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Human Rights Committee

Decision adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3148/2018*,**

<i>Communication submitted by:</i>	AL (represented by counsel, Inese Nikulceva)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Latvia
<i>Date of communication:</i>	14 August 2017 (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 March 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	19 July 2024
<i>Subject matter:</i>	Restrictions of exercise of two public service positions
<i>Procedural issues:</i>	Admissibility – substantiation of claims; exhaustion of domestic remedies; abuse of submission
<i>Substantive issue:</i>	Right to take part in the conduct of public affairs and to have access to public service
<i>Article of the Covenant:</i>	25 (a) and (c)
<i>Articles of the Optional Protocol:</i>	2, 3 and 5 (2)

1.1 The author of the communication is A. L., a citizen of Latvia born on 26 September 1953. The author claims that a security measure imposed on him during the criminal proceedings – not to be allowed to exercise two public service positions – amounts to a violation of his rights under article 25 (a) and (c) of the Covenant to take part in the conduct

* Adopted by the Committee at its 141st session (1-23 July 2024).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

of public affairs and to have access to public service. The Optional Protocol entered into force for the State party on 22 September 1994. The author is represented by counsel.

1.2 On 21 May 2018, the State party requested a separate consideration of the admissibility of the communication from the merits. On 6 February 2023, the Committee, acting through its Special Rapporteurs on New Communications and Interim Measures, decided to examine the admissibility of the communication together with its merits.

Facts as submitted by the author

2.1 The author is a politician – member and chair of the Board of the Latvian political party “Latvijai un Ventspilij”.¹ In the last municipal elections of 3 June 2017, the party won nine of the 13 mandates in the Ventspils City Council.² Since 1988, the author is the chair of the municipality of Ventspils. He was elected in municipal elections in 1991, and was re-elected in 1994, 1997, 2001, 2005, 2009, 2013 and 2017 to the Ventspils City Council as its member, and as the chairman of the Ventspils City Council.³ He is also the chairman of the Board of the Freeport of Ventspils.⁴

2.2 On 3 October 2005, criminal proceedings were initiated against the author. By decisions of 14 March 2007 and 27 August 2007,⁵ the author was held criminally liable for several crimes committed in his public official capacity as chairman of the People’s Deputy Council of Ventspils City: performing activities in the interest of persons offering a bribe, accepting bribe of a particularly large amount and demanding a bribe of an especially large amount; participation in property transactions as a public official occupying a position of responsibility, although prohibited from such activities due to his official status; forging documents; repeated money laundering in an organized group; and providing false information when declaring property. As a security measure, the author was put in detention, but on 10 July 2007, the Riga Regional Court revoked that measure and ordered his house arrest.

2.3 On 13 August 2007, a prosecutor of the Pre-trial Investigation Supervision Department of the Criminal Law Department of the Office of the Prosecutor General, in addition to the security measures of house arrest and prohibition from approaching specific persons, decided to impose the security measure of prohibition on specific employment.⁶ The prosecutor thus pronounced the prohibition for the author to perform the duties of Chairman of the Ventspils City Council as well as that of Chairman of the Board of Ventspils Freeport until the amendment or revocation of this security measure. When adopting the decision, the prosecutor took into account the fact that the author was charged with crimes and criminal activities committed in his position of responsibility within the service of public institutions and considered that in continuing to perform his duties as Chairman of the Ventspils City Council and as Chairman of the Board of the Ventspils Freeport, the author could continue to abuse his official status. For the prosecutor, there was sufficient reason to believe that the author, if continuing to occupy those positions, could repeatedly commit criminal activities, perform actions to conceal those activities or interfere with the pre-trial investigation. The security measure was deemed to interfere as little as possible with the author’s fundamental rights and to be proportionate.

¹ “For Latvia and for Ventspils”; Ventspils is the sixth biggest city in Latvia.

² According to the Latvian voting system, although the voting in municipal elections refers to lists of political parties and electoral associations, the voters may put “+” marks for individual candidates or strike them out. In the 2017 municipal elections, the author received the highest number of “+” marks (3.914), as well as the highest number of votes (10.235), calculated based on actual votes “for” plus “+” marks and minus “strike outs”.

³ The chairman of a city council is elected by the members of the council; the author has been re-elected as the chairman of the Ventspils City Council all over this period of time.

⁴ The author was appointed by the Ventspils municipality to the Board of the Ventspils Freeport Authority and was elected as its chairman. The Ventspils Freeport Authority is a legal person governed by the public law; hence the members of its Board hold public service positions.

⁵ The decisions are not on the file, and it is not clear from facts/translations which authority issued those decisions.

⁶ According to the author, that decision was not subject to appeal.

2.4 On 22 February 2008, the Kurzeme Regional Court revoked the house arrest, but maintained the prohibition on specific employment, along with other security measures.⁷

2.5 On 17 September 2010, the Riga Regional Court rejected the author's request of 19 August 2010 to revoke the security measure of prohibition on specific employment.⁸ The court held that the security measure, provided for by Section 243(1) of the Code of Criminal Procedure, was proportionate given the character and gravity of the criminal offences, and had not been applied for an unjustifiable long time, given the complexity of the case and number of witnesses. On 22 May 2012, 15 September 2014 and 7 June 2016, the Riga Regional Court rejected further requests to revoke the security measure of prohibition on specific employment.⁹

2.6 Following a further request of 11 January 2017 to revoke the security measure, the Riga Regional Court decided on 30 January 2017 to maintain the prohibition on specific employment. The author argued that the law stipulated that this measure must be set for a certain period, whereas the wording of the decision of 13 August 2007 – “until this security measure is amended or cancelled” – could not be considered as setting a time, because the time is calculated in hours, days, months or years. The author submitted that the law did not provide for such a form of calculating the time, that is, as the occurrence of a certain event, and he argued that article 6 (1) of the European Convention on Human Rights was violated, claiming that when the arguments of the parties are clear and substantiated, the court must provide them with answers. The court considered that the security measure was proportionate and that its choice and grounds for application conformed to the requirements stipulated in the law, as well as the charges against the author. The court also considered that the measure ensured that the author would not continue his actions until a final judgment in his case. The court further held that the measure was not applied for an unjustifiably long period of time, neither was its length disproportionate nor infringing upon the author's fundamental rights to such an extent as to amount to a violation of the European Convention on Human Rights (the Convention).

