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“The free expression of the people’s will as a prerequisite for the protect on of a democratic State order”

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I

Dear colleagues,

Europe is currently going through a period in which States are facing overlapping threats to democracy, the rule of law and the basic right of nations to live in peace. This is not only about the war waged against the democratic world, most clearly seen in the brutal aggression against Ukraine, but also about a broader campaign of hybrid warfare against other European democracies.

This includes disinformation, cyberattacks, sabotage, illicit financing and interference in elections. Threats also exist in the digital sphere, for which many democratic legal systems are not yet ready. Rapid technological developments in recent decades have enabled the use of new and highly disruptive tools that deliberately mislead people, shape how they understand what is happening in the world, and influence their free will.

Attacks on democracy and efforts to pull countries into the so-called “grey zone” are especially deceptive because they use democracy’s own foundations against it. Rights that normally make democracy strong – such as freedom of expression, freedom of religion, electoral rights and the free movement of capital – can be turned into tools for weakening democracy from within.

Whereas in the past, the abuse of democratic mechanisms was merely a question of facts, such as election fraud, today, the methods of abusing democracy have become more indirect and sophisticated. Nowadays, we are increasingly facing situations where the will and behaviour of citizens are being unfairly influenced. This calls into question the authenticity of the democratic process.

These threats are closely linked to the opportunities created by global development and technological progress. For this very reason, such abuses may be even more dangerous, as people have become closely connected to technologies which, often without their awareness, can easily be misused.

In particular, when the expression of people’s free will is improperly influenced, or election results are manipulated in less obvious ways, it may escape the attention of observers. For this reason, States have a positive obligation to actively counter such anti-democratic efforts, especially interference in elections, as they have the greatest impact on the future direction taken by States and societies.

II

Dear all,

Free expression of the people's will depends, *inter alia*, on how political opinions are circulated prior to elections and on what those opinions are. For instance, coordinated and widespread disinformation campaigns can have a significant impact on elections, since "a lie repeated becomes perception". If people hear again and again that they live in a "failed State" run by corrupt politicians, those who do not think critically enough may come to believe this narrative and support political parties that promise to "save" the State from collapse.

Article 3 of Protocol No. 1 of the European Convention on Human Rights obliges member States to adopt positive measures to organise elections "under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature".

The European Court of Human Rights, in its judgment in the case of *Bradshaw and Others v. the United Kingdom*, has recently reiterated that this obligation extends beyond ensuring that elections are conducted fairly in a narrow sense – for example, by making sure that the votes are counted correctly.

In the Latvian context the need to ensure that election results truly represent the free will of the people is seen not only in the light of electoral rights, but more broadly as a prerequisite for the protection of a democratic State order. The protection of such order in Latvia is perceived not only as one of the legitimate aims which may justify interference with fundamental rights, but more widely as the very essence of the purpose for which the Latvian Constitution was created.

The European Court of Human Rights has also clarified that States are not required to wait, before intervening, until a threat to democracy is sufficiently established and imminent. This aligns perfectly with the understanding of the precautionary principle in the case-law of the Latvian Constitutional Court: in the event of a danger State institutions are not required to wait until the harm has actually been done. In such situations, if several lawful options exist, the State may choose the one that best balances fundamental rights and national security.

While exercising the "considerable latitude left to the member States to establish rules within their constitutional order governing parliamentary elections", the Latvian legislature has adopted a range of measures to ensure the integrity of the electoral process. Some of those measures have been examined by the Constitutional Court, which has so far upheld their constitutionality. In the following three situations, the Constitutional Court has taken into account the current geopolitical circumstances and the well-documented attempts to interfere in elections in the EU, in particular in the States neighbouring Russia.

III

(1) The Latvian cases concerning restrictions on people becoming candidates in parliamentary elections are well known in Strasbourg, especially because of two such cases brought before the European Court of Human Rights by Tatjana Ždanoka. Ms Ždanoka was an active official of the Latvian Communist Party after Latvia restored its independence in 1990-91, and subsequently sought to be a candidate in parliamentary elections.

She was not allowed to become a candidate owing to a legal provision denying such a privilege to persons who had actively opposed Latvian independence and the democratic constitutional order. That legal provision has on multiple occasions been disputed before the Constitutional Court of Latvia, which has always

upheld its constitutionality. The European Court of Human Rights has on two occasions found that the applicant's right to stand as a candidate in parliamentary elections, as guaranteed by Article 3 of Protocol No. 1, was not violated.

The most recent ruling in these cases was adopted on 25 July 2024, when the European Court of Human Rights emphasised that the Convention did not operate in a vacuum. The Court, when interpreting the Convention, had to take into account the general context of the case at both the domestic and the international or regional levels.

