates they had been included.

5.8 The administrative convenience cannot be a sufficient justification for a significant restriction on the right to stand for election. In addition, there is no evidence of the list system strengthening the political party system given the freedom of those elected to abandon their

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<sup>20</sup> *Debreczeny v. the Netherlands*, para. 9.3, *Gorji-Dinka v. Cameroon*, para. 5.6, *Pietraroia v. Uruguay*, para. 16, and *Gillot v. France*, para. 14.5.

parties after being elected. The requirement to be a member of a political party also entails a compulsion to associate which the African Court on Human and People's Rights has found to be unjustified. As this compulsion was not introduced to enhance democracy or in pursuit of any theory regarding electoral systems, but for the administrative convenience which has remained not substantiated, it cannot be regarded as affording a justification for the restriction imposed on the right under article 25 of the Covenant.

5.9 The State party's argument that the author could have established a political party in order to stand for election is completely unrealistic, as it fails to take into account practical difficulty of establishing a party shortly before an election when it has become clear, despite best endeavours, that it was impossible to use existing parties for the purpose of standing for election.<sup>21</sup>

5.10 The author is not seeking the withdrawal of the party list system but the restoration of the possibility of individuals to stand as independent candidates alongside those from political parties. This would be in line with the ability of the State party to determine its electoral system.

5.11 The African Court on Human Rights and People's Rights and the Guidelines on Political Party Regulation by the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe and the European Commission for Democracy through Law (the Venice Commission) of 2010 do not consider a complete ban on independent candidates to be consistent with the right to stand for election.

5.12 There is the need for a compelling justification to preclude persons from standing for election to the parliament of a country without being on a list of candidates submitted by a political party or an association of political parties. No such justification exists for the restriction that has been applied to the author, as explained above.

5.13 Finally, the author invites the Committee to declare his communication admissible, to find a violation of article 25 of the Covenant, and to request the State party, in accordance with article 2 (3) (a) of the Covenant, to provide the author with an effective remedy, including compensation and legal expenses.

#### **State party's additional observations**

6.1 On 30 November 2020, the State party submitted the rejoinder<sup>22</sup> on the author's comments, reiterating its observations of 21 March 2019.

6.2 The State party submits that the author primarily argued that the impossibility of standing as a candidate for the election to the Parliament other than on a list of candidates submitted by a legally registered political party or a legally registered political parties' association has resulted in the alleged violation of the Covenant. At the same time, the author argued that he did not contest that the list system that existed in Latvia as such was incompatible with article 25 of the Covenant. In its observations, the State party drew attention to this contradiction. It concludes that there is no dispute as to the fact that the author's complaint before the Committee is about the existing electoral system of the State party as established by article 9 of the Parliament Elections Law, and which prevents individual candidates from standing for elections without being on the list of a party.

6.3 As regards its argument of inadmissibility *ratione materiae*, the State party submits that article 25 of the Covenant does not guarantee a specific right to stand for election as an individual candidate, outside the lists submitted by the parties. The General Comment No. 25 refers only to party membership, whereas the electoral system of Latvia does not require party membership in order to stand for elections. The State party recalls that both, in the 2014 and 2018 Parliament elections, there were candidates who were included in the list of candidates submitted to the Central Election Commission by the political parties, who were not members of the respective party. The author, however, contests the list system as such. Article 9 of the Parliament Election Law does not require a candidate on the list to be a

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<sup>21</sup> The lists of candidates must be submitted between 80 and 60 days before an election, and the registration of a political party tends to take at least two months.

<sup>22</sup> Pursuant to rule 92 (6) of the Rules of procedure.

member of a political party, but only that the list be submitted by a party. The author has in fact expanded the scope of article 25 of the Covenant and requested the Committee to conclude that article 25 imposes an obligation to States parties to create a certain electoral system; a system in which States parties would have an obligation to allow independent candidates to stand for election without being listed. The author has requested the Committee to depart from its own conclusions in the General Comment No. 25, namely that article 25 “does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors.”<sup>23</sup> The State party reiterates its request to consider the author’s communication incompatible *ratione materiae* with article 25 as the right to stand for the parliamentary elections as an independent candidate falls outside its scope.

6.4 As regards its argument that the author has not exhausted all available domestic remedies, the State party recalls the decision of the Constitutional Court of 14 September 2010, wherein it was noted that the author had contested incompatibility of article 9 of the Parliament Election Law with the Constitution. The Court held that the author’s complaint did not disclose any arguments how a disputed criterion for nomination to stand for election would disproportionately limit the author’s rights under article 9 of the Constitution to be elected, or unjustifiably infringed upon the principle of equality as enshrined in article 91 of the Constitution. The Court “therefore considered the legal argumentation provided in the author’s application as manifestly insufficient to find in his favour.” Before the Court, the author did not discharge the burden of proof to establish that a contested provision is *prima facie* incompatible with a provision of the Constitution. According to the Court’s case law, an opinion of an author is not sufficient legal argumentation.