2.7 On 15 May 2017, the author submitted a complaint to the Constitutional Court, arguing that the legal norm which allowed for the security measure of prohibition on specific employment to be applied without a periodic judicial control of its necessity and without a time limit was against the constitutional rights to participate in the work of the State and of local government, and also against the right to choose freely an employment and a workplace. He claimed that the measure was applied without a time limit and without a reasonable link with the offence. On 29 June 2017, the Constitutional Court decided not to initiate a case, considering that it was not allowed to reassess the application and interpretation of legal norms, and that it was not established that the alleged non-compliance of the contested norm with the provisions of the Constitution would be a cause of infringement of the fundamental rights of the author. It also held that the authority which imposed that measure was competent to decide on its duration and observed that the author had contested that measure several times, but the courts decided that it was necessary and proportional.

Complaint

3.1 The author submits that the security measure that prohibits him from fulfilling the duties of Chairman of the Ventspils City Council and of Chairman of the Board of the Ventspils Freeport is a restriction to his right under article 25 (a) and (c) of the Covenant to take part in the conduct of public affairs and to have access to public service.

3.2 While admitting that the right provided by article 25 of the Covenant is not absolute, the author considers that the prohibition to exercise the two chairman positions is not in accordance with the Latvian law of criminal procedure. First, it is not time bound as it could only be revoked through an amendment or formal revocation of the security measure. Second,

⁷ Placement under police supervision; prohibition from approaching certain persons; prohibition to change residence; prohibition to leave the country without permission; prohibition to participate in demonstrations, public meetings, street processions, pickets and gatherings. That decision was final, not subject to appeal.

⁸ According to the author, that decision was not subject to appeal.

⁹ According to the author, those decisions were not subject to appeal.

when deciding to maintain that measure, the Latvian courts have not mentioned facts that suggested that the author would interfere with the criminal proceedings or engage in new criminal activities. And third, that security measure has not been applied or even proposed by the person leading the criminal proceedings, or by an investigating judge by a reasoned written decision but was applied by the Kurzeme Regional Court on 22 February 2008 as an appellate court, on its own initiative, when it considered his complaint regarding the house arrest.

3.3 The author further considers that the measure had no objective and reasonable grounds because it did not pursue a legitimate aim – not to interfere with the investigation and not to commit new criminal offences – and did not conform to the principle of proportionality. None of the court decisions contains compelling motivation regarding the necessity of the application of that security measure. Moreover, the measure has been applied for 10 years at the time of initial communication – although he has not been found guilty and has not been sentenced – which is unreasonably long.¹⁰

3.4 Finally, the author claims that the Latvian law does not provide for fair proceedings on imposition and review of the security measure of prohibition on specific employment. Thus, such a significant restriction of rights was requested by a single person – a public prosecutor – and was not subject to periodic judicial control.¹¹ The author considers that court decisions must justify each time in detail the necessity for further application of the prohibition on specific employment. However, in his case, the courts decided periodically on the revocation of the security measure, but only because the author requested them to do so.

State party's observations on the admissibility

4.1 On 21 May 2018, the State party requested that the Committee examine the admissibility of the communication separately from the merits and argued that author's claims were inadmissible for abuse of the right of submission, *res judicata*,¹² *litis pendens*, lack of exhaustion of all available domestic remedies and lack of substantiation of the claims under article 25 (a) and (c) of the Covenant.

4.2 The State party asserts that the same matter submitted by the author in the present communication was raised before the European Court of Human Rights within the span of several weeks.¹³ The State party also states that the author has applied to the European Court of Human Rights on ten occasions regarding this issue.¹⁴ The State party thus argues that the European Court of Human Rights has decided on this issue already, that the Court is presently deciding again on the same matter presented before the Committee, and that the author has abused his right of submission by failing to disclose his pending application before the European Court of Human Rights to the Committee.

4.3 The State party further argues that the author has not exhausted all available domestic remedies provided for in the Criminal Procedure Law, since he has not appealed against the prosecutor's decisions of 13 August 2007 and of 29 July 2008 to a higher-level prosecutor, he also has not used the opportunity to challenge the imposed security measure more

¹⁰ The author explains that under the criminal law, prohibition to hold a certain position or to perform certain or other activities may be applied as an additional criminal sentence, from one to five years (article 44 of the Penal Code). Thus, limitation of that right even as a criminal sentence may not be longer than five years, which means that a security measure – applied to persons who have not been found guilty of a criminal offence – for a longer period cannot be reasonable and proportionate. [The nature and complexity of the proceedings are reflected in paras. 6.4 and 6.16.]

¹¹ The Latvian criminal procedure law provides for the control of the necessity of further application only in respect of the security measures related to deprivation of liberty, i.e., arrest and house arrest.

¹² A reference has been made to the European Court of Human Rights.

