CONSTITUTIONAL LAW

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PREFACE TO THE ENGLISH EDITION

It is an uncontroversial, if rather trite point that a cursory look at the constitutional law of any State will likely reveal its share of unique characteristics as well as institutions and challenges familiar from other polities. Scholars and practitioners of public law will know well this tension between familiar and unfamiliar in the interaction of actors, institutions, and concepts. Having said that, Latvia has a plausible claim to a particularly interesting constitutional history as well as present. I will first outline what that claim for uniqueness would look like, before turning to the book that I have the pleasure to preface.

Latvia declared its independence in 1918, amidst the confusing end of the Russian Empire.[1] In that, it was not unique,[2] nor was it unique (if less common) in successfully resisting Soviet Russia's attempts to suppress the effective establishment of the statehood.[3] But the 1920 Treaty of Peace between Latvia and Russia stands as a landmark: one of the first international instruments to base independent statehood on the right of self-determination as a matter of international law,[4] not merely wise or desirable policy,[5] some 40 years before

1 D Lieven, Towards the Flame: Empire, War and the End of Tsarist Russia (Penguin Books 2016).

2 J Smith, 'Non-Russians in the Soviet Union and after' in RG Suny (ed), The Cambridge History of Russia (Volume 3: The Twentieth Century, CUP 2006).

3 S Yekelchyk, 'The western republics: Ukraine, Belarus, Moldova, and the Baltics' in Suny ibid.

4 Treaty of Peace between Latvia and Russia (signed 11 August 1920) 2 LNTS 195 art 2. The analogous treaties concluded by the Soviet Russia with Estonia and Lithuania earlier in the same year also contained this language.

5 Z Steiner, The Lights that Failes: European International History 1919-1933 (OUP 2005) Chapters 1-2.

the proposition was endorsed at the universal level.[6] The later inter-War years were less remarkable and overall went with the grain of Eastern European practice: a Constitutional Assembly (*Satversmes sapulce*) from 1920 to the adoption of the Constitution (*Satversme*) of a democratic republic in 1922 (to the centenary of which this translation is dedicated), accession to the League of Nations in 1921, and the customary authoritarian coup d'état in 1934. But again, there was a unique twist. Unlike most other authoritarian States in the region, Latvia did not amend or replace the democratic constitution but merely suspended it. This seemingly technical choice of the least resource-demanding option from the handbook[7] would have important constitutional implications in 1990-1991.

The 1930s ended for Eastern Europe with the triumph of the dark;[8] for Latvia, sequential occupations and annexations by the Soviet Union, the Third Reich, and then the Soviet Union again. The post-World War Two Central and Eastern Europe was, of course, profoundly influenced in all settings by the Soviet Union, which shaped (and destroyed) boundaries, institutions, ideologies, and peoples.[9] But even against this background of deep and routine intervention in internal affairs, Latvia and other Baltic States were unique as the only members of League of Nations not to find any formal place or even mention in the world of the United Nations (UN). One searches in vain for Latvia in the great debates of the Cold War on decolonisation and creation of new fields of international law, such as human rights and environmental law. For the whole of the Cold War, Latvia existed solely through an increasingly brittle network of embassies in the Western Europe and United States, underpinned by the international non-recognition of the Soviet occupation and annexation as well as

6 Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Advisory Opinion) [2019] ICJ Rep 95 [149]-[152].

7 E Luttwak, Coup d'état: A Practical Handbook (Revided Edition, Harvard University Press 2016).

8 Z Steiner, The Triumph of the Dark: European International History 1933-1939 (OUP 2013).

9 N Naimark, 'The Sovietization of East Central Europe 1945-1989' in N Naimark, S Pons and S Quinn-Judge (eds), The Cambridge History of Communism (Volume 2: The Socialist Camp and World Power 1941-1960s, CUP 2017).

(initially) forcible and non-forcible resistance of the Latvian people.[10] The fall of the Soviet Union, in which the Baltic efforts at restoration of statehood played a not insignificant role,[11] put on the table hard questions about the fit between the democratic constitutional traditions and authoritarian practices of the pre-War years, the Cold War international practice, and the new Western European institutions and standards.

It is in the early 1990s that the uniqueness of Latvian constitutional law fully played out, for various reasons distinguishing its path from all the other States reflecting on their constitutional future at that point. The public international law backdrop of collective non-recognition of Soviet occupation excluded Soviet constitutional law as a benchmark, focusing the attention instead on the pre-War pedigree. (I cannot help mentioning here the inspiring figure of Ambassador Anatol Dinbergs, who ties together the storylines sketched so far: a member of the Latvian diplomatic service from its democratic times in 1932, part of Latvia's legation in exile in the US throughout the Cold War, and from 1991 Latvia's Ambassador to the US and Permanent Representative to the UN.)[12] An internationally recognised, fully functioning State immediately presented itself as a plausible pedigree with a rich stratum of thinking and practice, unlike for those nations that had been unsuccessful in resisting the initial pushback of the Soviet Russia in the early 1920s. Finally, the democratic Constitution, not spoiled by the (on this point) commendably tardy authoritarian regime, could be adopted without embarrassment for the end of history epoch. The 1990 Declaration of Independence thus proclaimed, in retrospect inevitably, Latvia to be the continuing State of the 1940 Latvia as a matter of international law, with the 1922

10 Generally I Ziemele, State Continuity and Nationality: The Baltic States and Russia (Brill 2005) Chapters 2-6.

11 Generally VM Zubok, Collapse: The Fall of the Soviet Union (YUP 2021).

12 'Anatol Dinbergs, 82, Latvia's Ambassador' New York Times (11 November 1993).

Constitution eventually restored as a matter of domestic law.[13] That was a unique framing.

With the basic aspects of the framework established, the next three decades could be devoted to solving more routine challenges. At the international level, the key lesson from 1940 was the importance for small States of rule of law in international affairs and strong multilateral institutions, particularly of regional character, reflected in the accession of Latvia to the United Nations in 1991, the Council of Europe in 1995, and the European Union and the North Atlantic Treaty Organization in 2004. At the domestic level, the Constitution was amended to provide for a constitutional court, probably the key change to the balance struck by the drafters in 1922, and a catalogue of fundamental rights. All fairly unremarkable, one might think, but also underpinned by the intense historical sense of fragility of democratic constitutionalism, from authoritarianism within and aggression of Great Powers without – as well as the confidence in the demonstrable sturdiness in the ought of Latvia for the intervening half century. An inquiry into how Latvian constitutional law grapples with the exceptional and mundane is thus likely to be of interest to (comparative) constitutional lawyers, legal theorists and historians, as well as public international lawyers. If a lingering doubt persists regarding the general interest that Latvian constitutional law would present, the judgments of the Constitutional Court regarding the Latvia-Russia Border Treaty and the Lisbon Treaty should provide an excellent starting point for evaluation (or so I would say, having been an invited legal expert by the Court in both cases).[14]

I now turn to the most pleasing part of writing this preface, which relates to the book itself. The (somewhat) abridged English translation of Jānis Pleps, Edgars Pastars, and Ilze Plakane's Constitutional

13 <https://www.saeima.lv/en/about-saeima/informative-materials-about-the-saeima/infografika-4-maijs-latvijas-republikas-neatkaribas-atjaunosanas-diena-1>.

14 Judgment of the Constitutional Court in Case no 2007-10-0102 of 29 November 2007 <https://www.satv.tiesa.gov.lv/web/wp-content/uploads/2007/04/2007-10-0102_Spriedums_ENG.pdf>; Judgment of the Constitutional Court in Case no 2008-35-01 of 7 April 2009 <https://www.satv.tiesa.gov.lv/wp-content/uploads/2008/09/2008-35-01_Spriedums_ENG.pdf>.

Law before the reader is based on the 3rd edition of Konstitucionālās tiesības (2021; 1st edition 2004; 2nd edition 2014). The quality of the book, in my view, goes without saying and will be appreciated as such by the reader, but some points will go even better by being said, for the proper appreciation of context. The book is, in short, the leading generalist constitutional law text in Latvia. It is the customary first point of call for consultation on a particularly obscure point as well as an authority for a legal argument ('Pleps, Pastars, Plakane say so' carries considerable weight in constitutional and administrative courts as well as legislative and executive chambers). The writing reflects a great deal of thinking, on the doctrinal aspects of statutory and judicial construction, theoretical underpinnings informed by the great theorists and philosophers, and the comparative and international perspective. The book also benefits from the practical experience of the authors, who are not (merely) ivory tower dwellers but during their professional career have inhabited the offices of, among others, assistants to Judges of the Constitutional Court, lawyers at the Parliament's Legal Bureau, advisers to various executive authorities, legal advisors to no less than three Presidents, and prolific private practitioners. When the authors weigh in on a constitutional, judicial, or statutory point, they do so with a full knowledge of how sausages – and perhaps even the particular slice at issue – are made. I am delighted to have been asked to write this preface, and could not be more sincere in my strong endorsement of the book.

London, 7 June 2022

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INTRODUCTION TO THE ENGLISH EDITION

The Constitution (*Satversme*) of the Republic of Latvia was adopted on 15 February 1922, was promulgated on 30 June 1922 and entered into force on 7 November 1922. This year the *Satversme* becomes a century old.[1]

Currently, the *Satversme* is one of the oldest written constitutions that are in force in Europe, namely, less than ten constitutions are older than the *Satversme* (for example, San Marino, Norway, the Netherlands, Belgium, Luxemburg, Austria and Lichtenstein have older written constitutions).

The *Satversme* reflects the development of constitutionalism after the First World War – its authors were inspired by the model of Weimar Constitution, the experience of the Third Republic of France and the English parliamentarism, as well as the Swiss ideas of direct democracy. The impact and development of constitutionalism of the time can be observed in the present state order of Latvia.[2]

The fate of the *Satversme* is unique. The inter-war crisis of democracy affected also Latvia, and the demand to reform the *Satversme* and the idea that this *Satversme* was not quite functional appeared in the political discourse. The coup of 15 May 1934 replaced the *Satversme* with an authoritarian state order, whereas on 17 June 1940, Latvia was occupied by the USSR, which incorporated it for half a century. However Latvia, as a de iure internationally recognised state continued to

1 See more about anniversary of the *Satversme*: https://www.satversme100.lv/

2 See more: Pleps J. The Constitutional Foundations of the Republic of Latvia. In: Latvia and Latvians. Collection of scholarly articles in 2 volumes. Volume I. Rīga: Latvian Academy of Science, 2018, pp. 93 – 130.

exist throughout the years of occupation, and from the very first day of occupation the national resistance movement was aimed at restoration of independence.[3] During this period, the *Satversme* turned into the symbol of statehood and the grounds for fight to regain the state. The national resistance movement demanded also restoration of the democratic state order and reinstatement of the *Satversme*.

The Latvian Central Council, the most important organisation of national resistance, attempted to restore Latvia's independence and reinstate the *Satversme* already on 8 September 1944 by the Declaration on the Restoration of the Republic of Latvia. It did not work out then.[4] However, these aims were successfully reached on 4 May 1990 when, after the Latvian Popular Front won the election, the Supreme Council adopted the declaration "On the Restoration of Independence of the Republic of Latvia". It provided for partial reinstatement of the *Satversme*. The political decision to reinstate the *Satversme* in full was made by the constitutional law of 21 August 1991 "On the Statehood of the Republic of Latvia". The 5th *Saeima*, elected in accordance with the *Satversme*, commenced its work on 6 July 1993 by reinstating the *Satversme* in full and restoring also the state order defined in it.[5]

Following an interruption that lasted for almost half a century, the *Satversme* was returned to the legal and social reality. Nothing of the kind has happened in any other country of the world.[6] Likewise, now, almost thirty years after reinstatement of the *Satversme*, we can say that the *Satversme* is a successful constitution that ensures stable democracy and a strong state governed by the rule of law.

3 See more: Judgment of the Constitutional Court of the Republic of Latvia in case No. 2007-10-0102, November 29, 2007, https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2007/04/2007-10-0102_Spriedums_ENG.pdf

4 See more: Pleps J. Role of the Latvian Central Council's Practice in Interpretation of the Constitution of Latvia. Latvijas Universitātes žurnāls "Juridiskā zinātne"/ Journal of the University of Latvia "Law", No.9, 2016, pp. 126 – 138.

5 See more: Deksnis E.B., Jundzis T. Restoration of Sovereignty and Independence of the Republic of Latvia 1986 – 1994. Riga: Latvian Academy of Science, Baltic Centre for Strategic Studies, 2015.

6 See more: Pleps J. The continuity of the constitutions: the examples of the Baltic states and Georgia. Wroclaw Review of Law, Administration & Economics, 2016, Vol. 6, Nr. 2, pp. 29 – 44.

In anticipation of the *Satversme's* centenary, the authors have prepared a translation into English of an abridged version of their book "Constitutional Law". This publication is based on the third edition of "Constitutional Law" of 2021.[7] Two previous editions of the book date back to 2004[8] and 2014.[9]

The authors hope that this publication will be of interest to the friends of Latvia and experts of constitutional law, providing the possibility to gain more information about the way the Latvian state order functions in practice and to view it in a broader context, that of the Baltic Region and Europe.

Several excellent articles and books by Latvian authors on the *Satversme* and the Latvian state order are already available in translations, which, definitely, can be used to continue studying the *Satversme*.[10]

The authors hope that this book could serves this aim and, in the anniversary year of the *Satversme*, will generate greater interests about Latvia's *Satversme* and its practice of constitutional law.

7 Pleps J., Pastars E., Plakane I. Konstitucionālās tiesības. Trešais izdevums ar Daiņa Īvāna priekšvārdu. Rīga: Latvijas Vēstnesis, 2021.

8 Pleps J., Pastars E., Plakane I. Konstitucionālās tiesības. Rīga: Latvijas Vēstnesis, 2004.

9 Pleps J., Pastars E., Plakane I. Konstitucionālās tiesības. Papildināts un pārstrādāts izdevums. Rīga: Latvijas Vēstnesis, 2014.

10 Laserson M. Die Verfassungsentwicklung Lettlands. Jahrbuch des öffentlichen Rechts der Gegenwart, Bd. 11, 1922; Laserson, M. Die Verfassungsrecht Lettlands. Jahrbuch des öffentlichen Rechts der Gegenwart, Bd. XII, 1923/1924; Schiemann, P. Acht Jahre lettländische Verfassung. Jahrbuch des öffentlichen Rechts der Gegenwart, Vol. 18, 1930; Levits E. Verfassungsgerichtsbarkeit in Lettland. Osteuropa-Recht: Gegenwartsfragen aus dem sowjetischen Rechtskreis, Vol. 43, 1997, No. 4; Balodis R. The Constitution of Latvia. Trier: Institut für Rechtspolitik an der Universität Trier, 2004; Balodis R. Evolution of Constitutionality of the Republic of Latvia: from 1918–2006. Jahrbuch des öffentlichen Rechts der Gegenwart. Neue Folge/Band 56, 2006.; Iljanova D. The Governmental System of the Republic of Latvia. Governmental Systems of Central and Eastern European States. Chronowski, N., Drinóczi, T., Takács, T. (eds.).Warszawa: Oficyna, Wolters Kluwer, 2011; Rezevska D. The Republic of Latvia. In: Constitutional Law of the EU Member States. 2nd revised ed. L. F. M. Besselink, P. P. T. Bovend'Eert, J. L. W. Broeksteeg, R. de Lange, W. Voermans (eds.). The Hague: Kluwer Law International, 2014; Krūma K., Plepa D. Constitutional law in Latvia. The Netherlands: Kluwer Law International BV, 2016; Ziemele I., Spale A., Jurcēna L. The Constitutional Court of the Republic of Latvia. In: The Max Planck Handbooks in European Public law. Volume III. Constitutional Adjudication: Institutions. Eds. von Bogdandy A., Huber P.M., Grabenwarter C. Oxford: Oxford University Press, 2020.

INTRODUCTION

I

In the centenary year of the *Satversme* [Constitution] of the Republic of Latvia[1] (hereafter – the *Satversme*), the authors deem the third edition of their "Constitutional Law" as being necessary and timely.[2]

A new edition of "Constitutional Law" provides the opportunity to the authors themselves to systematise the most recent findings in constitutional law, which have been formulated in the legal science and practice of applying the *Satversme* following the previous edition, as well as to update their position in matters of principle in constitutional law.

Repeated publications of books, which are regularly reviewed, supplemented and updated, is a tradition of a stable and developed legal system. Thirty years after Latvia's independence was restored, the Latvian legal science also has reached the required depth and maturity to maintain this tradition in the area of constitutional law in a targeted way.

The first edition of "Constitutional Law", in 2004, was created when the authors still were law students.[3] The authors are sincerely

1 Latvijas Republikas Satversme. Valdības Vēstnesis, 1922. 30.jūnijs, Nr.141. See more on the Satversme: Pleps J., Plepa D. Latvijas Republikas Satversme. https://enciklopedija.lv/skirklis/100866-Latvijas-Republikas-Satversme

2 The first edition: Pleps J., Pastars E., Plakane I. Konstitucionālās tiesības. Rīga: Latvijas Vēstnesis, 2004. The second edition: Pleps J., Pastars E., Plakane I. Konstitucionālās tiesības. Papildināts un pārstrādāts izdevums. Rīga: Latvijas Vēstnesis, 2014.

3 Balodis R. Par konstitucionālajām tiesībām. Jurista Vārds, 2004. 14.septembris, Nr.35(340).

grateful for the trust and excellent collaboration to the scientific editor professor Aivars Endziņš and the publisher, state limited liability company "Latvijas Vēstnesis" and Daina Ābele personally. At the time, Aivars Endziņš in his foreword assessed the accomplished work as a fundamental study, emphasizing, in particular, that "since K. Dišlers' work "Foundations of a Democratic State", published in 1931, effectively, not a single summarising monographic study in constitutional law has been written and published in Latvian".[4]

The second edition of "Constitutional Law", published in 2014, was a substantially reviewed and updated work, the development of the theory and practice of constitutional law during the decade that followed the first edition was integrated into it, including also the experience and practice of the authors themselves in applying the *Satversme*.[5] In the foreword to the second edition, Egils Levits recognised that "a "rounded", in all aspects, fundamental, wide-reaching work has been accomplished on the constitutional order of the State of Latvia, which reveals not only its structure and dogmatics but also its historical depths and affiliation with the circle of European constitutional law and Western democracies".[6]

Also in the third edition, the authors have supplemented or even significantly reworked some chapters of the book, as well as focused on the basic issues of the constitutional law theory, upon the appropriate understanding of which successful application of the *Satversme* and sustainable development of a democratic state governed by the rule of law depends. The authors view this edition as the third part of "Constitutional Law" rather than as a work which fully replaces the first or the second edition. The best thing to do would be storing this book on the book-shelf next to the previous editions of

4 Endziņš A. Priekšvārds. In: Pleps J., Pastars E., Plakane I. Konstitucionālās tiesības. Rīga: Latvijas Vēstnesis, 2004, 3.lpp.

5 Gailīte D. Jauns, pārstrādāts leģendāras grāmatas izdevums. Jurista Vārds, 2014. 4.marts, Nr.9(811).

6 Levits E. Priekšvārds. In: Pleps J., Pastars E., Plakane I. Konstitucionālās tiesības. Papildināts un pārstrādāts izdevums. Rīga: Latvijas Vēstnesis, 2014, 8.lpp.

"Constitutional Law" instead of simply replacing the old editions by the new one.[7]

In certain respects, it is logical that, in the case-law, references to "Constitutional Law" have found a more fitting place in judge's dissenting opinions rather than in the judgements by the judicial majority.[8] This characterises the book's concept –to encourage creative thinking about the *Satversme* and constantly look for new, innovative solutions rather than being boringly classical and correct. The authors' style of presentation has been consistently retained also in the third edition, which has given the grounds for describing the book as a collection of legal treatises or legal essays rather than a text-book, presenting all issues of the subject of constitutional law with meticulous and scholarly precision.[9]

The third edition of "Constitutional Law" is increasingly more adjusted to the needs of legal practitioners looking for precise answers to various issues relating to application of the *Satversme*, it also provides the necessary references to the theory and practice of the constitutional law for in-depth research of a certain issue. In this sense, the book will be useful to all practitioners who in their area of practice encounter issues of constitutional law and the *Satversme*. Likewise, the edition will be a good handbook for studying the conceptual fundamental issues of the Latvian legal system, constitutional law and state law, as well as for developing better understanding of the *Satversme*.

7 Pleps J., Pastars E., Plakane I. Ievads. In.: Pleps J., Pastars E., Plakane I. Konstitucionālās tiesības. Papildināts un pārstrādāts izdevums. Rīga: Latvijas Vēstnesis, 2014, 12.lpp.

8 Separate Opinion of Justices of the Constitutional Court of the Republic of Latvia Ineta Ziemele, Sanita Osipova and Daiga Rezevska of 4 January 2018 in Case No. 2017-03-01 and Separate Opinion of Justice of the Constitutional Court of the Republic of Latvia Aldis Laviņš of 26 November 2020 in Case No. 2019-33-01. Although, compare: Judgement by the Constitutional Court of the Republic of Latvia on 6 March 2019 in Case No. 2018-11-01.

9 Balodis R. Par konstitucionālajām tiesībām. Jurista Vārds, 2004. 14.septembris, Nr.35(340).

II

In a simplified way, constitutional law could be described as the teaching of society's values. The constitutional identity, organisation of the state's power and the fundamental principles, on which the relations between the state, society and individual persons rest, only reflect the particular values which are deemed to be correct and need to be safeguarded for the successive generations. If the dimension of values in left outside its scope, constitutional law turns into a technical instruction for competing for political power and reaching one's own political aims, as well as for skilful government of the state and society. Constitutional law is neither neutral nor equally open to various offers of values, regarding which relatively free political choice would be an option.

Constitutional law, like the concept and the understanding of a constitution, historically has formed and developed within the Western legal tradition. Within this legal tradition, everything is based on a person's fundamental rights and freedoms, democracy, sovereignty of the state and the people, separation of powers, and the rule of law.[10] Human dignity, freedom, democracy, equality, the rule of law and human rights, as well as pluralism, tolerance, justice, solidarity and equality are the value base that unites democratic states governed by the rule of law, belonging to the Western legal tradition.[11]

This perspective makes constitutional law possible only in democratic states governed by the rule of law, belonging to the Western legal tradition, where the respective values are not only recognised declaratively but are actually implemented in the legal and social reality. At the origins of the European constitutionalism, the respective position has been precisely recorded in the French Declaration of the Rights of Man and of the Citizen of 1789: a society, in which

10 Judgement by the Constitutional Court of the Republic of Latvia of 7 April 2009 in Case No.2008-35-01, Para 17.

11 Treaty on European Union. See Article 2 of the Treaty.
Available https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:lv:PDF.

the observance of the fundamental rights is not assured, nor the separation of powers is defined, has no constitution at all. Undemocratic regimes, in this understanding, have neither constitutions nor constitutional law, notwithstanding the wish to make political use of the respective concepts for the propaganda aims of the regime. In particular now, when democratic states governed by the rule of law, belonging to the Western legal tradition, face various threats, there is no place for compromises regarding values or for relativisation of constitutions and constitutional law.[12]

Through the mediation of values, constitutional courts ensure the existence of just and right societies. In a certain sense, the value dimension of constitutional law constitutes a universal secular quasi-religion, aimed at maintaining and safeguarding the Just by all mechanisms of constitutional law.[13] Therefore, it should not be a surprise that the political conflicts between various societal groups regarding defining values in the constitution and the understanding thereof often slide into intolerance and peremptoriness, almost typical of religious wars. At the same time, the existence of a democratic state governed by the rule of law is still best ensured by the possibility of reasonable compromise within the political process and openness of all political forces to such compromise, as well as the readiness to accept the constitution as the legitimate codification of values, which restrict the political process, and mechanisms, existing within the constitutional system, and to accept that in any dispute someone has the right to say the last word, and this final word is to be respected not so much because it would be correct and incontestable but because it puts an end to the dispute.[14]

Arveds Bergs, one of the fathers of the *Satversme*, once formulated, with a far-reaching effect, the principle that the content of the

12 Sajó A., Uitz R. The Constitution of Freedom. An Introduction to Legal Constitutionalism. Oxford: Oxford University Press, 2017, pp.1-11.

13 Compare: Bingham T. The Rule of Law. London: Allen Lane, 2010, p.174.

14 See more: Hett B.C. The Death of Democracy. Hitler's Rise to Power and the Downfall of the Weimar Republic. New York: Henry Holt and Company, 2018.

Satversme was determined not so much by the constitutional legislator by adopting or amending the *Satversme* but also by the numerous interpreters of the *Satversme* who sometimes may interpret the *Satversme* even contrary to the subjective notions of the *Satversme*'s authors. In parliamentary debates, Arveds Bergs underscored that "our *Satversme* is what is written, plus the way it has been interpreted by the Senate. Paradoxically speaking, one might say that explanations provided by the Senate is part of the *Satversme*."[15] This is all the more accurate after the Constitutional Court of the Republic of Latvia was established as a separate body of state power and was granted the right to review the constitutionality of laws and provide legally binding interpretation of the *Satversme*.[16]

Once, the Constitutional Court of the Republic of Latvia was recognised as the main developer of the constitutional law doctrine within the Latvian legal system.[17] Although, recently, both the science of constitutional law and other bodies of the state power have engaged more in a dialogue with the Constitutional Court regarding better understanding of the *Satversme*, the Constitutional Court still retains the position of the leading ideologist of the *Satversme*. It would be appropriate to mention here recent rulings by the Constitutional Court, which enshrined within the Latvian legal system the concept of human dignity[18] and the principle of good legislation.[19]

Comparatively recently, a fundamental scientific project of the University of Latvia and the state limited liability company "Latvijas Vēstnesis" was completed – extended scientific commentaries on all provisions of the *Satversme*, under the scientific guidance of Professor

15 Transcript of the 20th sitting of IX session of II Saeima of the Republic of Latvia on 6 June 1928.

16 See more.: Pleps J. Satversmes iztulkošana. Rīga: Latvijas Vēstnesis, 2012.

17 Nikuļceva I. Satversmes tiesas pieci gadi: ieskats tiesu jurisprudencē. Likums un Tiesības, 2001, Nr.12(28), 369.lpp.

18 Judgement by the Constitutional Court of 25 June 2020 in Case No. 2019-24-03 and Judgement of 12 November 2020 in Case No. 2019-33-01.

19 Judgement by the Constitutional Court of 12 April 2018 in Case No. 2017-17-01 and Judgement of 6 March 2019 in Case No. 2018-11-01.

Ringolds Balodis.[20] Commentaries on the *Satversme* define the standard of understanding the *Satversme*, comprising the findings, reached until now in legal science and in the practice of applying the *Satversme*, and is the mandatory starting point in interpreting any provision of the *Satversme*.[21] These commentaries on the *Satversme* will define the way of reading the *Satversme* for a long period, and the fact that the Constitutional Court in its rulings has accepted a dialogue with the ideas expressed in the commentaries on the *Satversme* should be viewed positively.

The research project of the commentaries on the *Satversme* has facilitated the development of an extensive community of legal scholars who are able to participate in the interpretation of the *Satversme* and development of constitutional law. In this respect, involvement of younger generation researchers, who often also criticise and disagree with the findings included in our "Constitutional Law", in interpretation and application of the *Satversme* needs to be highlighted in particular. Likewise, increasingly more studies of the *Satversme* and the Latvian constitutional law are written in foreign languages, thus promoting export of our constitutional experience and its integration into the common Western legal tradition.[22]

20 Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2011; Latvijas Republikas Satversmes komentāri. VI nodaļa. Tiesa. VII nodaļa. Valsts kontrole. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2013; Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2014; Latvijas Republikas Satversmes komentāri. III nodaļa. Valsts prezidents. IV nodaļa. Ministru kabinets. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2017; Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019; Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2020.

21 Valsts prezidenta Egila Levita uzruna izdevuma "Latvijas Republikas Satversmes komentāri. II nodaļa "Saeima"" svinīgajā atvēršanas pasākumā. https://www.president.lv/lv/jaunumi/zinas/valsts-prezidenta-egila-levita-uzruna-izdevuma-latvijas-republikas-satversmes-komentari-ii-nodala-saeima-sviniga-ja-atversanas-pasakuma-26386

22 For example: Rezevska D. The Republic of Latvia. In: Constitutional Law of the EU Memberstates. 2nd revised edition. Eds. Kortmann C., Fleuren J., Voermans W. The Hague: Kluwer Law International, 2014; Krūma K., Plepa D. Constitutional Law in Latvia. Alphen aan den Rijn: Kluwer Law International B.V., 2016; Ziemele I., Spale A., Jurcēna L. The Constitutional Court of the Republic of Latvia. In: The Max Planck Handbooks in European Public law. Volume III. Constitutional Adjudication: Institutions. Eds. von Bogdandy A., Huber P.M., Grabenwarter C. Oxford: Oxford University Press, 2020.

In the dialogue between the bodies of state power regarding the understanding of the *Satversme*, the President of the State plays an important role, which complies with the functions granted to them in the *Satversme*.[23] President Egils Levits, in particular, has influenced interpretation of the *Satversme*, elaborating the President's opinion on a separate law or a legal matter as significant supplementary source of law.[24]

The annual seminars on constitutional policy, held in Bīriņi Manor, continue to be relevant for the development of the Latvian constitutional law, these have been organised for more than fifteen years by the Institute of Public Law and Arvīds Dravnieks, with lawyer Lauris Liepa gathering peers to plan the seminar of the next year. It is customary that understandings of the most diverse aspects of the constitutional order are approximated, creating oral folklore of this area as a peculiar supplementary source of law.[25]

III

The authors appreciate the positive responses they have received from the readers following the first two publications of "Constitutional Law", as well as the frequent suggestions during recent years that the time has come for a new, repeated and supplemented edition.

