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LEGAL ASPECTS OF RESTRICTING ACTIVITIES OF POLITICAL PARTIES

Key words: political parties, Constitution, prohibition of political parties, dissolution of political parties, Constitutional Court, courts

Summary

The authors explore the regulatory framework on the restriction of the activities of political parties in the Republic of Latvia, outlining a comparison with other European countries in this context. The article analytically reflects the progress of the collective submission handed in to the Parliament of the Republic of Latvia (*Saeima*) in 2022, which called for a ban of one particular political party. In conjunction with this, the authors analyse the findings of the European Court of Human Rights on issues related to the prohibition of political parties, seeking a balance between freedom of association as a fundamental right, on the one hand, and the protection of state and public security, as well as democratic values, on the other.

Introduction

In the summer of 2022, shortly before the elections of the Parliament of the Republic of Latvia (hereinafter – *Saeima*), a collective submission signed by more than 10 000 applicants was submitted to *Saeima* in accordance with the procedure provided in the Rules of Order of *Saeima*¹ for banning the political party Latvian Russian Union, i.e., the motion “For a united society without the Latvian Russian

¹ Rules of Order of *Saeima*. Available: <https://likumi.lv/ta/en/en/id/57517-rules-of-order-of-saeima>
See Section 5.³ Examination of Collective Submissions [viewed 05.11.2023.].

Union”². After considering the collective submission, the particular political party was not banned, but on 16 June 2022, *Saeima* amended the Law on Political Parties adopted in 2006³, supplementing Article 7 of this law with the fourth and fifth paragraphs, which stipulate certain prohibitions on the activities and ideology of political parties, i.e. prohibits political parties from acting against independence of Latvia or other democratic states. At the same time, several other norms of the Law on Political Parties were amended, which determine the supervision of the legality of the activities of political parties and regulates prohibition and termination of their activities.

Issues of banning certain political parties also arise from time to time in other countries, e.g. in 2022, 2023 pro-Russian parties were banned in Ukraine⁴, Moldova⁵. Previously, this topic was actual in Germany.

In the article, the issue of restricting the activity of political parties due to the limited scope will be considered only from the constitutional law perspective, including the question, whether the state can ban specific political parties.

1. Latvian national framework for restricting and terminating the activities of political parties

Since the amendments of 16 June 2022 in the Law on Political Parties, Article 7(4) provides:

In its activities, the party is forbidden to act against the independence and territorial indivisibility of the Republic of Latvia or other democratic countries, to express or distribute proposals for the violent amendment of the Republic of Latvia or other democratic state institutions, to call for disobeying laws if this threatens national security, public safety or order, to preach violence or terrorism, open Nazi, fascism or communist ideology, propagate war, carry out activities aimed at inciting national, ethnic, racial, religious hatred or discord, glorify or encourage the commission of criminal offences.

The fifth part of the Article provides:

In their activities, political parties shall be prohibited from providing support, including information (propaganda), to persons or states that undermine or

² Statement of *Saeima*: On the further progress of the collective petition of 10 168 Latvian citizens “For a united society without the Latvian Russian Union”. Available in Latvian: <https://likumi.lv/ta/id/334738-par-10-168-latvijas-pilsonu-kolektiva-iesnieguma-par-vienotu-sabiedribu-bez-latvijas-krievu-savienibas-turpmako-virzibu> [viewed 05.11.2023.].

³ Amendments to the Law on Political Parties: Adopted 16.06.2022. Available in Latvian: <https://likumi.lv/ta/id/333448-grozijumi-politisko-partiju-likuma> [viewed 05.11.2023.].

⁴ Courts Ban Pro-Russian Parties in Ukraine. Available: <https://www.promoteukraine.org/courts-ban-pro-russian-parties-in-ukraine/> [viewed 05.11.2023.].

⁵ The pro-Russian party SOR is banned in Moldova. LETA. Available in Latvian: <https://www.tvnet.lv/7799162/moldova-aizliegta-prokrieviska-partija-sor> [viewed 05.11.2023.].

threaten the territorial integrity, sovereignty and independence of democratic states or the constitutional order.