6.5 The author’s first complaint to the Constitutional Court was considered in its decision of 28 April 2010 as *actio popularis*. The author should have known that his arguments as presented in paragraphs 4 to 14 of his second constitutional complaint would not meet the requirements of specificity under article 18 (1) (4) of the Law on the Constitutional Court. Recalling the Committee’s decision in *Apa v. Spain*,<sup>24</sup> which underscored that authors must exercise due diligence in pursuit of available remedies, the State party reiterates that the author failed to comply with the formal requirements for submission of a complaint before the Constitutional Court. Since the Court has not deliberated on the merits of the author’s allegations, the author has not exhausted domestic remedies.

6.6 On the merits, the State party submits that the author’s complaint is either manifestly ill-founded claiming that individuals who do not belong to political parties cannot stand for elections as article 9 of the Parliament Election Law does not prohibit persons from standing for elections if they do not belong to a political party; or the author has failed to show how the State party has interfered with his rights under article 25. The State party recalls the Committee’s inadmissibility decision in *A.P. v. the Russian Federation*, which concerned another author’s claims regarding an alleged violation of article 25 (a) and (b) of the Covenant to the effect that he could not be elected as an independent candidate at genuine periodic elections, other than by passing through a list of a political party registered for the elections in question.<sup>25</sup>

6.7 Similarly, the author in the present case has not attempted to stand for elections as a non-party member from a list of any party, and neither has he explained why he could not create his own political party together with individuals sharing similar political opinions and stand for elections from the list of such party. Given that the author has claimed that he merely wants the restoration of the previous electoral system, the State party notes that there was never a possibility of standing for elections as an individual candidate. The system has always been list-based.

6.8 Regarding the rationale behind the Latvian electoral system, the State party recalls the Committee’s General Comment No. 25, where the Committee acknowledged that State

<sup>23</sup> General Comment No. 25, para. 21.

<sup>24</sup> *Apa v. Spain* (CCPR/C/50/D/433/1990), para. 6.2.

<sup>25</sup> *A.P. v. The Russian Federation* (CCPR/C/107/D/1857/2008), paras. 10.6 – 10.7.

parties enjoy wide margin of appreciation regarding the establishment of their electoral systems. Indeed, the electoral systems must be compatible with the rights entailed in article 25, and they must be free, periodic and genuine. They should also protect the free expression of the will of the electors.<sup>26</sup> The State party recalls the conclusions of the European Court of Human Rights in the case of *Matthews v. the United Kingdom* finding that the choice of electoral system by which the free expression of the opinion of the people in the choice of the legislature is ensured – whether it be based on proportional representation, the “first-past-the-post” system or some other arrangement – is a matter in which the State enjoys a wide margin of appreciation.<sup>27</sup>

6.9 The State party noted that the legitimate aim protected by article 9 of the Parliament Election Law was the protection of the democratic system through strengthening the system of political parties, the political culture and the parliamentarism in Latvia. The European Court of Human Rights has noted that effects of an electoral threshold can differ from one country to another, and the various systems can pursue different political aims. None of these aims can be considered unreasonable in itself.<sup>28</sup> Latvia’s decision to create the existing electoral system pursues the aim of avoiding the fragmentation of the party system and ensuring fair representation of parties in the Parliament rather than individuals. The author’s contention that the impugned provision did not pursue a legitimate aim, but was created rather for administrative convenience, is unfounded. First, there was never an option for individual candidates to stand for elections, and second, the list-system pursues a legitimate aim.

6.10 The State party recalls article 16 of the *Law on the 5<sup>th</sup> Parliamentary Elections* that foresaw that candidates must be included in a list, i.e. just like the current Parliament Election Law. Unlike the author submits, the election of independent candidates was never foreseen, and the regulation envisaged the right of persons to stand for the parliamentary elections only through organised political parties or associations. The author’s argument regarding the lack of a legitimate aim of such restriction is manifestly ill-founded.

6.11 The State party reiterates that the obligation to ensure free elections is linked to a multi-party system, which can guarantee free choice between several genuine alternatives.<sup>29</sup> As to the author’s reference to the *Guidelines on Political Party Regulation* by the OSCE and the European Commission for Democracy through Law, the State party also recalls that the Venice Commission has concluded that proportional representation system is not automatically synonymous with a list system. The proportional system may be effectively used, albeit very rarely, in combination with individual candidature,<sup>30</sup> acknowledging that proportional representation systems do not require that State party establish a system where individuals can stand for elections as individual candidates. On the contrary, the States parties enjoy a wide margin of appreciation in this matter. Whereas the *Guidelines on Political Party Regulation* underline that individual candidates should be afforded the right to stand for election without being members of political parties, to have an equal opportunity to access

<sup>26</sup> General Comment No. 25: Article 25 (CCPR/C/21/Rev.1/Add.7).