23 For example: Valsts prezidenta Andra Bērziņa 2012.gada 3.augusta raksts Nr. 281. https://www.president.lv/storage/items/PDF/20120803.pdf; Valsts prezidenta Raimonda Vējoņa 2015.gada 7.novembra raksts Nr. 284. https://www.president.lv/storage/art_description/file/23550/20151107-vestule.PDF; Valsts prezidenta Raimonda Vējoņa 2016.gada 12.septembra raksts Nr. 453. https://www.president.lv/storage/items/PDF/20160912_VestuleSaeimai.pdf.

24 For example: Valsts prezidenta Egila Levita 2019.gada 5.augusta paziņojums Nr. 3 "Par Latvijas Republikas Satversmes 52. panta piemērošanu"; Valsts prezidenta Egila Levita 2020.gada 23.marta paziņojums Nr. 8 "Valsts konstitucionālo orgānu darbības pamatprincipi ārkārtējā situācijā"; Valsts prezidenta Egila Levita 2020.gada 16.novembra raksts Nr.408. https://www.president.lv/storage/kcfinder/files/0949_001.pdf ; Valsts prezidenta Egila Levita 2020.gada 11.decembra paziņojums Nr. 17 "Par valsts budžeta likumu paketi 2021. gadam".

25 Plepa D. Bīriņi – valststiesībnieku vasaras festivāls. Eseja, 05.08.2016. Available: https://juristavards.lv/eseja/269033-birini-valststiesibnieku-vasaras-festivals/

The authors express their heartfelt gratitude to all their loved ones, friends and colleagues, whose support, ideas and thoughts have facilitated the making of the third edition of "Constitutional Law". We thank also journalists and opponents, who have constantly provided catch questions to be preoccupied with, thus helping to shape the content of this edition.

The third edition of "Constitutional Law" reflects the authors' current views on the theory and practice of constitutional law. Therefore, the authors hope that readers will find this edition of the book interesting and that it will lead to new thoughts and reflections on the *Satversme* and constitutional law. The authors would feel satisfied if the third edition of "Constitutional Law" would receive friendly welcome among the readers and would be useful to both experienced experts on the *Satversme* and to all wishing to master the art of the *Satversme*.

Chapter 1

CONSTITUTION

I. The concept of a constitution

1. Understanding of a constitution. A constitution is the foundation of a state and of its legal system. The Senators of the Latvian Senate have noted that "an indispensable element for each modern state, but, in particular, for a democratic republic, is its legal structure, which is defined by its constitutional, i.e., basic laws and which characterise it in the international area as the respective subject of law".[26] A constitution characterises the identity of the respective state, encompassing not only law but also historical, political, national, cultural and other extra-legal factors, which characterise the respective state. A constitution comprises also concrete pre-constitutional and extra-constitutional facts, assumptions, postulates, legal and other principles.[27] Due to these reasons, a constitution is described as a legal and a political document. Not in vain, the Constitutional Court has recognised the close interconnection between law and politics in the norms of the *Satversme*.[28] Alongside this, a constitution encompasses increasingly more elements of political philosophy and

26 Latvijas Senāta senatoru atzinums par Latvijas Satversmes spēkā esamību un Saeimas pilnvarām okupācijas apstākļos. Latvju Ziņas, 1948. 17.aprīlis.

27 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 90-102.punkts. See also: Изензее Й. Государство и конституция. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.5-6.

28 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2005 in Case No.2005-12-0103, Para 17.

ideology of the respective state order. This turns each constitution into an important symbol of the national statehood. The text and the spirit of a constitution determine the most important elements of the national statehood, the preservation and development of which ensures the existence of a nation state. Thus, a constitution defines the respective state as a political entity, grants legitimacy to it and envisages aims of the state's politics.[29]

First and foremost, a constitution means defining the limits of the state power; a constitution turns the actual state power into legal power. A constitution is not an instrument of power for governing society but a complicated system for restricting the state power for the common interests of society. A constitution replaces human power with the power of law.[30] It is recognised in the British political philosophy that the king is the law in absolutism, whereas, in free societies, law is "the king". Irrespectively of the immensity of power one might gain, law is always above them. When law ends, in turn, tyranny begins.[31] Mechanisms for separation of powers and guarantees for fundamental rights, included in the constitution, ensure that power is no longer absolute, whichever institution of state power exercises it.

Alexander Hamilton has characterised this phenomenon as a limited constitution.[32] Only actual and real limitation of the state power in the legal and social reality means the existence of a constitution in the respective state order.[33] If the basic law of a state does not limit the state power in the legal and social reality it cannot be considered as being a constitution. Classification of various existing "constitutions" as undemocratic, unliberal, ineffective, symbolical (myth) and

29 Pleps J. Latvijas valsts konstitucionālie pamati. In: Latvija un latvieši. Akadēmiskie raksti divos sējumos. I sējums. Rīga: Latvijas Zinātņu akadēmija, 2018, 84. - 85.lpp.

30 Ernits M. Constitution as a System. Tartu: University of Tartu Press, 2019, pp.16 - 17

31 Bingham T. The Rule of Law. London: Allen Lane, 2010, pp.4 - 8

32 Hamilton A. The Federalist No.78. In: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.591-601.

33 Sajó A. Limiting Government. An Introduction to Constitutionalism. Budapest: Central European University Press, 1999, pp.7 - 16

nominal constitutions might be of intellectual interest; however, such "constitutions" do not ensure constitutionalism.[34]

A modern state is a constitutional state, in which the state power is effectively restricted through the mediation of some legal principles, traditions, and institutional mechanisms.[35] "The basic principle of a state governed by the rule of law or a constitutional state is that the state power in such a state is limited. In a state governed by the rule of law certain limits have been set, which it may not and also cannot exceed."[36] Constitutionalism as the model of state governance is based on the principles of a state governed by the rule of law, democracy, and human rights.[37] On the one hand, democracy demands realisation of the people's sovereignty and respecting the will of the majority, as well as the legislator as the voice of the people's will. On the other hand, democracy requires respect for the separation of powers, a state governed by the rule of law, independence of courts, human rights, and other values of society.[38]

The very concept of "*Satversme*" semantically comprises the idea of constitutionalism. Kronvaldu Atis created this word from the verb "tvert" (to grasp) because "that is why people have adopted laws, so that they would have refuge in times of need, to have *Satversme*s."[39] The *Satversme* guarantees to people legal protection and security. A constitution is an act of constituent power, which creates the particular state and legal order. A constitution may be regarded as the social

34 Grimm D. Types of Constitutions. In: Rosenfeld M., Sajó A. (eds) The Oxford Handbook of Comparative Constitutional Law. Oxford: Oxford University Press, 2012, pp.105 - 129

35 Sajó A. Limiting Government. An Introduction to Constitutionalism. Budapest: Central European University Press, 1999, p.xiv.

36 Кистяковский Б.А. Лекции по государственному праву (обшее и особенное). Москва: Московский коммерческий институт, 1909, с.7.

37 European Commission for Democracy through Law (Venice Commission). Report on the Rule of Law. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e See also: Rosenfeld M., Sajó A. Constitutionalism: Foundations for the New Millenium. In: New Millenium Constitutionalism: Paradigms of Reality and Challenges. Yerevan: Njhar, 2013, pp.11-22.

38 Barak A. The Judge in a Democracy. Princeton and Oxford: Princeton University Press, 2006, pp.23-26.

39 Karulis K. Latviešu etimoloģijas vārdnīca. 2.sējums. Rīga: Avots, 1992, 159.lpp.

contract, i.e., democratically accepted commitment of all citizens of the state to live, in the name of their own and future generations, in compliance with the fundamental values included in the constitution and abide by them, as well as to ensure the legitimacy of the state power and of the decisions adopted by it.[40] A constitution is the mega norm of a legal system (the norm of norms).[41] "A constitution itself is the basic legal order of a state. It cannot be derived from any other legal norm. It is the manifestation of such political act, which at a certain historical moment expresses the political will to create a constitution and has actually won its place in the political reality."[42] It is recognised in legal science that a constitution is the basic law, in compliance with which the governance of the state is organised and which determines a person's relations with the state and society.[43] A commentary on the first provisional constitution of Latvia: "The name "constitution" is used to designate the basic law of a state, its *Satversme*, where the relations between the supreme state power and its subjects are defined. In a narrow meaning, the word "constitution" denotes an act of the state, through which the rulers limits their power and, on certain conditions, share it with their subjects."[44] Hence, a constitution as the basic law of a state with the supreme legal force defines the basic principles of the state order, guarantees for a person's rights and freedoms, as well as the form of governance – structure of bodies of the state power and relations between them. Likewise, a constitution outlines the state's functions, as well as defines the relations between the state power and a person and society.[45]

40 Lietuvos Respublikos Konstitucinio Teismo 2004 m. gegužes 25 d. nutarimas. http://www.lrkt.lt/dokumentai/2004/n040525.htm

41 Schmitt C. Constitutional Theory. Durham and London: Duke University Press, 2008, p.62.

42 Horns N. Ievads tiesību zinātnē un tiesību filosofijā. Likums un Tiesības, 1999, Nr.3, 71.lpp.

43 Боржо М. Учрежденіе и пересмотръ конституший. Москва: Издание М. и С. Сабашниковыхъ, 1918, с.3.

44 Bite E. Latvijas pagaidu konstitūcija. Jaunā Latvija, 1920. 3.marts.

45 Баглай М.В. Конституционное право Российской Федерации. 4-е изд. Москва: Норма, 2004, с.68.

A constitution is a totality of directly applicable legal norms with the supreme legal force within the legal system, rather than being a declarative philosophical construct. A constitution aims to determine the state power and regulate the procedure for exercising it, envisaging limitations for it that are needed for sustainable existence of the state order. A constitution has to be derived from the will expressed by the people, and the people is the only source of a constitution's legitimacy. No other power is legitimate outside the constitution, and all actions by the state must comply with the constitutional requirements.[46]

A constitution's task is rationalisation of political life and political integration of all citizens and societal groups in the state as a constitution-based community.[47] Thus, a constitution performs the function of stabilisation, rationalisation (organisation), integration and security (defence) of the state order.[48]

It is customary in constitutional law to analyse, within the framework of the concept of a constitution, positive legal acts with supreme legal force, adopted by the constitutional legislator. Due to this, the perception that the dominant form of a constitution is a written and codified basic law of a state (mono-constitution) is extremely popular, conceding in some cases that poly-constitutions also may exist, i.e., constitutions consisting of several constitutional acts.[49] The contemporary legal reality shows that the constitutional legislator has not included all constitutional provisions in the text of the constitution. First and foremost, general legal principles, which define the nature of the particular legal system, is an essential element of the constitution. Likewise, the constitutional court, rather than the

46 Grimm D. Types of Constitutions. In: Rosenfeld M., Sajó A. (eds) The Oxford Handbook of Comparative Constitutional Law. Oxford: Oxford University Press, 2012, p.104

47 See more: Smend R. Constitution and Constitutional Law. In.: Jacobson A.J., Schlink B. (eds) Weimar. A Jurisprudence of Crisis. Berkley, Los Angelos and London: University of California Press, 2002, pp.213 - 248

48 Šileikis E. Alternatyvi konstitucinė teisė. Antras pataisytas ir papildytas leidimas. Vilnius: Teisinės informacijos centras, 2005, p.64. - 72.

49 Eglītis V. Ievads konstitūcijas teorijā. Rīga: Latvijas Vēstnesis, 2006, 88.-92.lpp.

constitutional legislator, decides on the constitution's content through interpretation. Hence, it could be acknowledged that a codified constitution is impossible and, also, only a written constitution is impossible.[50] At the time, this phenomenon was precisely outlined by Kārlis Dišlers who underscored that a correct decision on a state order cannot be provided solely on the basis of its constitutional law.[51] It must be noted also with respect to the *Satversme* that it is constituted by several constitutional-level acts.[52] The Constitutional Court has validly concluded that, alongside the *Satversme*, the following are valid constitutional-level acts: Act of Proclamation of the Republic of Latvia of 18 November 1918, Declaration on the State of Latvia of 27 May 1920, Declaration "On the Restoration of Independence of the Republic of Latvia" of 21 August 1991, and the constitutional law of 21 August 1991 "On the Statehood of the Republic of Latvia". In addition to this, the Constitutional Court has found that the laws adopted by the *Saeima* in the procedure set out in the second part of Article 68 of the *Satversme* are also to be recognised as being constitutional-level acts.[53] Declaration on Restoration of the State of Latvia of 8 September 1944 is also to be considered as being a constitutional-level act.[54] The decision, adopted by the totality of Latvia's citizens at the referendum, in the procedure set out in the first part of Article 79 of the *Satversme*, to not determine another language alongside the Latvian as an official language should also be included in the system

50 Gardner J. Can There Be a Written Constitution? In: Gardner J. Law as a Leap of Faith. Essays on Law in General. Oxford: Oxford University Press, 2012, pp.89 - 124

51 Dišlers K. Latvijas Satversme. In: Latvieši II. Balodis K., Šmits P, Tentelis A. (zin. red.) Rīga: Valters & Rapa, 1932, 147.lpp.

52 Pleps J., Pastars E. Vai tautai nozagta suverēnā vara? Jurista Vārds, 2002. 22.oktobris, Nr.21(254). See more.: Jelāgins J. Tiesību pamatavoti. In: Jelāgins J. Latvija ceļā uz tiesiskumu. Rakstu krājums. Rīga: Tiesu Namu Aģentūra, 2020, 99. - 102.lpp.

53 Judgement by the Constitutional Court of the Republic of Latvia of 29 November 2007 in Case No. 2007-10-0102, Para 56.3. and Para 62.

54 See more: Pleps J. Latvijas Centrālās padomes 8.septembra deklarācijas valststiesiskā nozīme. Jurista Vārds, 2018. 4.septembris, Nr. 36 (1042).

of constitutional-level acts.[55] Article 150 of the Constitution of the Republic of Lithuania provides expressis verbis that four acts should be regarded as the constituent part of this constitution, i.e., the constitutional law "On the State of Lithuania" of 11 February 1991 and the constitutional act of 8 June 1991 "On the Non-Alignment of the Republic of Lithuania to Post-Soviet Eastern Unions", as well as the law of 25 October 1992 "On the Procedure for the Entry into Force of the Constitution of the Republic of Lithuania". Lithuania ensured membership in the European Union, in turn, by a separate constitutional-level act of 13 July 2004 "On Membership of the Republic of Lithuania in the European Union", the existence of which is referred to by Article 150 of the Constitution of the Republic of Lithuania.[56] Alongside constitutional-level acts, the Act on Restoration of the State of Lithuania of 16 February 1918, Act on the Restoration of Independence of the State of Lithuania of 11 March 1990, as well as the Declaration adopted by the leadership of national partisans on 16 February 1949 are of fundamental importance in the Lithuanian legal system.[57] These examples reflect the comparable reality of constitutional law with the trend of the codified text of a constitution to become overgrown, over time, with other constitutional-level acts or to continue maintaining the validity of the previous constitutional-level acts.[58]

All constitutions are written in conviction that they will determine the constitutional order for indefinite time. Also at the Latvian Constitutional Assembly, one of its deputies noted that the *Satversme* would determine the state order for many generations to

55 See more.: Pleps J. Krievu valoda pēc tautas nobalsošanas. Jurista Vārds, 2012. 28.augusts, Nr.35(734).

56 Žalimas D. Pratarmė. In: Lietuvos konstitucionalizmas. Ištakos, raida ir dabartis. Vilnius: Lietuvos Respublikos Konstitucinis Teismas, 2018, p. 10. – 11.

57 See more: Griškevič L., Machovenko J., Paužaitė-Kulvinskienė J., Vaičaitis V.A. Lietuvos konstitucionalizmo istorija (Istorinė Lietuvos Konstitucija). 1387 m. - 1566 m. - 1791 m. - 1918 m. - 1990 m. Vilnius: Vilniaus univesiteto leidykla, 2016, p. 202. – 245.

58 Grimm D. Types of Constitutions. In: Rosenfeld M., Sajó A. (eds) The Oxford Handbook of Comparative Constitutional Law. Oxford: Oxford University Press, 2012, p.106

come.[59] Whereas with respect to Declaration on the State of Latvia of 27 May 1920, which defined the fundamental principles of the Latvian state order, its authors openly admitted: "This Declaration is to be considered as being the basic law of the State of Latvia. It is not of provisional nature, it is the fundamental law issued once and for all."[60] The unchangeability of a constitution is not ensured by the unchangeability of some of its provisions or cumbersome procedure of amending but by recognition of the constitution and the state order, established by it, in society and exclusion of the discussions on possible reforms from the political agenda. Ferdinand Lassalle once recognised that the genuine constitution of a state is constituted by the real, actual power relations existing within the state; i.e., the written constitution is said to be stable and authoritative only if it complies with this balance of powers existing in society.[61] Similarly, Jānis Pliekšāns (Rainis) also has concluded: "The genuine constitution of a country exists only within the relations and in the proportions of the actual societal forces. [..] If a new constitution is made, it should be taken into account that it is not enough to cover by writing a sheet of paper but the allocation of actual forces needs to be changed."[62] Hence, constitutions, essentially, are written with the conviction regarding their sustainability; i.e., their authors hope to achieve, with the constitution's help, consensus among certain political forces and society regarding the stability of the constitutional order, which would guarantee its perpetuity. Mostly, such constitutions have been elaborated in conviction that the democratic state order is the best possible model of the constitutional order and that the people will never want another order.

59 Transcript of the sitting (2nd sitting) of IV session of the Latvian Constitutional Assembly on 21 September 1921.

60 Transcript of the sitting (1st sitting) of IV session of the Latvian Constitutional Assembly on 20 September 1921.

61 Лассаль Ф. Сушность конституціи. In: Дюги Л. Обшество, личность и государство. Санкт-Петербург: Издательство "Вестника Знан1я", [b. g.], c.77.

62 Rainis J. Kas ir satversme. In: Rainis J. Kopotie raksti. 18.sējums. Rīga: Zinātne, 1983, 396.lpp.

2. Basic norm of the legal system. The act on proclaiming a state is an order given by the people, in the implementation of which a constitution is drafted.[63] Usually, the proclamation of a state is announced in a solemn act on the establishment of a state, alongside with an official announcement on the creation of a new state. The proclamation acts of states are predominantly based on similar principles, historically inspired by the United States Declaration of Independence of 4 June 1789. Implementation of the sovereignty of the people, the right to self-determination, guarantees of human rights and other ideas of constitutionalism were declared exactly by the text created by Thomas Jefferson.[64] The Proclamation Act of the People's Council of Latvia of 18 November 1918 was worded as an appeal "To the Citizens of Latvia!", signed by the Prime Minister of the Provisional Government Kārlis Ulmanis and Deputy-Chairman of the People's Council Gustavs Zemgals. Thus, the proclamation act of Latvia is of local nature; it is an announcement to the citizens of their own country regarding the foundation of an independent state. The proclamation act reflects the basic norm of the Latvian legal system – the will of the Latvian people as the sovereign to establish an independent State of Latvia, based on certain principles.[65] In proclaiming the Republic of Latvia, Kārlis Ulmanis underscored that "everyone, without differentiation as to their ethnicity, is called upon to help because the rights of all ethnicities will be ensured in Latvia. It will be a democratic state of justice, with no place in it for oppression or injustice".[66] Latvia developed as a democratic, socially oriented state, where justice

63 Боржо М. Учрежденіе и пересмотръ конституц'1й. Москва: Издание М. и С. Сабашниковыхъ, 1918, с.276.

64 Meļķisis E., Mēkons I. Amerikas neatkarības deklarācija. Likums un Tiesības, 2001, Nr.7(23), 213.-216. lpp.

65 Rezevska D. Legal Methods in Latvia's Legal Arrangement and European Integration. In: European Integration and Baltic Sea Region: Diversity and Perspectives. Muravska T., Petrov R., Sloka B., Vaivads J. (ed.) Rīga: University of Latvia, 2011, pp.224-225. See also: Pleps J. Normatīvo tiesību aktu hierarhija: profesors Hanss Kelzens un mūsdienas. Likums un Tiesības, 9.sējums, 2007, Nr.2(90), 47.-50.lpp., Nr.3(91), 85. – 95.lpp.

66 Ministru prezidenta runa. In: Latvijas valsts pasludināšana 18.novembrī 1918.g. Rakstu vainags Haralda Jēgera sakopots. Rīga: Astra, 1918, 19.lpp.

would rule and which would be based on the principles of Western democracies.[67]

The Constitutional Court has emphasised that Latvia's legal system is defined by its basic norm that Latvia is an independent democratic state, as well as the general legal principles of a democratic state governed by the rule of law, derived from this basic norm.[68] "The presumption of a basic norm is the conviction, existing in the legal mind or consciousness, regarding the empowerment and correctness. The basic norm makes those applying legal norms brave and infallible, acting within the framework of this empowerment."[69] The state's obligation to comply, in its actions, with the general legal principles of a democratic state governed by the rule of law, inter alia, the principle of human dignity, the principle of a state governed by the rule of law, the principle of a socially responsible state and the principle of sustainable national development, follows from the basic norm of the Latvian legal system.[70]

The concept of basic norm reflects Hans Kelsen's theoretical ideas regarding the legitimacy of a legal system and constitution. Hans Kelsen held that a constitution was not the foundation of a legal system; another norm also determines the procedure for adopting a constitution. The pre-condition for the validity of a valid constitution had to be sought in previous constitutions, until the first constitution was found, which was established by power and not by a legal act .[71] The basic norm, in turn, is the acme of the legal system, which determines the validity of all norms, inter alia, the procedure for adopting

67 Stradiņš J. 18.novembra Ulmanis (Latvijas Republikas pirmais Ministru prezidents). In: Kārlim Ulmanim 125. Caune A., Millers T., Stradiņš J. (red.) Rīga: Latvijas vēstures institūta apgāds, 2003, 24.-25.lpp.

68 Decision by the Constitutional Court of the Republic of Latvia of 27 September 2016 on Terminating Legal Proceedings in Case No.2016-03-01, Para 10.

69 Rezevska D. Vispārējo tiesību principu nozīme un piemērošana. 2.izd. Rīga: Daigas Rezevskas izdevums, 2015, 42. - 43.lpp.

70 Judgement by the Constitutional Court of the Republic of Latvia of 16 July 2020 in Case No.2019-25-03, Para 11.1.

71 Kelsen H. Introduction to the Problems of Legal Theory. A Translation of the First Edition of the Reine Rechtslehre or Pure Theory of Law. Oxford: Clarendon Press, 2002, p. 57

the first constitution.[72] Hans Kelsen wrote that the basic norm of any system of religious norms defined that someone should be the God and all authorities were created by His will. Similarly, the basic norm of a legal system envisages that someone should be the author of the constitution and that they are empowered to create the constitution.[73] The basic norm is the act of the sovereign's political will to establish a state with a certain political regime, empowering a certain institution or persons to adopt the first constitution of a state. "The sovereign is the source of the basic norm. The content of the basic norm is the sovereign's will. Thus, the sovereign's will defines the content of the basic norm, i.e., in what kind of state the sovereign wishes to live."[74]

It is underscored in commentaries on the *Satversme* that, legally and politically, the proclamation act of 18 November 1918 is even more important than the *Satversme* itself.[75] The act of proclamation includes declaration of the fundamental constitutional principles of the state as well as the task given to the Constitutional Assembly to determine the *Satversme* and relations with foreign countries, abiding by these principles. The *Satversme*, like the first and the second provisional constitution, implements the act of proclamation as an actually functioning constitutional order, remaining linked to the fundamental principles of statehood, defined in the act of proclamation. "Proclamation of the State of Latvia by a certain group of citizens is to be considered as sufficient grounds for the establishment of the state, popular vote (referendum) of the people living on the territory of Latvia was not needed for this purpose. The proclamation act of 18 November 1918 must be accepted by all institutions, inter alia, courts, as an act of state law, the lawfulness of which, contrary to the plaintiff's opinion, not only need not to be substantiated but it even should not

72 Kelsen H. Introduction to the Problems of Legal Theory. A Translation of the First Edition of the Reine Rechtslehre or Pure Theory of Law. Oxford: Clarendon Press, 2002, p. 59

73 Kelsen H. General Theory of Law & State. New Brunswick: Transaction Publishers, 2006, pp. 115–116

74 Rezevska D. Vispārējo tiesību principu nozīme un piemērošana. 2.izd. Rīga: Daigas Rezevskas izdevums, 2015, 43.lpp.

75 Vanags K. Latvijas valsts satversme. [B.v.]: L.Rumaka apgāds Valkā, 1948, 6.lpp.

be done."[76] The constitutional legal foundations of the State of Latvia are defined by the proclamation act of 18 November 1918, which has been confirmed by Declaration on the State of Latvia of 27 May 1920. The Constitutional Assembly of Latvia was linked to the proclamation act as the basic norm, in deciding on the basic laws of Latvia. Likewise, the constitutional legislator also, within the framework of the *Satversme*, is linked to the act of proclamation, i.e., reviewing of the proclamation act and the basic principles of statehood included therein is not admissible in the procedure of Article 76-79 of the *Satversme*. By recognising the act of proclamation as the foundation of Latvia's statehood it can be concluded that the constitutional legislator may act within the framework of Latvia's constitutional legal foundation, supplementing to or reviewing the constitutional regulation but has not been empowered to determine a new constitution, i.e., to amend the constitutional legal foundation of Latvia.[77]

3. A constitution's place in the hierarchy of normative acts. John Marshall, the Chief Justice of the US Supreme Court, declared in 1803 that "the constitution is either a superior, paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and like other acts, is alterable when legislature shall please to alter it. [..] if the latter part be true, then written constitutions are absurd attempts, on the part of the people, to limit a power in its own nature illimitable"[78]. To fulfil its functions in limiting the state power and protecting a person's rights, a constitution should be a totality of legal norms with the supreme legal force. Within the doctrine of constitutional law, it cannot be recognised that a national constitution is not the supreme legal norm within the particular legal system.[79]

76 Latvijas Senata Krimināla kasacijas departamenta 1924.gada 29.aprīļa spriedums Nr.201. In: Latvijas Senāta Krimināla kasācijas departamenta spriedumu tēžu pilnīgs kopojums. Kamradziuss F. (sast.) Rīga: Autora izdevums, 1928, 68.lpp.

77 Pleps J. Latvijas valstiskuma pamats. Jurista Vārds, 2012. 4.septembris, Nr.36(735).

78 Marbury v. Madison, 5 U.S. (1 Cranch) 137; 2 L. Ed. 60 (1803). https://www.law.cornell.edu/supremecourt/text/5/137

79 Jarašiūnas E. Nuo pirmosios iki naujausių konstitucijų: keletas minčių apie konstitucinio reguliavimo raidą. Grām.: Šiuolaikinė konstitūcija: studijos apie užsienio šalių konstitucinį regulavimą. Kolektyvinė monografija. Vilnius: Mykolo Romerio universitetas, 2005, pp. 11-14

"Pursuant to the idea of a constitution, the constitution is above "the other" law, and, thus, with respect to validity and substantiation, no regress is possible."[80] Hence, the principle of the constitution's supremacy is a mandatory element of constitutionalism.

Constitution as the act of constituent power, which the sovereign people have issued for self-regulation is superior compared to the laws that the legislator, elected by the people, issues in the regular legislative procedure. The idea of superlegalism or constitutionalism follows from this presumption.[81] A prior constitutional law may not be amended in the regular legislative way, and all valid laws must comply with the precepts of the constitution. Often, the supreme force of the constitution is defined in a norm of the constitution itself. Thus, for example, Article 3 of the Constitution of the Republic of Lithuanian of 1 August 1922 provided that no law that was incompatible with the constitution would be in force in the State of Lithuania. Whereas Article 3 of the Basic Law of the Republic of Estonia of 15 June 1920 envisages that the Estonian state power may be exercised pursuant to the Basic Law and laws, which have been adopted in the procedure set out in the Basic Law. The *Satversme* does not refer directly to the supreme force of the *Satversme*; however, indirectly it can be derived from Article 85 of the *Satversme*, which provides that the Constitutional Court has the jurisdiction to review cases regarding compatibility of laws with the *Satversme*.[82] Supremacy of the constitution per se follows also from those constitutions, where this principle is not defined expressis verbis with sufficient certainty.[83] It is derived from the generally accepted Hans Kelsen's idea of the hierarchy of normative acts. Since the constitution defines the procedure

80 Forlenders H. Iztulkotajs ka suverēns ar neierobežotu varu. Likums un Tiesības, 2001, Nr.10(26), 300.lpp.

81 Дурденевский В.Н. Иностранное конституционное право. Ленинград: Государственное издательство, 1925, с.29.

82 Jelāgins J. Tiesību pamatavoti. In: Jelāgins J. Latvija ceļā uz tiesiskumu. Rakstu krājums. Rīga: Tiesu Namu Aģentūra, 2020, 117.lpp.

83 Дябло В.К. Судебная охрана конституций в буржуазных государствах и в СССР. Москва: НКЮ РСФСР, 1928, с.7.

for issuing all laws and other legal acts, it, accordingly, is the supreme legal force.[84] The supreme legal force of constitutional norms is to be determined in accordance with the qualified procedure established for adopting and amending the constitution, which differs from the procedure for adopting regular laws. Laws, which have been adopted in qualified procedure, usually have the force of a higher law vis-à-vis regular laws.[85]

Constitutional provisions have supreme legal force vis-à-vis all other normative acts in the particular legal system; however, norms with different legal force may exist within the constitution itself. The norms, which define the basic idea of a constitution and for which usually even more qualified procedure of amendments is established, compared to other constitutional norms, or norms, which have been declared to be unalterable, turn into norms with the supreme legal force within the framework of one legal document. All other constitutional norms, as well as the practice of applying the constitution must be aligned with the basic principles of the constitution. An opinion has been expressed in legal science that such norms are on a supra-constitutional level, i.e., that they have higher legal force compared to other constitutional norms.[86]

The enumeration of the *Satversme*'s articles, included in its Article 77, is the conceptual basis for the *Satversme*, i.e., the norms, in which the ideas of Latvia's democratic statehood are concentrated, on which the rest of the *Satversme* and the entire state order of Latvia and the legal system in general have been constructed, is the constitutional legal basis for the entire State of Latvia. Article 77 of the *Satversme*, establishing qualified procedure for amending Articles 1, 2, 3, 4, 6 and 77 of the *Satversme*, grants to these constitutional norms

84 Kelsen H. Introduction to the Problems of Legal Theory. A Translation of the First Edition of the Reine Rechtslehre or Pure Theory of Law. Oxford: Clarendon Press, 2002, pp.56-57.