¹³ The application to the European Court of Human Rights was submitted on 22 August 2017 regarding the author's "inability to hold the position of Chairperson of Ventspils City Council after being elected." See the European Court of Human Rights decision on inadmissibility dated 11 October 2018.

¹⁴ As regards the same matter, the State party argues that the present communication is inadmissible given the case law of the Committee in *Karakurt v. Austria* (CCPR/C/74/965/2000); *V.O. v. Norway* (CCPR/C/25/D/168/1984); *Rogl v. Germany* (CCPR/C/70/D/808/1998); *Šroub v. Czech Republic* (CCPR/C/97/D/1573/2007); and *MG. v. Poland* (CCPR/C/114/D/2183/2012).

regularly than every two years, or together with the final judgment,¹⁵ and because the author did not use the opportunity to reapply to the Constitutional Court. However, the State party admits that the trial court on several occasions evaluated the application of security measure against the author from various perspectives, showing that the national authorities have thoroughly analysed every submission before deciding on continuation of the security measure. It also argues that the Committee is not competent to re-assess the facts and evidence, unless the national authorities' assessment was clearly arbitrary or amounted to a denial of justice.¹⁶ Moreover, several other security measures applied in the case have gradually been revoked and the national authorities hence proved that domestic remedies have been effective.

4.4 Lastly, the State party claims that the author has not substantiated his claims of violations of article 25 (a) and (c) of the Covenant. The State party asserts that because the author was able to participate in municipality elections and be elected for municipality positions while the security measures were in place, his rights under article 25 (a) and (c) have not been violated.

Author's comments on the State party's observations on the admissibility

5.1 On 17 August 2018, the author submitted his comments to contest the State party's arguments on admissibility.

5.2 Regarding his failure to inform the Committee of his application to the European Court of Human Rights of 22 August 2017, the author contends that the matters raised before the Court and the Committee are different. The author states that while the present communication is related to his right to take part in public affairs and services, the application before the European Court of Human Rights concerned interference with his voting rights,¹⁷ thus dismissing the objection of abuse of the right of submission. Furthermore, because all ten of his applications to the European Court have been dismissed as inadmissible, the author considers that the present matter has not been considered by another international investigation body.¹⁸

5.3 The author also argues that the prosecutor's decisions were not subject to appeal under article 337¹⁹ of the Criminal Procedure Law and based on the text of the prosecutor's decision.²⁰ Furthermore, the author states that he did appeal to the Constitutional Court, but that the Constitutional Court refused to initiate the case on 15 May 2017. For these reasons, the author contends that he has exhausted all available domestic remedies.

5.4 The author also refutes the State party's claim that he has not substantiated violations of article 25 (a) and (c). The author argues that he has provided sufficient evidence for his claims that he is prohibited from fulfilling the duties of his position as elected Chairman of the Ventspils City Council and Chairman of the Board of the Ventspils Freeport Authority, thereby substantiating that his rights under article 25 (a) and (c) have been violated.

¹⁵ The decision of the first instance court of 30 January 2017 on the application of the security measure was still subject to appeal

¹⁶ *Simms v. Jamaica* (543/1993).

¹⁷ The application before the European Court of Human Rights was made regarding a violation of article 3 of Protocol No. 1.

¹⁸ The author references *J.P.D. v. France* (CCPR/C/115/D/2262/2015), para. 4.3.

¹⁹ Under article 337, it says that a person can appeal the prosecutor's decision to the high-prosecutor.

Inclusion of this article seems against the author's argument.

https://vvc.gov.lv/image/catalog/dokumenti/Criminal_Procedure_Law.pdf. Article 262(2), however, states that the author should have appealed to the investigating judge to have the security measure lifted.

²⁰ The author submits that the prosecutor's decision stated that "the prohibition on specific employment may be appealed in the event and according to the procedure set out in Article 262(2) of the Criminal Procedure Law by submitting a complaint to the investigating judge of the City of Riga Central District Court."

5.5 On 12 October 2018, the author supplemented his comments of 17 August 2018, informing that on 11 October 2018, the European Court of Human Rights adopted decision on application No. 62323/17, declaring the application inadmissible.²¹

5.6 On 23 November 2018, the author provided additional information. According to the attached letter of the European Court of Human Rights of 15 November 2018, the author had lodged, in the period before May 2018, ten applications to the Court;²² all of which were found to be incompatible with the requirements of Rule 47 of the Rules of Court²³ or have been declared inadmissible, thus they are no longer pending before the Court.²⁴

State party's further observations on the admissibility and the merits

6.1 On 6 June 2023, the State party submitted further observations on the admissibility, and the merits.

Admissibility

6.2 The State party reiterated its observations on the admissibility of 21 May 2018. As regards the author's abuse of the right of submission, the State party reasserts that an identical complaint by the author as that before the Committee has been examined in parallel by the European Court.²⁵ It objected to the author's misrepresentation that his complaint before the Court allegedly overlapped with the rights protected by article 25 (b) of the Covenant, and not article 25 (a) and (c). In its view, the author's application under article 3 of Protocol no. 1 to the European Convention (application no. 62323/17) concerned the lawfulness and proportionality of the imposed security measure, which prohibited him from holding the function of chairperson after being elected despite a substantial support by the electorate. The author in fact concealed from the Committee information about the pending application before the European Court both in his communication and further observations, failing to inform the Committee of parallel proceedings and maintaining that the complaints were completely different. Therefore, the author's communication has amounted to an abuse of the right of submission, under article 3 of the Optional Protocol. However, the State party admits that the present communication does not concern the same matter in the sense of article 5 (2) (a) of the Optional Protocol, referring to the Committee's jurisprudence as article 25 (b) and (c) has no equivalent in the European Convention and its Protocols as regards access to public office other than the legislature.²⁶

6.3 The State party points out to the decision of the European Court of Human Rights of 11 October 2018, which rejected the author's application no. 62323/17 under article 3 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (right to free elections) as inadmissible. The Court found that the author's complaint about his inability to hold the position of Chairperson of the Ventspils City Council after being elected was incompatible *ratione materiae* with the provisions of the Convention.²⁷ As regards the present case, the State party asserts that article 25 of the

²¹ The Court explained that article 3 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms was not applicable as the city and municipal councils of Latvia did not exercise legislative power and did not therefore form part of the "legislature" within the meaning of the referred article.