These amendments were proposed in the context of the war launched by Russia in Ukraine.⁶ The annotation of the amendments stated: “although *Saeima* has condemned Russia’s aggression in Ukraine, there is still a part of society that supports it. This sentiment has been promoted by Russian propaganda, as well as by representatives of certain political forces who have expressed support of Russia’s actions”⁷. Therefore, the legislator considered it important to provide that Latvian political parties are prohibited from publicly praising, denying or justifying genocide, crimes against humanity, crimes against peace, war crimes, as well as supporting actions aimed at undermining the territorial integrity, sovereignty, independence or constitutional order of democratic states.⁸ At the same time, these amendments also specified the institutions exercising control over political parties. According to Article 38 – if the prosecutor’s office or the state security authority establishes signs of a possible illegal activity of a party which is directed against or may harm the state security, or is otherwise contrary to *Satversme*, or its activities are indicative of violations referred to in the fourth or fifth paragraph of Article 7 of this Law, the prosecutor’s office shall warn the party in writing about the inadmissibility of such activities. If a political party, upon receipt of the prosecutor’s application, fails to remedy the violation within the prescribed time or commits a violation of which it has been warned in advance, the prosecutor shall bring an action in court for the termination of the party’s activities.

According to the Law, the cases concerning the termination of activities of political parties are referred to one particular court of first instance – the Riga City Court (Article 45³ of the Law). The court examines cases on the termination of a party activity without delay, applying the procedure laid down in the Civil Procedure Law. Although the adversarial principle prevails in civil procedure, in cases concerning the termination of political parties the court is to be more actively involved in the evidentiary aspect, i.e., in order to establish the true facts of the case within the limits of the claim and to achieve a legal and fair hearing, the court, when hearing cases concerning the termination of political parties where the interests of the state or public security are involved, shall clarify the facts of the case, examine the evidence and, if the submitted evidence is

⁶ See *Saeima* statement on 22 April 2022 “On aggression and war crimes by the Russian Federation in Ukraine”. Available in Latvian: <https://likumi.lv/ta/id/331839-par-krievijas-federacijas-agresiju-un-kara-noziegumiem-ukraina>; *Saeima* statement on 12 August, 2022 “On Russia’s targeted military attacks against Ukrainian civilians and public space”. Available in Latvian: <https://likumi.lv/ta/id/334736-par-krievijas-merktiecigiem-militariem-uzbrukumiem-ukrainas-civiliedzivotajiem-un-sabiedriskajai-telpai> [viewed 06.11.2023.].

⁷ Annotation to the draft law “Amendment to the Law on Political Parties”. Available in Latvian: [https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/84c6bd74195503d1c22588290049436a/\\$FILE/1431.PDF](https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/84c6bd74195503d1c22588290049436a/$FILE/1431.PDF) [viewed 06.11.2023.]. See also: Draft Law “Amendment to the Law on Political Parties”, the first reading. Available in Latvian: <https://titania.saeima.lv/LIVS13/saeimalivs13.nsf/0/776A86545E6F1E1EC2258868002BDC41?OpenDocument> [viewed 10.11.2023.].

⁸ *Ibid.*

insufficient, request it on its own initiative.⁹ Although at the moment the Latvian court practice has not applied the procedure for termination of political parties' activities provided by the amendments adopted in 2022, this issue may potentially become topical, as in spring 2023 the Prosecutor General's Office issued a warning to the Latvian Russian Union for dissemination of Russian propaganda. If new violations in the activities of this party will be found within a year, the court may decide to terminate the activity of the political party in question.¹⁰

2. The right to form political parties and to be a member of them as a fundamental right: A comparative perspective

The right to form political parties and to be a member of them is one of the fundamental rights. In Latvia, it can be seen in the context of Article 102 of the Constitution of the Republic of Latvia (hereinafter – *Satversme*), which provides that “Everyone has the right to form and join associations, political parties and other public organisations.”¹¹ This fundamental right – as freedom of association – is one of political rights. According to political science professor Daunis Auers, Latvia is one of those rare countries in Europe and even in the world where too many parties exist, as at the end of 2022, Latvia had 53 political parties, while Estonia had 12, Lithuania – 27, Sweden – 29 and Finland – 24.¹² One of the explanations for this is that in Latvia the foundation of a political party is relatively simple, since it takes only 200 members to found a party, whereas, for comparison, in Lithuania – 2000. At the same time, unlike other European countries, Latvia has a relatively low number of members in political parties – in Europe about 5% of the population is involved in political parties, while in Latvia only 1% of the population is involved in political parties.¹³

By exercising the fundamental rights laid down in Article 102 of *Satversme*, persons acquire the opportunity to participate in democratic processes.¹⁴ As the Constitutional Court has precisely pointed out, political parties exist to carry out political activities. In other words, any political party is a mechanism for

⁹ Article 45³(4).