85 Ducmanis K. Leo Petražicka tiesību un valsts teorija sakarā ar mācību par morāli (uz emocionālās psiholoģijas pamatiem). Rīga: Augusta Golta apgādībā, 1931,212.-213.lpp.

86 Маклаков В. В. Конституционное право зарубежных стран. Москва: Волтерс Клувер, 2006, с.62-63.

a higher legal force than to the other norms of the *Satversme*.[87] Hence, Articles 1, 2, 3, 4, 6 and 77 of the *Satversme* are to be recognised as positive legal norms with the supreme legal force.[88]

The principle of a constitution's supremacy does not exclude the principle of the supremacy of international and the European Union law. If the constitution is duly open to the state's membership in the international community and the European Union then recognition of the supremacy of international and the European Union law is one of the mandatory elements in the constitution. In the case of Latvia, with the mediation of Article 68 of the *Satversme*, the supremacy of international law and the supremacy of the European Union law in the Latvian legal system is constitutionally recognised.[89]

4. Preamble to a constitution. Preambles are an important element in the texts of constitutions. The preamble to the constitution reflects the decisions of utmost importance for society, which have been the grounds for adopting the constitution. The preamble to the constitution can be used to define the national constitutional identity and understand the constitutional legislator's will.[90] The preamble to a constitution is not only a text of philosophical, political or moral nature, it also carries a normative load. The general legal principles of a state order, reflected in the preamble, per se are norms with the supreme legal force. Likewise, no constitutional norm may be interpreted by ignoring the framework of the preamble to the constitution.[91] Usually, preambles to constitutions are drafted with the aim of reflecting the historical circumstances, in which the constitution has been adopted, the purposes and most important principles of the constitution,

87 Pleps J., Pastars E. Vai tautai nozagta suverēnā vara? Jurista Vārds, 2002. 22.oktobris, Nr.21(254).

88 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 138.punkts.

89 See more: Lejnieks M., Pleps J., Ziemele I. Satversmes 68.pants. In: Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019, 88. - 89., 111. - 112., 129.lpp.

90 Orgad L. The Preamble in Constitutional Interpretation. International Journal of Constitutional Law, Volume 8, Issue 4, 2010, pp. 714–738

91 Sinkevičs V. Dažas piezīmes par Lietuvas Republikas Konstitūcijas preambulu. Jurista Vārds, 2014. 25.februāris, Nr. 8 (810)

societal values and political directions, as well as a person's rights and freedoms.[92] A preamble may serve not only as the source for interpretation of a constitution but also may include references to the validity of other acts. For example, the Preamble of the Constitution of France of 1958 (the Fifth Republic) included references to the Declaration of the Rights of Man and Citizen of 1789, and the Preamble to the Constitution of France of 1946 (the Fourth Republic). The preamble has the special task to define the fundamental relations between the state and the constitution. The preamble, without prejudice to the legal content of constitutional provisions, points to the authority of the constitutional norms beyond law, as well as to the intentions and considerations of the constitutional legislator. A preamble reflects the most important constitutional origins and ideas, thus, manifesting itself as the interface between the state and constitutional theory.[93]

The *Satversme* is one the few constitutions to which an extensive preamble was added during its term of validity – the Introduction to the *Satversme* of 19 June 2014.[94] Initially, the *Satversme* had a concise Introduction, i.e., one introductory sentence.[95] The Constitutional Court has used the initial introductory sentence of the *Satversme* to come to the conclusion that, in the *Satversme*, the people of Latvia had restrained themselves.[96] "The introduction to the *Satversme* proves that the people of Latvia had undertaken to exercise their sovereign power only in compliance with norms of the *Satversme* and in the procedure set out therein."[97]

92 Vaiņute M. Konstitūcijas preambula: Lietuvas piemērs. Jurista Vārds, 2014. 22.aprīlis, Nr. 16 (818).

93 Изензее Й. Государство и конституция. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.6.

94 Levits E. Izvērstas Satversmes preambulas iespējamā teksta piedāvājums un komentārs. Jurista Vārds, 2013. 24. septembris, Nr. 39 (790). Skat arī: Amoliņa D. Mēs visi mirsim. Visi! https://juristavards.lv/eseja/264686-mes-visi-mirsim-visi/

95 Pleps J. Dažas domas par Satversmes preambulu. Jurista Vārds, 2013. 22.oktobris, Nr. 43 (794).

96 Judgement by the Constitutional Court of the Republic of Latvia of 19 May 2009 in Case No. .2008-40-01, Para 11.

97 Judgement by the Constitutional Court of the Republic of Latvia of12 February 2014 in Case.2013-05-01, Para 14.2.

The elaborated Introduction to the *Satversme* of 19 June 2014 sets out the obligations of the Latvian State within the Latvian legal system. The first paragraph in the Introduction to the *Satversme* indicates the aims for the existence of the Latvian State, which define the framework for the state's actions and demand implementation of certain policy. The fourth paragraph of the Introduction to the *Satversme* characterises the Latvian state order from the constitutional law perspective and points to the most important general legal principles in the state order, which define Latvia's constitutional identity. For example, the Introduction to the *Satversme* points to human dignity and personal freedom as the foundation of the Latvian State. The sixth paragraph of the Introduction to the *Satversme*, in turn, formulates the basic postulates of the national foreign policy. The fifth paragraph of the Introduction characterises the Latvian society, its values and foundations for organising life, as well as sets out some responsibilities of a person towards the state and society.[98] The Constitutional Court applies the Introduction to the *Satversme* in its case law to interpret other norms of the *Satversme*, likewise, it has derived the existence of some constitutional-level norms within the Latvian legal system from the Introduction to the *Satversme*.[99]

Also the valid constitutional-level acts – Declaration of the Supreme Council of 4 May 1990 "On the Restoration of Independence of the Republic of Latvia" and the constitutional law of 21 August 1991 "On the Statehood of the Republic of Latvia" – have quite elaborated preambles, which, in particular, applies to the Declaration of 4 May 1990. The preamble presents the historical development of the Republic of Latvia, provides legal substantiation for the right of the Latvian people to establish an independent state on 18 November 1918 and to restore independence of the Republic of Latvia on

98 Pleps J. Satversmes ievada piemērošana. Jurista Vārds, 2014. 5.augusts, Nr. 30 (832).

99 Judgement by the Constitutional Court of the Republic of Latvia of 5 March 2019 in Case No.2018-08-03, Para 11, and Judgement of 23 April 2019 in Case No.2018-12-01, Para 21 and 24.

4 May 1990.[100] The Constitutional Court has concluded that "The rules included in the Declaration of Independence concretize the doctrine of state continuity of Latvia, which is provided by Article 2 of the *Satversme* in accordance with the rules of international law. This is the official opinion of the Republic of Latvia on the issue that the Republic of Latvia that was founded on November 18, 1918, despite the aggression and occupation by the USSR that took place in 1940, has continued its uninterrupted existence."[101] The preamble to the constitutional law of 21 August 1991 fully confirms and enshrines the continuity of the Latvian State.[102]

5. Formal and substantive constitution. It is customary in the constitutional law to differentiate between the formal and the substantive constitution. In explaining the concept of a formal constitution, Kārlis Dišlers wrote: "The basic principles of a state order tend to be expressed in a separate act, adopted the by the people themselves or a by a constitutional assembly, elected by the people; this act is called the constitution or the constitutional law. Understanding as the constitution such special law, issued by the respective authoritative power, we designate the formal concept of the constitution."[103] The formal constitution, essentially, designates a set of legal norms with the supreme legal force within the legal system that regulates the issues of constitutional law. Hence, understanding of the constitution is closely linked to the understanding of a legal norm. With understanding of a legal norm changing, also understanding of the formal constitution should change.

In the doctrine of legal positivism, where law is limited to the legal norms adopted by the legislator, the inclusion of one or several

100 See more: Levits E. 4.maina Deklarācija Latvijas tiesību sistēmā. In: 4.maijs. Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju. Dr.habil. Tālava Jundža redakcijā. Rīga: LU žurnāla "Latvijas Vēsture" fonds, 2000, 54. - 57.lpp.

101 Judgement by the Constitutional Court of the Republic of Latvia on 29 November 2007 in Case No. 2007-10-0102, Para 64.2.

102 Ibid., Para 60.2.

103 Dišlers K. Demokrātiskas valsts iekārtas pamati (Ievads konstitucionālajās tiesībās). Rīga: A.Gulbis, 1931, 12.lpp.

normative acts, adopted by the constitutional legislator, in the understanding of formal constitution was justified. However, presently, when the concept of law comprises not only the norms adopted by the legislator but also the general principles of law, understanding of formal constitution needs to be accordingly revisited. Within the framework of the doctrine of natural law, the concept of formal constitution comprises not only the positive legal norms, adopted by the constitutional legislator), but also (and first of all) the general legal principles of a democratic state governed by the rule of law. Not only the legislator, the constitutional legislator also is bound by the general principles of law.[104] Within the framework of the doctrine of natural law, understanding of the formal constitution should include not only the constitutional norms adopted by the constitutional legislator but also the general legal principles of a democratic state governed by the rule of law. Hence, the formal constitution consists of two types of norms - norms adopted by the constitutional legislator and the general legal principles of a democratic state governed by the rule of law. The constitutional legislator is no longer called upon to define the formal constitution in full. The content of the formal constitution is constituted by the general legal principles of a democratic state governed by the rule of law, whereas the constitutional legislator keeps its discretion in those areas, where the general legal principles envisage various possibilities for regulating the respective matter.[105] Nowadays, the formal constitution is no longer solely the set of positive norms defined by the constitutional legislator, but rather a complicated system of written legal norms and general legal principles, which must be interpreted and applied in its entirety.[106] Thus, the formal constitution comprises not only the constitution adopted by the constitutional legislator as one or several normative legal acts but also the general legal principles.

104 Rezevska D. Vispārējo tiesību principu nozīme un piemērošana. 2.izd. Rīga: Daigas Rezevskas izdevums, 2015, 126. - 127.lpp.

105 Ibid, 43. – 45.lpp.

106 Pleps J. Satversmes iztulkošana. Rīga: Latvijas Vēstnesis, 2012, 24. – 28.lpp.

In explaining the concept of substantive constitution, in turn, Kārlis Dišlers has underscored: "This concept must be understood as the existing state order in its main components and the relations between these components, irrespectively of whether these relations have been designated and whether their relations have been defined in a written act or not. [Therefore] every state has its own constitution, i.e., the actually existing state order, based on the actual balance of powers found in society."[107] The concept of substantive constitution reflects changes in the content of the formal constitution, which have occurred in the practice of its application. At the time, Kārlis Dišlers wrote that, in all states, unwritten norms, based on precedents of the state law, existed alongside the written constitution, supplementing the written constitution and gradually transforming it to a greater or lesser extent.[108] Transformation of a constitution denotes those formal changes to the constitution that happen to the formal constitution without the interference by the constitutional legislator, by amending the text of the constitution.[109] "[Such] transformations are recorded neither in the formal constitution nor in the written law, but gain recognition and force by way of constitutional customary law, gradually developing from the constitutional practice, in accordance with the real-life requirements."[110] The substantive constitution is formed by interpretation of the *Satversme*, in particular, interpretation of the *Satversme*, provided by the Constitutional Court of the Republic of Latvia, constitutional traditions and the normative assessment of the *Satversme* through legislation.[111]

107 Dišlers K. Demokrātiskas valsts iekārtas pamati (Ievads konstitucionālajās tiesībās). Rīga: A.Gulbis, 1931, 12.lpp.

108 Dišlers K. Latvijas Satversme. In: LatviešiII. Balodis K., Šmits P,Tentelis A. (red.) Rīga: Valters & Rapa, 1932, 147.lpp.

109 Еллинекъ Г. Конституци, ихъ изменения и преобразованя. Санктпетербург: Издание Юридическаго книжнаго склада "Право', 1907, c.5; Vālbergs J. Konstitūcijas jēdziena attīstība vēsturiskā apgaismojumā. Tieslietu Ministrijas Vēstnesis, 1936, Nr.3, 788.lpp.

110 Dišlers K. Demokrātiskas valsts iekārtas pamati (Ievads konstitucionālajās tiesībās). Rīga: A.Gulbis, 1931, 37.lpp.

111 Pleps J. Satversmes iztulkošana. Rīga: Latvijas Vēstnesis, 2012, 29. - 43.lpp.

Traditionally, the constitutional tradition has been conferred great significance in the Latvian constitutional order.[112] This fact brings the Latvian constitutional law closer to the British constitutional law with its widely recognised and applied doctrine of conventional norms.[113] However, the constitutional tradition is a broader concept of state law than conventional norms, since the latter are to be considered as being the unwritten norms (of customary law), which have evolved in the practice of applying the constitution. Alongside the conventional norms or constitutional custom, in Latvia, the constitutional tradition is formed by the prevailing opinion of scholars of constitutional law and some ceremonial activities of constitutional institutions.[114] Since its establishment, the Latvian constitutional tradition has accepted the legislator's right to further specify many issues of constitutional law by laws.[115] In several instances, the *Satversme* even directly envisages the legislator's mandate to define by law details of a constitutional law issue. The legislator, by drafting and adopting such laws, specifies the regulation of the *Satversme* or provides normative interpretation of the wordings found in the *Satversme*. The normative interpretation of the *Satversme* found in laws is to be considered as "natural addition to and development of our *Satversme*."[116] Transformation of the formal constitution results in the establishment of the substantive constitution. The substantive constitution, alongside the formal constitution, should comprise interpretation of the constitution through legislation, findings in case law regarding the scope of constitutional norms, and the constitutional tradition.

112 Valsts prezidenta Konstitucionālo tiesību komisijas 2011.gada 31.maija viedokļa "Par iespējamo ministra noteikumu satversmību' 16.-20.punkts.

113 Dicey A.W. Introduction to the study of the Law of the Constitution. London: Macmillan and Co, 1889, pp.341-361.

114 Pastars E. Par grāmatu "Satversmes iztulkošana". Gram.: Pleps J. Satversmes iztulkošana. Rīga: Latvijas Vēstnesis, 2012, 5.lpp.

115 Lazersons M. "Konstitucionāla" likumdošana un Saeimas publisko tiesību komisija. Jurists, 1928, Nr.6, 166.sl.; Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 90-91.lpp.

116 Akmens A. Mūsu militārā likumdošana. Tieslietu Ministrijas Vēstnesis, 1927, Nr.6/7, 224.lpp.

II. Constituent Power

1. People's constituent power. The principle of the people's sovereignty is the foundation of constitutionalism. The people's right to elaborate the constitution as the draft structure of the state and the plan in people's striving for happiness cannot be restricted. The people have the right to choose a political regime of their liking; however, this choice should be free, it cannot be imposed; a free basic decision by the people on the adoption of the constitution defines the type of political co-habitation within the state.[117] The right and the ability to create its own state and determine the constitution of this state are vested in the people. This right and ability is denoted as the people's constituent power. The right to constituent power is primordial and inalienable.[118] It is the most important power of the people – to issue the supreme basic law (constitution). The fairness of people, which, on the basis of political equality, sets the limits of power and subordination to everyone, is put into the foundation of the constitution.[119] The principle of democracy requires that the people is the power that adopts the constitution. This is consistent with the basic concept that political society, generally, should be based on the majority vote of its members.[120] This understanding is rooted in the principle of the people's sovereignty.

The constituent power granted to the people is constitutional innovation introduced by abbot Emmanuel-Joseph Sieyès.[121] Transferring the power of the monarch, the legitimacy of which was justified by religious notions and the traditional way of doing things, to the people was a revolutionary idea. The constituent power granted to the people was vested with attributes characteristic of the God - potestas

117 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 39.lpp.

118 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 48.punkts.

119 Рейснеръ М. Всенародное голосование и Учредительное Собраніе. Петроград: [б. г.], 1917, с.1.

120 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 46.lpp.

121 Sieyès E.J. Qu'est-ce que le Tiers-État ? http://www.leboucher.com/pdf/sieyes/tiers.pdf

constituens, norma normans, creatio ex nihil. It replaced the divine world order by a social political order defined by the people.[122] It should be taken into account that the people as the sovereign exercises the constituent power and establishes the basic norm of the legal system, which is something more than the totality of all citizens with the right to vote or the majority of citizens with the right to vote. The sovereign, which exercises the constituent power, is the historical people, comprising all generations of citizens, the ones that are no more, those who are not yet, as well as the present generation. The people is an immortal sovereign, existing throughout centuries, it unites in one common fate all the past, present and future generations of citizens.[123] In defining the basic norm of the legal system and the constitution, the people express free political will regarding establishment of the state order, which results in a constitution as a written imperative and generally binding act of the constituent power. The constitution transforms the dynamic constituent power, which freely creates and shapes the state order, into static constituent power, which is recorded in the constitution. After the basic norm has been defined and the constitution has been adopted, the constituent power no longer may act freely because further actions are determined by the constitution.[124] In a democratic state governed by the rule of law, the constitution restricts also the people themselves, i.e., the existing totality of citizens has the right to exercise the power granted to it only within the scope and in the procedure defined in the constitution.[125]

The process of drafting the constitution should be transparent, which can be ensured only by public discussions of the draft

122 Böckenförde E.-W. The Constituent Power of the People. A Liminal Concept of Constitutional Law. In: Böckenförde E.-W., Künkler M., Stein T. Constitutional and Political Theory. Selected Writings. Oxford: Oxford University Press, 2017, p.172.

123 Ījabs I., Levits E., Paparinskis M., Pleps J. Satversmes 2.pants. In: Latvijas Republikas komentāri. Ievads. I nodaļa. Vispārējie noteikumi. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2014, 252. – 253.lpp.

124 Römeris M. Suverenitetas. Kaunas: Vytauto Didžiojo Universiteto Teisių Fakulteto Leidinys, 1939, p.176. - 178.

125 Judgement by the Constitutional Court of the Republic of Latvia on 12 February 2014 in Case No. 2013-05-01, Para 14.4.

constitution. All significant social and political forces must be involved in discussions on the constitution because, in a democratic society, the totality of citizens comprises many and ideologically diverse social groups, common interests and parties with different interests and notions of the shared future within the state.[126] The constitution should be able to integrate the totality of citizens in a common fate and unite it, rather than fight against the worldview and conviction of some societal groups. A sustainable constitution is never a triumph of the opinions held by one societal group but is a complex compromise of political discussions, which defines the non-partisan vision of the future, shared by all.

The constituent power is an essential element of the people's sovereign power, which includes discretion with respect to the fundamental constitutional norms. The constituent power comprises the right to adopt and to amend the *Satversme*. In accordance with the concept of abbot Sieyès, the constituent power (pouvoir constituant) is separated from other powers, which are either elected or appointed (pouvoir constitué).[127] It is accepted also in the Latvian constitutional law that the adoption and change of the constitution is an act of the constituent power. The constituent power is vested in the people, and it differs from the legislative, executive and judicial powers. The constituent power of the people is not linked to and cannot be linked to any rules. The people may exercise the constituent power themselves or with the mediation of their representatives.[128]

2. Exercising the constituent power. Exercising the constituent power is a fundamental political decision, which changes the existing state order.[129] Conditionally, the constituent power has the right to adopt the constitution and to review the constitution. The right to adopt the constitution as the exclusive competence of the sovereign,

126 Шнайдер Г.П. Власть, учреждающая конституцию. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.2. Москва: Институт государства и права РАН, 1994, с.304.

127 Sieyès E.J. Qu'est-ce que le Tiers-État ? http://www.leboucher.com/pdf/sieyes/tiers.pdf

128 Dišlers K. Konstitūcija un satversmes vara. Tieslietu Ministrijas Vēstnesis, 1921, Nr.1/3, 7-10.lpp.

129 Schmitt C. Constitutional Theory. Durham and London: Duke University Press, 2008, p.140.

i.e., of the people, comprises the right to amend the foundations of the constitution and the state order, as well as the right to even renounce the statehood entirely.[130] Whereas the right to review the constitution is change of the constitutional regulation in procedure defined in the constitution itself, without encroaching upon the constitutional foundations. The Constitutional Court of the Republic of Latvia has made a similar conclusion regarding the scope of the constitution: "The *Satversme* divides the power of *Satversme* among the body of Latvian citizens and the *Saeima*; however, it guarantees the exclusive rights to deal with the fundamental norms of the *Satversme* of the Latvian people, namely, to repeal the constitution or to establish a new constitutional order. Moreover, Article 76 of the *Satversme* delegates to the *Saeima* only the power to review the *Satversme*, which differs from the constituent power of the Latvian people since it is related to fundamental constitutional principles. The *Saeima* is authorized to make constitutional amendments within the framework of the existing constitution, but the *Saeima* as a constitutional institution of the State power cannot be authorized to change the basis of the constitutional order or to renounce the existence of the State, since only the people as the carrier of the constituent power can decide on this issue."[131] Similarly, the *Satversme* grants the power to review the *Satversme* also to the totality of Latvian citizens, as the second legislator in this state order. Norms and principles of the *Satversme* are binding also upon the totality of Latvian citizens as the legislator who must comply with the jurisdiction granted to it and must exercise its rights appropriately.[132] The totality of Latvian citizens has the right to amend the *Satversme* (also Articles 1, 2, 3, 6 and 77 of it) but only in such a way as not to infringe upon the core of the *Satversme*. Nobody, including the totality of Latvian citizens, may exercise the

130 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 46. – 47.lpp.

131 Judgement by the Constitutional Court of the Republic of Latvia on 29 November 2007 in Case No. 2007-10-0102, Para 31.1.

132 Decision by the Constitutional Court of the Republic of Latvia on 19 December 2012 on Terminating Legal Proceedings in Case No. .2012-03-01, Para 23.

right vested in them to destroy the State of Latvia or its democratic state order.[133]

The constituent power is extraordinary and special legislative power, which should not be exercised by the ordinary legislator but by a separate body of the state power with special authorisation by the people. An institution with both the constitutional and legislative power should be considered as being the absolute sovereign; however, any unlimited power is despotic power. This was the reason why it was considered that the parliament cannot be granted the functions of the constituent power because the totality of citizens elects the deputies so that they would represent their interests within the framework of the existing constitution, not to amend it. The body of state power exercising the constituent power, in turn, could not be granted the functions of legislation, administration of justice or the executive power.[134] Due to these reasons, the practice spread in the former British colonies in North America of entrusting the drafting of the constitution not to the parliament but to a special assembly of the peoples' deputies – the convention, which, acting in the name of the people, drafts the constitution, which the people approve by voting. This established the principle that the constitution is issued by the people but simple laws – by the parliament .[135] In the USA, the constitutional principle that the people is the source and foundation of power has not changed: "We the People of the United States," is the eternal source of all power, all mandates are derived from "us", and only "we" have the right to amend the constitution.[136]

Abbot Sieyès perfected the theory of constituent power for the needs of the French Revolution. Since the people themselves cannot convene and draft the constitution, abbot Sieyès developed the system for adopting the constitution in the name of the people's will

133 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 276.punkts.

134 Вишнякъ М. Проблема учредительной власти. Законъ и Судъ, 1932, №6(26), с.829-836.

135 Dišlers K. Konstitūcija un satversmes vara. Tieslietu Ministrijas Vēstnesis, 1921, Nr.1/3, 8.lpp.

136 Вишнякъ М. Проблема учредительной власти. Законъ и Судъ, 1932, №5(25), с.800.

when special representatives may exercise the constituent power as the people's deputies (vice populi).[137] These representatives, like the people themselves, are not bound by any rules but can exercise only the constituent power. They are not ordinary legislators who could be entrusted with the legislative power. The idea of the constitutional assembly as a specially elected extraordinary legislator, whose task is to define the state order and adopt the *Satversme*, is based on abbot Sieyès's concept.[138]

Abbot Sieyès held that it was not necessary for members of society to exercise the constituent power individually because they could trust the deputies who had convened solely for this purpose; however, these representatives of the people may not perform the functions of other powers.[139] However, in practice, the National Assembly assumed the functions of both the constituent power and the legislator. It must be noted that Kārlis Dišlers also supported the admissibility of merging the constituent and the legislative power because they all were said to flow into one source – the people themselves. In a genuine democracy, the source of all laws is the same – the people's will, and the procedure for issuing them is the same – the people's vote.[140] The Latvian Constitutional Assembly also exercised both the constituent power and the right to legislate.[141]

Nowadays, the rights vested in the people may be exercised also in other ways. The constitution may be adopted or amended by the constitutional assembly, chosen by the people, which adopts the constitution by the qualified majority of two-thirds of votes or the regular majority vote; the constitutional convent, elected by the people, usually transfers the draft constitution elaborated by it for the people's

137 Боржо М. Учрежденіе и пересмотръ конституций. Москва: Издание М. и С. Сабашниковыхъ, 1918, с.276.

138 Dišlers K. Konstitūcija un satversmes vara. Tieslietu Ministrijas Vēstnesis, 1921, Nr.1/3, 7. - 10.lpp.

139 Sieyès E.J. Qu'est-ce que le Tiers-État ? http://www.leboucher.com/pdf/sieyes/tiers.pdf

140 Dišlers K. Konstitūcija un satversmes vara. Tieslietu Ministrijas Vēstnesis, 1921, Nr.1/3, 10.lpp.

141 Dišlers K. Latvijas pagaidu konstitūcija. Vispārīgas piezīmes. Tieslietu Ministrijas Vēstnesis, 1920, Nr.2/3, 52. - 54.lpp.

vote, and the people themselves later adopt the draft submitted by it in a national referendum. Likewise, the parliament also can adopt the constitution and amendments to it in the framework of a special procedure. In the modern state, the laws and, usually, also amendments to the constitution are adopted by the legislator, elected by the people; however, proposals to separate the constituent power from the legislative power are encountered because the one who has both powers is the absolutely sovereign. Representatives of this opinion considered that the mandate to amend the constitution should be taken out of the parliament's jurisdiction, the parliament may not have the right to amend the basic law because the deputies are not given the task to amend the basic law of the state but to represent the people's interests in compliance with the existing constitution.

3. Restrictions on the constituent power. Following adoption of the constitution, the people may amend the constitution only in the procedure and scope envisaged in it. This means that, in a democratic state governed by the rule of law, the constitution restricts the people's constituent power.[142] Likewise, the right to amend the constitution, granted to the constituent power, is not a mandate to adopt a new constitution or essentially revisit the fundamental principles of the constitution because the constitutional identity must be preserved also at the time of amending the constitution.[143] Abbot Sieyès, however, believed that no constitutional provisions restricted the constituent power of the people. The way, in which the nation wants, does not matter; it is sufficient that it wants it; all forms are good, and its will is always the supreme law.[144] However, in the modern state, the constituent power loses its unrestrictedness. No constitutional legislator can disregard and ignore those values and conviction, on which the generally recognised legal norms are based. Those who exercise the constituent power may not infringe upon the dignity and rights of

142 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 53. – 55.punkts.

143 Schmitt C. Constitutional Theory. Durham and London: Duke University Press, 2008, pp.150-154.

144 Sieyès E.J. Qu'est-ce que le Tiers-État ? http://www.leboucher.com/pdf/sieyes/tiers.pdf

individual persons because they are the core of any democratic constitution. Transferring of the constituent power to the people means not only a democratic procedure for adopting the constitution but also the need for a democratic structure of the constitution.[145]

The right to review the constitution should be separated from the power to adopt it. It is the right to legally amend the constitution, which is granted by the existing constitution, and the procedure and limits of the review are defined. If the constitution does not refer to restrictions it does not mean that such restrictions are non-existent. The limits of such restrictions are unwritten because a public institution, called upon the constituent power, may not be authorised to undermine the foundations of the constitutional order or renounce the existence of the state.[146] For example, Article 114 of the Constitution of the Republic of Armenia turns the unlimited constituent power of the people, which would pertain to the adoption of a new constitution, into almost a revolutionary act because abolishment of the fundamental principles of this constitution by legal means is prohibited. Hence, two manifestations of the constituent power exist. The initial constituent power functions as a revolutionary act and has the right to create an entirely new constitution, the constituent power of a constitution, however, may only substantially renew the constitution, without affecting the unchangeable articles.[147] Also in the Latvian constitutional law, pursuant to the basic norm of the legal system and the valid *Satversme*, the obligation to maintain permanently the State of Latvia and its democratic state order is binding upon the constituent power. No one – neither the people nor the public institutions, nor an individual citizen – may exercise their rights,

145 Шнайдер Г.П. Власть, учреждающая конституцию. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.2. Москва: Институт государства и права РАН, 1994, с.306.

146 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 47.lpp.

147 Шнайдер Г.П. Власть, учреждающая конституцию. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.2. Москва: Институт государства и права РАН, 1994, с.306.

included in the *Satversme*, for the purpose of destroying the State of Latvia or its democratic order.[148]

III. Interpretation of the constitution

1. Significance of interpreting the constitution. In a contemporary democratic state governed by the rule of law, the importance of interpreting the constitution is essential. Due to the laconic and abstract nature of the constitution's text, the need to interpret occurs much more frequently compared to other branches of law with more detailed regulation. The objective of interpretation is to make constitutionally correct conclusions regarding the scope of constitutional norm and to substantiate it, thus creating legal certainty and clarity regarding the constitutional regulation.[149] Interpretation of the constitution means turning the text of the constitution into legal regulation. As Aharon Baron wrote, the interpreter translates "the human" language into "the legal" language.[150] Interpretation of the constitution is creative in its nature since the content of the norm to be interpreted becomes complete only as the result of its interpretation. The interpretation, inter alia, remains linked to the constitutional norms, defining the content and scope of this norm.[151] Actually, the interpreter of the constitution is a partner of the constitution's authors. The authors define the text of the constitution but the interpreter elucidates its meaning. The authors of the constitution include in it the will that they would like to exercise, whereas the interpreter of the constitution places this will in the broader context of constitutional law. Thus, the interpreter of the constitution ensures continuity of

148 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 276.punkts.