²² Applications nos. 40612/08, 43568/12, 26168/13, 26171/13, 73846/14, 35671/17, 45118/17, 55175/17, 62323/17 and 80439/17.

²³ This rule concerns formal requirements regarding contents of an individual application.

²⁴ Copy of the ECtHR decision was provided.

²⁵ On 22 August 2017, the author lodged an application before the Court alleging a violation of his rights under article 3 of the Protocol No. 1 to the European Convention, which was signed on 24 July 2017. A week earlier, on 14 August 2017, the author lodged the present communication.

²⁶ *Paksas v. Lithuania* (2155/2012), para. 7.3, or *Jagminas v. Lithuania* (2670/2015), para. 7.2.

²⁷ The author submitted that the voters had shown their opinion by electing the author's party in the city council and that polls show their desire to see the author as Chairperson of the Ventspils City Council. However, the imposed security measure has prohibited him from holding the office after being elected, thus constituting a violation of article 3 of Protocol No. 1. The Court considered that in Latvia the city and municipal councils, as well as the chairpersons of such councils, do not exercise legislative power and do not form part of the "legislature" within the meaning of article 3 of Protocol No. 1. The Court concluded that article 3 of Protocol No. 1 was not applicable in the present case.

Covenant does not guarantee a right for the author to take up a specific post or exercise managerial functions in public service, and therefore the author's complaint essentially falls outside the scope *ratione materiae* of article 25 of the Covenant, and should be rejected as inadmissible, under articles 2 and 3 of the Optional Protocol. Recalling the Committee's case law, the State party also suggested rejecting the author's arguments concerning general application of the law, appearing as *actio popularis*.

6.4 In addition, on 22 February 2021, the Riga Regional Court, acting as a first instance court, found the author guilty of accepting bribes, falsification, and forgery of official documents, laundering of the proceeds of crime, unlawful participation in property transactions, and intentional provision of false information in a declaration of income. He was acquitted of charges for exceeding official authority and abuse of official position.²⁸ The criminal proceedings in the author's case are currently pending before the court of appeals.²⁹

Merits

6.5 As regards the merits, the author, first, argues that the alleged interference with his rights under article 25 (a) and (c) of the Covenant was not established by law. He has claimed that the decisions by the prosecutors and then the domestic courts allegedly failed to identify a specific date until which the security measure under article 254 of the Criminal Procedure Law would be in force, and the decisions allegedly lacked sufficient reasoning for the imposition of the security measure as such. Second, the author submits that the security measure did not have objective and reasonable grounds as such. In his view, it had not been established in the criminal proceedings that the author had interfered with the criminal proceedings or attempted to re-commit the crimes he was charged with to impose this security measure. Third, the author holds that there was no periodic control over the security measure by a judicial authority, and therefore, the imposition of this security measure did not involve fair proceedings.

6.6 The State party recalls the Committee's case law that the exercise of the rights recognized in article 25 of the Covenant, including the right to stand for election, may not be suspended or excluded except on grounds that are established by law and that are objective and reasonable.³⁰ The Committee has also held that "the right provided for by article 25 is not an absolute right and that restrictions of this right are allowed as long as they are not discriminatory or unreasonable".³¹

6.7 The State party submits that there has been no interference with the author's rights under article 25 (a) and (c) of the Covenant, and that even if the Committee were to disagree, the alleged interference was established by law, was objectively necessary and proportionate, and that there are sufficient safeguards in the State party's law to ensure that the security measure of prohibition on specific employment complies with the reasonableness requirement under article 25. The State party underlines that the present communication does not concern a prohibition to continue or take up functions as an elected official of a city council.³² The present case is limited to the prohibition for the author to carry out the functions of chairperson, i.e. the functions of a managerial position, of the Ventspils City Council and the Board of the Ventspils Freeport Authority. As a result of the impugned security measure, the author has never been denied his rights to take part in the meetings of the local government authority, to vote or express his views during the debates of the council

²⁸ The author was sentenced to 5-year prison term, confiscation of property and a fine in the amount of 20,000 EUR. See also para. 7.3.

²⁹ No further information has been provided as to the outcome of the appeal proceedings.

³⁰ UN Human Rights Committee, general comment no. 25 (CCPR/C/21/Rev.1/Add.7), paras. 3, 5 and 6. See also *Bandaranayake v. Sri Lanka* (1376/2005), paras. 7.1 and 7.3; and *Jagminas v. Lithuania* (2670/2015), para. 8.2.

³¹ *Debrezény v. the Netherlands* (500/1992), para. 9.2; See also the UN Human Rights Committee, general comment no. 31 (CCPR/C/21/Rev.1/Add.13), para. 6.

