



## International Covenant on Civil and Political Rights

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#### Human Rights Committee

### Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3021/2017\*\*,\*\*

<i>Communication submitted by:</i>	Ivans Baranovs (represented by counsel, Vladimirs Buzajevs)
<i>Alleged victims:</i>	The author
<i>State party:</i>	Latvia
<i>Date of communication:</i>	6 September 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 14 September 2017 (not issued in document form)
<i>Date of adoption of Views:</i>	18 October 2021
<i>Subject matter:</i>	Withdrawal of deputy mandate on the ground of insufficient proficiency in state language
<i>Procedural issues:</i>	Lack of substantiation
<i>Substantive issues:</i>	Access to public services; discrimination on the ground of ethnic origin; voting and election
<i>Articles of the Covenant:</i>	25 read in conjunction with articles 2 (1) and 26; and article 14
<i>Articles of the Optional Protocol:</i>	1, 2 and 3

1. The author of the communication is Ivans Baranovs, a Latvian citizen of Russian origin born in 1962. His mother tongue is Russian. He claims that the State party has violated his rights under article 25, read in conjunction with articles 2 (1) and 26, and article 14 of the Covenant. The Optional Protocol entered into force for Latvia on 22 September 1994. The author is represented by counsel.

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\* Adopted by the Committee at its 133rd session (11 October - 5 November 2021).

\*\* The following members of the Committee participated in the examination of the communication: Wafaa Ashraf Moharram Bassim, Yadh Ben Achour, Arif Bulkan, Mahjoub El Haiba, Furuya Shuichi, Carlos Gomez Martinez, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Vasilka Sancin, José Manuel Santos Pais, Changrok Soh, Kobauyah Tchamdja Kpatcha, Hélène Tigroudja, Imeru Tamerat Yigezu, and Gentian Zyberi.

\*\*\* An Individual opinion by Committee member Furuya Shuichi is annexed to the present Views (dissenting).

### **The facts as submitted by the author**

2.1 The author was elected as a deputy to the Balvi Municipal Council in 2013. In December 2013, the Latvian State Language Centre interviewed him in order to verify whether he possesses Latvian language skills at the level required by the Law on the Status of Members of the Republic City Council and the Municipality Council. It was established that the author's language knowledge fails to meet the statutory requirement and he was given 6 months to obtain the required language proficiency in Latvian, for which financial resources were provided by the municipality. Since the author failed to pass the required language proficiency examination, the State Language Centre submitted a request to the Latgale Regional Court for the revocation of his deputy mandate. Due to jurisdictional matters, the case was transferred to the Balvi District Court, which, on 11 November 2015, stripped the author of his deputy mandate.

2.2 On 23 March 2016, the Latgale Regional Court affirmed the decision of the Balvi District Court. On 13 December 2016, the Collegium for Civil Cases of the Supreme Court of Latvia denied the author's cassation appeal. On 18 January 2017, the author applied to the Constitutional Court to declare the relevant parts of Article 4 of the Law on the Status of Members of the Republic City Council and the Municipality Council unconstitutional. On 17 February 2017, the Constitutional Court refused to admit the complaint on the grounds of insufficient legal substantiation. The author then submitted a new complaint to the Constitutional Court, which again refused to examine the complaint on 10 May 2017.

2.3 On 3 June 2017, the author again won the elections to the Balvi Municipal Council. On 14 August 2017, he was informed that the State Language Centre intends to conduct an examination of his proficiency in Latvian language. The examination was scheduled for 5 September 2017, however, due to other commitments, the author could not attend the examination. At the time of the submission of the complaint, the author expected this interview to be rescheduled.