149 Хессе К. Основы конституционного права ФРГ. Москва: Юридическая литература, 1981, с.41-42.

150 Barak A. The Judge in a Democracy. Princeton and Oxford: Princeton University Press, 2006, p.123.

151 Хессе К. Основы конституционного права ФРГ. Москва: Юридическая литература, 1981, с.46.

the constitution.[152] It has been recognised that "initially, the sovereign creator of the constitution had the mandate to create norms, by interpreting the constitution, it comes into the hands that have been called to interpret the constitution. One might even say that, in a constitutional state, the interpreter of the constitution gains sovereignty"[153].

Carl Schmitt has recognised that sovereign is the one who makes the decision on the state of exception, i.e., he adopts the decision not only on whether the extreme circumstances of extraordinary need have set it but also what should be done to prevent these circumstances.[154] Carl Schmitt holds that the state of exception is a situation, which is not constitutionally regulated. The sovereign is the one who makes the decision on constitutionally unregulated mandates, i.e., the one who has the jurisdiction to act in cases where the constitutional regulation does not provide a clear answer regarding the jurisdiction that has been granted.[155] Usually, answers to these questions are provided through interpretation of the constitution. The right to interpret the constitution, in particular, by providing a final decision, not subject to appeal, regarding the scope and content of the constitution, is a central element of power. The one who has the final say in interpretation of the constitution, actually, could be considered as being the manifestation of Carl Schmitt' s sovereign in the constitutional reality.[156]

A decision on the content of constitutional norms is always political in its nature. In interpreting the constitution, it is possible to decide not only on a particular legal issue but also on the future development of the state order. As Aharon Baron wrote, the constitution characterises the people and their strivings, defining the points of

152 Barak A. The Judge in a Democracy. Princeton and Oxford: Princeton University Press, 2006, p.135.

153 Forlenders H. Iztulkotājs kā suverēns ar neierobežotu varu. Likums un Tiesības, 2001, Nr.10(26), 300.lpp.

154 Schmitt C. Political Theology. Four Chapters on the Concept of Sovereignty. Chicago and London: Chicago University Press, 2005, pp.5-7.

155 Ibid., c.10-11.

156 Pleps J. Satversmes iztulkošana. Rīga: Latvijas Vēstnesis, 2012, 52. – 56.lpp.

reference for the majority's political views. By outlining the national values, aims to be reached, commitments and possible development, the constitution is based on the past, determines the present, and extends into the future. Philosophy, politics and law are simultaneously concentrated in it.[157] This makes the constitution substantially different from other normative acts. Consequently, the constitution strives to regulate not only the present but also the future. The constitution is capable of regulating such social, political and historical processes, which the authors of the constitution even did not anticipate.[158] "The sovereign body in the state is the one who makes the last and the final decision on all important matters in the life of the state."[159] Since increasingly more relevant issues can be resolved through interpretation of the constitution, in a democratic state governed by the rule of law, the right to interpret the constitution means claiming the status of the sovereign. As noted by Hans Forelender: "No longer everything depends on the basic law. The Constitutional Court's rulings determine what the constitution is. "The constitution is what judges understand as constitution", an American judge announced already at the beginning of the 20th century. Now this can be said also about Germany".[160] This should be linked to the nature of the constitution: nowadays, the constitution defines not only the institutions of state power and their jurisdiction but also the basic principles of the state order, relations between the state and a private person, as well as regulates the most important issues in the life of the state.[161] Almost any issue can be examined from the constitutional perspective, this, in turn, creates demand for interpretation of the constitutional norms.

157 Barak A. Purposive Interpretation in Law. Princeton and Oxford: Princeton University Press, 2005, p.370.

158 Ibid., p.371.

159 Dišlers K. Latvijas pagaidu konstitūcija. Vispārīgas piezīmes. Tieslietu Ministrijas Vēstnesis, 1920, Nr.2/3, 52.lpp.

160 Forlenders H. Iztulkotājs kā suverēns ar neierobežotu varu. Likums un Tiesības, 2001, Nr.10(26), 299.lpp.

161 Jarašiūnas E. Aukščiausioji ir ordinarine teise: požiūrio į konstituciją pokyčiai. Jurisprudencija, 2002, t.33(25), pp.30-41.

Historically, discussions on the methodology for interpreting the constitution and the power granted to the interpreter of the constitution to determine the future of the state order are typical of all democratic states governed by the rule of law. These discussions are seen most vividly in the interpretation of the US Constitution. On the one hand, there is a strong conservative tradition with huge respect for the text of the constitution and the historical legislator's will (textualists and originalists).[162] On the other hand, the tradition of "living constitution", inclined towards contemporary interpretation of the constitution in compliance with the spirit of the age and society's development (pragmatists and intentists).[163] However, irrespectively of the chosen approach to interpreting the constitution, in any case, the interpreter of the constitutions adopts a decision that defines the solution to the contentious legal issue.[164] Similarly, the choice of judicial activism or self-restrain in interpretation of the constitution likewise provides the final answer regarding the unclear issue regarding interpretation of the constitution.[165]

The constitution needs interpretation but interpretation per se cannot ensure correct understanding of the constitution. However, exercising the right to interpret the constitution allows, in cases of conflict, adopt, although not always the right one but a legally binding decision on the scope of constitutional norms. This, in turn, puts a full stop and ensures uniform application of the constitution.[166] The logical requirement of binding interpretation of the constitution gives fundamental meaning to the right to interpret the constitution. "The

162 For example: Scalia A. A Matter of Interpretation. Federal Courts and the Law. Princeton: Princeton University Press, 1998, pp. 23 – 47

163 For example: Posner R.A. The Problems of Jurisprudence. Cambridge and London: Harvard University Press, 1993.

164 See more: Posner R.A. How Judges Thinks. Cambridge and London: Harvard University Press, 2008, pp. 324 – 346

165 Sadurski W. Rights before Courts. A Study of Constitutional Courts in Postcommunist States of Central and Eastern Europe. Second edition. Dordrecht: Springer, 2008, pp. 130 -147

166 Изензее Й. Конституционное право как право "политическое'! In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.2. Москва: Институт государства и права РАН, 1994, с.309.

constitution is a text but texts, in turn, need interpretation because they speak indirectly. They require interpretation, specification and application. The constitution is not "live" if it does not determine who, in particular, in a case of conflict, applies this constitution and succeeds in having its rules enforced."[167] The right to the final say in interpreting the constitution is vested in the judicial power, in particular, the constitutional court. Thus, the supreme legal force, supremacy and direct and unmediated effect of the constitution is ensured. The constitution is equally binding for all, and the actual effect of the constitution is defined by courts (the Constitution is what the judges say it is). Pursuant to the constitution, protection of the freedom and property of all persons is exactly the task of the judicial power.[168]

A wish to have a constitution that would be clear and unambiguous for all non-lawyers so that it could be applied without interpretation has been expressed in journalism. "The constitution of the state is the foundation of our lives that should be known to all of us. The phenomenon that the basic laws of the state "to a large extent need to be interpreted" to be made comprehensible to citizens is quite abnormal. The basic laws of the state should be definite and clear – it is an unambiguous and necessary requirement."[169] However, such hopes cannot be fulfilled because laws will never be sufficiently clear for all members of society.

Egils Levits wrote: "The simplistic notion that laws could be worded "till the end" unambiguously and that unclarity of laws and problems in interpretation are caused only by the legislator's unwillingness un unskillfulness is illusory."[170] The text of the constitution is the point of departure in the path of seeking constitutional norms.

167 Forlenders H. Iztulkotājs kā suverēns ar neierobežotu varu. Likums un Tiesības, 2001, Nr.10(26), 300.lpp.

168 Hughes C.E. Speech before the Chamber of Commerce, Elmira, New York (3 May 1907). In: Hughes C.E. Addresses and Papers of Charles Evans Hughes, Governor of New York.1906–1908. New York and London: G.P. Putnam's Sons, 1908, p. 139

169 Kurmis A. 59.pants. Brīvā Zeme, 1923. 19. janvāris.

170 Levits E. Cilvēktiesību piemērošanas pamatjautājumi Latvijā. In: Cilvēktiesības pasaulē un Latvijā. Dr. Inetas Ziemeles redakcijā. Rīga: Izglītības soļi, 2000, 266.lpp.

When working with the text of the constitution the party applying the law encounters the need to take into account the impact of time, i.e., constitutional norms cannot be obtained simply by using the text of the constitution.[171]

2. Dynamic interpretation of the constitution. The position that the constitutional legislator's will has defined unchangeable content of the constitution for eternity, unavoidably, would diminish the constitution's ability to regulate legal and political relations in contemporary society. For the constitution to be effective, it should be able to change with the times. The Constitution of the US defines the way answers to unclear issues of constitutional law should be sought but does not provide the correct answers to these questions. A constitution is not a static document, it is rather a dynamic document to be read in the context of changing times. Although, often, its text is clear and unambiguous, nevertheless, with the passing of time, a reader's understanding of the content of its norms changes.[172] The European Court of Human Rights also has underscored that the Convention for the Protection of Human Rights and Fundamental Freedoms is a living instrument that always should be interpreted in the present context.[173] A similar approach should be applied to interpreting the *Satversme*. "In the Latvian legal system, the norms of the *Satversme* are not interpreted formally or dogmatically but rather dynamically to ensure that the aim of these norms is reached and implemented effectively. Changes in public life, possibilities provided by available technologies and scientific achievements, as well as the development of the legal thought within the Western legal tradition should always be taken into account in interpreting the *Satversme*."[174]

171 Smith E. Introduction. In: Constitutional Justice under Old Constitutions. Edited by Eivind Smith. The Hague/ London/Boston: Kluwer Law International, 1995, p.xvii.

172 Obama B. The Audacity of Hope. Thoughts on Reclaiming the American Dream. Edinburgh/ London/ New York/ Melbourne: Canongate, 2006, pp.89-90.

173 Judgement by the European Court of Human Rights on 15 March 1978 in Case "Tyrer v. the United Kingdom", Para 31.

174 Valsts prezidenta Egila Levita 2019.gada 5.augusta paziņojums Nr.3 "Par Latvijas Republikas Satversmes 52.panta piemērošanu".

Dynamic interpretation ensures the possibility, in clarifying the content of constitutional norms, of taking into account the current needs, i.e., all constitutions must be interpreted in compliance with the spirit and requirements of the times, focusing on the legal findings of a modern democratic legal system.[175] Dynamic interpretation of the constitution, essentially, means extensive application of the teleological method of interpretation.[176] The use of this method significantly decreases the impact of the wording of constitutional norms and constitutional legislator's historical will, i.e., within the concept of dynamic interpretation of the constitution, the importance of the grammatical and historical interpretation methods is significantly narrowed down. Within the framework of teleological method of interpretation, the party applying the constitution focuses on the purpose of the norm and tries to derive its meaning in order to achieve an expedient and fair outcome by using the norm.[177] Alongside this, the comparative auxiliary method has an important role in the framework of dynamic interpretation, i.e., in assessing the development of a democratic state governed by the rule of law and its principles, legal findings of the European Union Member States, belonging to the circle of continental European law, as well as of the European Union's legal system should be chosen as the object of comparison and the point of reference in interpretation.[178]

Dynamic interpretation of the constitution is the law policy choice of the constitutional law theory for interpretation of the constitution, underscoring the need to ensure that a democratic state governed by the rule of law, in the contemporary Western understanding, would function in Latvia. As stated by Egils Levits, "dynamic interpretation

175 Levits E. Samerīguma princips publiskajās tiesības -juscommuneeuropaeum un Satversme ietvertais konstitucionāla ranga princips. Likums un Tiesības, 2000, Nr.9(13), 266.lpp.

176 Ibid.

177 Levits E. Tiesību normu interpretācija un Satversmes 1.panta demokrātijas jēdziens. Cilvēktiesību Žurnāls, 1997, Nr.4, 56.lpp.

178 Levits E. Samerīguma princips publiskajās tiesībās - jus commune europaeum un Satversme ietvertais konstitucionāla ranga princips. Likums un Tiesības, 2000, Nr.9(13), 266.lpp.

of the *Satversme* should be "a one-way road" towards improving the Latvian legal system rather than justifying its deficiencies".[179]

3. The concept of a complete constitution. It has been recognised in the theory of constitutional law that "special interpretation methods, differing from the interpretation of law, do not exist in the area of constitutional law".[180] However, it has turned out in practice that the four classical basic methods for interpreting legal norms are not enough to elucidate precisely the content of constitutional norms. The theory of constitutional law and constitutional courts have developed several other methods and presumptions of interpretation alongside the grammatical, systemic, historical and teleological method of interpretation.[181] The Constitutional Court of the Republic of Latvia also has developed in its case law an extended methodology for interpreting the *Satversme*.[182] The need for additional methods of interpretation to elucidate the content of constitutional norms is determined by the constitution's nature. A constitution is not an ordinary external regulatory enactment or, more precisely, a constitution is not solely an external regulatory enactment. A constitution is a complicated phenomenon of a democratic state governed by the rule of law, which autonomously ensures the functioning of this type of state order in practice.[183] Similarly to other constitutional courts, the Constitutional Court of the Republic of Latvia avoids admitting that the constitution is evolving.[184] Instead, constitutional courts usually develop the concept of the complete constitution. Pursuant to

179 Levits E. Tiesību normu interpretācija un Satversmes 1.panta demokrātijas jēdziens. Cilvēktiesību Žurnāls, 1997, Nr.4, 63.lpp.

180 Eglītis V. Ievads konstitūcijas teorijā. Rīga: Latvijas Vēstnesis, 2006, 173.lpp.

181 Goldsworthy J. Conclusions. In: Interpreting Constitutions. A Comparative Study. Goldsworthy J. (ed.) Oxford: Oxford University Press, 2006, pp.325-335; Sinkevičius V. Konstitucijos interpretavimo principal ir ribos. Jurisprudence, 2005, t.67(59), pp.7-19.

182 Ušacka A. Satversmes 8.nodaļas "Cilvēka pamattiesības" interpretācija Satversmes tiesas spriedumos. Jurista Vārds, 2001. 27.novembris, Nr.230. See more: Pleps J. Satversmes iztulkošana. Rīga: Latvijas Vēstnesis, 2012.

183 Sileikis E. Alternatyvi konstitucinė teisė. Antras pataisytas ir papildytas leidimas. Vilnius: Teisinės informacijos centras, 2005, pp.52-62.

184 Pleps J. Satversmes iztulkošana. Rīga: Latvijas Vēstnesis, 2012, 199. – 204.lpp.

it, a constitution is united and complete regulation, without lacunae and internal collisions.[185] Likewise, it is recognised that all issues of public life are regulated by constitutional norms. In view of this, constitutional courts avoid using open methods for law development, elaborating, instead, special methods for interpreting the constitution or granting essential role to the dynamic interpretation of norms.

The respective theoretical concept has been extensively elaborated in the Lithuanian constitutional law theory. The Constitutional Court of the Republic of Lithuania has recognised that the constitution as a regulatory enactment has been formulated in words in the form of a text. However, just like law is not limited only to the text, where the norms have been recorded expressis verbis, also the constitution is something more than its text alone. A constitution cannot be interpreted only as a set of norms recorded in words. The idea of the constitution as the supreme law and constitutionalism is rooted in the notion that there are no and cannot be lacunae in the constitution, i.e., there are no and there cannot be acts of lower legal force, the compatibility of which with the constitution could not be reviewed. Due to this reason, the Constitutional Court of the Republic of Lithuania has recognised that the constitution as legal reality consists of two types of norms, i.e., the written norms of the constitution and the constitutional principles, which have been enshrined or referred to in the constitution or which can be derived from the text of the constitution. The constitutional principles, which are not referred to expressis verbis or enshrined in the constitution are to be derived from the written norms of the constitution, other constitutional principles, from the overall constitutional regulation or from the value system defined in the constitution. Written constitutional norms and constitutional principles are not and cannot be in conflict, they establish a united and aligned system. Constitutional principles organise and systematise all constitutional norms, prohibiting from interpreting the constitution by ignoring a constitutional norm. Constitutional principles form

185 Kūris E. Konstitūcija kaip teisė be spragų. Jurisprudencija, 2006, t.12(90), pp.7-14; Sinkevičius V. Konstitucijos interpretavimo principai ir ribos. Jurisprudencija, 2005, t.67(59), pp.7-19.

not so much the text of the constitution as its spirit – those values and aspirations for which the people adopted the constitution and for the attainment of which the respective norms have been formulated in the text of the constitution. Just as there are no contradiction between constitutional norms and constitutional principles, there is no contradiction between the text and the spirt of the constitution. The text of the constitution cannot be interpreted to ignore the spirit of the constitution, which determines the entire constitutional regulation and each constitutional norm.[186]

Pursuant to this doctrine of the Constitutional Court of the Republic of Lithuania, the constitution is assessed as the legal reality rather than a formal text. The constitution as a network of closely interconnected and aligned norms and principles ensures effective protection and implementation of values and aspirations defined in the constitution. A conclusion that the constitution is not complete would prohibit from reviewing the constitutionality of laws and other regulatory enactments. Therefore, the constitution has no lacunae: a constitution is a complete system, compliance with which can be reviewed both with respect to laws that have been adopted already and laws that will be adopted.[187]

Since the compliance of each regulatory enactment with the constitution can be reviewed, the constitution should be interpreted as law par excellence. The Constitutional Court of the Republic of Lithuania interprets the constitution as the totality of ideal legal norms, which regulates completely all issues of public life. The text of the constitution may be unclear, incomplete or contradictory; however, the constitutional court in its case law must eliminate these shortcomings by applying constitutional principles. The constitution as the totality of written norms and principles is the foundation of the legal system, defining the entire legal system, state order and its aims. The constitutional court applies the constitution as the foundation

186 Lietuvos Respublikos Konstitucinio Teismo 2004 m. gegužes 25 d. nutarimas. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta265/content

187 Kūris E. Konstitucija kaip teisė be spragų. Jurisprudencija, 2006, t.12(90), pp.7-14.

and benchmark of the rule of law. With the mediation of the constitutional justice, a contradictory and unclear text of the constitution turns into a perfect norm – the ideal and complete regulation.[188] The concept of the constitution's spirit is important in this context. The spirit of the constitution are those constitutional values and aspirations that the constitutional legislator strives to attain by including certain norms in the text of the constitution or by wording these norms accordingly. Constitutional principles allow the party applying law to elucidate the spirit of the constitution. In this context, however, it should be taken into account that the content of constitutional principles changes together with the development of the idea of a democratic state governed by the rule of law. The text of the constitution should be examined in its context, without allowing it to prevail over the spirit of the constitution. If the constitutional justice had not been called upon to develop the constitutional principles and explain the constitution's content then the constitution would remain only on the level of political slogans, without turning into an instrument regulating the positive law and a political imperative.[189]

4. Principle of the constitution's unity. The theoretical justification for the need to interpret the constitution as a united whole was provided by Rudolf Smend. A constitution is an attempt by the totality of citizens to define a system that integrates all norms as law. Therefore all constitutional norms should not be analysed as isolated entities but rather as elements in a united system.[190] In the Federal Republic of Germany, the Federal Constitutional Court underscored already in 1951 that "no individual constitutional norm can be taken out of the common context and interpreted separately".[191] This finding is

188 Jarašiūnas E. Aukščiausioji ir ordinarine teise: požiūrio į konstituciją pokyčiai. Jurisprudencija, 2002, t.33(25), pp.30-41.

189 Kūris E. Konstitucijos dvasia. Jurisprudencija, 2002, t.30(22), pp.16-31.

190 Smend R. Constitution and Constitutional Law. In: Weimar. A Jurisprudence in Crisis. Edited by Arthur J. Jacobson and Bernhard Schlink. Berkley/Los Angeles/London: University of California Press, 2000, pp.244-248.

191 Kommers D.P The Constitutional Jurisprudence of the Federal Republic of Germany. Second Edition. Durham and London: Duke University Press, 1997, p.45.

linked to the idea that the constitution established an all-embracing order in the life of society and the state. In deciding on the content of a separate norm, the constitutional law deduction should be applied and each object to be regulation is examined in the context of the entire constitution.[192] Certain constitutional law principles and basic decisions, to which individual constitution precepts are subject to, follow from the entire content of the constitution. These separate constitutional norms should be interpreted in a way to make them compatible with the basic constitutional principles and the basic decisions by the one who adopts the constitution.[193] The justification for such conclusion given by the Federal Constitutional Court of Germany was that each constitutional norm was in a certain way connected to other norms and, in conjunction with other norms of the Basic Law, constituted a united whole. The most important constitutional principles and guidelines follow from the Basic Law as a whole, to which the content of a separate constitutional norm is subordinated.[194] The interconnection and interdependence of some elements of the constitution determine the need to not examine each norm separately but to view them only in conjunction with other norms in the context, to which this norm belongs. All constitutional norms should be interpreted in a way to avoid contradictions with other constitutional norms.[195]

Many European states have adopted the principle of the unity of the constitution. For example, in the Republic of Lithuania, the constitutional legislator has included this provision expressis verbis in the first part of Article 6 of the Constitution, i.e., "the constitution shall be an integral and directly applicable act". This reference made by the constitutional legislator is extensively used in the case law

192 Штарк К. Толкование конституции. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.2. Москва: Институт государства и права РАН, 1994, с.317-318.

193 Маунц Т. Государственное право Германии (ФРГи ГДР). Москва: Издательство иностранной литературы, 1959, с.111.

194 Kommers D.P The Constitutional Jurisprudence of the Federal Republic of Germany. Second Edition. Durham and London: Duke University Press, 1997, p.45.

195 Хессе К. Основы конституционного права ФРГ Москва: Юридическая литература, 1981, с.50.

of the Constitutional Court of the Republic of Lithuania.[196] Also in Latvia, application of the principle of the unity of the *Satversme* is based on the assumption that the *Satversme* is a united whole.[197] The constitution as a united whole comprises not only the positive legal norms but also legal principles. As underscored by the Constitutional Court of the Republic of Lithuania, in reviewing the compatibility of a legal norm with a particular norm of the Constitution, also the compliance of the procedure established in the legal norm with the principles of a state governed by the rule of law should be reviewed because the principle of the unity of the Constitution demands such review.[198] Similarly, the Constitutional Court of the Republic of Latvia also has recognised that the objective of legal principles is to ensure that other legal norms, also those included in the *Satversme*, are applied correctly and that the application thereof and the outcome of application fully comply with the requirements of a state governed by the rule of law.[199] Understanding of the constitution as a united whole also means that there are no contradiction between constitutional norms and that all norms of the constitution are arranged in a harmonious and internally aligned system. Since the adoption of a constitution is the expression of the one bearing the constituent power, in interpreting constitutional norms, the conclusion that constitutional norms are contradictory cannot be made.[200] The Constitutional Court of the Republic of Latvia has stated: "The *Satversme* is a united whole and the legal norms incorporated into it are closely interconnected.

196 Šileikis E. Alternatyvi konstitucine teise. Antras pataisytas ir papildytas leidimas. Vilnius: Teisines informacijos centras, 2005, pp.83-85; Sinkevičius V. Konstitucijos interpretavimo principai ir ribos. Jurisprudencija, 2005, t.67(59), pp.7-19.

197 Judgement by the Constitutional Court of the Republic of Latvia on 27 June 2003 in Case No. 2003-04-01, Para 1.1. of the Findings.

198 Lietuvos Respublikos Konstitucinio Teismo 1999 m. gegužes 11 d. nutarimas. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta357/content

199 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2005 in Case No.2005-12-0103, Para 24.

200 Белкин А. А. Текстуально-правовые конфликты в Конституции Российской Федерации и проблемы их преодаления. In: Белкин А.А. Избранные работы 90-х годов по констиционному праву. Санкт-Петербург: Юридический центр Пресс, 2003, с.184.

Every norm of the *Satversme* has its definite place in the system of the *Satversme* and no greater significance shall be accorded to any norm of the *Satversme* than has been envisaged by the will of the "fathers" or the text of the *Satversme*. To establish the content of separate *Satversme* norms more completely and objectively, they shall be interpreted as read together with other norms of the *Satversme*. [..]. The principle of the unity of the *Satversme* prohibits interpretation of separate norms of the *Satversme* as isolated from the other norms of the *Satversme*, because the *Satversme* as a document, which is a united whole, influences the scope and content of each norm."[201]

Hence, it can be concluded that two consequences follow from the principle of the *Satversme*'s unity. First, none of the constitutional norms may be interpreter in isolation from other norms of the *Satversme*. The *Satversme* as a whole influences the scope and content of each individual norm. Secondly, each norm of the *Satversme* has its own definite place within the system of the *Satversme* and none of the norms can be given greater weight than the one envisaged by the fathers or the text of the *Satversme*. The principle of the unity of the constitution determines the use of particular legal methods for elucidating the content of constitutional provisions. As noted by the Constitutional Court of the Republic of Lithuanian, the principle of the unity of the constitution requires using the method of systemic interpretation. This must be done, in particular, in those case where the constitutional regulation is not included in one norm but, rather, the issue to be resolved is regulated by several constitutional norms, included in different chapters of the constitution.[202] To clarify the content of some constitutional norms, it is not enough to use only the method of grammatical interpretation. Since the constitutional norms are aligned and constitute a united whole, to elucidate the content

201 Judgement by the Constitutional Court of the Republic of Latvia on 16 October 2006 in Case No. 2006-05-01, Para 16.

202 Lietuvos Respublikos Konstitucinio Teismo 1998 m. sausio 10 d. nutarimas. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta370/content

of some constitutional norms, the method of systemic interpretation should be used.[203]

5. Internal coherence of the constitution. The German theory of constitutional law differentiates between the principle of the unity of the constitution and its internal coherence (praktische Konkordanz). The basic area of application for the principle of constitution's unity is structural interpretation; i.e., making conclusions on the basis of the constitution as a united whole.[204] Whereas the principle of internal coherence provides that coherence should be established between constitutionally protected values if these values collide. In implementing one constitutional value other constitutional values cannot be totally ignored because interpretation of the constitution is not a game of "all or nothing".[205] This means that the principle of constitution's internal coherence will be applied in cases where choosing between implementation of two constitutionally protected values is required. This principle requires optimisation of both these values, i.e., the party applying the law must establish coherence between the two in the particular case to reach the necessary effect. In the case of a conflict, the party applying the law cannot select only one constitutionally protected value.[206] As in the case of a conflict between general legal principles, the balancing of constitutional values should be done by applying the method of weighing and evaluation.[207] For example, such conflict between constitutional values appears particularly keenly when the state is under threat, when the choice between the protection of human rights, on the one hand, and national security interests, on the other hand, is made.

203 Lietuvos Respublikos Konstitucinio Teismo 1999 m. lapkričio 9 d. nutarimas. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta364/content

204 Kommers D.P Germany: Balancing Rights and Dûtes. In: interpreting Constitutions. A Comparative Study. Edited by Jeffrey Goldsworthy. Oxford: Oxford University Press, 2006, pp.199-200.

205 Kommers D.P. The Constitutional Jurisprudence of the Federal Republic of Germany. Second Edition. Durham and London: Duke University Press, 1997, pp.45-46.

206 Kommers D.P, Germany: Balancing Rights and Dûtes. In: interpreting Constitutions. A Comparative Study. Edited by Jeffrey Goldsworthy. Oxford: Oxford University Press, 2006, pp.203-204.

207 Rezevska D. Vispārējo tiesību principu nozīme un piemērošana. 2.izd. Rīga: Daigas Rezevskas izdevums, 2015, 111. – 116.lpp.

In this area, the case law of the Supreme Court of Israel is significant, in balancing the need to protect human rights and, at the same time, to protect the state against the threats of terrorism. Both the security of the state and its inhabitants and human rights are constitutionally protected values. At the same time, the state cannot fully ensure only one of these values, ignoring its constitutional duty to protect also the other value. In such cases, most often the court's control over the actions by the executive power, taken to protect the national security interests, is chosen. On 3 September 2002, the Supreme Court of Israel has provided the following practical formulation of this approach: "In this balance, human rights cannot receive complete protection, as if there were no terror, and state security cannot receive complete protection, as if there were no human rights. A delicate and sensitive balance is required. This is the price of democracy. It is expensive, but worthwhile. It strengthens the state. It provides a reason for its struggle."[208] Aharon Barack has characterised this approach by a maxim "In battle, the laws are not silent", opposing Cicero's classical maxim "Among arms, law is silent" (Silent enim leges inter arma).[209] Bringing internal coherence into constitutional values grants a moral meaning to the protection of national security because society's ability to resist the enemy is based on the awareness that there are values worth protecting. One of such values, inter alia, is the idea of a state governed by the rule of law.[210]

Internal coherence of the *Satversme* means not only that are no contradictions between norms included in the *Satversme* and that they are internally coherent but also that the system of the *Satversme* is characterised by internal logic which defines certain content-wise requirements for any addition to the *Satversme* so that it would fit

208 Ajuri v. The Commander of IDF Forces: Izraēlas Augstākās tiesas 2002.gada 3.septembra spriedums lietā Nr.HCJ-7015/02. In: Judgments of the Israel Supreme Court: Fighting Terrorism within the Law. Jerusalem: Israel Supreme Court, 2005, p.177. Sprieduma 40.paragrāfs.