<sup>27</sup> *Matthews v. the United Kingdom* (application no. 24833/94), GC judgment of 18 February 1999, para. 64. In that case, the Court found that the very essence of the applicant’s right to vote, as guaranteed by Article 3 of Protocol No. 1, was denied.

<sup>28</sup> European Court of Human Rights, “*Guide on Article 3 of Protocol No. 1 to the European Convention on Human Rights: Right to free elections*”, updated on 31 August 2020, available: [https://www.echr.coe.int/Documents/Guide\\_Art\\_3\\_Protocol\\_1\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_3_Protocol_1_ENG.pdf), para. 68.

<sup>29</sup> Nowak M., *U.N. Covenant on Civil and Political Rights: ICCPR Commentary*. 2<sup>nd</sup> Revised Edition. Germany: Norbert Paul Engel Verlag, 2005, p. 584.

<sup>30</sup> European Commission for Democracy Through Law (Venice Commission), *Electoral Law*, CDL-EL(2013)006, Strasbourg 3 July 2013, available: <https://www.venice.coe.int/webforms/documents/?pdf=CDL-EL%282013%29006-e>, p.162; Council of Europe, European Commission for Democracy through Law (Venice Commission), *Report on Electoral Systems: Overview of available solutions and selection criteria*, adopted by the Venice Commission at its 57<sup>th</sup> Plenary Session, Study no. 250/2003, Strasbourg, 4 February 2004, available: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2004\)003-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2004)003-e), p. 4.

the ballot,<sup>31</sup> and not that there would be a requirement to allow individual candidates to stand for election without being included in a list.

6.12 Finally, the State party invites the Committee to find the present communication under article 25 manifestly ill-founded, or, alternatively, that there has been no violation of the said article since the State party has chosen the most appropriate electoral system to protect the party-system, whilst enabling persons who do not belong to parties to participate in political decision making.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

7.1 Before considering any claims contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether it is admissible under the Optional Protocol.

7.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the State party's objection to the exhaustion of domestic remedies by the author, arguing that the complaint he submitted to the Constitutional Court did not meet formal requirements (paras. 4.3, 4.6 and 4.11), and that the author did not object to his exclusion from the Social Democratic Party the Harmony (Saskana). The Committee, however, observes that the author addressed the substance of his claims - illegitimate and unreasonable restrictions of his right to stand as individual for election to the Parliament, in his application of 30 March 2010 and the constitutional complaint of 16 August 2010, but the Constitutional Court rejected them for formal reasons, without considering their merits. The Committee also notes the author's argument that a legal objection to his exclusion from the Social Democratic Party the Harmony (Saskana) is not in any way related to the substance of his claims, and hence does not represent an effective remedy. The Committee therefore finds that the consideration of the author's communication is not precluded by the requirements of article 5 (2) (b) of the Optional Protocol.

7.4 The State party has further objected that the author's claims are inadmissible *ratione materiae* as not falling within the scope of article 25 of the Covenant. The author, however, contended that his main claim has concerned the author's inability to stand as independent candidate for election to the Parliament, without a nomination on the list of candidates by a political party or their association, and that the restrictions of his right to stand for election have not pursued legitimate aim and their impact was disproportionate (paras. 3.3 and 5.3). The Committee considers that the author's claims fall within the scope of article 25 of the Covenant, which guarantees a right of an individual to stand for election, without unreasonable restrictions. Consequently, the Committee finds that the author's claims are admissible *ratione materiae*, in accordance with article 3 of the Optional Protocol.

7.5 The Committee considers that the author has sufficiently substantiated, for purposes of admissibility, his claims under article 25 of the Covenant. Accordingly, it declares the author's communication admissible and proceeds with its consideration on the merits.

### *Consideration of the merits*

8.1 The Committee has considered the present communication in the light of all the information submitted to it in writing by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The issue before the Committee is whether the author's rights under article 25 were violated by not allowing him to stand as independent candidate for parliamentary elections held on 2 October 2010, and on 4 October 2014, without having been nominated and included on the list of candidates by a political party or their association.

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<sup>31</sup> OSCE, Venice Commission, *Guidelines on Political Party Regulation*, Warsaw, 2011, p. 63, available: <https://www.osce.org/files/f/documents/2/b/77812.pdf>.