### **Complaint**

3.1 The author claims that the Latvian language proficiency requirement violates his rights under article 25 of the Covenant, read in conjunction with articles 2 (1) and 26. He explains that article 25 (b), which guarantees universal suffrage, should apply in his case in the first place, but his rights are at least protected by article 25 (c) of the Covenant. He refers to the Committee's general comment no. 25 and submits that any restriction on the right to stand for election must be justifiable on objective and reasonable criteria. He claims that the revocation of an already-elected deputy's mandate on the basis of criteria which do not apply to candidates before their election is more restrictive of the rights of both the deputy and the voters than would be the direct application of the same criteria to candidates. He further notes that there is a difference in treatment between deputies whose native language is Latvian and non-native speakers, as the same requirement applies to both groups of deputies, which is more burdensome for the latter. The author further submits that he has been discriminated against and that the interference was not prescribed by law, as the required level of language proficiency for deputies is set out only in a regulation. Regarding the aim of the impugned restriction, the author notes that the historical aims of the interference, such as the protection of the right to use Latvian language and of democratic state order, are no longer relevant given the increase of the ratio of those persons whose native language is Latvian. Furthermore, the otherwise legitimate aim of ensuring the effective functioning of local governments cannot be achieved with the chosen means, or at least other less restrictive means would be available. He also believes that the withdrawal of his mandate was not proportionate and disregards his significant contribution as a deputy to the municipality, which is evidenced by the fact that he has been re-elected multiple times. Lastly, he underlines that the Committee, in *Ignatane v. Latvia*, has already recognized the unlawfulness of the language requirement for deputy candidates.

3.2 The author further claims that the national courts' assessment of facts and evidence was clearly arbitrary or amounted to a manifest error or denial of justice, thus violating his rights under article 14 (1) of the Covenant. The author argues that his case was tried by a district court that lacked jurisdiction; the second instance court violated the principle of impartiality because the same judge who had made a decision regarding the lack of

jurisprudence of the Regional Court participated in the decision-making in the appeals procedure. Furthermore, the author's appeals to the Constitutional Court were rejected on the basis of arbitrary reasoning.

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

4.1 On 31 July 2019, the State party submitted its observations on admissibility and the merits.

4.2 The State party provides additional details concerning the facts of the case. It informs that in March 2005 and July 2009, the author was already elected as a deputy to the Balvi Municipal Council. In 2013, in response to various complaints, the State Language Centre initiated administrative proceedings in order to verify whether, while carrying out his official duties, the author used the state language at the level required for members of municipal councils.

4.3 After the author had been re-elected in July 2013<sup>1</sup> and the deadline set for him to certify that he possesses the required language proficiency expired in June 2014, the State language Centre made multiple attempts to interview the author, but he recused himself from appearing on those interviews for various reasons.

4.4 Regarding the author's constitutional complaints, the State party informs that in November 2013, the Constitutional Court of Latvia examined a complaint raising concerns similar to those of the author and confirmed the constitutionality of the relevant laws prescribing for the contested language requirement.

4.5 Regarding the admissibility of the complaint, the State party contests the author's victim status for the purposes of article 25, read in conjunction with article 2 (1) of the Covenant and therefore considers that it should be inadmissible pursuant to article 2 of the Optional Protocol. The State party underlines that the author has never been prevented from standing as a candidate in municipal elections, or from being elected. On the contrary, since 2005, the author regularly stood for and was elected as a deputy to the Council of the Balvi Region. Moreover, due to his re-election in 2017, he currently holds the same mandate. The State party further notes that the present communication differs substantially from *Ignatane v. Latvia* for the following reasons: 1) In *Ignatane v. Latvia* the author had obtained the certificate that confirmed her Latvian language proficiency at the highest level; 2) the author was struck off the list of candidates shortly before the municipal elections; 3) the Committee's finding of a violation related to the procedure for determining the State language proficiency of the candidates concerned, which does not suggest that the requirement of C1 language proficiency in Latvian would run counter to the provisions of the Covenant.