209 Barak A. The Judge in a Democracy. Princeton and Oxford: Princeton University Press, 2006, p.287.

210 Ibid., pp.287-291.

into the *Satversme*'s system.[211] Likewise, this allows clarifying completely unregulated issues in applying the norms of the *Satversme*. In the context of a constitution's internal coherence, it should be taken into account that interpretation of the *Satversme* should be based on the principle that the constitution does not comprise empty formulations.[212] The Constitutional Court has accepted this theoretical position quite extensively. "None of the norms of the *Satversme* or its parts can be regarded as being redundant because such an understanding would destroy the internal logic of the *Satversme*"[213] Thus, if a concept is used in the *Satversme* it means that the Constitutional Assembly has put certain content into this concept, which should be taken into account in interpreting the respective norm of the *Satversme*. Such respect for the text of the *Satversme* is linked to the fact that the *Satversme* is laconic. Therefore, in those cases where a thought has been expressed or explained more extensively, these elaborations of the thought, included in the text, must be complied with.

6. Constitution's openness to international and European Union law. The constitution of a modern state is not an internally closed system of norms and values, existing outside the continuously growing openness of the state to international cooperation un supranational collaboration.[214] In the context of the Member States of the European Union, constitutionalism already can be analysed not only on the national but also on the supranational level.[215] Hence,

211 Pleps J. Robežlīgums ar Krievijas Federāciju: Satversme un Satversmes tiesa. In: Robežlīgums: Spriedums. Materiāli. Komentāri. Rīga: Latvijas Vēstnesis, 2009, 583.lpp.

212 Levits E. Par tiesiskās vienlīdzības principu. Latvijas Vēstnesis, 2003. 8.maijs, Nr.68(2833); Neimanis J. Tiesību tālākveidošana. Rīga: Latvijas Vēstnesis, 2006, 84. – 85.lpp.

213 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2005 in Case No.2005-12-0103, Para 17.

214 See more: Ziemele I. Konstitucionālās tiesas kā slūžas globalizētajā pasaulē. Jurista Vārds, 13.11.2018. 13.novembris, Nr.46(1052); Ziemele I. Moderns tiesiskums Eiropas pilsonim. https://juristavards.lv/eseja/275455-moderns-tiesiskums-eiropas-pilsonim/

215 Arnold R. National and Supranational Constitutionalism in Europe. In: New Millenium Constitutionalism: Paradigms of Reality and Challenges. Yerevan: Njhar, 2013, pp.121-135.

constitutions of these states can be discussed as open constitutions.[216] The Constitutional Court has noted: "The constitutional courts of other European states also, in interpreting the norms of national constitutions, use the norms [of the European Convention for the Protection of Human Rights and Fundamental Freedoms] and the norms of other international human rights documents, as well as the case law [of the European Court of Human Rights]. The Federal Constitutional Court of Germany has concluded that the guarantees [of the European Convention for the Protection of Human Rights and Fundamental Freedoms] influence the interpretation of fundamental rights and principles of a state governed by the rule of law, included in the Basic Law. The text [of the European Convention for the Protection of Human Rights and Fundamental Freedoms] and the case law [of the European Court of Human Rights], on the level of constitutional law, serve as means of interpretation to determine the content and scope of fundamental rights and the principles of a state governed by the rule of law, insofar this does not lead to decreasing or restricting fundamental human rights, included in the Basic Law, i.e., impact, which is excluded by Article 53 [of the European Convention for the Protection of Human Rights and Fundamental Freedoms]. The constitutional law meaning of the norms of international human rights is an expression of the Basic Law's goodwill towards international law (Völkerrechtsfreundlichkeit), which reinforces sovereignty of the state with the help of international law provisions, international collaboration and the general principles of international law. Therefore, the Basic Law should be interpreted, to the extent possible, in a way to avoid a conflict with the international commitments of the Federal Republic of Germany."[217]

The idea of the *Satversme*'s openness to the international community and joint efforts to ensure functioning of a democratic state

216 Lebeck C. National Constitutionalism, Openness to International Law and the Pragmatic Limits of European Integration - European Law in the German Constitutional Court from EEC to the PJCC. German Law Journal, 2006, Volume 7, No.1, pp.907-945.

217 Judgement by the Constitutional Court of the Republic of Latvia on 13 May 2005 in Case No.2004-18-0106 , Para 5 of the Findings.

governed by the rule of law has been typical of Latvia's statehood since its establishment. The founders of the Republic of Latvia stated already in the Political Platform of the People's Council of Latvia: "A republic on democratic foundations [..] in the League of Nations." The aim of the People's Council of Latvia was to create an independent democratic state that would become part of the league established by other democratic states. "The State of Latvia, since the origins of its foundation, has upheld democratic values, moreover, linked the understanding of the concept of "democracy" with the experience of other democratic states. [..] Also in elaborating and discussing the draft *Satversme*, Members of the Constitutional Assembly have repeatedly referred to the experience of democratic states of the time, thus acknowledging the organic link of the order to be established in Latvia with other progressive states."[218] The norms of fundamental rights, established in the *Satversme*, must be interpreted in compliance with international human rights provisions. This obligation of parties applying the law follows both from Article 89 of the *Satversme* and principle of the *Satversme*'s openness.[219]

To justify this approach, the Constitutional Court has used, alongside Article 89 of the *Satversme*, regulation included in the first part of Article 68 of the *Satversme*. "Article 68 [of the *Satversme*], inter alia, envisages that all international agreements which settle matters that may be decided by the legislative process must be ratified by the *Saeima*. The Constitutional Assembly, when including the above norm in the *Satversme* has not conceded that the State of Latvia could avoid fulfilling its international commitments. The demand to require ratification of international agreements by the *Saeima* was incorporated in the *Satversme* with the aim of precluding such international

218 Satversmes tiesas tiesnešu Aivara Endziņa, Jura Jelāgina un Anitas Ušackas atsevišķās domas lietā Nr.2000- 03-01 "Par Saeimas vēlēšanu likuma 5.panta 5. un 6.punkta un Pilsētu domes un pagastu padomes vēlēšanu likuma 9.panta 5. un 6.punkta atbilstību Latvijas Republikas Satversmes 89. un 101.pantam, Eiropas Cilvēka tiesību un pamatbrīvību aizsardzības konvencijas 14.pantam un Starptautiskā pakta par pilsoņu un politiskajām tiesībām 25.pantam" In: Latvijas Republikas Satversmes tiesas spriedumi. 1999-2000. Rīga: Tiesu namu aģentūra, 2002, 118.lpp. Atsevišķo domu 5.punkts.

219 Kovaļevska A. Satversmes 89.pants: vai deklaratīva norma Satversmē? Jurista Vārds, 2008. 15.jūlijs, Nr.26(531).

liabilities, which regulated issues under the procedure of legislature without the assent of the *Saeima*. Thus it can be seen that the Constitutional Assembly has been guided by the presumption that international liabilities "settle" issues and they shall be fulfilled."[220]

The Constitutional Court has concluded that the legislator's aim had not been to juxtapose norms of human rights included in the *Satversme* and the international human rights provisions, quite on the contrary, to achieve harmony between these norms. Hence, when the content of fundamental right included in the *Satversme* needs to be clarified, this norm should be interpreted a close as possible to the interpretation used in the practice of applying international human rights provisions.[221] This means that the *Satversme* must be interpreted, insofar possible, so as to ensure that this interpretation would not come into conflict with international commitments that the Republic of Latvia has assumed in the area of human rights protection.[222] Thus, substantially, the *Satversme* cannot envisage smaller scope of ensuring or protecting fundamental rights than any of the international human rights acts binding upon Latvia.[223] It should be taken into account that the *Satversme* may provide for more extensive protection of human rights (higher level of fundamental rights protection) than international human rights acts.[224] The wording of the norm or its preparatory materials, which reflect the constitutional legislator's will, may point to the broader scope of the *Satversme*.[225]

Membership in the European Union requires that the respective commitments are duly met and the European Union law is effectively

220 Judgement by the Constitutional Court of the Republic of Latvia of 7 July 2004 in Case No. 2004-01-06, Para 6 of the Findings.

221 Judgement by the Constitutional Court of the Republic of Latvia of 30 August 2000 in case No.2000-03-01, Para 5 of the Findings.

222 Judgement by the Constitutional Court of the Republic of Latvia of 13 May 2005 in case No.2004-18-0106, Para 5 of the Findings.

223 Judgement by the Constitutional Court of the Republic of Latvia of 14 September 2005 in Case No.2005-02-0106, Para 10.

224 Ibid.

225 For example: Judgement by the Constitutional Court of the Republic of Latvia of 23 November 2006 in Case No.2006-03-0106, Para 15 - 23.

implemented.[226] The principles of the supremacy and direct effect of the European Union law must be ensured within the Latvian legal. The legal system of Latvia is open to the European Union law, and the national legal provisions must be interpreted and applied in compliance with the European Union law.[227] Also, in interpreting the norms of the *Satversme*, the context of the European Union law must be taken into account.[228] The *Satversme* must be interpreted in conformity with the European Union law, insofar it does not prejudice the basic principles included in the *Satversme* (constitutional identity).[229]

Findings from the judgements by constitutional courts of other states are used in the Constitutional Court's case law, maintaining a united space of European constitutional values.[230] However, legal regulation of other countries, including the findings made by constitutional courts, cannot be applied mechanically in solving some issues within the Latvian legal system. The different legal, social, political, historical and systemic contexts should always be taken into account in comparative legal analysis.[231]

IV. Amending the constitution

1. Stability of the constitution. Amending the constitution means altering the constitution, which is done by an intentional act of

226 Judgement by the Constitutional Court of the Republic of Latvia of 7 July 2004 in Case No.2004-01-06, Para 7 of the Findings.

227 Judgement by the Constitutional Court of the Republic of Latvia of 8 March 2017 in Case No.2016-07-01, Para 21.

228 Judgement by the Constitutional Court of the Republic of Latvia of 15 June 2006 in Case No.2005-13-0106, Para 13..

229 Judgement by the Constitutional Court of the Republic of Latvia of 17 January 2008 in Case No.20078-11-03, Para 25.4.

230 See more: Pleps J. Ārvalstu precedenti konstitucionālajā tiesvedībā: Latvijas prakse. Jurista Vārds, 2014. 19.augusts, Nr.32(834).

231 Judgement of the Constitutional Court of the Republic of Latvia 2009.gada 3.jūnija sprieduma lietā Nr. 2008-43-0106 10.6.punkts. See more: Dissenting Opinion of Justice of the Constitutional Court of the Republic of Latvia Kristīne Krūma on 7 October 2008 in Case No.2008-03-03, Para 6.

the constitutional legislator's will.[232] Amendments to the constitution mean actions by the constituent power aimed at revisiting and improving the constitution in accordance with society's interests and needs. At the same time, frequent amendments to the constitution should be considered as being a trait of an unstable and weak state. Stability of the constitutions is the main rule and basic safeguard for society's succession.[233] Stability of the constitution is its important feature, which differentiates it from regulatory enactments of lower legal force.[234] Calls to ensure stability of the *Satversme* were heard already during the debates of the Constitutional Assembly of Latvia. Arveds Bergs underscored in his speech: "Frequent amendments to the *Satversme* are undesirable because *Satversme* should be something firm and definite, which is amended as little as possible . [..] It is in our interests to maintain stability and, with respect to the law of the *Satversme*, to avoid amendments to the extent possible".[235]

Most frequently, the constitutional legislator strives to ensure stability un unchangeability of the written constitution by defining qualified procedure for amending the constitutional provisions.[236] "Amendments [to the Basic Law] are not willingly allowed and, therefore, high requirements are set for amending it."[237]

To introduce additions or amendments to the constitution of a state, usually, very broad compromise in the parliament is required, or, the matter is even put for a referendum. Some countries tend to

232 Еллинекъ Г. Конституціи, ихъ изменения и преобразованія. Санктпетербург: Издание Юридическаго книжнаго склада "Право', 1907, с.5.

233 Eglītis V. Ievads konstitūcijas teorijā. Rīga: Latvijas Vēstnesis, 2006, 48.lpp.

234 Jarašiūnas E. Lietuvos Respublikos 1992 m. Konstitucija: nuo pagrindinio jstatymo iki aukščiausiosios teises. In: Lietuvos konstitucine teise: raida, institucijos, teisip apsauga, savivalda. Kolektyvine monografija. Vilnius: Mykolo Romerio Universitetas, 2007, pp.108-112.

235 Latvijas Satversmes sapulces IV sesijas 10.sēdes 1921.gada 11.oktobrī stenogramma.

236 Еллинекъ Г. Конституіи, ихъ изменения и преобразованія. Санктпетербург: Издание Юридическаго книжнаго склада "Право", 1907, с.11-12; Schmitt C. Constitutional Theory. Durham and London: Duke University
Press, 2008, p.71.

237 Sinaiskis V. Lietderība un noteikumi likumu tulkošanā (sakarā ar dep. Goldmaņa neaizskaramību). Jurists, 1928, Nr.3, 70.sl.

ensure the constitutional stability of the state by introducing the eternity clause in their constitutions. "Eternity clause" is the generally accepted designation of the third part of Article 79 of the Basic Law of the Federal Republic of Germany of 1949. However, the constitutions of quite many countries comprise such norms. For example, the principle that amendments to the constitution may not be contrary the constitution's principles and infringe upon its spirit was enshrined in the Constitution of Norway in 1814, as one of the first .[238] Whereas amendments of 1884 to the Constitution of the Third Republic of France set out the prohibition to review the form of republican governance.[239]

An eternity clause is a norm of the constitution which declares some parts of the constitution as being unamendable within the framework of the constitution. Hence, none of the constitutional institutions has been given the mandate to amend or revisit the principles of the constitution that had been declared as unamendable by the giver of the constitution.[240] Inclusion of formal eternity clauses in constitutions restrict revising or improving the said constitutions, in particular, where the eternity clauses include such constitutional norms, which are not unanimously recognised in society and the fairness of which is the subject of political debates.

Even if the constitution formally allows amending all its norms, this, however, does not allow deriving the conclusion from it that this constitution can be revoked, abolishing the independence of the state or the democratic state order. Each constitution has its core (constitutional identity), which cannot be infringed upon or abolished by amending the constitution.[241] In fact, such protection of the

238 Smith E. Old and Protected? On the "Supra-Constitutional" Clause in the Constitution of Norway. Israel Law Review, 2011, Vol.44, No.3, pp.369-388.

239 Палиенко Н.И. Суверенитетъ. Историческое развитіе идеи суверенитета и ея правовое значение. Ярославль: Типография Губернскаго Правленя, 1903, с.453-456.

240 Preuss U.K. The Implications of "Eternity Clauses": The German Perspective. Israel Law Review, 2011, Vol.44, No.3, pp.440-442.

241 See more extensively: Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedoklis "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu".

constitution's core is within the jurisdiction of constitutional courts, examining whether such amendments to the constitution are admissible. This is how the substantive eternity clause should be worded, i.e., a certain set of constitutional principles and values which is not to be revised in the framework of the respective state order.[242] The *Satversme* also comprises such a substantive eternity clause.[243] The Constitutional Court of the Republic of Lithuania has arrived at a similar conclusion, i.e., such amendments that would infringe upon the independence of the Lithuanian State, democratic state order and guarantees for a person's fundamental rights and freedoms are inadmissible.[244]

The eternity clause, essentially, means that revision of the constitution is possible only through revolution or coup d'état, which poses substantive risks for the constitutional regime.[245] Such constitutional prohibitions are effective until they reflect the prevailing opinion in society regarding the state order acceptable to it. Namely, such prohibition is binding until the majority of society recognises itself as being bound and dismisses the idea of renouncing the constitutional restrictions in a revolutionary way. As recorded by Sergey Kotlyarevsky, even the French law of 1884 on prohibition to change the republican form of government would be powerless if the legal consciousness of the French society would incline towards monarchy.[246] There is no constitutional norm that would be able to detain those political forces who no longer associate themselves with the basic decisions adopted

242 Weintal S. The Challenge of Reconciling Constitutional Eternity Clauses with Popular Sovereignty: toward Three-Track Democracy in Israel as a Universal Holistic Constitutional System and Theory. Israel Law Review, 2011, vol. 44, No.3, pp. 460 – 643

243 Pleps J. Latvijas valsts konstitucionālie pamati. In:Latvija un latvieši. Akadēmiskie raksti divos sējumos. I sējums. Rīga: Latvijas Zinātņu akadēmija, 2018, 104. - 106.lpp.

244 Lietuvos Respublikos Konstitucinio Teismo 2014 m. liepos 11 d. nutarimas. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta24/content

245 Friedman A. Dead Hand Constitutionalism: The Danger of Eternity Clauses in New Democrasies. Mexican Law Review, Vol.IV, No.1, p.96.

246 Котляревский С.А. Власть и право. Санктпетербург: Лань, 2001, с.224.

by the constitutional order, as they will be able to break and replace them.[247]

The prohibition to amend some constitutional norms creates an illusion of constitutional stability and eternity. However, constitutional practice of various states shows that the unchangeability of constitutional norms is ensured by the consensus among political forces and society regarding the legitimacy and suitability of the state order rather than by the constitutional norms themselves. In this respect, James Bryce has noted that nothing human is immortal and, the less authors of a constitution will think about the eternity of their deeds the longer could the existence of written constitutions be.[248] A constitution should be given the ability to adapt to changing circumstances and the prevailing public opinions, therefore, explanation and enforcement of the constitution is required.[249] Already Thomas Jefferson has recognised that laws and the constitution should go hand in hand with the progress of mankind's mind.[250]

The constitutional traditions of some states included the duty to review the constitution periodically. For example, it was set out in the Constitution of Poland of 1791 and 1921 that it had to be reviewed once in twenty-five years, thus pointing to the inviolable right of each generation to determine its life and its own laws in accordance with the spirit and requirements of its age. This approach, however, does not guarantee the constitution's authority but merely turns it into a provisional law, which determines the foundations of the state order for a certain period of time.

A basic law of the state, vested with authority, is the pledge of the stability of the state order. Taking the USA as a model, many states are attempting to create intentionally a cult of the constitution, thus creating psychological protection of for it. It is characterised by treating

247 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 113.lpp.

248 Bryce J. Studies in History and Jurisprudence, Vol.I. New York: Oxford University Press, 1901, p.208.

249 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 39.lpp.

250 Meļķisis E. Konstitucionālisma attīstība Latvijā. In: Satversmes reforma Latvijā: par un pret. Rīga: Sociāli ekonomisko pētījumu institūts, 1995, 7.lpp.

the constitution as, in a certain way, a sacred text, the amending of which is a social taboo that nobody would be allowed to break.[251] In this respect, states with older constitutions, created in previous generations, enjoy natural advantages. They ensure the constitution's authority and the necessary respect for it. In the case of Latvia, the decision, following restoration of independence, to reinstate also the *Satversme* in full has given the needed sense of stability and authority of the constitution. The states that have relatively new constitutions must ensure its required authority in society. In such countries, amendments to the basic law of the state should be treated with particular awe. Usually, adoption of a new constitution means a radical turn in the life and opinions of the state and society. In democratic states, the constitution is revised if the state order changes, in times of crises when it is no longer possible to resolve the relevant political issues within the framework of the existing system, when a coup d'état has occurred and the regime which has taken power is constituted, constitutional provisions are reviewed in accordance with the spirit of the age or if the old constitution, with many amendments, is revised. A good weapon against the need to amend the basic law of the state regularly is the inclusion of appropriate content in it. Texts of constitutions should not comprise minutely detailed norms, which, perhaps, at the time when they are drafted regulate precisely the relations between the institutions of state power but, after decades, will undeniably become outdated. Only such norms, which are rather general principles, without engrossing into excessive casuistry, are able to regulate effectively the life of a state also several decades on.

The *Satversme* should be mentioned as a positive example of such legal technique for constitutions. Its particular style of codification, which could be characterised as extreme laconicism or textual frugality, in principle, differs from the elaborated political declarations and

251 See more: Römeris M. Suverenitetas. Kaunas: Vytauto Didžiojo Universiteto Teisių Fakulteto Leidinys, 1939, p. 196. - 197.

petty technical regulations, typical of contemporary constitutions.[252] Due to this, the Constitutional Court has underscored that "the *Satversme* , substantially, is a short, laconic and, yet, complicated document".[253] This is a special choice and an intentional decision by the Latvian Constitutional Assembly because the *Satversme*'s laconic style of expression allows interpreting its norms in compliance with the spirit and requirements of the age, focusing on the legal findings of a modern, democratic legal system.[254] Artis Pabriks has succeed in wording this idea very accurately: "It is often said that one can read the Bible for one's entire life and find in this book wise advice for all occasions in life. The same can be said about Latvia's *Satversme*. The fathers of our Constitution have created not only a laconic and masterpiece-like basic document but also a warehouse of advice on law and statehood, where to turn to in a moment of hardship."[255] A laconic constitution gives greater discretion to those applying it. At the time when the emerging constitution of 1799 was discussed in France, Napoleon Bonaparte emphasised that the constitution should be short and unclear.[256] Such codification of a constitution would give greater "freedom" in governing the state, adding to, changing and transforming the constitutional precepts by ordinary laws, normative acts of the executive power and by way of interpretation. However, as a matter of principle, such development of the constitution should take place in conformity with the development of the ideas of a democratic state governed by the rule of law and constitutionalism because short and concise constitutional norms, most often, allow their use

252 Endziņš A. The principle of separation of powers and the experience of the Constitutional Court of the Republic of Latvia. Report in seminar "Cases of conflicts of competence between state powers before the Constitutional Court", Yerevan, 4-5 October, 1999.
Available: http://www.concourt.am/armenian/events/conferences/1999/endzinse.html

253 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2005 in Case No.2005-12-0103, Para 17.

254 Levits E. Samērīguma princips publiskajās tiesībās - jus commune europaeum un Satversmē ietvertais konstitucionāla ranga princips. Likums un Tiesības, 2000, Nr.9(13), 266.lpp.

255 Pabriks A. Robežlīgums nedrīkst būt "beigta ēzeļa ausis". Diena, 2005. 28.maijs.

256 Вандаль А. Возвышение Бонапарта. Ростов-на-Дону: Феникс, 1995, с.501.

for actual or legal dismantling of a democratic state governed by the rule of law.

2. Rigid and flexible constitutions. The division into rigid and flexible constitutions was introduced by taking as the criterion the degree of difficulty in amending the constitution. Constitutions with various rules that encumber the procedure of amending it are called rigid constitutions. The fact that special, cumbersome parliamentary procedure is needed to amend the constitution; that special elected institutions – conventions – are involved in amending the constitution or that the constitution is amended by a direct sanction by the people in a referendum testify to such a procedure.[257] Whereas those constitutions, which can be amended in the regular legislative procedure, are called flexible constitutions. The British constitution is the most flexible, it can be amended in the same procedure as the one for issuing or amending any law with less important content.[258] Any decision by the Parliament or a court's ruling may expand or narrow the uncodified British constitution, which is constantly changing. The British constitution is a barrier which bends inwards under pressure but, at the same time, can never break due to its steadiness and flexibility. The British Parliament does not create the constitution but may issue laws that constitute part of it. The Parliament can never revise systematically the entire constitution of the state.[259] Great Britain is a unique example of a constitution because its constitution could be considered to be the only flexible constitution in the world. Other constitutions are either less rigid (mixed) or rigid constitutions.

The most widespread method for amending the constitution is the parliamentary procedure for amendments; however, with certain encumbrances; in such a case, the constitution can be considered to be mixed. In Latvia, the encumbrance for amending the *Satversme*, is the

257 Дурденевский В.Н. Иностранное конституционное право. Ленинград: Государственное издательство, 1925, с.19.

258 Dišlers K. Latvijas Republikas Satversmes grozīšanas kārtība. Tieslietu Ministrijas Vēstnesis, 1929, Nr.7/8, 225.lpp.

259 Боржо М. Учрежденіе и пересмотръ конституций. Москва: Издание М. и С. Сабашниковыхъ, 1918, с.3-4.

majority vote, quorum and three readings required for amending the *Satversme*, established in Article 76 of the *Satversme*. The legislator's discretion is restricted also by the obligation to discuss and adopt the respective changes exactly as amendments to the *Satversme*. Once in the application of, for example, Article 76 of the Weimar Constitution, any new law, which was adopted by the required qualified majority of vote and a quorum and amended the text of the Constitution, was considered to be an amendment to the Constitution.[260] Similarly, amending the *Satversme* is encumbered by the obligation to have the amendments to some provisions of the *Satversme* approved in a referendum (Article 77). Encumbrances to amending the constitution can be set out not only in the parliamentary procedure but also before it. In the Republic of Moldova, prior to submitting draft amendments to the Parliament, four of six Judges of the Constitutional Court have to express their positive opinion regarding compliance of the draft amendments with the Constitution and their justification (second part of Article 141).

From the perspective of democracy, the requirement of qualified majority vote is understandable because it guarantees the protection of minority's interests and, in addition, guarantees the safety of solution to certain problems in the case of an unstable and inconsistent majority. The principle of qualified majority most often ensures retaining of the existing status quo and protection of minority's interests. Thus, the possible majority's incidental arbitrariness or turning against the minority is prevented.[261] In states with relatively strong elements of direct democracy, the people's right to demand revision of the constitution or to submit directly a new draft constitution is defined. For example, part of the people, i.e., no less than 100 000 citizens with the right to vote, may demand total revision of the Federal Constitution of the Confederation of Switzerland. In such a case, a referendum on the need for total revision of the Constitution is held.

260 Grimm D. Types of Constitutions. In: Rosenfeld M., Sajó A. (eds) The Oxford Handbook of Comparative Constitutional Law. Oxford: Oxford University Press, 2012, p. 110

261 Amery L. S. Thoughts on the Constitution. London: Oxford University Press, 1964, pp.31-32.

If the referendum has a positive outcome, then extraordinary election of both chambers of the Parliament is announced. The new Parliament drafts the new constitution in the regular legislative procedure. If 100 000 of those with the right to vote demand partial revision of the Constitution, this demand may have two possible forms: an entirely elaborated draft law or a conceptual proposal. In the latter case, the Federal Assembly may uphold the proposal and draft the required amendments, which later must be approved in a referendum. If the Parliament does not agree to the proposal, then a referendum is held to decide, whether the Parliament should elaborate the draft amendments. Whereas if the people have submitted a completed draft law, the Parliament must mandatorily put it for a referendum, although exceptions are envisaged.

Constitutions of some states differentiate between amending and supplementing the constitution. Amendments are understood as changes to the content of an existing norm in accordance with the new circumstances when it is no longer able to meet the people's needs. Supplementing, in turn, means the inclusion in the constitution's text new norms, which regulate on the level of the state's basic norms certain legal institutions or legal relations. Often, additions to the constitutions influence the interpretation of its existing norms substantially, so, by additions the existing norms are substantially amended. Terms "amending the constitution" and "supplementing the constitution" are known in the legislative terminology. It has been recognised in legal science that amending the constitution means "amending the text of a separate article or several articles", whereas supplementing the constitution – "adding a new article or several articles to the constitution".[262] Such interpretation closely relates to Article 79 of the German Basic Law, which provides that the Basic Law may be amended only by a law, which especially amends or supplements its text. Amending the constitution should be considered as its partial revision, which is manifested in small, as to their scope,

262 Dišlers K. Latvijas Republikas Satversmes grozīšanas kartība. Tieslietu Ministrijas, 1929, Nr.7/8, 226. – 227.lpp.

changes to the text of the constitution, deleting norms or adding new norms to the text; however, this process may not affect the totality of norms, which form the conceptual foundation of the constitution and defines the state's constitutional identity. This foundation may be amended only by conducting a total revision of the constitution, which is manifested as the adoption of a new constitution or adoption of a new wording of the constitution, retaining the date of adoption that the old constitution had.

Constitutions of some states provide for a special procedure for amending a norm or a group of norms, moreover, this special procedure of amendments is simplified and has an entirely different meaning. The Constitution of Russia is a good example, its Article 65 may be amended in a special procedure. This article lists the names of all subjects of the federation that are part of the Russian Federation. These names may change over time, new subjects can be admitted, the existing ones – merged. Therefore the second part of Article 137 of the Constitution regulates the change of the name of a federal subject, and the Constitutional Court has explained that changes can be introduced to the first part of Article 65 in a simplified procedure, i.e., by the President's decree on the basis of the Federation's decision, which has been adopted in the procedure defined by the Federation, unless the content of the amendment affects human rights, interests or other subjects or states and changes the constitutional status of the Federation. However, if the Federation's constitutional status is changed, a new subjects is formed from the introduced on the basis of a federal constitutional law.[263] existing subjects or a new subject is admitted to the Federation then amendments are

The possibility of less stringent procedure for introducing amendments can be envisaged both in the constitution itself and in the act on its entering in force, allowing to remedy the identified errors and shortcomings for a certain period after adoption of the constitution. Thus, Article 8 of the law of the Republic of Estonia "On Entering into

263 Постановление Конституционного Суда Российской Федерации от 28 ноября 1995 г. по делу о толковании части 2 статьи 137 Конституции Российской Федерации.

Force of the Constitution" provided that for three years following the adoption of the Constitution in a referendum the State Assembly had the right to introduce amendments to the Constitution in urgent procedure with the two-thirds majority of the composition of the State Assembly.

3. Constitutional identity. The majority of constitutions comprises norms that are sometimes called their constitutional basis. The constitutional basis is the norms, upon which the state order and the legal system in general are founded on. In some sources it is called also the fundamental values.[264] The Constitutional Court of the Republic of Latvia has noted: "The State of Latvia is based on such fundamental values that, among the rest, include basic rights and fundamental freedoms, democracy, sovereignty of the state and people, separation of powers and rule of law. The State has the duty to guarantee these values and they cannot be infringed on by introducing amendments to the *Satversme*, these values being introduced only by law"[265].

The conceptual basis of a constitution reflects the constitutional identity of the respective state. Constitutional identity is a set of constitutional values and basic principles of a democratic state governed by the rule of law, which determines the essence of the respective state.[266] The constitutional identity exists in the consciousness of the people and forms a united community of destiny. Elements of constitutional identity are reference points or landmarks that hold society together, enable mutual co-operation and ensure the constant existence of the state over time.[267] Constitutional identity expands the scope of the constitution by entering the area of societal values and political ideology. Constitutional identity comprises the basic constitutional

264 Decision by the Constitutional Court of the Republic of Latvia on 19 December 2012 on Terminating Legal Proceedings in Case No.2012-03-01, Para 13.3.