¹⁰ The Prosecutor General's Office has issued a warning to the Latvian Russian Union. Available in Latvian: <https://www.lsm.lv/raksts/zinas/latvija/16.03.2023-generalprokuratura-izteikusi-bridinajumu-latvijas-krievu-savienibai.a501162/> [viewed 05.11.2023.].

¹¹ The Constitution of the Republic of Latvia. Available: <https://likumi.lv/ta/en/en/id/57980-the-constitution-of-the-republic-of-latvia> [viewed 05.11.2023.].

¹² Judgment of the Constitutional Court of the Republic of Latvia of 15 December 2022 in Case No. 2021-36-01, para. 11. Available in Latvian: <https://likumi.lv/ta/id/338095-par-politisko-organizaciju-partiju-finansesanas-likuma-7sup1sup-panta-pirmas-dalas-2-punkta-atbilstibu-latvijas-republikas-satversmes-91-panta-pirmajam-teikumam> [viewed 05.11.2023.].

¹³ Ibid.

¹⁴ Judgment of the Constitutional Court of the Republic of Latvia of 10 May 2013 in Case No. 2012-16-01, para. 17. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2012/07/2012-16-01_Spriedums_ENG.pdf#search= [viewed 05.11.2023.].

the exercise of power.¹⁵ It is this feature that distinguishes political parties from public organizations.¹⁶ In order to enable individuals to exercise this right, Article 102 of *Satversme* imposes an obligation on the state to create a legal framework that ensures the practical expression of the freedom of association, while also ensuring respect for the rights and public interests of third parties. Of course, taking into account the principle of harmonization of human rights, in the context of the activities of political parties, Latvia must also take into account the human rights guarantees deriving from international law, in particular from the European Convention on Human Rights.¹⁷

The issue of restriction of the activities of political parties is both legally and politically complex.¹⁸ It is a dilemma that every democracy faces because, as the Council of Europe has pointed out, every democracy must strike a reasonable balance, weighing up the possible threats to its democratic system while preserving the right to express different political views. The national legislator is obliged to incorporate such balancing mechanisms into national legislation.¹⁹ The Council of Europe's Venice Commission on Democracy through Law has issued guidelines²⁰ which set out the criteria for banning parties. According to the opinion of the Venice Commission, the ban of the party can be justified only if the political party condones the use of violence as a means of political struggle and also applies it with the aim of destroying the country's democratic system, which in turn will prevent the relevant country from ensuring compliance with the provisions of the European Convention on Human Rights. In addition, it is necessary for the decision to ban the party to be taken by the country's Constitutional Court or an equivalent court within the framework of a fair process; the situation when such

¹⁵ *Ibid.*, para. 19. See also: Judgment of the Constitutional Court of 18 October 2023 in Case No. 2022-33-01, para. 11. Available in Latvian: https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2022/08/2022-33-01_Spriedums.pdf#search= [viewed 05.11.2023.].

¹⁶ Separate Opinions of Justices Arturs Kucs and Anita Rodina in Constitutional Court Case of the Republic of Latvia No. 2021-36-01, para. 3.2. With reference to: Kules V. T., Vinchorek P. Democracy. 20th century. The end. Riga: Zvaigzne ABC, 1996, p. 82. Available in Latvian: https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/08/2021-36-01_atseviskas-domas_Kucs_Rodina.pdf#search= [viewed 05.11.2023.].

¹⁷ See more in: Daly T. G., Jones Ch. B. Parties versus democracy: Addressing today's political party threats to democratic rule. *International Journal of Constitutional Law*, 2020, Vol. 18, No. 2, pp. 509–538.

¹⁸ Mersel Y. The dissolution of political parties: The problem of internal democracy. *International Journal Constitutional Law*, 2006, Vol. 4, No. 1, pp. 84–113.

¹⁹ Council of Europe, Parliamentary Assembly. Resolution 1308 (2002) Restrictions on Political Parties in the Council of Europe Member States. Available: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17063&lang=en> [viewed 05.11.2023.].