4.6 Regarding the alleged violation of article 26 of the Covenant, the State party notes that in its judgment of 7 November 2013, the Constitutional Court established that the impugned language requirement applies to all members of the municipality council equally, and it is equally binding to all citizens of Latvia, as well as any citizens of other member states of the European Union, who stand for municipal elections and are elected. In the absence of any justification as to why the author considers that his rights under article 26 of the Covenant have been violated, the State party is of the position that the author has failed to disclose any difference in treatment that would fall under the cited article and invites the Committee to declare the author's claim inadmissible under articles 2 and 3 of the Optional Protocol.

4.7 Regarding the alleged violation of article 14 (1) of the Covenant, the State party notes that before 1 January 2015, regional courts indeed adjudicated certain categories of civil cases as courts of first instance and the Supreme Court proceeded in those cases as an appeal court. However, a court reform aimed at improving the efficiency of the judicial system, introduced a new rule according to which all district courts proceed as first instance courts in all civil matters. The State party notes that the adjudication of the author's case on three instances

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<sup>1</sup> The author notes in his comments dated 7 October 2018 that he was re-elected for the third time on 1 June 2013.

was in fact more favourable to him. In any event, the State party provides a factual clarification and notes that the State Language Centre's first petition was erroneously introduced to the Regional Court and for this reason was then referred to the Balvi District Court, however, that procedure was terminated for other procedural reasons. The court action that resulted in the withdrawal of the author's mandate was introduced directly before the Balvi District Court, therefore the Regional's Court's contested decision to relinquish its jurisdiction cannot be subject to review within the framework of the present communication.

4.8 Regarding the author's claim alleging that judge A.Š. lacked impartiality, the State party notes that the Regional Court's judge did not make any decision either on the admissibility or the merits of the author's case but made a purely procedural decision to refer his case to another court because the Regional Court lacked jurisdiction to adjudicate on the matter as first instance court. This, however, does not preclude the same judge from examining the case on the substance when it is appealed to the Regional Court as an appellate court. The State party recalls that the Committee found no violation in more controversial cases, i.e. when two of the three judges in the appeals procedure were members of the first instance tribunal. It follows that there is nothing in the present communication to shed doubts about the impartiality of judge A.Š. In the light of the foregoing, the State party invites the Committee to declare the author's complaint under Article 14 (1) of the Covenant inadmissible within the meaning of articles 2 and 3 of the Optional Protocol.

4.9 Regarding the alleged violation of article 25 read in conjunction with article 2 of the Covenant, the State party provides information regarding the historical reasons for the importance of protecting Latvian as State language in certain areas and underlines that States are at liberty to impose and regulate the use of their official language.<sup>2</sup> It further submits that the author's mandate was withdrawn on the basis of the decision of the Supreme Court of 13 December 2016, which was based on article 6 of the Law on the Status of Members of the Republic City Council and the Municipality Council and Regulation No. 733 of the Cabinet of Ministers. It is further underlined that it is not disputed in the present case that the author does not possess the required level of language proficiency, as established during his interview in December 2013. Subsequently, he did not take any steps, despite the funding allocated by the Municipality for that purpose, to improve his knowledge of language and to certify his proficiency before the State Language Centre. The State party further argues that the author could reasonably foresee the results of his non-compliance with the domestic legislation.

4.10 The State party further notes that the withdrawal of the author's mandate was aimed at ensuring the normal functioning of municipality councils, the democratic structure of the State, as well as the rights of others to use the State language in public matters and was therefore reasonable. The State party recalls the position of the European Court of Human Rights that the "interest of each State in ensuring that its own institutional system functions normally is incontestably legitimate".<sup>3</sup> Accordingly, it is reasonable to expect that members of the municipality council of Latvia are able to communicate in Latvian and ensure proper functioning of the municipality council. The State party notes that in its attempts to try to verify the author's language proficiency, an official of the State Language Centre participated in several sessions of the Municipality Council, however, the author did not actively take part in the debates and records of 2013 show that he stayed passive during all debates of 2013, which raises legitimate concerns about the representation of his electorate. The State party further submits that the domestic courts established that there were no objective obstacles for the author to learn the Latvian language. Lastly, the State party recalls that the right of persons belonging to minorities to enjoy their culture and language in no way obliges the State to guarantee the right to use a particular language in communications with public authorities or the right to receive information in a language of one's choice, as the aim of that guarantee differs substantially from the purpose of the requirement that members of municipalities use the State language in their official duties.<sup>4</sup> The State party therefore considers that the