³² In the latest municipal elections in Latvia, on 5 June 2021, the author stood as a candidate for the political party "Latvijai un Ventspilij". The author was elected to the Ventspils City Council, though not as its chairperson. He currently works in the Committee for Social Issues, Budgetary and Economics Commission, and City Development and Environmental Commission of the Ventspils City Council. He is also the chairperson of the political party "Latvijai un Ventspilij".

meetings. He has also never been prevented from acting as a member of the board of the Ventspils Freeport Authority.³³

6.8 As regards the (author's) alleged interference with (his) the author's rights, the State party recalls that the rights enshrined in article 25 refer only to "the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service."³⁴ However, nothing in the practice of the Committee suggests that the right to retain public office refers to a right to retain a managerial position or a specific office,³⁵ and the author has not provided any evidence to the contrary. The "executive office" as referred to in the General comment no. 25 concerns the branch of the government, instead of an executive, that is, a managerial position. The State party maintains that article 25 does not confer upon individuals a right to retain a managerial position in the public service but refers only to a general access to a position in the public service. In its views in *Kall v. Poland*, the Committee concluded that the rights protected by article 25 (c) of the Covenant do not entitle every citizen to a right to obtain guaranteed employment in the public service.³⁶

6.9 The cases that are partly similar to the present one, such as *Paksas v. Lithuania*, *Jagminas v. Lithuania*, *Eduardo Humberto Maldonado Iporre v. Bolivia*, and *Bandaranayake v. Sri Lanka*,³⁷ relate either to a long-term or permanent prohibition to stand for elections, or a dismissal from public service as such, and not just demotion or prohibition to exercise certain functions in the public service. The practice of the Committee does not go as far as establishing a right to a specific post or retention of that post. During the entire investigation and adjudication of the criminal proceedings against the author, including after his conviction and pending his appeal, the author has stood for municipal elections and has also been elected. Currently, the author takes part in the conduct of public affairs as an elected official of the municipal authority. The author's argument that the voting results of the municipal elections confirm that the electorate allegedly wanted the author to be the Chairperson of the Ventspils City Council is unfounded, also as there is no interference with the author's rights.

6.10 As for the alleged incompatibility of the imposed security measure with the provisions of the Criminal Procedure Law, the author has submitted that the aim of a security measure, as set out in article 241 of the Criminal Procedure Law, is to preclude the accused's actions that would obstruct or hinder the criminal proceedings, the investigation, or the achievement of the aims of criminal proceedings. The State party has agreed with the author's statement, submitting that prohibition of a specific employment is one of the security measures that can be imposed in criminal proceedings, for a certain period of time.³⁸ The notion "for a certain period of time" does not refer to a specific time-frame in the sense of days or months, but its duration can be linked to a decision of the criminal authorities. The date of the lifting of such measure is not always specified, which is sometimes the practice, based in the national case law, where the impugned security measure is applied to an accused, who is tried for crimes that have allegedly been committed in public office. The restrictions imposed on the author when he served as chairperson of the Ventspils City Council and the Board of the Ventspils Freeport Authority were directly connected to the functions that are carried out by the chairperson of these authorities and the context of the criminal proceedings brought against him. The notion of "certain period of time" in the context of the security measure provided for by article 254 of the Criminal Procedure Law in view of its aim foresees that it can be applied until the completion of the criminal proceedings, if necessary.

6.11 The State party argues that the alleged interference has been lawful and has complied with the provisions of the Criminal Procedure Law and the case law of domestic courts. The decisions of the prosecutor, acting as the person directing the criminal proceedings, and of

³³ The author is no longer Chairperson of the board of the Ventspils Freeport Authority.

³⁴ UN Human Rights Committee, general comment no. 25, para. 5.

³⁵ *Albareda et al. v. Uruguay* (1637/2007, 1757/2008 and 1765/2008), para. 8.3.

³⁶ *Kall v. Poland* (552/1993), para. 13.2.

³⁷ *Paksas v. Lithuania* (2155/2012), para. ; *Jagminas v. Lithuania* (2670/2015), para. 7.2; *Eduardo Humberto Maldonado Iporre v. Bolivia* (2629/2015), para. ; and *Bandaranayake v. Sri Lanka* (1376/2005).

³⁸ Article 243 (1) (3) and article 254 (1) and (2) of the *Criminal Procedure Law*.

the domestic courts were sufficiently grounded in the author's own actions, the nature of the criminal charges against him, and the potential for the author to obstruct the criminal proceedings. In addition, the particular security measure was imposed as the most lenient security measure to be applied instead of detention and house arrest, that was requested by the prosecution to achieve the aims of the criminal proceedings.

6.12 As regards the author's argument that the decision to impose the security measure did not pursue any legitimate aims, and there were no objective grounds for its imposition, the State party disagrees and recalls that the security measures are imposed during the investigation and adjudication of crimes to ensure that individuals do not obstruct criminal proceedings, attempt to influence victims or witnesses, avoid criminal proceedings or re-commit crimes that they are charged with. In criminal proceedings that pertain to alleged crimes committed in public office, the security measures must be applied to prevent re-commission of such crimes. Hence, a decision not to impose a security measure that would prevent the author from continuing the exercise of his functions as the Chairperson of the city council and the board of the Freeport Authority would be irresponsible from the side of the authorities and would go against the need to preserve public order.³⁹ The imposition of the security measure was hence legitimate.