²⁰ European Commission for Democracy through Law (Venice Commission). Guidelines on prohibition and dissolution of political parties and analogous measures. Adopted by the Venice Commission at its 41st plenary session (Venice, 10–11 December, 1999). CDL-INF (2000) 1. Available: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF\(2000\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(2000)001-e) [viewed 05.11.2023.].

a decision is taken by an administrative authority is, in the opinion of the Venice Commission, unacceptable.²¹

In many countries, constitutions do not directly define the requirements that political parties must meet, leaving this regulation to the special laws governing the activities of political parties.²² However, the prohibition of specific party ideologies is *expressis verbis* provided in Article 13 of the 1997 Polish Constitution, which states: “Political parties and other organizations whose programmes are based on totalitarian methods and the ideology of Nazism, fascism and communism, as well as those whose programmes or activities support racial or national hatred, the use of violence to gain power or influence public policy, or provide for secrecy of their structure or affiliation, are prohibited.”²³ Similar provisions can be found in the Portuguese Constitution adopted in 1976, Article 46 of which stipulates that organizations which disseminate racist or fascist ideology are not allowed.²⁴ The Constitutional Court of Portugal examines cases concerning the constitutionality of political parties on application by the public prosecutor.²⁵

The question of the unconstitutionality of political parties is also included in the German Basic Law of 1949. Compared to the Polish and Portuguese Constitutions, the Basic Law for the Federal Republic of Germany does not mention specific prohibited ideologies, but Article 21(2) of the Basic Law lays down the principle that “parties that, by reason of their aims or the behaviour of their adherents, seek to undermine or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany shall be unconstitutional.”²⁶ Namely, the drafters of the Basic Law, taking into account the experience of the Weimar Republic, had come to the concept of self-defending democracy, which must ensure that the enemies of the constitution, invoking the freedoms granted by the constitution, cannot interfere with or destroy the constitutional system or the state.²⁷ The Federal Constitutional Court of Germany decides on the unconstitutionality of parties and on their exclusion from public funding.²⁸ So far, two parties have been declared unconstitutional

²¹ Pabel K. Parteiverbote auf dem europäischen Prüfstand [Party bans under European scrutiny]. Zeitschrift fuer ausländisches öffentliches Recht und Völkerrecht, 2003, Heft 4, S. 927–928.

²² About restrictions of political parties in different EU Member States see: Serma A. Restricting political parties. In: Lawyers of the Ministry of Justice for the Centenary of Latvia. Riga: TNA, 2018, pp. 60–63.

²³ The Constitution of the Republic of Poland. Available: <https://www.sejm.gov.pl/prawo/konst/angielski/konse.htm> [viewed 05.11.2023.].

²⁴ Constitution of the Portuguese Republic. Available: <https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf> [viewed 05.11.2023.].

²⁵ *Ibid.*, Article 223.

²⁶ Grundgesetz fuer die Bundesrepublik Deutschland [Basic Law for the Federal Republic of Germany]. Available: <https://www.gesetze-im-internet.de/gg/> [viewed 05.11.2023.].

²⁷ Volp D. Parteiverbot und wehrhafte Demokratie [Party ban and defensive democracy]. Does the Parteiverbotsverfahren still have a role to play? Neue Juristische Zeitschrift, 2016, Heft 7, S. 460.

²⁸ Pabel K. 2003, Heft 4, S. 925.

on the basis of Article 21(2) of the Basic Law: the Socialist Reich Party in 1952 and the German Communist Party in 1956.²⁹ For example, in the judgment of the Federal Constitutional Court of Germany banning the Communist Party, the party's militantly aggressive attitude towards the existing state system was a prerequisite for the application of the ban. Accordingly, in order to apply the ban, it had to be established that the party intended to disrupt the functioning of the state system and in the further course of the process of dissolving it, the party's political course had to be determined with intent, which was basically aimed at the fight against the free democratic system.³⁰