8.3 The Committee has noted the author's claims under article 25 of the Covenant that he could not be elected in general elections in 2010 and also in 2014, because the State party's electoral system, at the time, did not allow him to stand as an independent candidate in the parliamentary elections other than by passing through a list of candidates of a political party, or of their association, registered for the elections in question. In this connection, the Committee notes that the author had been a member of the political parties the Tautas Saskaņas Partija and the Social Democratic Party the Harmony (Sakana) prior to the general elections in 2010 (until April 2010); and that he submitted an individual independent candidature to the Central Election Commission in July 2010, which was rejected. The Committee further notes the author's failed attempts to have the tenants' concerns accommodated by political parties, and to be included in the lists of candidates by political parties for 2014 parliamentary elections, as parties only included in their lists members of the parties (except for his inclusion in the list of candidates nominated by the newly formed "Russian Union of Latvia" which did not manage to have any of its candidates elected); and that the "Latvia's Tenants Association" was neither a legally registered political party nor a legally registered political parties' association, and becoming one was not an option as it was mostly composed of non-citizens.

8.4 The Committee further notes that the State party explained that for independent candidates, it was possible to be listed for the elections through one of the lists of parties registered for such elections. The State party also explained that the author could create his own political party together with individuals sharing similar political opinions and stand for elections through it. In this connection, the State party noted that the author has not attempted to stand for elections as a non-party member from a list of any party, and neither has he explained why he could not create his own political party together with individuals sharing similar political opinions and consequently stand for elections from the list of such party (para. 6.8).

8.5 The Committee further notes the author's argument that there was no legitimate aim for excluding the possibility of independent candidates standing for election alongside candidates on the lists of political parties; that the system entailed a compulsion to associate and the undue burden of establishing a party prior to election; and that his aim was to extend the possibility to individuals to stand as independent candidates alongside those from political parties (paras. 5.5-5.6).

8.6 In that regard, the Committee recalls its General Comment No. 25 (para. 17) which provides that the right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties. The Committee should then determine whether the limitation inherent in the State party's electoral system that requires candidates to be nominated by political parties or their associations, even as non-party members, is reasonable in line with the requirements of article 25. The Committee notes the information of the State party that the nomination in the list of political parties does not automatically and necessarily entail being a formal member of that party, and that independent candidates can be put forward as candidates on such lists. In addition, the Committee notes that the author could have established his own political party together with individuals sharing similar political opinions and consequently stand for elections from the list of such party, which would correspond to the proportional party-based electoral system.

8.7 The Committee also recalls that in its General Comment No. 25 (paras. 4 and 21), it has set out that article 25 "does not impose any particular electoral system, any system operating in a State party must be compatible with the rights protected by article 25 and must guarantee and give effect to the free expression of the will of the electors" and that "any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable criteria, and that any restrictions thereof be provided by law". The Committee considers that in the circumstances of the present case, the author has not established that the restrictions imposed on him, seeking to stand as an independent candidate in parliamentary elections, through the requirements of the electoral system in place at the time, were not in compliance with the provisions contained in article 25 of the Covenant. In particular, those requirements pursued the legitimate aim of proportionate parliamentary representation based on synergy and competition of political parties; provided an option for independent non-party members to run on the lists of candidates proposed by the political

parties or their associations; and any corresponding restrictions in the context of the electoral system were objective, proportionate and reasonable.

9. In the light of the above, the Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not reveal any violation of article 25 of the Covenant.

## Annex

### **Individual opinion by Committee member Rodrigo Alberto Carazo (dissenting)**

1. Es claro el artículo 25 del Pacto. Sin restricciones indebidas toda persona tiene el derecho a ser electa para el ejercicio de funciones públicas. En ese mismo sentido abunda el párrafo 17 de la Observación General número 25 indicando específicamente que el derecho a ser electo consagrado por el artículo 25 del Pacto “no debe limitarse injustificadamente exigiendo que los candidatos sean miembros de partidos políticos”, agregando en el párrafo 25 que toda limitación que se aplique al ejercicio de los derechos protegidos en el artículo 25 debe basarse en criterios “objetivos y razonables”
2. Al autor se le impidió postularse siquiera a un cargo a ser definido en un proceso electoral. Al resolver la petición el Comité acepta la validez del argumento del Estado Parte en el sentido de que la limitación resulta de una disposición legislativa que exige a cualquier candidato ser postulado por un partido político con el propósito de “ proteger el sistema democrático mediante el fortalecimiento del sistema de partidos políticos, la cultura política y el parlamentarismo “, e indica el Comité (párrafo 8.7) que las restricciones “*parecían*” (destacado no es del original) el objetivo legítimo de una representación parlamentaria proporcionada basada en la sinergia y la competencia de los partidos “ lo cual deviene, a todas luces, ser absolutamente subjetivo, y algo que privilegia a partidos políticos y es por lo tanto atentatorio al derecho de las personas a ser electas.
3. Considero que el Comité debió haber tenido por violentado el artículo 25 en perjuicio del autor.

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