6.13 The State party notes the author's assertions that the alleged interference was disproportionate as it lacked reasons for the security measure, that it was not the least intrusive measure to achieve the aim of the criminal proceedings, that the security measure has been applied for a disproportionately long period of time, and that there were no sufficient procedural safeguards available to the author to protect his rights under article 25 of the Covenant as there was no judicial control over the imposed security measure. The State party reiterates that the alleged interference with the author's rights was proportionate to the legitimate aim pursued, and reasonable as the authorities provided sufficient grounds for the application and maintenance of the security measure, which were in line with the standing practice of the domestic courts. In addition, there were no less restrictive measures that would achieve the legitimate aim pursued in the same quality as those imposed on the author. The length of the application of the security measure, in view of the complexity of the criminal proceedings and the diligence adopted by the authorities, was also proportionate, and the author had sufficient procedural safeguards to protect his rights.

6.14 The security measure was first applied by the Kurzeme Regional Court on 22 February 2008 as the least intrusive, compared with the house arrest and/or detention that was previously imposed on the author and further requested by the prosecution. Similarly, the subsequent decisions by the prosecutorial and judicial authorities found that the security measure was necessary and proportionate, considering that in several instances the author had violated the security measures that had been previously imposed on him. The imposition of the security measure was hence substantiated and confirmed several times both by prosecutorial and judicial authorities.

6.15 The State party adds that there were no less restrictive security measures available. In addition, the author was also prohibited from contacting specific individuals, and he could not leave the country. Since the charges against the author were directly linked to his functions as Chairperson of the city council and the board of the freeport authority, the only measures that were available to the authorities to prevent possible re-commission of offences were detention, house arrest and prohibition of specific employment. In fact, the court rejected the request of the prosecutor to continue the author's detention and imposed the impugned security measure. Since the author has not provided any information about other security measures, the Committee is requested to conclude that there were no less restrictive measures available.

6.16 The State party further refers to an applicable legislation which limits the candidatures for and exercise of local administration bodies or corporate roles in companies with State participation, if convicted for a criminal offence.⁴⁰ The comparison drawn by the author with

³⁹ *Jagminas v. Lithuania* (CCPR/C/126/D/2670/2015), paras. 4.9, 7.5 and 8.5.

⁴⁰ Article 9 of the *Law on the Election of Local Government Councils*, and article 37 of the *Law on Governance of Capital Shares of a Public Person and Capital Companies*.

respect to the sanction that may be imposed on him as a result of conviction is irrelevant, since the present case concerns a security measure pending criminal investigation. Anyway, if the author would be found guilty, he would be prohibited from standing as a candidate in local government elections and could not become even a member of the Board of the Ventspils Freeport Authority. Although the author's criminal case was very complex, with extensive evidence and victims' and witnesses' hearings, and the proceedings have taken more than a decade until a judgment by the first instance court was pronounced, the State party holds that the investigation and adjudication of the case has not been prolonged. The proceedings were conducted with diligence, the courts held hearings regularly and frequently, they examined a significant number of motions from the author and the prosecution, including with respect to the author's request to alter the security measures imposed on him. The State party concludes that the fact that the security measure was imposed on the author for more than a decade, in view of the charges brought against him and the complexity of the trial, cannot be considered as a prolonged imposition of the security measure that would go beyond a reasonable restriction under article 25 of the Covenant.

6.17 The State party reiterates that the security measure, which was limited in its scope and did not eliminate the author's participation in the conduct of public affairs and did not remove him from public office per se, was a proportionate measure that the domestic authorities of the State party imposed on the author to achieve the aims of the criminal proceedings. Contrary to what the author suggests, neither was the author's career disproportionately affected, as he was and still is the leader of the political party "*Zaļo un Zemnieku Savienība*" (Union of Greens and Farmers). Despite the criminal charges against him, and the fact that he was convicted by the first instance court, he was chosen by this party as their prime minister candidate in the 2022 parliamentary elections of Latvia.

6.18 Finally, the author had procedural avenues and safeguards during the investigation and adjudication of his criminal proceedings to challenge the imposed security measure, pursuant to articles 336, 337 and 496 of the Criminal Procedure Law. The author did indeed lodge such complaints and requests. The effectiveness of those avenues was confirmed by the assessment of the Supreme Court. Moreover, the author's argument about the need of a periodical judicial control over the security measure is also unfounded since the argued restrictions in the domestic law on the author's freedom, i.e. detention and house arrest, or the prohibition to leave the country, are not applicable to the present case.⁴¹ The States parties to the Covenant retain a certain level of discretion in the choice of the review mechanisms available for individuals as regards the access and restrictions for appointment, promotion, suspension and dismissal or removal from public office. Nothing in the practice of the Committee suggests that there should always be judicial review over a restriction on the right to access and perform public service. Moreover, the State party reiterates that the security measure imposed on the author was limited in its scope and initially imposed by the Kurzeme Regional Court as the least restrictive measure to achieve the aims of the criminal proceedings. At no point was the author actually prevented from acting as a member of the local government council or the member of the Board of the Ventspils Freeport Authority. He also had the right and could challenge the security measure before the domestic courts during the adjudication of his case, which he did.

Author's further comments

7.1 On 25 August 2023, the author submitted further comments on the State party's observations, clarifying some facts.

7.2 As explained in the initial communication, the author is a politician, a member and the chairman of the board of a Latvian political party "*Latvijai un Ventspilij*" ("For Latvia and for Ventspils"). The State party correctly admitted that he is the chairperson of that political party. However, the author has never been the leader of the political party "*Zaļo un Zemnieku Savienība*" (Union of Greens and Farmers).

7.3 Since the submission of the initial communication, one municipal election in Latvia took place on 5 June 2021. Political party "*Latvijai un Ventspilij*" won seven of the 13 mandates in the Ventspils City Council. Although the author received the biggest number of

⁴¹ The State party has referred to the Committee's General comment no. 25, para. 24.