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<sup>2</sup> The State party refers to the decision of the European Court of Human Rights in *Mentzen v. Latvia* (app. no. 71074/01) of 7 December 2004.

<sup>3</sup> *Podkolzina v. Latvia* (application no.46726/99), judgment of the European Court of Human Rights of 9 April 2002

<sup>4</sup> The State party refers to *Mentzen v. Latvia*.

withdrawal of the author's mandate was based on objective and reasonable grounds, and was compatible with the purpose of the law. Accordingly, the State party deems that the author has failed to sufficiently substantiate his claims and his complaint should therefore be declared inadmissible. In the alternative, it invites the Committee to find that there has been no violation of article 25, read in conjunction with article 2 of the Covenant.

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

5.1 On 7 October 2018, the author submitted his comments on the State party's observations.

5.2 Regarding the alleged inadmissibility of his claims under article 25 in conjunction with article 2 (1) of the Covenant, the author notes that although it is true that he has been re-elected in four consecutive terms, article 25 does not protect only the right to be elected, but also the right not to be dismissed arbitrarily from office. The author finds it particularly worrying that more stringent requirements apply to mandate-holders than to candidates. Therefore, the revocation of his mandate before the expiry of his term renders him a victim for the purposes of article 25 of the Covenant. In this connection, the author notes that a new procedure has already been initiated to deprive him of his fourth mandate that he had lawfully obtained. Regarding the State party's argument made in relation to *Ignatane v. Latvia*, the author holds that the Committee found a violation not only because the author was struck off the list of candidates using an unfair and arbitrary procedure, but it found the language requirements applied to candidates incompatible with the Covenant. The author notes that the State party, in order to comply with the Committee's decision, eliminated the language requirement, which was, however, reintroduced in 2009 and only in relation to mandate-holders. From 2013, the relevant laws allow for the withdrawal of mandates of those deputies who do not meet the language requirement.

5.3 Regarding the merits of those claims, the author submits that no justification provided for the removal of elected office holders based on distinctions between citizens in the enjoyment of their rights on the ground of language can be considered objective and reasonable.<sup>5</sup> He further claims that the State party failed to provide concrete examples to substantiate that his performance is inefficient. He notes in this respect that it has not been substantiated by documentary evidence that he did not actively participate in the sessions of the Council and that there is no information submitted concerning the activity of native speaker mandate-holders to allow for a reasonable comparison. He submits that the State party's argument that the language requirement is justified by the need of the normal functioning of municipality councils seems to be overridden by the fact that the author has been re-elected four times, which proves that he is able to carry out his duties efficiently and duly represent the interests of his voters. In this connection, he argues that above all, he represents the interests of voters belonging to ethnic minorities, which is clear from his party's electoral program. He notes that the complaints based on which the State Language Centre initiated the first administrative procedure against him were not sufficient to prove that he has difficulties with communicating with his voters. Instead, the impugned law's real aim appears to be the reduction of representation of national minorities in municipality councils. As to the proportionality of the interference, the author reiterates his arguments contained in the communication, notably that the required level of language proficiency is unreasonably high and that only a short period of time is ensured to acquire the sufficient language proficiency. Furthermore, the author contests the relevance of *Mentzen v. Latvia*, in which the author's claim was substantially different from that of the present complaint. Lastly, if the case is assessed in its historical context as advised by the State party, the author notes that 37% of the population speaks Russian as a native language in Latvia.