265 Judgement by the Constitutional Court of the Republic of Latvia on 7 April 2009 in Case No.2008-35-01, Para 17.

266 Osipova S. Tautas gars, pamatnorma un konstitucionālā identitāte. In: Osipova S. Nācija, valoda, tiesiska valsts: ceļā uz rītdienu. Rakstu krājums. Rīga: Tiesu Namu Aģentūra, 2020, 40.lpp.

267 Osipova S. Latvijas Republikas konstitucionālā identitāte Satversmes tiesas spriedumos. In: Osipova S. Nācija, valoda, tiesiska valsts: ceļā uz rītdienu. Rakstu krājums. Rīga: Tiesu Namu Aģentūra, 2020, 45.lpp.

principles, the values of society, the aims of the state, the historical development of statehood, and also certain issues that are uniquely and fundamentally important for a particular state.[268] For example, the principle of the state's continuity is an important element of the constitutional identity for all Baltic States, whereas for Lithuania, specifically, the requirement regarding Vilnius as the capital of Lithuania is characteristic.[269] Constitutional identity determines the essence of the statehood and legal system based on the constitution.[270] The constitutional legislator may create the constitutional identity in a targeted way, by including elements of constitutional identity in the text of the constitution and by providing normative regulation on them.[271] The Preamble to the Constitution of Hungary of 2011 is a particularly striking example in this respect.[272] However, usually, constitutional identity is formed in the process of applying the constitution, by the constitutional courts and legal doctrine formulating the most important basic principles of the respective statehood. In Latvia, constitutional identity is reflected in the inviolable core of the *Satversme*, which defines the most important constitutional values and basic principles.[273] Existence and independence of the Latvian State, personal freedom and geopolitical affiliation with European cultural space could be mentioned as the most important elements of the Latvian constitutional identity.[274]

268 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 93. - 95.punktu.

269 Pleps J. Baltijas valstu konstitucionālā identitāte. Jurista Vārds, 2016. 23.augusts, Nr.34(937).

270 Kūris E. Koordinaciniai ir determinaciniai konstituciniai principai (1). Jurisprudencija, 2002, t. 26 (18), p. 31–35.

271 Orgad L. The Preamble in Constitutional Interpretation. International Journal of Constitutional Law, Vol. 8, 2010, Nr. 4, pp. 2–5

272 See more: Horkay Horcher F. The National Avowal. The Basic Law of Hungary. A First Commentary. Eds. Csink L., Schanda B., Varga A. Budapest: National Institute of Public Administration, 2011, pp. 71–107

273 Osipova S. Latvijas Republikas konstitucionālā identitāte Satversmes tiesas spriedumos. In: Osipova S. Nācija, valoda, tiesiska valsts: ceļā uz rītdienu. Rakstu krājums. Rīga: Tiesu Namu Aģentūra, 2020, 44.lpp.

274 Pleps J. Latvijas valsts konstitucionālie pamati. In:Latvija un latvieši. Akadēmiskie raksti divos sējumos. I sējums. Rīga: Latvijas Zinātņu akadēmija, 2018, 108.lpp.

Constitutional identity is protected by including in the constitution's text formal eternity clauses or by developing, in the process of applying the constitution, the substantive eternity clauses when constitutional courts ensure protection of the identity. In Germany, where inalterability of some norms in the Basic Law is clearly defined, it is considered to be the pre-requisite that ensures the stability of the Basic Law. No constitution can exist if amendments to some rules are prohibited; however, a constitution is even less able to exist if the possibility to amend it is transferred into complete discretion of two-thirds of majority. Therefore the legislator is authorised only to amend the Basic Law, not to revoke it. The inalterability of some articles in the Basic Law comprises not only the prohibition to revoke the Basic Law as a whole but also excludes any amendment to the Basic Law that would revoke the identity of the historically established order that exists in Germany.[275] Inalterability of some articles of the Basic Law has been established to protect the democratic manifestation of will. However, the limits to this protection must be examined: if these are exceeded, then the inalterability of the Basic Law is not respecting freedom and principles of democracy but restriction of their content, attempting to prevent cardinal changes in the political order and trying to link the future generations with the ideals of its age.[276] The inalterable articles of a constitution should not be perceived formally as separate norms; they should be defined only as a totality of constitutional provisions included in separate other articles, and everything depends upon the significance of these provisions in enforcing the inalterable articles, so that these provisions either could not be amended. For example, the greatest part of norms in the catalogue of fundamental rights, which define the substantive content of the constitutional order, as well as the principle of separation of powers and other norms of substantive and procedural

275 Хессе К. Основы конституционного права ФРГ. Москва: Юридическая литература, 1981, с.328-329.

276 Бёкенфёрде Е.В. Демократия как конституционний принцип. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.39.

nature that, alongside fundamental rights, guarantee recognition of the power of the people's majority, equal opportunities and protection of minority, free and open political development of democracy, cannot be amended. Protection for the substantive basis of this Basic Law excludes abolishment of such separate provisions, which cannot be taken out of the total structure without changing the foundations of this totality.[277]

The concept of constitutional identity developed in the "old" European democracies to protect the national statehood against excessive external interference into legal systems, which could be caused by membership in the European Union or international organisation (e.g., excessive interference by the Court of Justice of the European Union or the European Court of Human Rights). Whereas Latvia needed the idea of a constitutional identity to reinforce the democratic state governed by the rule of law against internal threats.[278] In the case of Latvia, belonging to the European cultural space and membership in the European Union is an element of its constitutional identity, which provides one more (external) guarantee for irrevocable reinforcement of a democratic state governed by the rule of law.[279] Similarly, the German constitutional identity has been defined in the Basic Law as inviolable to never allow relapsing into barbarism and recurrence of the Nazi regime. In this respect, constitutional identity refers to the negative experience of each generation as regards abuse of power, which has been retained in the historical memory and the recurrence of which it would never want to experience.[280]

The idea of the *Satversme*'s core does not allow one amendment to the *Satversme* to destroy the values on which the *Satversme* is

277 Хессе К. Основы конституционного права ФРГ. Москва: Юридическая литература, 1981, с.330-331.

278 Osipova S. Latvijas Republikas konstitucionālā identitāte Satversmes tiesas spriedumos. Jurista Vārds, 2018. 3.jūlijs, Nr.27(1033)

279 See more: Pleps J. Satversme, Satversmes tiesa un Eiropas Savienība. In: Latvija. Pārskats par tautas attīstību 2019/2020. Latvijas eiropeizācija. Galv.red. Daunis Auers. Rīga: LU Akadēmiskais apgāds, 2020, 55. - 57.lpp.

280 Sajó A., Uitz R. The Constitution of Freedom. An Introduction to Legal Constitutionalism. Oxford: Oxford University Press, 2017, pp. 64 – 65

founded, as well as excludes the possibility to renounce the State of Latvia and its democratic state order. The core of the *Satversme* as an independent concept, in difference to the principles included in it, does not have direct and special applicability in preparing individual decisions in the regular conditions in which the state order operates. The concept of the *Satversme*'s core as an autonomous concept should be used in the case of extremely important threats to the constitutional order to protect the constitutional order and prevent liquidation of a democratic state governed by the rule of law in seemingly formally correct form. The concept of the *Satversme*'s core cannot be the grounds for restricting pluralism of opinion that is admissible in a democratic society and various offers regarding the strategies for political development, as well as for unacceptably infringing on fundamental human rights. Protection of the *Satversme*'s core is in the competence of all Latvian state bodies, however, the Constitutional Court of the Republic of Latvia is the one that has the final say in these matters.[281]

281 Ziemele I. Eiropas Savienības tiesību konstitucionalitātes kontrole Latvijā. Jurista Vārds, 2020. 7.jūlijs, Nr.27(1137).

Chapter 2

SOVEREIGNTY

I. Concept of sovereignty

1. Relevance of sovereignty. The ever closer integration of European states into the European Union has created the need to reconsider and redefine anew the basic concepts of constitutional law. Latvia's accession to the European Union also caused national discussions of sovereignty, i.e., the extent to which Member States of the European Union retain their sovereignty and the moment when the transition of the sovereignty from the nation-states to the European Union can be identified.[282] The Court of Justice of the European Union (formerly – the Court of Justice of the European Communities) formulated its position quite some time ago. First and foremost, the Court of Justice of the European Communities found that the creation of the Communities established a new type of legal order in international law, in the framework of which Member States restricted their sovereign rights to benefit from membership in the Communities.[283] Later, the Court recognised that the Communities, established for an indefinite term, had real power, which followed from the restriction on the Member States' sovereignty because the Member States had limited

282 Diskusija par Satversmes grozījumu nepieciešamību. Likums un Tiesības, 2000, Nr.6(10), 162.-168.lpp.; Krūma K. Mūsdienu suverenitāte mainīgajā Eiropā. Likums un Tiesības, 2003, Nr.4(44), 106. – 110.lpp.

283 Judgment of the Court of 5 February 1963. NVAlgemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration. Reference for a preliminary ruling: Tariefcommissie-Pays-Bas. Case 26-62.

their sovereignty in certain areas.[284] Later, in turn, the supremacy of the community law over the Member States' constitutions was established.[285] In view of the inclination of the Court of Justice of the European Union to ensure the supremacy of the European Union law, the constitutional courts have consistently chosen to defend the principle of the supremacy of the national constitution. From the perspective of national courts, the supreme legal power of the national constitution is indubitable and the European Union law is applicable insofar it is constitutional.[286] At the same time, constitutions of the European Union Member States are open to the supremacy and direct effect of the European Union law. National constitutions and the European Union law interact in constant dialogue between the constitutional courts and the Court of Justice of the European Union.[287] Constitutional courts of the European Union Member States have already defined their attitude towards the European Union, by outlining clear borders of sovereignty.[288] The Constitutional Court of the Republic of Latvia is to be considered as being one of the constitutional courts in Europe that are most friendly towards the European integration.[289] In its case law, the Constitutional Court of the Republic of Latvia has underscored the need to ensure harmonious and aligned compatibility

284 Judgment of the Court of 15 July 1964. Flaminio Costa vE.N.E.L. Reference for a preliminary ruling: Giudice conciliatore di Milano - Italy. Case 6/64.

285 Judgment of the Court of 9 March 1978. Amministrazione delle Finanze dello Stato v Simmenthal SpA. Reference for a preliminary ruling: Pretura di Susa - Italy. Discarding by the national court of a law contrary to Community law. Case 106/77.

286 Endziņš A. Eiropas Konstitūcijas līgums un Latvijas Republikas Satversme. Jurista Vārds, 2004. 12.oktobris, Nr.39(344); Kūtris G. Valsts kompetences deleģējums ES institūcijām un konstitucionālās tiesas loma. In: Konstitucinio teismo vaidmuo Europos Sajungos narystes kontekste. Satversmes tiesu loma dalības Eiropas Savienībā kontekstā. Vilnius: Lietuvos Respublikos Konstitucinis Teismas, 2004, 77. – 85.lpp.

287 See more: Ziemele I. Konstitucionālās tiesas kā slūžas globalizētajā pasaulē. Jurista Vārds, 2018. 13.novembris, Nr.46(1052).

288 Schmitz T. Kāzusi un mācību materiāli Eiropas Savienības tiesībās. Rīga: Tiesu namu aģentūra, 2010, 23.-46.lpp.; Claes, M., Reestman, J.-H. The Protection of National Constitutional Identity and the Limits of European Integration at the Ocassion of the Gauweiler Case. German Law Journal, 2015, Vol. 16, No. 4, pp.917-970

289 Pleps J. Satversme, Satversmes tiesa un Eiropas Savienība. In: Latvija. Pārskats par tautas attīstību 2019/2020. Latvijas eiropeizācija. Galv.red. Daunis Auers. Rīga: LU Akadēmiskais apgāds, 2020, 58. - 60.lpp.

of the national legal system with the European Union law, reserving for itself the right to defend the constitutional identity in a dialogue with the Court of Justice of the European Union.[290] Actually, demarcation of the final limits of European integration currently is not so much a matter of sovereignty as a matter of constitutional identity.[291]

The content of the concept of sovereignty, over the period of its use, has been significantly modified; it has been influenced by the increasing intensity of international relations between states, development of international public law, formation of various international organisations and supranational institutions, as well as by other factors.[292] As regards sovereignty, the requirement to redefine the content of the classical concept is habitual in the contemporary constitutional law.[293] The classical, "ideal" concept of sovereignty is to be understood in the contemporary meaning thereof as "the right to final say" on the most important matters of the state.[294] In constitutional law, the inseparable link between the state and sovereignty is axiomatic; a state without sovereignty as a mandatory trait characterising the state is inconceivable. However, sovereignty is a considerably newer concept, in practice, a political one, which , in certain historical circumstances was introduced into constitutional law, which had certain legal consequences. The state and the constitution existed before the idea of sovereignty originated. Perhaps, the development of constitutional law will create the possibility to renounce the concept

290 Ziemele I. Eiropas Savienības tiesību konstitucionalitātes kontrole Latvijā. Jurista Vārds, 2020. 7.jūlijs, Nr.27(1137).

291 Pleps J. Latvijas valsts konstitucionālie pamati. In:Latvija un latvieši. Akadēmiskie raksti divos sējumos. I sējums. Rīga: Latvijas Zinātņu akadēmija, 2018, 89.lpp. See more: Kucina I. Satricinājums Eiropas Savienības tiesību telpā. Vācijas Konstitucionālā tiesa versus Eiropas Savienības tiesa. Jurista Vārds, 2020. 26.maijs, Nr.21(1131).

292 Albi A. EU Enlargement and the Constitutions of Central and Eastern Europe. Cambridge: Cambridge University Press, 2005, pp.122-137.

293 Kādēļ Latvijas konstitūcijā nepieciešami labojumi. Darba grupas Satversmes grozījumu izstrādei piedāvātā projekta teorētiskais pamatojums. Jurista Vārds, 2001.15.maijs, Nr.14(207).

294 Levits E. Eiropas Savienības tiesības un Satversme. In: Blūzma V., Buka A., Deksnis E.B., Jarinovska K., Jundze I., Jundzis T., Levits E. Eiropas tiesības. Otrais papildinātais izdevums. Rīga: Juridiskā koledža, 2007, 589.lpp.

of sovereignty, guaranteeing the independence and preservation of national statehood by other mechanisms.

2. Genesis of sovereignty. In political philosophy, the idea of sovereignty is comparatively new, and its origins are found in Europe of the Middle Ages. The state-like formations that existed until the Middle Ages had no need to develop the concept of state law.[295] Aristotle characterised the state as a union of several tribes for perfect and self-sufficient life (autarky). Autarky of a state requires the state to have everything it needs for life and to not lack anything.[296] Marcus Tullius Cicero, in turn, defines the state as the power of the people when the people are united by consensus on the law and mutual expedience.[297] The works of both authors of antiquity did not focus on the issue of the state's independence or sovereignty. For Aristotle, autarky of a state is the economic and the political self-sufficiency or total independence. There was no practical need for the idea of sovereignty in the world of antiquity because the competition between various political powers or interdependence of states was not widespread.[298] The need for the idea of sovereignty was determined by the situation in Europe of the Middle Ages when the monarchs of some states had to justify their right to power over feudal lords, on the one hand, and independence from the Pope of Rome and the Emperor of the Holy Roman Empire of the German Nation, on the other hand. Hence, monarchs had to consolidate their states, overcoming their political fragmentation or the Pope's or the Emperor's claims to global power. The idea of sovereignty was created to justify legally the monarch's independence from the Pope and the Emperor and to abolish the separatism of feudal lords.[299] "Within the political space,

295 Палиенко Н.И. Суверенитетъ. Историческое развитіе идеи суверенитета и ея правовое значение. Ярославль: Типография Губернскаго Правленія, 1903, с.1-22.

296 Aristotle. Politics. Book 1. http://classics.mit.edu/Aristotle/politics.1.one.html

297 Cicerons M.T. Par valsti. Rīga: Zvaigzne ABC, 2009, 23.lpp.

298 Dišlers K. Ievads Latvijas valststiesību zinātne. Rīga: A.Gulbis, 1930, 20.lpp.

299 Еллинекъ Г. Обшее учение о государстве. Санкт-Петербург: Издание Юридическаго Книжнаго Магазина Н.К. Мартынова, 1908, с.321-331.

the sovereign occupies the place that the God occupies in the world. Namely, everything is subjected to him, but he himself is not subject to anything."[300] The idea of sovereignty was made necessary by political practical reasons and developed simultaneously with the idea of a nation-state.[301] Jean Bodin is considered to be the founder of the sovereignty theory. He concluded that sovereignty was a mandatory feature of a state. The state power should be independent from external power or other powers internally.[302]

Sovereignty is eternal, constant, supreme, independent; a power, not bound by laws, and absolute over citizens and subjects. Such power is not restricted by any other power or man-made laws. It does not depend upon any other external power, whereas all powers internally are subject to the sovereign and exists at his will.[303] Thus, Jean Bodin defended a secular, national, centralised state, for the consolidation of which he advanced the sovereignty principle as the opposite to the political and ideological fragmentation and the Pope's and the Emperor's power. Jean Bodin held sovereignty to be united and indivisible and that anyone in that state might own it. He defended the monarch as the sovereign, who exercised his supreme power both internally and in liaisons with monarchs of other states. In the interests of the state, the sovereign's power should be unlimited in its jurisdiction and unreplaceable. On the one hand, the theory of sovereignty creates the pre-conditions for establishing centralised states, independent of any power in Europe. On the other hand, sovereignty is a pre-condition for the development of international law because only states that are not interdependent are forced to form mutual relations.

300 Ījabs I. Politikas teorija: pirmie soļi. Rīga: Lasītava, 2017, 81.lpp.

301 Гаджиев К. Введение в политическую науку. Москва: Логос, 1997, с.81.

302 Bodin J. Six Books of the Commonwealth. Book I. Chapter I. http://www.yorku.ca/comninel/courses/3020pdf/six_books.pdf

303 Ibid. Chapter VIII.

In Jean Bodin's theory, sovereignty has certain limits, i.e., it is bound by the laws of the God and nature.[304] Hence, the obligation to abide by certain principles of a state governed by the rule of law is included in the content of sovereignty, i.e., the sovereign must abide by the contracts concluded with the subjects and other rulers, as well as respect fundamental human rights. Sovereignty is characterised by several competences of the state power. Jean Bodin mentioned the sovereign's right to legislate, the right to declare war and conclude peace, the right to appoint officials, the right to administer justice in the supreme instance, the right to loyalty and subordination of the subjects, the right to amnesty, the right to coin money and collect taxes as mandatory attributes of sovereignty.[305] Jean Bodin's theory of sovereignty turned into a relevant and politically necessary doctrine of his time. The rulers of all European states predominantly based their political rights on the sovereign rights. Due to this, almost all works of political philosophy touched upon also the issues of sovereignty.[306] After Jean Bodin, issues of sovereignty were analysed in almost every book on philosophy, state law or international law.

Pursuant to Jean Bodin's tradition, also henceforth sovereignty is analysed in the context of the historical situation and political aims of the particular age. The idea of sovereignty has been used to justify and defend often politically opposite and mutually exclusive aims. Thus, the context of daily politics is significant for theories of sovereignty.

3. Content of sovereignty. It is recognised in constitutional law that the concept "sovereignty" may be used to denotate various factors. First of all, sovereignty characterises the nature of the supreme state power and its independence from other internal or external powers. Likewise, sovereignty encompasses all mandates and

304 Bodin J. Six Books of the Commonwealth. Book I. Chapter VIII. http://www.yorku.ca/comninel/courses/3020pdf/six_books.pdf

305 Ibid., Chapter X.

306 Палиенко Н.И. Суверенитетъ. Историческое развитіе идеи суверенитета и ея правовое значение. Ярославль: Типография Губернскаго Правленія, 1903, с.93-280.

competences of the state, which it has the right to exercise. Additionally, sovereignty may be attributed to a body of state power having the supreme position within the system of state bodies.[307] The multi-faceted nature of the concept of sovereignty is the reason why various concepts of sovereignty are analysed simultaneously in constitutional law – the sovereignty of the state, the sovereignty of the people, the sovereignty of the state power, the sovereignty of a body of state power, and the sovereignty of law.[308]

Sovereignty has two dimensions: external and internal. The external dimension of sovereignty means that the people can take decisions themselves without external interference. The internal dimension of sovereignty, in turn, ensures the priority of society (the people) over the state, i.e., subjects the state to the will of the people.[309] Sovereignty is not the power itself but only its certain trait, which turns this power into the supreme and independent power, it is the utmost perfection or the supreme degree of this power.[310] This is why sovereignty is to be deemed to be the state of independence of the power from other powers and states. Only that subject of constitutional law, the power of which has full sovereignty, can be considered to be the sovereign. The sovereign power is to be viewed as legally unrestricted and not subject to restrictions as being above the law. This power is placed above all subjects of law in the state and may not be bound or restricted in its actions and manifestations of its will.[311]

However, it must be noted that sovereignty is a power that is governed by the rule of law, i.e., it exists within the framework of a state governed by the rule of law. The sovereign is bound by international

307 Troper M. Sovereignty. In: The Oxford Handbook of Comparative Constitutional Law. Edited by Mischael Rosenfeld and Andras Sajó. Oxford: Oxford University Press, 2012, pp.353-354.

308 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 19. – 27.lpp.

309 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 28-30.punkts.

310 Палиенко Н.И. Суверенитетъ. Историческое развитіе идеи суверенитета и ея правовое значение. Ярославль: Типография Губернскаго Правленія, 1903, с.438-439.

311 Определение Обшаго Собрания Латвиского Сената отъ 15 марта 1929 г. о сушности Верховной Власти. Законъ и судъ, 1929, №1, с.12.

law and its national law; the sovereign's will may be expressed only in legal forms.[312] The sovereign power is the supreme power only within its legally set framework. Sovereignty does not mean tyrannic and arbitrary rule. In a state governed by the rule of law, also the sovereign is bound by legal acts and the law. Sovereignty demands, primarily, the supremacy of this power internally in the state. The supremacy of power means that this power is placed above all other powers and has the right to exert influence over other powers. No other power in state may be above the power, which is sovereign. Such power is complete; it may not have any restrictions of competitors, which would allow questioning the absoluteness of this power. Competing powers, which claim part of this power's sovereignty, may not exist parallel to this power. The sovereign power is restricted only by the territory of the state, i.e., it encompasses the entire territory of the state, the state's inhabitants, as well as that part in the lives of inhabitants, the regulation of which is admissible in a state governed by the rule of law.[313] Sovereignty envisages independence and autonomy of the state from other external powers. The sovereign is independent in international relations and can decide freely on its matters. Sovereignty demands political and legal independence of the power from other states and powers. The sovereign has the exclusive right to exercise the entire competence of the state, which is divided into the legislative, judicial and executive power, throughout the territory of the state. No other power within the state or beyond its borders may have equal rights alongside the sovereign power.

A state's membership in various international organisations, the transfer of some competences of the state to international institutions and, in particular, the process of European integration lead to new discussions on sovereignty.[314] The theory of the extinction and disappearance of sovereignty in more distant future, together with the

312 Палиенко Н.И. Суверенитетъ. Историческое развитіе идеи суверенитета и ея правовое значение. Ярославль: Типография Губернскаго Правленія, 1903, с.388-411.

313 Ibid., с.439.

314 Krūma K. Mūsdienu suverenitāte mainīgajā Eiropā. Likums un Tiesības, Nr.4(44), 106. – 110.lpp.

state, with the prospect of establishing a global order and abolishing fragmentation of civilisation no longer seems to be utopian. The trend to diminish the role and significance of the sovereignty principle is becoming stronger, "division", "restructuring", "fragmentation" of the sovereignty is discussed.[315]

II. The people's sovereignty

1. The idea of the people's sovereignty. The principle of the people' sovereignty means that the people themselves, without external interference, form their will and also determine the way, in which the state is organised.[316] Since the period of Enlightenment and the French Revolution, the principle of the people's sovereignty has become the foundation for the national statehood, i.e., the majority of state in the world provide in their regulation that they recognise the principle of the people's sovereignty.[317] The principle of the people's sovereignty is a shared constitutional fundamental value of the West, having the rank of an unwritten legal principle.[318] The principle of the people's sovereignty is not a political declaration within the constitution's text, which accepts and allows the existence of any political regime. The principle of the people's sovereignty has a definite legal content, which must be embodied in the constitutional reality. If the principle of the people's sovereignty exists only in the form of a political declaration then the respective state order cannot be considered as being a democratic constitutional state.

315 Mikainis Z. Diskusija par Satversmes grozījumu nepieciešamību. Likums un Tiesības, 2000, Nr.6 (10), 165.lpp.

316 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 27.punkts.

317 Troper M. Sovereignty. In: The Oxford Handbook of Comparative Constitutional Law. Edited by Mischael Rosenfeld and Andras Sajó. Oxford: Oxford University Press, 2012, pp.350-354.

318 Iljanova D. The Governmental System of the Republic of Latvia. In: Governmental Systems of Central and Eastern European States. Editors Nora Chronowski, Timea Drinoczi, Tamara Takacs. Warszawa: Oficyna, 2011, pp.368-378.

Initially, the idea of sovereignty was used to justify the monarch's sovereignty in a nation state. The people were the source of power who had transferred the rights of the sovereign to the monarch, and it was the foundation for the legitimacy of the existing power.[319] The Pope substantiated his supremacy over secular rules by the supreme power, granted by the God. The rulers, in turn, attempting to achieve independence from the spiritual power, recognised the people of the respective state as the source of their power: the people had transferred the power primarily vested in them to the monarch.[320] However, the idea that the people might have transferred the sovereignty to the monarch created the pre-conditions for the theory of social contract and political considerations that the power, once transferred, could be regained if it was not exercised properly. Johannes Althusius was among the first who elaborated the principle of the people's sovereignty, underscoring that the sovereignty within a state was owned by the people as a whole. The sovereignty owned by the people is united, indivisible and inalienable. Sovereignty, however, is not absolute since it is subject to the laws of the God and to natural laws, as well as written laws, in particular, constitutional laws. The people may not alienate sovereignty but may authorise some officials to exercise it in their name. if the monarch acts contrary to the people's will, he breaks the social contract and the people have the right to overthrow him.[321]

Jean-Jacques Rousseau's theory of social contract was a significant turning point in the understanding of the principle of the people's sovereignty. He considered that the people as the totality of all persons were the bearer of the sovereign power, which was enacted by the general will (volonté générale). Since the common will manifests itself in laws, the legislator's power is the core of sovereignty.[322]

319 Bodin J. Six Books of the Commonwealth. 1576. Book I. Chapter VIII. http://www.yorku.ca/comninel/courses/3020pdf/six_books.pdf

320 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 22.lpp.

321 Althusius J. Politica. Indianapolis: Liberty Fund, 1995. Chapter IX.

322 Ruso Ž.Ž. Par sabiedrisko līgumu jeb politisko tiesību principi. Rīga: Zvaigzne ABC, 2013, 100.lpp.

Sovereignty is independent, inalienable and indivisible power, vested in the people.[323] All public officials are subject to the general will, and the people have the right to replace these officials.[324] Pursuant to the theory of Jean-Jacques Rousseau, there is only one sovereignty in the state and it belongs to the people. Only one sovereignty may exist in the same territory, and the same person may be subject only to one sovereignty. Sovereignty is indivisible, inalienable and untransferable.[325]

2. Content of the people's sovereignty principle. Sovereign power means independent, autonomous power, which is not restricted or impacted by other powers. The people's sovereignty principle means that the people themselves run their life either directly (through a referendum) or through their elected representatives who, in expressing the people's will, lead the state in the name of and on the behalf of the people.[326] Hence, the principle of the people's sovereignty demands that the people themselves, without external interference, form their will and determine how this state is organised.[327] The source of the state power is not outside or above the people, but the people are the source of this power.[328] The people's will is the state power. All bodies of the state power that exercise the state power have been created by the people's will; power has been granted to these bodies of state power in accordance with the people's will.[329] The source of the state power and the bearer of the sovereign state power are the people of Latvia rather than the constitutional bodies of

323 Ruso Ž.Ž. Par sabiedrisko līgumu jeb politisko tiesību principi. Rīga: Zvaigzne ABC, 2013, 33. – 36.lpp.

324 Ibid, 109. – 112.lpp.

325 Дюги Л. Конституционное право. Обшая теория государства. Москва: И.Д. Сытин, 1908, с.168.

326 Vanags K. Latvijas valsts satversme. [B. v.]: L.Rumaka apgāds Valkā, 1948, 14.lpp.

327 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 27.punkts.

328 Anschütz G. Three guiding principles of the Weimar Constitution. In: Weimar. Jurisprudence of crisis. Edited by Arthur J. Jacobson and Bernhard Schlink. Berkley, Los Angeles, London: University of California Press, 2000, p.144.

329 Ibid., p.148.

the state power. The sovereign is the people themselves as a totality of equal citizens with common will.[330]

The people's sovereignty is the right of the people to decide on their fate, inter alia, by establishing an independent state.[331] The principle of the people's sovereignty has been recognised as the source of the sovereign state power, from which other bodies of the state power derive their power.[332] Politically, the people are the "bearer" of the state (i.e., the founder and the constant maintainer), but legally it is the source of the state power and legitimacy.[333] Initially, the principle of the people's legitimacy recognised the people as the source of the sovereign state power, from which institutions of state power derived their power, recognising, however, an institution of state power as the bearer of sovereignty. This is a formal understanding of the people's sovereignty, which originated in constitutional monarchies and is based on the contract between the people and the monarch, enshrined in the theory of social contract, e.g., Article 25 of the Constitution of the Kingdom of Belgium of 1831.

Also at present, the opinion that the bearer of the sovereign power within the state is an institution of the legitimate state power, i.e., the parliament, the government, etc., is encountered.[334] However, the principle of the people's sovereignty also requires recognising the people as the bearer of the sovereign power.[335] Within a state, the body of the sovereign state power is the one that makes the last and the final choice regarding all most important matters in life. In democratic states, the bearer of the sovereignty is either the parliament

330 Ījabs I. Politikas teorija: pirmie soļi. Rīga: Lasītava, 2017, 81.lpp.