It should be noted that the judgments banning both abovementioned parties were handed down in the 1950s, shortly after the establishment of the German democratic system, which in contemporary Germany raises the question whether a procedure for banning parties would even be permissible in the context of an already established democratic system. In 2003, considering the case of prohibition of the National Democratic Party, the Constitutional Court set stronger criteria for prohibition of parties, and these criteria were further strengthened in the 2017 judgment in the proceedings concerning the National Democratic Party.³¹ It is pointed out that the possibility to prohibit a political party does not really correspond to the basic idea of democracy, in which political competition for the favour of the electorate is free and unrestricted by state action.³² According to Article 21(2) of the Basic Law, an unconstitutional party is characterized by having at least one of two objectives: to influence or eliminate the free democratic order or to threaten the existence of the State. As German doctrine points out, the concept of a free democratic order does not include the entire content of the Constitution, but only the highest fundamental values and principles.³³ The conclusion in German legal doctrine that the unconstitutionality of a political party's aims is not to be assessed formally, but the real aims (even if they are not publicly proclaimed) that are decisive in this respect, including the legal relevance of secret aims, provided that their existence can be proven, is also supportable.³⁴ Moreover, banning a political party can be a preventive measure which, in certain cases, can be implemented "before it is too late" – in other words, before the actual threat to the values of the state has arisen.³⁵

²⁹ Weber K. In: Weber K. (Hrsg.). *Weber, Rechtswörterbuch [Weber, Legal Dictionary]*. 28th edition. München: Verlag C. H. Beck, 2022, Parteien, politische; Rn. 8b.

³⁰ Coelln C. von. In: *Bundesverfassungsgerichtsgesetz. Kommentar. Band 2. 61. Ergänzungslieferung [Federal Constitutional Court Act. Comment. Vol. 2, 61. Supplementary delivery]*. München: C. H. Beck, 2021, § 46, Rn. 12.

³¹ *Ibid.*, Rn. 3.

³² Volp D. 2016, S. 459–460.

³³ Coelln C. von. 2021, § 46, Rn. 18–19.

³⁴ *Ibid.*, Rn. 4.

³⁵ *Ibid.*, Rn. 13–16.

3. European Court of Human Rights case law on the restriction and prohibition of party activities

The European Court of Human Rights (hereinafter – ECHR) has examined cases concerning political parties within the scope of Article 11 of the European Convention of Human Rights (hereinafter – the Convention). Article 11(1) of the Convention provides that everyone has the right to freedom of peaceful assembly and of association, including the right to form and join trade unions for the protection of his interests. Paragraph 2 of the same Article stipulates:

*No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.*³⁶

As regards the application of Article 11 of the Convention, it should be noted that, according to the established case law of the ECHR, democracy is impossible without pluralism.³⁷ One of the key features of democracy is the possibility to discuss issues raised by different political opinions, even if they are worrying or disturbing. In other words, freedom of expression is essential to democracy and it is also enshrined in Article 10 of the Convention. The activity of political parties is one of the ways of exercising collective freedom of expression, and political parties therefore can claim the protection of rights arising from Articles 10 and 11 of the Convention.³⁸

Taking into account the essential role of political parties in the pluralism of opinion, any measure directed against them affects both freedom of association and also the functioning of democracy in the respective country.³⁹ Therefore, the exceptions set out in Article 11 of the Convention must be interpreted narrowly. Only convincing and compelling reasons can justify restrictions on freedom of association, including restrictions affecting the activity of political parties.⁴⁰

³⁶ European Convention on Human Rights. Signed in Rome on 04.11.1950. [in the wording of 23.10.2023.].

³⁷ Comp. with Judgment of the Constitutional Court of the Republic of Latvia of 5 February 2015 in Case No. 2014-03-01, para. 20.2. Available in Latvian: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/02/2014-03-01_Spriedums.pdf#search= [viewed 05.11.2023.].

³⁸ ECHR judgement of 30 June 2009 in Case Herri Batasuna and Batasuna v. Spain (Application No. 25803/04 and 25817/04), para. 76.

³⁹ ECHR. Guide on Article 11 of the Convention – Freedom of assembly and association, 2022, p. 32. Available: https://www.echr.coe.int/documents/d/echr/guide_art_11_eng [viewed 23.10.2023.].

⁴⁰ ECHR judgement of 30 January 1998 in Case United Communist Party of Turkey and Others v. Turkey (application No 133/1996/752/951), para. 46.

In the jurisprudence of the ECHR, when assessing the state's right to intervene in the activities of political parties, it is determined that the nature and gravity of the intervention is a factor to be taken into account when assessing the proportionality of the intervention. Therefore, drastic measures such as the dissolution of an entire political party, may only be taken in the most serious cases.⁴¹ The designation "most serious cases" for the purposes of the Convention means the cases where the dissolution of a party is based on a "pressing social need". In examining whether the refusal to register a political party or its dissolution is a "pressing social need", the ECHR takes into account the following considerations: (1) whether there was credible evidence that the threat to democracy from the party's potential activities was sufficiently imminent; (2) whether the actions of the party members were attributable to the political party in question; and (3) whether it was clear from those actions that the political party in question intended to operate in a manner that was or would be incompatible with the concept of a "democratic society".⁴² The application of these criteria has been the basis of several ECHR judgments and, as the ECHR's case law of recent years shows, the question of restricting and prohibiting the activities of political parties remains a topical issue.