“+” marks and the biggest number of votes, he was not elected as the Chairman of the Ventspils City Council. The author held a position of the Chairman of the Ventspils City Council until 5 July 2021. In the criminal proceedings, in which the security measure has been imposed on the author, the first instance court - the Riga Regional Court sentenced the author by the judgment of 22 February 2021. The author was sentenced for taking bribes, money laundering, falsification of documents, unlawful participation in property transactions and avoiding a tax declaration. He was sentenced to 5-year prison term, confiscation of property and a fine in the amount of 20,000 EUR. He was acquitted in the remaining charges.

7.4 The judgment of the Riga Regional Court was appealed, and it has not entered into force. The Riga Regional Court also decided to revoke a security measure of prohibition of certain occupation for the author, and to replace it with detention, and later on with a bail (from 22 February 2022). As the author paid the bail, he left the prison on 25 February 2022. The security measure of prohibition to fulfil the duties of the chairman of the Ventspils City Council was imposed on the author from 13 August 2007 to 22 February 2021, and it is continuing since 25 February 2022. The author was prohibited to fulfil his duties as elected Chairman of the Ventspils City Council from 13 August 2007 to 5 July 2021 (for almost fourteen years). Secondly, the author was the chairman of the Board of the Ventspils Freeport Authority until 10 December 2019. The security measure of prohibition to fulfil the duties of the chairman of the Board of the Ventspils Freeport Authority had been imposed on the author from 13 August 2007 to 10 December 2019 (for more than twelve years).

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim 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.

8.2 As regards article 5 (2) (a) of the Optional Protocol, the Committee notes the State party's objection that the author has submitted ten applications on the same issue to the European Court of Human Rights, all of which were rejected as inadmissible.⁴² The Committee notes the author's assertion that the applications to the European Court did not concern the same matter, arguing that the claims in the last application concerned article 3 of Protocol no. 1 to the European Convention on Human Rights, which are different from the claims before the Committee. The author has further argued that all ten of his applications to the European Court have been dismissed as inadmissible and that he had no pending submission with the Court, which rejected the author's last application as inadmissible on 11 October 2018 (para. 6.3). The Committee considers that, since the same matter is not at present being examined under another procedure of international investigation or settlement, it is not precluded from considering the author's claims by the requirements of article 5 (2) (a) of the Optional Protocol.

8.3 The Committee also notes the State party's objection that the author has not exhausted all available domestic remedies, arguing that the prosecutor's decisions on security measures of detention, restriction of movement and prohibition on specific employment could have been appealed to the higher prosecutor and investigating judge, challenged on appeal in the context of court final judgment, and that the author could have also re-applied to the Constitutional Court. The Committee notes the author's response that the prosecutor's decisions on security measures could not be appealed to the higher prosecutor pursuant to the Criminal Procedure Law, that those decisions were regularly appealed to the Riga Regional Court, which repeatedly confirmed their application through the decisions which could not be appealed. The Committee further notes that the author submitted a complaint to the

⁴² The decision of the European Court of Human Rights of 11 October 2018 rejected the author's application no. 62323/17 under article 3 of Protocol no. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (right to free elections) as incompatible *ratione materiae* with the Convention. Article 3 of Protocol No. 1 on the right to free elections requires the States parties to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

Constitutional Court, which rejected its consideration as concerning the issues of application of the domestic legislation, and the allegations therein were not substantiated. In these circumstances, the Committee considers that the author has exhausted domestic remedies which were available, pursuant to the requirements of article 5 (2) (b) of the Optional Protocol.

8.4 The State party has further argued that the author abused his right of submission since he withheld from the Committee the information that there were applications pending before the European Court at the time of submission of the initial communication, and that the last application to the European Court was submitted several days after the date of the present communication. The Committee notes the author's explanation that the applications before the European Court did not concern the same matter, as the claims under article 3 of Protocol No. 1 to the European Convention have been distinct from the claims under art. 25 (a) and (c) of the Covenant. Although the Committee finds it regrettable that the author failed to inform the Committee at the outset that he had submitted or intends to still submit complaints to the European Court, which were pending parallel to his communication to the Committee and which concern the same events, and while noting that in other circumstances, such a failure to notify could amount to an abuse of the right of submission, it nevertheless observes the State party's admission that the present communication ultimately does not concern the same matter in the sense of article 5 (2) (a) of the Optional Protocol, as article 25 (b) and (c) has no equivalent in the European Convention and its Protocols as regards access to public office other than the legislature (para. 6.2). Therefore, the Committee considers that it is not precluded from considering the author's claims by the requirements of article 3 of the Optional Protocol.

8.5 Having been prohibited to fulfil the duties of Chairperson of the Ventspils City Council and the Board of the Ventspils Freeport Authority, the author argues that: a) the alleged interference with his rights under article 25 (a) and (c) was not established by law and was not necessary and proportionate; b) the security measure did not have objective and reasonable grounds; and c) there was no periodic control over the security measure by a judicial authority, and therefore, the imposition of this security measure did not include fair proceedings. The issue before the Committee is therefore whether the imposition of security measure of prohibition on specific employment during the criminal investigation and trial have violated the author's rights under article 25 (a) and (c) of the Covenant to take part in the conduct of public affairs and to have access to public service.