331 Judgement by the Constitutional Court of the Republic of Latvia on 29 November 2007 in Case No. 2007-10-0102, Para. 31.1.

332 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 22.lpp.

333 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 26.punkts.

334 Levits E. Valsts un valsts pārvaldes juridiskā struktūra un pamatjēdzieni. Jaunā Pārvalde, 2002, Nr.2, 2.lpp.

335 Определение Обшаго Собрания Латвиского Сената отъ 15 марта 1929 г. о сушности Верховной Власти. Законъ и судъ, 1929, №1, с.13.

or the totality of all citizens with the right to vote, if the state order provides for a referendum. In view of the fact that the Latvian Constitutional Assembly has envisaged a referendum, the Latvian people is also the sole bearer of the sovereign power in the state.[336] Hence, the people is the only source of the state power and also the only bearer of the sovereign state power. The people is the sole direct, uncreated, undestroyable, source of all acts of will of the state.[337] The Constitutional Court of the Republic of Latvia has concluded that the Latvian people is the only subject of the state's sovereign power.[338] The principle of the people's sovereignty is closely linked to the concept of the core of democracy, which requires enacting the majority's will.

The bearer of the sovereign state power , i.e., the people, must be able to impact the decision-making in the state. The state power must be founded on the people's will, it should be the source of the state power.[339] In a democratic order, the people's sovereignty must be exercised, first and foremost, in regular and free elections (representative democracy); however, some democratic orders have retained also elements of direct democracy: a referendum and a citizens' initiative (the people's right to legislate).[340] The people's sovereignty is unrestricted. Limits that follow from justice and human rights are binding upon it. The people's will cannot turn that what is unjust into just.[341] Hence, the principles of a state governed by the rule of law restrict the people's sovereignty. In a state governed by the rule of law, there is not a single subject, a single body of the state power that would be

336 Dišlers K. Latvijas pagaidu konstitūcija. Vispārīgas piezīmes. Tieslietu Ministrijas Vēstnesis, 1920, Nr.2/3, 52.lpp.

337 [B. a.] Valststiesības. 13.lekcija. Pēc LU lekcijām 1931./32. māc. g. In: Augstskola Mājā. Tiesību zinātņu nodaļa, Nr.67,133.lpp.

338 Judgement by the Constitutional Court of the Republic of Latvia on 7 April 2009 in Case No.2008-35-01, Para 14.

339 Judgement by the Constitutional Court of the Republic of Latvia on 19 May 2009 in Case No.2008-40-01, Para 11.

340 Ibid.

341 Констан Б. Принципы политики. In: Классический французский либерализм. Москва: Российская политическая энциклопедия, 2000, с.35.

above the law.[342] The people as a sovereign are subject to restrictions defined by the law and are not released from the obligation to abide by the law.[343]

In the constitution, the people's sovereignty is formally restricted by the binding force of the opinion held by the political majority, if all procedural requirements are met. Substantially, the people's sovereignty is limited by human rights, the state's international commitments and the judicial power. These factors that limit the people's sovereignty are defined by the will of the people themselves and are linked to the substance of the people's sovereignty in a state governed by the rule of law; whereas, if attempts are made to restrict the people's sovereignty against their will by other factors, this is no longer compatible with the concept of sovereignty.[344] In a democratic state governed by the rule of law, the people express their will not as a collective whole but as a totality of individual citizens. Each individual citizen has inalienable freedoms with respect to the people as a collective whole or the majority constituting the political will. Human rights and the rights of a citizen mean protection of an individual against arbitrariness, against the people's sovereignty as any other absolutism. The people may restrict themselves, by defining in the constitution obligations and procedures binding upon them as to how the sovereign state power is enacted. This has allowed to develop the idea that, in a constitutional state, the sovereign is no longer the people themselves but it is the constitution, as an elaboration of the basic norm, formulated by the sovereign, with the supreme legal force.[345] Once, the idea that the supreme power was not vested in concrete

342 Dišlers K. Latvijas valsts varas orgāni un viņu funkcijas. Rīga: Tieslietu Ministrijas Vēstneša izdevums, 1925, 14.lpp.

343 Code of good practice on referendums adopted by the Council for Democratic Elections at its 19th meeting (Venice, 16 December 2006) and the Venice Commission at its 70th plenary session (Venice, 16-17 March 2007). https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)008rev-cor-e

344 Арановский К.В. Государственное право зарубежных стран. Москва: Форум, 2000, с.127.

345 Ījabs I. Politikas teorija: pirmie soļi. Rīga: Lasītava, 2017, 83.lpp.

persons but in the law was quite extensively discussed in state law.[346] However, the sovereignty of law will always lead to concrete persons, who adopt the respective legal provisions or determine their content in the process of applying the law.[347]

Pursuant to the Introduction to the *Satversme*, the people of Latvia have self-restricted within the framework of the democratic order, defined by the *Satversme*.[348] Following adoption of the constitution, the people exercise their power only in the way and in the cases stipulated in the constitution. If the people do not abide by the constitution, they act unlawfully and anti-constitutionally.[349] The Constitutional Court of the Republic of Latvia has also recognised that the people are obliged to abide by the provisions, principles and values, included in the *Satversme*. None of the constitutional bodies, including the people themselves, has the right to violate the *Satversme* in exercising the rights granted to it.[350]

III. State Sovereignty

1. Concept of state sovereignty. Initially, sovereignty meant the power of the state over the people, however, with the recognition of the principle of the people's sovereignty, the principle of state sovereignty had to change in order to become aligned with the principle of the people's sovereignty. In international relations, other states are not interested in the kind of regime that exists in the particular state and which power in the state is sovereign. Therefore, international relations are being developed between states. In this context, other

346 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 25. – 26.lpp.

347 Ījabs I. Politikas teorija: pirmie soļi. Rīga: Lasītava, 2017, 83.lpp.

348 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 263.punkts.

349 Ibid, viedokļa 51. – 52.punkts.

350 Decision by the Constitutional Court of the Republic of Latvia of 19 December 2012 on Terminating Legal Proceedings in Case No.2012-03-01, Para 18.3.

states are interested only in whether the respective state has supremacy within its territory and whether it is independent in international affairs. The main role of the state sovereignty principle in constitutional law is to underscore the total political and legal independence of the people, who have established their own state, from other states.[351] In a democratic republic, the principle of state sovereignty is to be interpreted much more narrowly and is applicable only to external relations. Quite validly, the concept of state sovereignty in contemporary circumstances has turned rather into a concept of international law and political science. Political scientists also have revised the use of this concept since it does not point out the difference between formal and actual independence (limited sovereignty). The concept of state autonomy has been advanced instead of the concept of state sovereignty (as belonging to the theory of international relations and differing from the understanding of autonomy in state law). Taking into account that a democratic state are politically organised people who, within the framework of the state, have the sovereign state power, autonomy is the ability of these people to collaborate with other politically organised people to implement their interests to the extent possible. This is the freedom of choice of these people and their goal-achieving capacity.[352]

In contemporary constitutional law, the concept of "sovereignty of the state", most probably, should be replaced by the concept of "independence of the state". This concept allows emphasizing the main essence of state sovereignty – political and legal independence in international relations. Hence, state sovereignty envisages a state's independence and autonomy from other states, ensures that other states do not interfere into the internal affairs of the state and the territorial unity of a state. Interpretation of the concept of state sovereignty has been essential in the case law of the Permanent Court of International Justice regarding the customs union between Austria and Germany.

351 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 22. – 23.lpp.

352 Bleiere D. Mazas valsts ārpolitiskā autonomija. In: Latvija pasaules politikā: iespējas un ierobežojumi. Ozoliņa Ž. (red.) 2.izdevums. Rīga: Latvijas Ārpolitikas institūts, 2001, 31.lpp.

Judge Dionisio Anzilotti noted in his opinion that, in accordance with international law, independence was a normal condition of the state. This means that a separate state exists, which is not subject to the power of any other state or a group of states. A condition like this can be characterised as sovereignty or external sovereignty, pursuant to which, the state is subject to no other power except for international law. Loss of independence means subjecting the sovereign will to the will of another power or generally substituting the sovereign will by the will of an alien power.[353] Whereas several other Judges of the Permanent Court of International Justice noted in their opinion that a state was not independent legally if it placed itself in a position of dependence vis-à-vis another power or transferred the right to exercise sovereignty in its territory. Restrictions on a state's discretion, which it undertakes in accordance with international law, do not mean losing the state's independence. All international treaties, entered into by independent states, restrict the sovereignty of states. Total and absolute sovereignty, unrestricted by any contractual commitments, is impossible and practically unknown.[354]

2. State in international relations. At present, limiting sovereignty is inevitable because only an absolutely isolated state may be absolutely sovereign. The principle of state sovereignty, demanding the state to be independent, envisages the state's right to participate in the international community. Actually, the state sovereignty is the pre-condition for the state to fully engage in international relations and undertook international commitments. Sovereignty in international law should be assessed as exercising the sovereign rights rather than restricting these.[355] The Permanent Court of International Justice

353 Advisory Opinion of Permanent Court of International Justice, Customs Régime between Germany and Austria (Protocol of March 19th, 1931), 5 September 1931. Individual Opinion by M.Anzilotti. http://www.icj-cij. org/pcij/serie_AB/AB_41/02_Regime_douanier_Opinion_Anzilotti.pdf

354 Advisory Opinion of Permanent Court of International Justice, Customs Régime between Germany and Austria (Protocol of March 19th, 1931), 5 September 1931. Dissenting Opinion of M.Adatci, M.Kellogg, Baron Rolin-Jaequemyns, Sir Cecil Hurst, M.Schücking, Jonkheer van Eysinga and M.Wang. http://www.icj-cij.org/pcij/serie_AB/AB_41/03_Regime_douanier_Opinion_A datci.pdf

355 Judgement by the Constitutional Court of the Republic of Latvia on 7 April 2009 in Case No. 2008-35-01, Para 17.

did not uphold the opinion that entering into any agreement, pursuant to which the state undertakes to perform certain activities or to refrain from performing certain activities, would mean that the state was abolishing its sovereignty. The right to assume international obligations is an element of state sovereignty.[356] The Permanent Court of International Justice has noted: "The Court declines to see in the conclusion of any Treaty by which a State undertakes to perform or refrain from performing a particular act an abandonment of its sovereignty. No doubt any convention creating an obligation of this kind places a restriction upon the exercise of the sovereign rights of the State, in the sense that it requires them to be exercised in a certain way. But the right of entering into international engagements is an attribute of State sovereignty."[357]

The concept of sovereignty always has been linked to exercise of power in internal and external relations, and this exercise always has been subject to sovereign values that define it. Values grant normative nature to sovereignty, which can be used to assess the order existing in a particular society, which, in our case, means relations between a state and an international organisation. A state may be a member of such international organisations with different legal relations between their institutions and member states, and, in each particular case, although an organisation might be a subject of international law, these relations will be differently impacted by the respective constitutional provisions.[358] Thus, for example, the second part of Article 68 of the *Satversme* envisages the possibility for Latvia to transfer part of the competences of state institutions to international institutions. The transfer of competences cannot extend so far as to violate the foundations of an independent, sovereign and democratic republic, based on the rule of law and fundamental rights. Likewise, it may not

356 Judgement by the Constitutional Court of the Republic of Latvia on 7 April 2009 in Case No. 2008-35-01, Para 17.

357 Judgement of Permanent Court of International Justice, Case of the S.S. "Wimbledon", 17 August 1923.

358 Judgement by the Constitutional Court of the Republic of Latvia on 7 April 2009 in Case No. 2008-35-01, Para 17.

impact the citizens' rights to decide on issues important for a democratic state.[359] The constitutional legislator may not renounce from the independent statehood and sovereignty of Latvia by joining another state or by forming together with other states a new state, in the meaning of international law. Latvia's sovereignty cannot be "emptied" by excessive "channelling" of the competences of Latvian state to supranational formations, in particular, the European Union.[360]

In conditions of international integration, the idea of the need for absolute sovereignty has disappeared, and delegating certain rights of sovereignty is no longer perceived as abolishing of sovereignty because the member state retains the right to the power of final, decisive choice.[361] Sovereignty and, thus, unity of the state power is not lost until the state is able to exist independently in a case of emergency and make decisions independently and act within its territory, i.e., to exercise the right to secession, which allows, at the respective moment, to take over completely power over processes ongoing in the territory of the state.[362] Nowadays, this so-called right to the last word means sovereignty.[363] Until some states retain at least the actual possibility of secession, competences, the point of no return is not reached in the disintegration of sovereignty .[364] The Constitutional Court of the Republic of Latvia, however, has noted that the understanding of Article 2 of the Satversme comprises not only "the right to the last word" but also an obligation to assess the conditions for operation of the international organisation as such. In this context, "the right to the first word" seems to be more important, i.e., legitimate acceptance of exercising sovereignty in a certain way, i.e., the purpose, nature, structure of the organisation exercising the competence, as well as

359 Judgement by the Constitutional Court of the Republic of Latvia on 7 April 2009 in Case No. 2008-35-01, Para 17.

360 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 306. – 307.punkts.

361 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 53.lpp.

362 Gulbe S. Cik suverēna ir Eiropas Savienības dalībvalsts. Likums un Tiesības, 2000, Nr.9(13), 285.lpp.

363 Endzins A. European Integration and Constitutional Law: the Situation in Latvia. https://www.venice.coe.int/webforms/documents/?pdf=CDL-STD(2002)036-bil, pp. 85 – 90

364 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 54.lpp.

the possibility of the state and its citizens to influence the processes of exercising competence. Hence, it needs to be assessed, at which point the use of sovereignty for creating international commitments reaches the stage, where a constitutional procedure is required for legitimising within the national legal system this use.[365]

3. Membership in the European Union. Membership in the European Union does not affect the people's sovereignty since only the competence granted to the state as the implementer of the peoples sovereignty changes. Competence is one of the elements in sovereignty, which throughout the entire territory of the state encompasses a totality of mandates, rights and obligations, which, in turn, is divided into the legislative, judicial and executive power. In a sovereign state, the entire competence is implemented by state institution, dividing it among themselves in a detailed way, on the basis of the constitution and laws subordinated to it. The state is omnipotent.[366] Upon accessing the European Union, part of the competence of the sovereign power, i.e., areas, where decisions important for the state are made, is transferred to institutions of the European Union, and the decisions and directives adopted by the union of states will be binding upon the Member State. Sovereignty is not delegated to the European Union; only part of the competence of a sovereign state is delegated, i.e., the totality of citizens as a legal person chooses other institutions that will implement the competence granted by it. Aivars Endziņš has validly noted: "Accession to the European Union cannot be linked to losing sovereignty. It is a matter of transferring some competencies to international organisations."[367] By the act of accession, the people transfer part of the competence of the state power to the European Union. Thus, the people's will is implemented both by the European Union and the power of the nation state (state in a narrower understanding). Orders by the European Union, as a supranational organisation, are to be considered acts

365 Judgement by the Constitutional Court of the Republic of Latvia on 7 April 2009 in Case No. 2008-35-01, Para 17.

366 Levits E. Valsts un valsts pārvaldes juridiskā struktūra un pamatjēdzieni. Jaunā Pārvalde, 2002, Nr.2, 4.lpp.

367 Endziņš A. "Svētos" pantus nevar aizskart. Lauku Avīze, 2002.gada 26.februāris.

of international law, the internal commitments of the state of which would be founded on previously envisaged general transformation or previously envisaged general executive order, i.e., the people's assent given at a referendum.[368] Membership in the European Union does not mean weakening of the people's sovereignty but using it in Latvia's interests in reaching the aims of the European Union.[369]

Belonging to united Europe as an element of the constitutional identity formulates the geopolitical orientation of the Latvian legal system. In law policy terms, the Latvian legal system is characterised by openness and readiness to participate in the processes of European integration and to be part of common legal space of the European Union. Pursuant to the basic European Union Treaties, a state's membership in the European Union is linked to partial transfer of the state's competence to the European Union and to restrictions on the state's discretion. Viewing this from the perspective of the national legal system, these matters can be resolved by respective alignment within the framework of the national constitution.[370] Issues related to Latvia's membership in the European Union, basically, were resolved by amendments to the *Satversme*, which have proven to be sufficient for the Constitutional Court to develop successfully in its case law and elaborate in the constitutional reality the respective principles.[371] The principle of European integration has been introduced into the *Satversme*, i.e., Latvia's legal policy choice to be a Member State of the European Union, which has to be implemented in compliance with the basic European Union Treaties.[372]

368 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 54.lpp.

369 Judgement by the Constitutional Court of the Republic of Latvia on 7 April 2009 in Case No. 2008-35-01, Para 17.

370 Ziemele I. Atsevišķu Latvijas Republikas Satversmes grozījumu nepieciešamības pamatojums sakarā ar Eiropas Savienības tiesību integrāciju Latvijas tiesību sistēmā. Likums un Tiesības, 2004, 6. sējums, Nr. 3, 68. – 70.lpp.

371 See more: Krūma K., Statkus S. The Constitution of Latvia – A Bridge Between Traditions and Modernity. In: National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law. A. Albi and S. Bardutzky (eds.) The Hague: T.M.C. Asser Press, 2019, pp. 954 – 960

372 Balodis R. The Constitution of Latvia. Trier: Institut für Rechtspolitik an der Universität Trier, 2004, pp. 16 – 17

The constitutional solution to membership in the European Union provided by the *Satversme* is implementation of the state sovereignty and the people's sovereignty, by delegating some competencies of the state to the European Union, not as restricting or delegating sovereignty as such. Pursuant to Article 68 of the *Satversme*, Latvia transfers to the European Union only some competences of the state, in accordance with the European Union Treaties, without affecting and decreasing its sovereignty.[373] If the processes of European integration were to jeopardise the independence of the state or the people's sovereignty, they would be constitutionally inadmissible. The *Satversme* thus sets substantive restrictions on Latvia's membership in the European Union.[374] The *Satversme* provides for substantive pre-conditions to Latvia's membership in the European Union, i.e., it is admissible only for the purpose of strengthening democracy. Until membership in the European Union does not jeopardise the order of a democratic state governed by the rule of law in Latvia, it is to be promoted by law policy measures and is constitutionally admissible. It is a significant condition, which sees Latvia's membership in the European Union as one more additional elements reinforcing Latvia as an independent, democratic state governed by the rule of law. Membership in the European Union should be aimed at irreversible consolidation of the order of a democratic state governed by the rule of law in Latvia and it should serve as (one more) supranational guarantee for the protection of a democratic state governed by the rule of law.[375]

The obligation to maintain internally the national legal system as a democratic state governed by the rule of law also follows from the *Satversme*. The European Union should be able to protect its Member State's order of a democratic state governed by the rule of law also against the Member State itself if the political processes ongoing within

373 Endziņš A. Latvijas un Eiropas Savienības tiesības un to savstarpējā hierarhija. Jurista Vārds, 2003. 2. decembris, Nr.43(301).

374 Ziemele I. Eiropas Savienības tiesību konstitucionalitātes kontrole Latvijā. Jurista Vārds, 2020. 7.jūlijs, Nr.27(1137).

375 Ibid.

it are aimed at fundamental dismantling of the order of a democratic state governed by the rule of law. Until a Member State wishes to retain its membership in the European Union, it should be able to ensure the functioning of an order of democratic state governed by the rule of law in full within its legal system. Protection of an order of a democratic state governed by the rule of law is not the responsibility of a separate Member State but the joint responsibility of also other Member States and the entire European Union.[376]

IV. Organisation of the territory of a sovereign state

1. Concept of the state's territory. The people is the human foundation of the state, whereas the territory is the material part of the state. The state acquires appropriate stability only after the people have obtained land and have become established in the particular territory. That part of the land surface, on which the people are situated and where they exercise their power, is called the state. Its size, like the size of the people, is determined by the course of history. International law does not define the minimum required size of a territory that could be considered sufficient for the existence of a state; likewise, spatial unity of the state's territory and clearly demarcated borders of the state are not required either. However, some part of a territory is necessary since the state is a territorial entity.[377] A state expands its territory, spreads its culture and rule in uncultivated or ownerless lands or acquires alien territories on the basis of contracts, by voluntary joining or through conquests. Unchanging and eternal territories are unknown in history because the size of the territory depends on the people's power. A territory, like the people, is constantly changing, i.e., four types of territorial changes are discerned: occupation

376 See more: Pleps J. Satversme, Satversmes tiesa un Eiropas Savienība. In: Latvija. Pārskats par tautas attīstību 2019/2020. Latvijas eiropeizācija. Galv.red. Daunis Auers. Rīga: LU Akadēmiskais apgāds, 2020, 53. - 61.lpp.

377 Crawford J. The Creation of States in International Law. Second edition. Oxford: Clarendon Press,2006, pp. 46–47.

(acquiring a territory that does not belong to any state), annexation (unilateral inclusion of an alien territory into the territory of the state, not based on an agreement), cessation (transfer of a territory from one state to another, achieved through an agreement), adjudication (transfer of a disputed territory from one state to another on the basis of an arbitration court's ruling). It must be noted that occupation as a form of acquiring territory should not be mistaken for the terms used in international law – occupatio bellocai and occupatio pacifica.[378]

Usually, constitutions do not record inviolability and unchangeability of the territory. Hence, as a matter of principle, constitutions recognise the possibility of changing the territory. Absolute unchangeability of the state's borders, just like absolute unchangeability of the constitution, established for eternity, in reality cannot ensure their actual unchangeability. Constitutionalisation of a state's territory would require an act of constituent power for changing the state's borders, as in the cases when the constitution is amended. Mykolas Romeris considered that it would be logical to reserve changing the boundaries of a territory to the sovereign constituent power because a territory constitutes a constructive, significant element in the state's existence. This is manifested most vividly in a nation state, the territory of which is not accidental and which cannot be moved from one territory to another but constitutes a logical entity. In a nation state, the issue of territory is an issue of the state's essence. This, however, is not characteristic of all types of states. For example, Mykolas Romeris has commented on the example of the USSR and the Confederation of Switzerland. He recognised that decreasing the territory or any expansion of it is insignificant, for example, for the USSR, which, essentially, is not a state of a definite territory but the germ of the universal proletariat or its communist party, which today is located here but can relocate to another place tomorrow: it is based on indefinite territorial expansion and insignificance of local considerations. Likewise, essentially, the inclusion or exclusion of one or another canton

378 Блюнчли. Обшее государственное право. Москва: Въ Университетской типографии, 1865, с. 186–187.

is not important for the Confederation of Switzerland.[379] Changes in the territory of a state are admissible in international law; in state law, however, such changes may cause constitutional complications because they affect the identity of the respective state. The state's territory is an element in the integration of state's inhabitants, like common homeland, commonly experienced scene of nature and culture, the basis for a common political fate.[380] In state law, the territory of the respective state, together with the people belongs to a certain cultural space, is culturally linked to the respective statehood and is individualised.[381] The territory of a state is an important element in the state's existence. The state is inseparably linked to its territory, which it cannot change or lose.[382] In the Latvian constitutional law, the Constitutional Court has significantly developed the concept of changing the state's territory or borders by ruling on the treaty between the Republic of Latvia and the Russian Federation on the state borders.[383] The Constitutional Court concluded that Article 3 of the *Satversme* primarily did not fully define the entire territory of the state or its border because the purpose if this norm was to define the principle of unity of united Latvia or all historical lands of Latvians (historically ethnographic regions populated by Latvians).[384] Article 3 of the *Satversme* does not determine the entire territory of the state because the respective norm primarily defines the essence of the Republic of Latvia as a nation state – to unite in one statehood all historical lands of Latvians. Thus, Article 3 of the *Satversme* as the principle of the unity of all historical Latvian lands provides that Vidzeme, Latgale,

379 Romeris M. Lietuvos konstitucines teises paskaitos. I dalīs. Kaunas: Vytauto Didžiojo Universiteto Teisip fakulteto leidinys, 1937, pp. 204-206.

380 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 2000, 66. – 67.lpp.

381 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 205.punkts.

382 Челлен Р. (Kjellén R.) Государство как форма жизни (Staten som lifvsform). Москва: РОССПЭН, 2008, с.101 – 107

383 Judgement by the Constitutional Court of the Republic of Latvia on 29 November 2007 in Case No. 2007-10-0102.

384 Ibid, Para 40.1.

Kurzeme, Zemgale and Sēlija constitute the Latvian State. These historical Latvian lands can be geographically precisely identified, i.e., their clear boundaries can be outlined.[385] A logical consequence follows from it, i.e., that the territory, which Latvia has included in its territory but which has never been part of the historical Latvian lands, does not belong either to Vidzeme and Latgale, or Kurzeme, Zemgale and Sēlija. The purpose of Article 3 of the *Satversme* is only to establish the uniting of the particular historical Latvian lands in one statehood. "This article enacts the historical demands of the Latvian freedom fighters for undivided Latvia, uniting Vidzeme, Kurzeme and Latgale".[386] The Latvian State does not change its essence, until it is comprised of all territories, where the Latvian people have become a self-determined people, i.e., all historical Latvian lands. It should be taken into account that the absence of a historical Latvian lands would radically change the essence of the State of Latvia and would affect its state law identity. Therefore, the principle of the territorial unity and indivisibility of the Latvian State follows from Article 3 of the *Satversme*.[387] It follows from the Introduction to the *Satversme* that the State of Latvia can exist only in the Latvian lands, and none of these lands can be surrendered.

The Constitutional Assembly of Latvia, by defining the principle of the unity of the historical Latvian lands, has retained the division of Latvia in the historical Latvian lands. In deciding on state affairs, it should be taken into account that the State of Latvia is constituted by five historical Latvian lands.[388] The legislator is obliged to respect the identity and unique culture-historical environment of the historical

385 Valsts prezidenta Egila Levita sagatavotais likumprojekts "Latviešu vēsturisko zemju likums" un tā anotācija. https://www.president.lv/lv/darbibas-jomas/darbiba-likumdosanas-joma/valsts-prezidenta-likumdosanas-iniciativas/likumprojekts-latviesu-vesturisko-zemju-likums

386 Vanags K. Latvijas valsts satversme. [B.v.]: L.Rumaka apgāds Valkā, 1948, 14.lpp.

387 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 206.punkts.

388 Judgement by the Constitutional Court of the Republic of Latvia on 29 November 2007 in Case No. 2007-10-0102, Para 40.5.

Latvian lands.[389] Vidzeme, Latgale, Kurzeme, Zemgale and Sēlija as the historical Latvian lands have their definite boundaries. The fact that Article 3 of the *Satversme* does not refer to other territories outside the historical Latvian lands, which constitute the State of Latvia, does not mean that such territories would be impossible.

The Constitutional Court has concluded in its judgement that, alongside the historical Latvian lands, newly added territories constitute the territory of the Latvian State. The procedure for amending Article 3 of the *Satversme* protects only that part of Latvia's territory, which is constituted by the historical Latvian lands. Article 3 of the *Satversme* does not regulate inclusion of newly added territories into the State of Latvia, and this part of the territory can be handled in the procedure set out in Article 68 of the *Satversme*. Thus, in interpreting Article 3 of the *Satversme*, the Constitutional Court concluded that the territory of the Latvian State was formed by territories of two conditional levels.[390] The Constitutional Court holds that core of the territory of the Latvian State is formed by the historical Latvian lands, which define the state law identity of the State of Latvia. Egils Levits, commenting on the Constitutional Court's judgement, once noted that "a unique thesis is advanced in the judgement, until now unheard of in the state law of Latvia and other countries, that in a unitary state already after its actual and legal establishment and international recognition of its borders various parts of its territories, depending on their history and ethnic composition, are granted different "weights" that exist for a long time in the *Satversme*, i.e., that some parts of the territory are constitutionally less protected than others and therefore they can be surrendered in simplified procedure".[391]

The theory of newly added territories allowed the Constitutional Court to find a specific legal solution to the issue of ceding the city of

389 See more: Pleps J. Robežlīgums ar Krievijas Federāciju: Satversme un Satversmes tiesa. In: Robežlīgums: spriedums, materiāli, komentāri. Rīga: Latvijas Vēstnesis, 2009, 622. – 623.lpp.

390 Pleps J. Robežlīgums ar Krievijas Federāciju: Satversme un Satversmes tiesa. In: Robežlīgums. Spriedums. Materiāli. Komentāri, Rīga: Latvijas Vēstnesis, 2009, 611. – 632.lpp.

391 Saulītis A. Levits: prezidentam ir arī "rezerves funkcija", http://www.knl.lv/raksti/344

Abrene and rural municipalities adjacent to it to the Russian Federation. There are no similar territories that could be compared to this part of the territory of the Latvian State because, during the period of existence of the Latvian State, the entire territory of the Latvian State has developed a constitutional link with Latvia's state law identity and belongs to one of the historical Latvian lands.[392] This position is reflected in the Law on the Historical Latvian Lands, prepared by President Egils Levits, which establishes the belonging of all Latvian rural municipalities and cities to one of the historical Latvian lands.

2. Governing the territory of the state. The state's rule is manifested in two ways. Firstly, externally, which means the fact of co-existence of several states. This leads to the need for delimiting the powers of various states. Secondly, internally, which means the state's rule over its citizens. The external rule of the state is delimited by the institution of state border, whereas the internal – by recognising human freedoms. According to the general principle, the state exercises its rule only within the boundaries of its territory. However, there are several exceptions to this principle, which could be brought together under the fiction of the exterritorial principle. This fiction means that certain persons, while being on the territory of another state, legally are considered as being such who are on the territory of their own state, e.g., embassies abroad, aircrafts and seafaring vessels. Since the high seas are in common use of all nations, the vessels sailing the high seas are small parts of the territories of those states, under the flag of which this ship sails. The persons on board of the vessel, unless they have a special status, are subject to the power of this state.[393]

Territory is a subjective element of the state, i.e., the state is a legal person who is the bearer of subjective power, and this power is exercised by public institutions. Territory is a constitutional element of this legal person. The definition of a state included that each state

392 Pleps J. Latvijas valsts robežu noteikšana. In: Nepārtrauktības doktrīna Latvijas vēstures kontekstā. Autoru kolektīvs prof. T.Jundža zinātniskā vadībā. Rīga: Latvijas Zinātņu akadēmijas Baltijas stratēģisko pētījumu centrs, 2017, 329.lpp.