5.4 Regarding his claims under article 26 of the Covenant, the author reiterates that, even if not formally present, the differential treatment of certain mandate-holders is implied in the language requirement because those whose mother tongue is Latvian by definition meet the impugned requirement whereas persons belonging to ethnic minorities are more likely to face hardship.

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<sup>5</sup> The author refers to the Committee's general comment no. 25 (para. 3).

5.5 Regarding his claims under article 14 (1) of the Covenant, the author notes that after the amendment of the Civil Procedure Code, additional laws were modified,<sup>6</sup> but these did not change the relevant rules as to the jurisdiction of regional courts in matters concerning the revocation of mandates. The author argues that there is uncertainty as to the scope of jurisdiction of courts and his case should not have been adjudicated until after a decision have been made at a higher level in this matter. The author further informs that currently, two procedures are pending against him. One was initiated because of his failure to co-operate with the State Language Centre so that his language proficiency can be assessed. He notes, however, that he informed the State Language Centre that his current knowledge of Latvian does not meet the C1 level requirement, which is why he found it unnecessary to have him interviewed.<sup>7</sup> The other procedure concerns the revocation of his mandate, however, he notes that in accordance with the relevant rules, he first should have been given six months to improve his language skills, therefore the procedure against him has been launched unlawfully in court.

#### **Additional information from the author**

6. On 7 January 2019, the author submitted additional information concerning the status of the procedures against him. He first notes that he was found responsible by the Latgale Regional Court for his failure to appear for a language interview and was imposed a fine in the amount of 50 euros. On 11 October 2018, the Rezekne District Court terminated the procedure against the author because it accepted his argument that he should have been given six months to improve his language skills before launching a court procedure against him. The author notes that this does not rule out that a new procedure will commence once this period elapsed.

#### **Issues and proceedings before the Committee**

##### *Consideration of admissibility*

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

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

7.3 The Committee notes the author's claim that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in that connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

7.4 The Committee notes on the one hand the State party's argument that the author has never been prevented from standing for election in municipal elections. In fact, he was newly elected to the municipality council in 2017, for the fourth time, consecutively. Therefore, according to the State party, he cannot be considered a victim for the purposes of article 25 read in conjunction with Article 2 (1) of the Covenant. On the other hand, the Committee notes the author's contention that the protection afforded under article 25 of the Covenant extends to the whole term of the mandate of elected office holders, including to their arbitrary removal from office. The Committee recalls its general comment no. 25 (para. 16), which establishes that grounds for the removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures. It therefore follows that the fact that the author was allowed to stand for election despite his contested language skills cannot lead to the loss of his victim status, as the revocation of his mandate on the basis of allegedly arbitrary criteria may indeed raise issues under the Covenant. The

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<sup>6</sup> The author calls this the "Status Law".

<sup>7</sup> At the time of the submission of the comments, the case was still pending before the second instance court.

Committee therefore considers that the author has retained his victim status despite his re-elections, for the purposes of article 1 of the Optional Protocol.

7.5 As regards the author's claims under article 14 (1) of the Covenant, the Committee notes the author's claims that his case was tried by a court lacking jurisdiction and that his constitutional complaint was rejected on the basis of arbitrary reasoning. As regards the former one, the Committee notes that the Regional Court ruled that it has no jurisdiction to adjudicate on the matter and that the court action relaunched by the State Language Centre before the District Court was examined on the merits and the author was able to challenge that decision on several instances. The Committee recalls that it is generally for the courts of States parties to the Covenant to review facts and evidence, or the application of domestic legislation in a particular case, unless it can be shown that such evaluation or application was clearly arbitrary or amounted to a manifest error or denial of justice.<sup>8</sup> In such circumstances, and in view of the information in the case file, the Committee considers that the author has failed to sufficiently substantiate for purposes of admissibility that the application of domestic legislation by the domestic courts regarding jurisdictional matters amounted to clear arbitrariness, manifest error or a denial of justice. That part of the communication is therefore inadmissible pursuant to article 2 of the Optional Protocol. Likewise, the Committee considers that the author's claim concerning the Constitutional Court's justification does not rise to the sufficient level of substantiation in view of the fact that the impugned decisions provided detailed reasoning for the rejection of the author's complaint and the author only seems to disagree with the outcome of the case. Therefore, the author's claims under article 14(1) should be declared inadmissible pursuant to article 2 of the Optional Protocol