For example, in the case *Refah Partisi (Welfare Party) and Others v. Turkey*, the Turkish Constitutional Court had ruled that a political party should be dissolved on the grounds that it had become a "centre of illegal activities". In examination of the case, the ECHR found that there had been no violation of Article 11 of the Convention and that the decision to dissolve the party had been proportionate. According to the ECHR, the actions and speeches of Refah's party members and leaders had revealed the party's long-term policy. This policy was aimed at establishing a Sharia-based legal system and the party did not rule out the use of force to implement its policy. Given that these plans were incompatible with the concept of a "democratic society" and that the party had a realistic chance of putting these plans into practice, the ECHR found the decision of the Turkish Constitutional Court to be justified and the restriction imposed to be in accordance with a "pressing social need".⁴³ In the context of this case, not only the application of the above criteria is relevant, but also the Court's interpretation of the preventive and positive duty of the state to intervene in the activities of a political party. The ECHR stated in this judgment that, firstly, the state must not wait until a political party whose aims are contrary to the democratic order has acquired power and control in the state. When such a threat is identified, the state must already prevent the exercise of political activities that threaten the peace and democratic order of the state.⁴⁴ Secondly, the state not only has the right to

⁴¹ ECHR judgement of 30 June 2009 in *Case Herri Batasuna and Batasuna v. Spain* (application No. 25803/04 and 25817/04), para. 78–79.

⁴² ECHR 2022, pp. 32–33.

⁴³ *Ibid.*, p. 33.

⁴⁴ ECHR judgement of 13 February 2003 in *Case Refah Partisi (the Welfare Party) and Others v. Turkey* (application No. 41340/98, 41342/98, 41343/98 and 41344/98), para. 102.

interfere preventively in the activities of a political party, but it also has a positive obligation under Article 1 of the Convention (which obliges the state to ensure the protection of the Convention rights).⁴⁵

The ECHR reached similar conclusions in the Case *Herri Batasuna and Batasuna v. Spain*. The ECHR found no violation of the Convention in a decision taken by a Spanish court banning a particular political party. The Spanish court's decision was motivated by the evidence obtained, which clearly showed that the party was determined to achieve its political objectives through terrorism. The ECHR held that the Spanish court's decision was proportionate and lawful in the light of Spain's experience with previous terrorist attacks.⁴⁶

In the Case *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*, the ECHR came to the opposite conclusion – it found that the state had violated Article 11 of the Convention by refusing to register a political party. In the present case, the Romanian authorities based their decision to refuse to register a political party on the argument that they could not allow the formation of a new communist party. In the ECHR's view, such a consideration alone is insufficient to justify a decision refusing to register a political party. Since in the present case there was nothing (including the party's programme) to suggest a call to violence or any other rejection of democratic principles, the activities of the political party would be compatible with a “democratic society”.⁴⁷ The ECHR reached a similar conclusion in the Case *Tsonev v. Bulgaria*. In this case, the ECHR did not find any sign that the party, whatever its name (the intended name was the Bulgarian Communist Party), was seeking the domination of one social class over others. Nor was there any evidence that, by choosing to include the word “revolutionary” in the preamble to its statutes, the party had chosen a policy which posed a real threat to the Bulgarian state. Moreover, there was nothing in the party's declarations to suggest that its aims were undemocratic or that violence was intended to achieve them. Significantly, the ECHR further noted that if, however, the party's activities proved to be incompatible with the fundamental principles of a democratic state, the Romanian authorities would have legal mechanisms to suspend the political party.⁴⁸

Finally, in the most recent case – *Taganrog LRO and Others v. Russia* – the ECHR ruled that a Russian court decision to dissolve a political party was unlawful. The illegality of the decision was mainly manifested in the fact that the Russian court applied the concept of “extremist activities” in an unjustifiably broad manner. In the given situation, it was not clear to the ECHR why this

⁴⁵ ECHR judgement of 13 February 2003 in Case *Refah Partisi (the Welfare Party) and Others v. Turkey* (application No. 41340/98, 41342/98, 41343/98 and 41344/98), para. 103.