In that particular case, the European Court of Human Rights pointed out that Latvia increasingly had legitimate reasons to fear for its security, territorial integrity and democratic order on account of its being a neighbouring State of Russia, which in recent years had engaged in military aggression against Georgia and Ukraine. This called for an even wider margin of appreciation in protecting those values. The European Court thus in essence endorsed the reasoning of the Latvian authorities – including the Constitutional Court – according to which any democracy needs to have in its possession robust instruments to defend itself in the situation we are facing today.

(2) In another case the Constitutional Court relatively recently examined the issue of the financing of political parties from the State budget. In the judgment the Constitutional Court endorsed the system whereby political parties were in principle eligible for public financing. The aim of this approach was to limit private funding and reduce parties' dependence on private sponsors. This helped prevent financial influence that could undermine State independence and democratic values.

(3) The most recent judgment of the Constitutional Court addressed the obligation to use only the Latvian language in paid pre-election campaigning. In its ruling, the Constitutional Court emphasised that while regulating the language did constitute an interference with the freedom of expression of political parties, such interference had to be assessed in light of the specific geopolitical circumstances at the relevant time.

The Constitutional Court recognised that threats continued to exist and that Russia remained consistently interested in socio-political developments within Latvia. This was evidenced by, among other things, the 2024 report of the Russian Ministry of Foreign Affairs on the so-called violations of the rights of Russia's citizens and diaspora abroad, in which Latvia was described as one of the most "Russophobic" States. In order to increase tensions within Latvian society, undermine trust in State institutions and politics, and create conditions for resetting Latvia's political course towards Russia, extensive use of various informative tools was being made.

The Constitutional Court found that the regulation on the obligation to use the Latvian language in paid election campaigning was not aimed at restricting pluralism during the pre-election period. Instead, it sought to reduce the impact of Russia's information influence operations during such politically vulnerable periods – particularly in an information space where the Russian language could serve as a channel for aggressive, anti-democratic narratives prepared in Moscow. The scale of these activities within Latvia's information space, combined with growing security risks, created a need to protect not only the security of Latvian society and the country's democratic constitutional order, but also the security and democracy of Europe as a whole.

Taken together, these cases demonstrate a clear and consistent constitutional approach: democracy is not a passive system, but one that must be capable of defending itself. The Latvian constitutional framework seeks to safeguard the genuine will of the people to have their own independent State. It does so by restricting the eligibility of individuals who continue to act against the independence and democratic foundations of the State, by ensuring transparent financing of political parties from legitimate sources, and protecting pre-election campaigning from hostile foreign influence.

As both the Latvian Constitutional Court and the European Court of Human Rights have recognised, fundamental rights cannot be interpreted in isolation from historical experience or present geopolitical

realities. In an era in which democratic processes are being targeted by authoritarian regimes, constitutional safeguards of this kind are not a denial of democracy but, on the contrary, a necessary condition for its survival – both in Latvia and across Europe.

IV

Colleagues,

As we can see, there is a constant – and I would say healthy – tension between the free expression of the will of the people and the limits set by constitutional democracy.

In the age of populism, politicians often present the will of the people as the highest, self-sufficient source of legitimacy, while at the same time the institutions meant to shape and restrain that will within the margins of the rule of law are questioned or sidelined. According to this understanding, the will of the people is reduced to the short-term preference of a political majority, treated as uniform and unquestionable, while constitutional institutions – especially courts – are presented as distant from, or even opposed to, the democratic will of the people.

In such circumstances, a purely formal or mechanical application of democratic principles is not enough. Referring to the will of the people without examining how it is formed, how representative it is and how it is filtered through democratic institutions can lead to the erosion of democracy. At the same time, an overly rigid or abstract reading of constitutional rules may weaken public trust in democratic institutions and strengthen populist narratives.

For this reason, the role of the constitutional judiciary is especially important. Courts' task is to protect both the effective exercise of political rights and the foundations of constitutional democracy. They must look beyond the law itself and consider the quality of democratic processes, the way the will of the people is expressed and the broader risks to the democratic system as a whole.

Courts have established an important principle that States have not only a right but also an obligation to protect their democratic systems against hostile foreign interference. Such self-defence mechanisms have to be preventive as well – because we know that authoritarian regimes adapt swiftly through money, technology and disinformation. Democracies therefore cannot afford for the law to evolve more slowly than the threats.

Democracy survives when vigilance is guided by law. As long as the proportionality of restrictions on human rights is verified by national and supranational courts, our democracies will remain capable of defending themselves.