7.6 In the absence of any other challenges to the admissibility of the communication, the Committee declares the communication admissible insofar as it concerns the author's claims under article 25 read in conjunction with articles 2 (1) and 26 of the Covenant, in particular those related to his mandate that he gained in 2013 and was deprived of by the decision of the Balvi District Court of 11 November 2015 and that of the Latgale Regional Court of 23 March 2016, and proceeds with its consideration of the merits.

#### *Consideration of the merits*

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, as required under article 5 (1) of the Optional Protocol.

8.2 The issue before the Committee is whether the rights of the author under article 25 read in conjunction with articles 2 (1) and 26 of the Covenant were violated by his removal from office to which he was elected in 2013.

8.3 The Committee recalls that any restrictions on the right to stand for election, such as minimum age, must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation.<sup>9</sup> Furthermore, the grounds for the removal of elected office holders should be established by laws based on objective and reasonable criteria and incorporating fair procedures.<sup>10</sup>

8.4 In the present case, the Committee notes the State party's arguments that the decision to withdraw the author's mandate was prescribed by law and was necessary in the interest of ensuring the normal functioning of public institutions. In this regard, the Committee underlines that the rights set forth in article 25 are not absolute; the wording of the provision is such that it may be seen to incorporate limitations which permit States to attach conditions to those rights. The Committee acknowledges that as long as the grounds for such limitation remain objective and reasonable, States parties enjoy certain liberty to determine cases of ineligibility, since these are linked to the particular historical and political characteristics of each State. In this respect, the Committee notes that the obligation in domestic law for members of the municipality council to have an adequate command of the official language

<sup>8</sup> See e.g. *Lin v. Australia* (CCPR/C/107/D/1957/2010), para. 9.3.

<sup>9</sup> Committee's general comment No. 25, para. 15.

<sup>10</sup> Committee's general comment No. 25, para. 16.

pursued a legitimate aim. Every State has a legitimate interest in ensuring that its institutional system functions properly. Although it is true that the right to stand for election would be illusory if mandate-holders could, at any time, be deprived of it, the Committee notes that in the present case, it was not contested by the author that the relevant laws were clear and their application to persons who do not meet the language requirement was foreseeable. In this respect, the Committee while mindful of the author's argument regarding the alleged unjustifiability of the circumstance that the impugned requirement applies to elected members only and not to candidates, notes that the grace period of six months benefit the mandate holders concerned and can justify the differentiation. Furthermore, in the present case, the author was first elected in 2005, so he has had plenty of time to acquire the necessary skills in the Latvian language.

8.5 Furthermore, the Committee concurs with the position of the State party that the facts of the present case substantially differ from those of *Ignatane v. Latvia*, in which the author possessed a language aptitude certificate, which was, however, contradicted by a single inspector on the basis of an ad hoc review. The Committee notes that in the present case, the author did not contest that he does not use the official language at the level specified in regulatory norms (para. 5.5) and that he has not succeeded in improving his language skills necessary for the status of a deputy in spite of the fact he was re-elected four times in a row. The Committee further notes that the impugned requirement seems to apply to everyone without any distinction and the mere fact that the fulfilment of this criterion for mandate-holders whose mother tongue is Latvian is less burdensome than for non-native speakers does not constitute discriminatory treatment so long as it is imposed on objective and reasonable grounds. In view of the circumstances, however, that the author who was able to repeatedly stand for election and to conclude his first two terms and, as regards his mandate under review, was given the opportunity to improve his language skills for which funding was allocated by the municipality, the Committee cannot conclude that the procedure for the revocation of the author's mandate was not based on objective and reasonable criteria.