⁴⁶ ECHR judgement of 30 June 2009, *Herri Batasuna and Batasuna v. Spain* (application No. 25803/04 and 25817/04), para. 88–91.

⁴⁷ ECHR. Guide on Article 11 of the Convention – Freedom of assembly and association, 2022, p. 33. Available: https://www.echr.coe.int/documents/d/echr/guide_art_11_eng [viewed 21.10.2023.].

⁴⁸ ECHR judgement of 13 April 2006 in Case *Tsonev v. Bulgaria* (application No. 45963/99), para. 58–61.

general clause was being applied to the political party in question. In addition, the ECHR found that the party was not provided with adequate and effective remedies to defend itself against the charges against it. The impermissibly broad definition of “extremist activities”, combined with the lack of remedy mechanisms, were sufficient grounds for the ECHR to find a violation of the Convention.⁴⁹ On the same grounds – unjustifiably broad interpretation of legal concepts and lack of remedies – the ECHR found the Russian court’s decision in the case *Ecodefence and Others v. Russia* to be incompatible with the Convention.⁵⁰

The ECHR has held that the statutes and programme of a political party are not the only criteria for determining the purpose and intention of a political party. Experience has shown that political parties whose aims have been contrary to the fundamental principles of democracy have not included these aims in their official documents. Thus, in order to dissolve a political party, it is necessary to assess both the programme and the activities of the leaders as a whole.⁵¹

Conclusions

1. The international situation, including the events in Ukraine, has prompted the Latvian legislator to introduce stricter regulations on the control of political parties and the banning of political parties that threaten state or public security. For this reason, in June 2022, substantial amendments in the Law on Political Parties were adopted, including more elaborated regulation about procedure for termination of the activities of parties that threaten state or public security.
2. The activities of political parties must be considered within the framework of freedom of association. Freedom of association is a fundamental right, which belongs to the group of political human rights. Freedom of association is enshrined in the constitutions of many countries. Article 102 of *Satversme* also defines political parties as one of the manifestations of freedom of association.
3. There are relatively few countries which *expressis verbis* in their constitutions define prohibition of the concrete ideology or unconstitutionality of specific political parties. However, even if such a regulation is not mentioned in the constitution, the state may restrict the activities of political parties, ensuring that such a restriction must be prescribed by law, it has a legitimate aim and it is necessary in a democratic society.
4. Political parties play a significant role in creating pluralism of opinion, hence, restrictions on the activities of political parties should be interpreted

⁴⁹ ECHR judgement of 7 July 2022 in Case *Taganrog LRO and Others v. Russia* (application No. 32401/10 and 19 others), para. 159.

⁵⁰ ECHR 2022, pp. 28–29.

⁵¹ ECHR judgement of 13 February 2003 in Case *Refah Partisi (the Welfare Party) and Others v. Turkey* (application No. 41340/98, 41342/98, 41343/98 and 41344/98), para. 101.

as narrowly as possible when in doubt. ECHR case law on the right of the state to interfere in the activities of political parties has established that the nature and gravity of the interference is a factor to be considered when assessing the proportionality of the interference. Therefore, such a measure as the dissolution of an entire political party can only be taken in the most serious cases.

5. According to the principle of harmonization of human rights, the findings of the ECHR in the context of restricting the activities of political parties are also relevant for Latvia, as well as for other member states of the Convention. States should take into account the following “pressing social need” considerations, as set out in ECHR case law, when their supervisory authorities or national courts have to assess the refusal of registration of political parties or decide on their dissolution: (1) whether there was credible evidence that the threat to democracy from the party’s potential activities was sufficiently imminent; (2) whether the actions of the party members were attributable to the political party in question; and (3) whether it was clear from those actions that the intended pattern of activity of the political party in question was or would be incompatible with the concept of a “democratic society”.
6. The question of potentially dangerous political parties which threaten the protection of constitutional values (e.g. preach terrorist ideas, are directed against national security, public security and incite hatred) should be addressed already preventively, i.e. by providing in the national legislation the possibility to refuse registration of them. As the ECHR has also recognized, the state cannot wait until a political party whose aims are contrary to the democratic order has gained power and control in the state.

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