8.6 As to the alleged interference, the author has claimed that the decisions by the prosecutors and the domestic courts (Riga Regional Court) failed to identify a specific date until which the security measure against him, under article 254 of the Criminal Procedure Law, would be in force, and that the decisions lacked sufficient reasoning for the imposition of the security measure. The Committee notes the State party's objection to admissibility for lack of sufficient substantiation of those author's claims. The State party has argued that there has been no interference with the author's rights under article 25 (a) and (c) of the Covenant; or alternatively, that the interference was established by law, was objectively necessary and proportionate, and that there are sufficient safeguards in the State party's law to ensure that the security measure complies with the reasonableness requirement under article 25. The State party has also held that the present communication does not concern a prohibition to continue or take up functions as an elected official of a city council, as it is limited to the prohibition for the author to carry out managerial functions such as Chairperson of the Ventspils City Council and of the Board of the Ventspils Freeport Authority. Furthermore, the State party has submitted that the author has not been denied, during the entire investigation and adjudication of the criminal proceedings against him, including after his conviction and pending his appeal, his rights to take part in the meetings of the local government authority; to vote or express his views during the debates of the council meetings; and he has never been prevented from acting as a member of the board of the Ventspils Freeport Authority. The State party also argued that the author continued to serve on several expert committees of the Ventspils City Council.

8.7 The Committee recalls its jurisprudence that "any conditions which apply to the exercise of the rights protected by article 25 should be based on objective and reasonable

criteria”.⁴³ The Committee recalls its jurisprudence that “the exercise of the rights recognized in article 25 of the Covenant, including the right to stand for election, may not be suspended or excluded except on grounds that are established by law and that are objective and reasonable”.⁴⁴

8.8 The Committee notes the author’s claims that the interference was disproportionate as it: lacked reasons for the impugned security measure; and was not the least intrusive measure to achieve the aim of the criminal proceedings. Also, the security measure has been applied for a disproportionately long period of time, and there were no sufficient procedural safeguards available to the author to protect his rights under article 25 of the Covenant, because there was no judicial control over the imposed security measure. The State party has objected that such restrictions were proportionate, compatible with the criminal procedure and legitimate, as they can be applied until the completion of the criminal proceedings, if necessary. The State party has emphasized that the decisions of the prosecutor, acting as the person directing the criminal proceedings, and the domestic courts were sufficiently grounded in the author’s own actions, the nature of the criminal charges against him, and the potential for the author to obstruct the criminal proceedings; and the particular security measure was imposed as the most lenient security measure to be applied instead of detention and house arrest, that was requested by the prosecution to achieve the aims of the criminal proceedings.

8.9 In that context, the Committee observes that the security measure, which is directly connected to the functions that are carried out by the chairperson of the authorities concerned and the particular criminal proceedings brought against the author, was first applied by the Kurzeme Regional Court on 22 February 2008 as the least intrusive security measure, compared with the house arrest and/or detention that was previously imposed on the author and further requested by the prosecution. The Committee also observes that the prosecutorial and judicial authorities subsequently found that the security measure continued to be necessary and proportionate, considering that in several instances the author had violated other security measures that had previously been imposed on him, and that no less restrictive security measures were available (para. 6.14).

8.10 As regards the author’s allegation that the security measure was imposed for a prolonged period, and was unreasonable, the State party underlined that the author’s criminal case was very complex, with extensive evidence and victims’ and witnesses’ hearings. Although the proceedings have taken almost 14 years until a judgment by the first instance court was pronounced, the State party has denied that the investigation and adjudication of the case were prolonged. The Committee further notes the State party’s assertion that the proceedings were conducted with diligence, the courts held hearings regularly and frequently, they examined a significant number of motions from the author and the prosecution, including with respect to the author’s request to alter the security measures imposed on him. This part of the author’s claims concerns the assessment of the facts and evidence by the national criminal justice authorities. The Committee notes that the author has not established that such assessment was arbitrary or amounting to a denial of justice. The Committee therefore considers that no specific reasons have been presented to re-assess the imposition of a security measure which represents *prima facie* an objective and reasonable restriction under article 25 of the Covenant. This part of the author’s claims is hence inadmissible *ratione materiae*, pursuant to article 3 of the Optional Protocol.

8.11 Regarding the author’s claim on the imposition of the security measure without proper judicial guarantees, the State party argued that the author had procedural avenues and safeguards during the investigation and adjudication of his criminal proceedings to challenge the imposed security measure, of which he repeatedly benefitted. The effectiveness of those avenues was supported by the assessment of the Supreme Court on file. In that context, the Committee observes that the security measure imposed on the author was limited in its scope and was initially imposed as the least restrictive measure to achieve the aims of the criminal proceedings. The Committee also observes that the imposition of the security measure was

⁴³ CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), para. 4.

⁴⁴ *Ibid.*, paras. 5 and 6.

regularly reviewed by domestic courts; the matter has also been before the Constitutional Court; and that the author was not actually prevented from acting as a member of the Ventspils City Council or the member of the board of the Ventspils Freeport Authority. The Committee considers that the State party's authorities took into account all the elements available, in particular the gravity of the criminal charges against the author, which related to his executive roles in the public authorities. The Committee finds that, while the author disagrees with the conclusions of the State party's authorities regarding the assessment of the facts and evidence in support of his claims, the information before the Committee do not allow it to conclude that the assessment by the State party's authorities was clearly arbitrary or amounted to a manifest error or a denial of justice. Accordingly, the Committee concludes that the author has failed to substantiate the part of his claims as to the lack of procedural avenues and safeguards to challenge the imposed security measure, in violation of article 25, for the purposes of admissibility and that those claims are inadmissible, in accordance with article 2 of the Optional Protocol.

9. The Committee therefore decides:

- (a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;
- (b) That the present decision shall be transmitted to the State party and to the author.