9. In the light of the above, the Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it do not reveal any violation of article 25 read in conjunction with articles 2 (1) and 26 of the Covenant



## Annex

### Individual opinion by Committee member Furuya Shuichi (dissenting)

1. I am unable to concur with the View's conclusion that the revocation of author's mandate as a deputy of Municipal Council due to the lack of required language proficiency in Latvian does not constitute a violation of article 25 read in conjunction with article 26 of the Covenant.

2. As the View points out (para. 8.4), the rights set forth in article 25 are not absolute and States can attach certain limitations to those rights as long as the grounds for such limitations remain objective and reasonable. It is also true that every State has a legitimate interest in determining its official language in light of its particular historical and political characteristics.

3. In the present case, however, the Committee is not requested by the author to adopt its position on the choice of official language in the State party nor on the right of the author to speak his mother tongue in the Municipal Council. That decision, which is linked to the particular historical and political characteristics of Latvia, would be in principle to be made by Latvia alone. Rather, the issue before the Committee is more specific, namely whether the removal of the author from the office to which he was elected only due to the insufficient proficiency in such an official language is compatible with articles 25 and 26 of the Covenant.

4. In this regard, the State party argues that the revocation of the author's mandate was prescribed by law and was necessary and reasonable in the interest of ensuring the normal functioning of public institutions. To support this argument, the State party submits that the author did not actively take part in the debates and records of 2013 show that he stayed passive during all debates of 2013, which raises legitimate concerns about the representation of his electorate.

5. In my view, however, the removal of a mandate-holder due to the insufficiency of performing his/her mandate must be evaluated on the strict basis of objective and reasonable criteria. While the proficiency in the official language of the State party is an important element, it is merely one of the relevant elements for evaluating the competences of a person as a representative of local community. Particularly, in the case of an elected officer, it is voters who decide whether a candidate possesses sufficient competences, including good communication skills, as their representative. In this regard, it is a crucial fact that the author has been elected four times and continued to hold the office of deputy since 2005, which clearly demonstrates that a certain amount of local population has recognized and supported the author as a representative of local community. The author's removal admittedly disregards the will of those voters supporting him. In addition, the State party has not provided any specific and concrete example to demonstrate that the author's insufficient proficiency in Latvian caused any problems or difficulties in carrying out his mandate as a deputy of the Municipal Council for more than ten years. I therefore have to conclude that the removal of the author from the Municipal Council only due to his insufficient language proficiency is not based on objective and reasonable grounds, and is in violation of article 25 of the Covenant.

6. As to the author's claims under article 26 of the Covenant, the State party argues that the language requirement applies to all members of the Municipal Council which is equally binding to all citizens of Latvia. According to the Committee's jurisprudence, however, the violations of article 26 may result from the discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate<sup>11</sup>, and such "indirect discrimination" breaches article 26 when a rule or measure disproportionately affect certain persons to the extent that it is not justifiable on objective and reasonable grounds. In light of my conclusion in the previous paragraph, I also have to consider that requiring certain level of proficiency

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<sup>11</sup> *Althammer et al. v. Austria* (CCPR/C/78/D/998/2001), para. 10.2; *Broeks v. The Netherlands* (CCPR/C/29/D/172/1984), para. 16; *Prince v. South Africa* (CCPR/C/91/D/1474/2006), para. 7.5.

in Latvian to the author, whose mother tongue is Russian, in order to maintain the position as a deputy of Municipal Council constitutes a violation of his rights under article 26 of the Covenant.

7. Accordingly, I conclude, dissenting from the majority of the Committee, that the facts before the Committee in the present case reveal a violation of article 25 read in conjunction with article 26 of the Covenant.

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