393 Коркунов Н.М. Русское государственное право. Т.1. Санктпетербург: Типография М.М. Стасюлевича, 1914, с.442.

has been endowed with political power, i.e., the right to issue unconditional precepts, without complying with any restrictions, which do not come from the issuers thereof. If power is vested in the state, it can exercise it only within a definite territory. If these exclusive territories were not delimited, then one state could expand its rule to the other's territory. If the power of one state yields in and complies with the other's precepts, it will no longer the state power in its part of the territory. Both powers may yield in and substitute each other, but in such a case two political corporations will form in this territory; however, they will not create one state. Thus, an exclusive territory is a pre-condition for political power. Since political power is a manifestation of the state, the exclusiveness of the territory is a pre-condition for the existence of the state itself.[394] The addressee of the state power is the totality of people, located in a particular territory. The territory of a state is an area of a specific sovereign rule or of the state's competence. There is both a positive and negative aspect to the sovereignty of a territory. The positive aspect means that anyone located on the territory of the state is subject to the state power. The negative aspect, in turn, records that within the state's territory another sovereign power, which has not been determined by the state's regulatory power, cannot be exercised. The regulatory power may exercise its sovereign right and allow granting certain authorisation to another state within its territory.

The contemporary processes of transnational integration require transferring to a supranational organisation the authority to adopt legal acts with direct effect within the state.[395] The state's rule is limited within a definite territory, which is separated from the territories of other states by a border. The territory of a state is constituted, firs of all, by the naturally created part of the land surface, i.e., "the quality of a state's territory is vested in naturally created places. A man-made artificial platform [..] cannot be called "part of land surface" or

394 Дюги Л. Конституционное право. Обшая теория государства. Москва: И.Д.Сытин, 1908, с.130-131.

395 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 66.lpp.

"plot of land", because its origins are not linked to the globe, thus, it is not a piece of the globe."[396] The territory of a state is not two-dimensional but is three-dimensional, i.e., it is not an area but a body located within the space above and under the earth. Above and under the earth, the legal territorial sovereignty does not reach beyond the actual possibility of governing, thus, only insofar it is technically always located in the region to be governed because the possibilities for state's interactions are determined by the technological development.[397] This aspect, however, should be differentiated from the civil law nuances with respect to what is located under the surface layer of the earth. First of all, mineral rights, which sometimes provide that a person who owns a land plot owns the subterranean depths only up to a certain depth but is entitled to receive remuneration for the deepest (for example, crystalline basement). In Latvia, this approach has been introduced only partially. Secondly, in building the tunnel infrastructure, the construction can be considered as being a servitude, also without alienating the right to the surface layer of the earth.

Territories of states differ as to their size, however, the principle that it is impossible to govern centrally the entire territory of the state is generally recognised. This impossibility is overcome by introducing decentralisation, which can be manifested in different ways and may have several different aims. Decentralisation is manifested internally; however, apart from that also a union of several sovereign states is possible as a form of territorial organisation. Decentralisation can be implemented in various ways, depending on its level, because any territorial organisation, actually, is decentralisation to a certain extent. Several types of territorial organisation may be differentiated between, which are customary designated as a unitary state, a federative state, and a regional state. Externally oriented territorial organisations are unions, confederations, as well as some other political-territorial formations.

396 Vildbergs H.J., Messeršmits K., Niedre L. Pilsonis tiesiskā valstī. Vācu konstitucionālo un administratīvo tiesību pamati. Rīga: Latvijas Universitāte, 2004, 2.lpp.

397 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 67. – 68.lpp.

Different types of autonomy are possible both in unitary and federated states, i.e., personal, corporative and territorial autonomy, the substance of which is the granting of certain rights to self-government to some cultural-national or ethnic communities. The scope of the right to self-government of these autonomies may vary: from solely the right to use their own language in a sector or reserving certain places for the community in the state apparatus up to the right, established in a legal act, to adopt laws on matters of local importance (North Ireland, Sicily) or granting more extensive rights to deal with matters of local importance, or the right to participate in drafting the act, which will determine (determines) the legal status of the particular autonomy. A federated state envisages much more extensive degree of decentralisation, forming the second level immediately after the state's central power. The existence of any other types of territorial organisation is not excluded in such states, for example, local governments of the third or the fourth level, union, autonomies with different statuses, etc.

3. Unitary state. A unitary state is one among the basic forms of state order, consisting not of state like formations, but basically is administrative territorial units; although separate autonomous state like formations may be part of the state's composition.[398] Also the wording of Article 3 of the *Satversme* provides that Latvia is a unitary state.[399] This is confirmed also by the case law of the Constitutional Court of the Republic of Latvia.[400] It is characteristic of a unitary state that administrative territorial units or the status, competence and structure of the units are determined by the central power. The central power is the one who exerts direct or indirect control over the activities of local self-governments. A state like this has one constitution, united legal system, citizenship, a system of institutions of supreme power and a united judicial system. Usually, a unitary state is comprised of political administrative units who perform local government.

398 Чиркин В.Е. Конституционное право зарубежных стран. Москва: Юристъ, 2000, с.167.

399 Muciņš L. Jāpārvar viduslaiku priekšstati par valsts robežu. Diena, 2007. 20.marts.

400 Judgement by the Constitutional Court of the Republic of Latvia on 12 March 2021 in Case No. 2020-37-0106, Para 19.

Depending on the way public power is organised, it is possible to differentiate between three types of unitary states, i.e., a centralised unitary state (without elected institutions of local government, only representatives appointed by the central power), a relatively decentralised unitary state (representatives appointed by the centre exist alongside elected local governments, but representatives have quite extensive mandate for interfering into the work of local governments), as well as a decentralised unitary state (strictly separated competences of the central power and local governments, only elected local governments exist and these are usually influenced by financial leverages).[401] Pursuant to the principle of a unitary state, a state like this should have one common constitutional order and a united national legal system. Likewise, in a unitary state, justice is administered only by state-established courts, the territory of the state, in turn, is divided into administrative territorial units of equal status. A unitary state is characterised also by a common official language and citizenship, as well as a single state budget.

4. Regional or quasi-federal state. The states whose territories consist only of autonomous formations can be considered to be regional states.[402] In principle, such states (the Republic of Italy, the Kingdom of Spain) should be considered as being unitary; however, it must be admitted that they differ from such unitary states that have only various autonomies. This is linked to the fact that regional states are considered to be a special intermediate stage between a federation and a unitary state. Autonomies within these states have their own constitutions (RSA) or a statute (Italy), which grant to them more extensive rights to self-government; however, the approval thereof, for example, in Italy, is determined by the constitutional law. Moreover, alongside the institutions of executive power, created by the local

401 Конституционное право зарубежных стран. Баглай М.В., Лейбо Ю.И. и Энтин Л.М. (ред.) Москва: Норма, 2000, с.126-127; Алебастрова И.А. Конституционное право зарубежных стран. Москва: Юрайт, 2001, с.147.

402 OECD Multi-level Governance Studies, Making Decentralisation WorkA Handbook for Policy-Makers. Chapter 2. Understanding decentralisation systems. Piejeams: https://www.oecd-ilibrary.org/sites/53013b71-en/index.html?itemId=/content/component/53013b71-en

legislative institutions, also centrally appointed commissioners or governors may function. The centre interferes into the lives of autonomies much more substantially than a federation interferes into the life of its subject, although the dominance of the federation' s centre over the power institutions of the subject continues to increase to achieve balance between the federative and unitary elements. This balance is achieved by transferring the greatest part of legislative rights into the competence of the central power, leaving to lands broad administrative competence.[403]

5. Federation. A federation consists of independent subjects of federation and the central power, which has been formed by aligning the national (common) and the federal element. A federative state is a union of the state law, where the union of organised states itself has the quality of a state.[404] A federation (foederatio) is a union of states or state-like formations, which form in various ways - by several sovereign states joining or as top-down decentralisation of a centralised state, as well as some states joining an already existing federation. There is only one sovereign power in a federative state, which has delegated a certain part of its competence to the federal subjects. A federation has one territory, one nation, in the broadest understanding of it, in the broadest understanding of it, but the public power is divided between the sovereign federation and the "autonomous" subjects of the federation. In the case of a federation, the principle of the indivisibility of the people's sovereignty enters into a certain contradiction with the principle of federalism, which is quite vague and over-politicised in fights for competences. Divided sovereignty has been offered in the constitutional traditions of the USA, emphasizing, in particular, the transfer of the state's sovereignty to the federal government.[405] The dualism of the centre of decisions , established in the common

403 Киминних О. Федеративное государство. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.80.

404 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 48.lpp.

405 Hamilton A. The Federalist. No.31. In: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.224-230.

constitution of the state, the central institutions and institutions of the lands, differentiates a federative state from a unitary state. If the centre were able to dock or even revoke without any restrictions the competences of members states then this state would be nothing else but a decentralised unitary state.[406]

Greater decentralisation brings the power closer to inhabitants, ensures that persons' political rights and freedoms are exercised to a greater extent, as well as increases citizens' political activities. However, on the other hand, it makes the apparatus of the state more complicated and hinders swift implementation of national-scale reforms. A centralised state is better at allocating benefits and can protect a person from abuse of power more effectively. It is more complicated to separate the areas in which the federation and the subjects operate because competences are much broader and both parties have the same degree of legitimacy. A large number of the federation's subjects make the separation of competences even harder, in particular, in such cases, where part of subjects, compared to the rest, is financially weak. The substance of a federative order determines that it resists centralised re-allocation of benefits to ensure equality of subjects. Hence, the federal centre may be forced to delegate part of its competence to the stronger regions as compensation for re-allocation of benefits, thus complicating the structure of the federation even more. The existence of a federation is ensured by the art of resolving conflicts within the framework of law, without driving the dispute to an explosion. Several legal ways for separating the competence of the federation and the subjects exist. It is possible to define the exclusive competences of the centre and the subject of federation or to define one of these as the remainder. Another approach is seen in defining the shared or competing competence in addition to the exclusive competence, as well as by defining it in the constitution the blocking, i.e., such in which no interference by the centre or the subjects, or joint is allowed. In practice, the presumed competence is added to

406 Арановский К.В. Государственное право зарубежных стран. Москва: Форум, 2000, с.195-198.

the centre, i.e., new and unregulated areas, thus shifting the scales in favour of the centre.

6. Confederations and unions. A confederation is not a united state or a state in general,[407] but a union of states with common aim. Functioning of a confederation may be regulated both by constitutional law and international law with elements of constitutional law. The most significant difference from a federation is not found in institutions but in the fact that the acts adopted by the confederation, usually, are not directly applicable on the territory of all states that form it. Normally, confederations are not long-term formations, in the course of political development they either turn into federations or split into separate nation states. This is linked to the nature of a confederation because the common aims of states tend to change, failure to enact acts issued by the confederation's institutions, on quire rare occasions, may be the grounds for applying some sanctions, following from delegation of competence, and linked to its scope. The fact per se that the states have not formed a federation but have chosen a confederation is an evidence of readiness to consider renouncing the confederation in the future. There are also such formations of collaboration between the states in the world that are remains from the colonial age, .e.g., reservations, the British Commonwealth of Nations, associated states, etc.

A union can be mentioned as joining of two states that was quite widespread in the past. There are two types of unions: a real union and a personal union. A personal union is temporary combining of states under the guidance of a monarch, related to his right to the throne of the other state. A real union, however, envisages a united monarch, i.e., a united procedure for inheriting the throne. For example, the union of Austria-Hungary and Sweden- Norway. In 1814, the Norwegian Parliament elected the Swedish King as the King, and later the Parliaments of both states adopted an act on eternal union of both states with one monarch. If the dynasty would be unable to continue,

407 Коркунов Н.М. Русское государственное право. Т.1. Санктпетербург: Типография М.М. Стасюлевича, 1914, с.158-159.

then, pursuant to the adopted act, both Parliaments would convene to elect a new King. The Norwegian Parliament dissolved the respective union in 1905.

7. Local governments. A contemporary democratic state is inconceivable without local governments. Local self-government is an essential fundamental principle of democracy. The institution of local governments allows establishing a legitimate democratic order, where the primary right to define the basic principles in their life is vested in the inhabitants of the state. The role of local governments may differ in each state; however, it has a certain significance in all democratic societies. Local governments can be considered as being the foundation of each democratic state governed by the rule of law. Local government is the local power, created by inhabitants (citizens) of a certain territory or a territorial community, which functions within this territory and decides on matters, which, pursuant to laws, fall within its competence, as well as on other important matters if the law does not provide that they fall within the competence of other institutions of public administration. Local governments are usually called the cradle of democracy and, simultaneously, also the mirror of particular state's democracy – the more developed local governments are, the greater democracy in the state.[408] Modern democratic systems are based on the principle that all local issues in common interests should be managed and control by truly practical institutions of local government. The primary need for a local government is the close contact with local inhabitants, which cannot be established if the state is governed by central measures only.

The tasks of self-government are performed by unions with legal capacity that was called self-government in the meaning of law (legal self-government). Henceforth, self-government means "independent, free from instructions resolving of certain delegated public matters, which is constantly performed by subjects that are subordinate to the

408 Ekspertu grupas pārvaldības pilnveidei ziņojums "Pašvaldību sistēmas pilnveidošanas iespējas". In: Priekšlikumi Latvijas publiskās varas pilnveidošanai. Ekspertui grupas pārvaldības pilnveidei materiāli. Rīga: Latvijas Vēstnesis, 2015, 9.lpp. See more: Vanags E., Vilka I. Pašvaldību darbība un attīstība. Rīga: LU Akadēmiskais apgāds, 2005.

state or subjects of public administration".[409] The new understanding of the concept of self-government provided the possibility to apply this form of government not only to the area of local governments but also to the general decentralised form of government. Apart from the territorial area, it could be applied also to the personal and functional area.[410] In the German doctrine, the issue of whether self-government is a direct or indirect state governance is still being disputed. One of the opinions is that self-government is derived from the state government and is supported by the state power. It differs from the direct state government only by the fact that self-government is implemented, apart from the state, by legally capable subjects (the state and someone else).[411] Local governments' nature as indirect state government and, thus, decentralised government, follows from the fact that, in many areas, local governments act on their own responsibility and their actions are not subject to verification of its expedience or other verifications, it is subject only to legality review.[412] Another opinion is that local government is a third form of government, alongside direct and indirect state government.[413] It is based on the assumption that local government (self-government) is not derived from the state but it has its initial, original nature. This dispute is of greater theoretical than practical importance because in both cases (direct, indirect government) it is recognised that the state may manage the local government in accordance with provisions and, in principle, local government is subject to supervision by the state, which includes at least control over legal compliance

The idea of local governments has developed on the basis of an individuals' wish to determine and regulate, autonomously from the

409 Stern K. Das Staatsrecht der Bundesrepublik Deutschland. Band I. Grundbegriffe und Grundlegen des Staatsrechts, Strukturprinzipien der Verfassung. 2.Aufl. Verlag C.H. Beck, 1984, S.398-400.

410 Ibid., S.402.

411 Steiner (Hrsg.) Besonderes Verwaltungsrecht.. 6. neubearb. Aufl. Heidelberg: C.F.Müller, 1999, S.18.

412 Stern K. Das Staatsrecht der Bundesrepublik Deutschland. Band I. Grundbegriffe und Grundlegen des Staatsrechts, Strukturprinzipien der Verfassung. 2.Aufl. Verlag C.H. Beck, 1984, S.402.

413 Cipeliuss R. Vispārējā mācība par valsti Rīga: AGB, 1998, 74., 149.lpp.

state, significant areas in their life. The origins of local governments can be found in the relations between the state and society at the moment when the state has grown so large that it is unable to regulate all issues related to public life and society no longer wants the state to interfere excessively in its life. At the time when liberalism and constitutionalism developed, the citizens' right to self-government, in particular, in the area of local governments, was understood as a fundamental right of a free society. In a democratic state, considering such issues as common good, civil participation, the rule of law, a state cannot be governed only centrally. In case of decentralisation, the tasks of government are transferred, to the extent possible, to independent bearers of governance, for example, to communities or regions, moreover, the smaller the government units are the greater the possibility for each of its members to engage in the creation of common will. The more the political decision-making power is decentralised, the broader, in general, the area of political activities of the majority of citizens becomes.[414]

Establishment of any system of local governments, irrespectively of the constitutional regulation on the local governments' status, is based on certain principles. The most important of them is independent resolving and organising of the local matters, binding safeguards for the rights and freedoms of all persons, compliance with law, in performing functions and obligations, the right of the local government inhabitants to engage in activities of the local government, to elect local government and submit petitions, liability for its actions and transparency of actions, aligning the interests of the state and local governments, accountability of the local government institutions and their officials before the inhabitants, the rule of law and social justice, economic independence and the right to defend the local government's interests in court. Decision-making is one of the most important elements in the activities of local governments and the state power in general, it also falls with the competence of local

414 AllgemeinesVerwaltungsrecht, 9. neubearb. Aufl. Hrsg. von Erichsen H.O., Martens W. Berlin: Walter de Gruyter, 1992, S.720.

governments. The right to issue regulatory enactments is an important feature of a local government, turning it into a democratic, decentralised and autonomous government. In the absence of such authorisation, a local government cannot justify its constitutional status.[415] These findings have become inalienable part of the European legal space, in particular, taking into account the European Charter of Local Self-governments, adopted on 27 June 1985, which was adopted as a multilateral international treaty. The purpose of the Charter of Local Self-governments is to ensure the rights of local governments, thus, offering to citizens the possibility to participate in deciding on the issues affecting their daily lives. This is the first multi-lateral international treaty that explains and ensures the principles of local self-governments. The Charter imposes an obligation on the contracting parties to define the basic principles, which would guarantee to local governments political, administrative and financial independence. The Charter is directed towards closer unity between the Member States of the Council of Europe in protecting and enacting the shared inherited ideals and principles.

The Constitutional Court has recognised that not only a person's fundamental right to elect local government and the derived right to participate in the administration of public matters with the help of elected local governments has been enshrined in Article 101 of the *Satversme*, but also, in compliance with the laconic style of the *Satversme*, the status of local government as an elected institution of self-government as a whole. Hence, the principle of local government, which comprises the totality of minimum requirements with regard to organisation of local self-government in a democratic state governed by the rule of law, follows from the first sentence in the second part of Article 101 of the *Satversme* in conjunction with Article 1 of the *Satversme*.[416]

415 Olle V. Legislative Acts of Local Government Bodies and the Protection of Personal Rights and Freedoms. Juridica international IV, 1999, pp.70-71.

416 Decision by the Constitutional Court of the Republic of Latvia on 16 April 2008 on Terminating Legal Proceedings in Case Nr. 2007-21-01, Para 8.

One of the primary aims for electing local governments is to create a representative body for the local government's inhabitants, i.e., the local government's council.[417] The principle of local government as an unwritten general principle of law envisages a set of minimum requirements regarding organisation of a local self-government in a democratic state governed by the rule of law – the existence of a local self-government and its direct democratic legitimisation, as well as constitutional guarantees for the functioning of local self-governments.[418] Pursuant to Article 101 of the *Satversme*, local governments can be only elected. An appointed second level of local governments would be incompatible with the *Satversme*; these would be state institutions with certain mandate for supervision and coordination. Analysis of the procedure for electing the local government council shows that the legislator enjoys broad discretion in regulating this procedure – also to determine, which subjects and in what way have the right to submit lists of candidates for local government elections; however, this does not include the obligation to establish such legal regulation that would allow every citizen to choose a procedure for exercising their passive electoral rights outside the one set out in law.[419] A member of the local government council must have a certain level of proficiency in the Latvian language, however, this requirement is not applied at the point of standing for election (an unjustified restriction on the passive electoral rights) but it ensured when the work begins, inter alia, the deputy may be sent to learn the language, and failure to do this might result in losing the deputy's mandate.[420]

417 Judgement by the Constitutional Court of the Republic of Latvia on 5 February 2015 in Case No. 2014-03-01, Para 20.2.

418 Judgement by the Constitutional Court of the Republic of Latvia on 29 June 2018 in Case No. 2017-32-05, Para 11.

419 Judgement by the Constitutional Court of the Republic of Latvia on 5 February 2015 in Case No. 2014-03-01, Para 14.

420 Judgement by the Constitutional Court of the Republic of Latvia on 7 November 2013 in Case No. 2012-24-03.

The content of the local government principle in the *Satversme* may not be narrower than the one imposed as an obligation by the Charter of Local Self-government and other international commitments that Latvia has assumed in this area. If the legislator has defined a certain function as the autonomous function of local government, this autonomous competence is not only defined by the legislator but follows from the principle of local government included in the *Satversme*. Hence, the local governments' actions to fulfil the autonomous functions can be regulated by law, but local governments cannot be fully deprived of it. As with regard to other issues that are linked to guarantees of self-government, the local government must retain at least the core of this function, i.e., the possibility to fulfil this function at its own responsibility at least on the basic scale.[421] From the institutional vantage point, local governments have the right to organise independently their internal structure (e.g., to form an administration, institutions) and the work of local government institutions.[422] Local governments' right to self-determination would be too limited if the legislator abolished the functions of a local government to the extent that the existence of the local government would become insignificant. The principle of subsidiarity requires examination of local-level problems on the local level, and, therefore, the legislator should identify correctly those issues that would be placed in the autonomous competence of local governments. Likewise, democratic participation of inhabitants must be ensured in local government and democratic mechanisms need to be reinforced in the order of local governments; the requirements of the principle of a democratic state governed by the rule of law are applicable also to a local government.[423] However, protection of local governments' boundaries does not follow

421 Judgement by the Constitutional Court of the Republic of Latvia on 24 September 2008 in Case No. 2008-03-03, Para 12.

422 Judgement by the Constitutional Court of the Republic of Latvia on 29 June 2018 in Case No. 2017-32-05, Para 12- 13.

423 Valsts prezidenta Egila Levita 2021.gada 1.februāra paziņojums Nr.2 "Par vēlētiem vietējo kopienu pārstāvjiem pagastu un pilsētu iedzīvotāju padomēs". https://www.vestnesis.lv/op/2021/22.9

from the subsidiarity principle, only the allocation of functions between the central and the local power is derived from it.[424]

An intrinsic part of the local governments' autonomy is their right to property(to ensure economic basis for operations), as well as the right to form unions (associations). To perform its functions, a local government has the right to engage in commercial activities without distorting the market and competition, to establish a commercial company for this purpose. In addition to the autonomous competence, a local government may fulfil also the entrusted (delegated) competence (the local government acts as the state's representative regarding the tasks that the state has decided on, for example, ensuring declaration of the place of residence) as an opposite to the autonomous (or natural) competence. Whereas the voluntary initiatives as the third block of functions is encountered seldom, e.g., providing grants to students with the aim of attracting them later to working in this local government.[425]

At the same time, it should be taken into account that a local government does not have the subjective right to demand and the legislator – to determine – inclusion of a certain function into the autonomous function of a local government; however, if this has been done, Article 4 of the Charter applies to this case.[426] If a legislator has defined a certain function as the autonomous function of a local government and it has to make such a choice in compliance with the meaning of the Charter, then the local government has the obligation to fulfil it. Currently, no examples can be found in the Constitutional Court's case law where a local government had contested a law that had limited its autonomy by imposing disproportionally numerous functions or regulated the procedure for fulfilling them, which the local government was unable to fulfil (e.g., because of costs); however,

424 Judgement by the Constitutional Court of the Republic of Latvia on 12 March 2021 in Case No. 2020-37-0106, Para 20.

425 Briede J., Danovskis E., Kovaļevska A. Administratīvās tiesības. Rīga: Tiesu namu aģentūra, 2016, 153. – 158.lpp.

426 Judgement by the Constitutional Court of the Republic of Latvia on 29 June 2017 in Case No. 2016-23-03, Para 15.1.

there are cases regarding restrictions on a local government's discretion (e.g., when it is admissible to form secondary school classes). This correlates with the state's obligation to establish such local governments and determine such sources of income for them that allow fulfilling the requirements set in law and, thus, reaching the common good for society. As noted by the Constitutional Court, common good can be manifested as "increasing the effectiveness of the local government governance, improving the quality of services provided by local governments, ensuring united environment and standard of living and levelling out differences, consolidating inhabitants' sense of belonging, cultural identity, implementation of the aims set in the plans for territorial development." [427]

Usually, three parts are singled out in the decentralisation of deciding on local matters – political (direct legitimisation, adoption of political decisions), administrative (independence in deciding on matters of planning, establishment of institutions and similar matters) and fiscal (independence in introducing taxes and duties).[428] On the level of the state, several levels of administrative governance are possible, usually, from two to five. There are two levels in Latvia, five – in Portugal.[429] Analysis of the European models for organising local governments does not allow identifying ideal-typical models because classification can be based on very different elements – relations with the central power, models of supervision, fiscal autonomy, structures of governance, etc. Local governments in Europe differ greatly as to their autonomy, organisation of work and size. Usually, the supreme decision-making institution is the assembly or the council, elected in general elections. Often (e.g., in the USA) a council member at the same time assumes also functions in the executive power. In some

427 Judgement by the Constitutional Court of the Republic of Latvia on 12 March 2021 in Case No. 2020-37-0106, Para 19.

428 OECD Multi-level Governance Studies, Making Decentralisation Work. A Handbook for Policy-Makers. Chapter 2. Understanding decentralisation systems. Available: https://www.oecd-ilibrary.org/sites/53013b71-en/index.html?itemId=/content/component/53013b71-en

429 A comparative overview of public administration characteristics and performance in EU28. Available: https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8072

countries the mayor of the local government is elected in direct elections (Poland) and in some they are elected by the assembly or the council (Germany) or is appointed by another institution (the Netherlands).[430] In some models a council is elected, which establishes the executive power – a board, besides, such a model was known also in Latvia.[431]

In some cases, the law may encourage local governments or even impose an obligation to search for solutions in the framework of collaboration,[432] inter alia, by establishing special cooperation or administrative regions to provide a certain framework for this collaboration. If the law defines forced cooperation between local governments, it means restricting the autonomy of a local government; however, it depends a lot from the particular legal regulation. It may prohibit a local government from making its own decisions and regulate independently issues of local importance with the aim of achieving broader alignment of interests.[433] Restricting the principle of a local government's autonomy as a constitutional principle is admissible if it is justified by reaching an important constitutional value[434] and is done by clear precepts, established in law.

The legislator has the obligation to hear local governments, in deciding on issues significant for them, and to assess the local governments' opinion.[435] It could also be recognised that, pursuant to the doctrine of materiality , issues that affect local governments

430 Juraj Nemec. Local Government Structure and Capacities in Europe, Masaryk University. Available: https://www.researchgate.net/publication/301903944_Local_Government_Structure_and_Capacities_in_Europe

431 Vanags E., Vilka I. Pašvaldību darbība un attīstība. Rīga, Latvijas Universistātes Akadēmiskais apgāds, 2005, 141. – 144.lpp.

432 The Council of Europe, Inter-municipal cooperation, Toolkit Manual, 2010. Available: http://www.municipal-cooperation.org/images/4/4c/IMC_Toolkit_Manual.pdf

433 Sulev Mäeltsemees, Mikk Lõhmus and Jüri Ratas. 2013. "Inter-Municipal Cooperation: Possibility for Advancing Local Democracy and Subsidiarity in Estonia." Halduskultuur – Administrative Culture 14 (1), p. 82. http://f.ell.ee/failid/uurimis_ja_teadustood/2013/2013-05_Maeltsemees_Lohmus_Ratas_73_97.pdf

434 Estonia, Supreme Court, EST-2005-3-001, 19.04.2005. Available: http://www.codices.coe.int

435 Judgement by the Constitutional Court of the Republic of Latvia on 30 October 2009 in Case No. 2009-04-06.

significantly, could be regarded as being so important and significant issues in the life of the state and society that the legislator itself, i.e., the *Saeima* should decide on them.[436] One of such issues is the division of administrative territories, from which the size of local governments and also the ability to perform autonomous functions, in providing for inhabitants' needs, follow. The approach to it is as follows: the legislator may determine administrative territories without local governments' consent; however, it should be done after meticulous assessment, hearing the opinion of local governments and the Cabinet, achieving that the parties involved in the reform have, at least, agreements on the level that would allow defining aims of the reform. This process cannot be politically arbitrary, it should be based on criteria, compliance with which would allow reaching the aim of the reform.[437] Moreover, since the administrative territorial reform is related to interests of the respective local inhabitants and performance of the local government's autonomous functions, a local government has the right to establish the opinion of its inhabitants to present it timely, in the course of reform, to state institutions; however, establishment of such an opinion cannot be considered to be a binding referendum,[438] unless the law itself provides for such a referendum.

Usually, the administrative territorial division comprises four additional questions. First, whether the functioning of state institutions is subordinated to it or another principle is chosen. This aspect is of particular importance for inhabitants in order to receive services. Secondly, division of populated places in the framework of a unit of administrative territorial division (a village, a small village, a farmstead), as well as the units of territorial division of region – a rural territory and a town. Thirdly, belonging to one of the historical Latvian lands or small cultural space. Fourth, crating the names of populated

436 Decision by the Constitutional Court of the Republic of Latvia on 20 January 2009 on Terminating Legal Proceedings in Case No.2008-08-0306, Para 16.3.

437 Judgement by the Constitutional Court of the Republic of Latvia on 12 March 2021 in Case No. 2020-37-0106, Para 25.

438 Judgement by the Constitutional Court of the Republic of Latvia on 15 May 2020 in Case No. 2019-17-05, Para 16.3.

places and the system of addresses as well as the procedure for giving addresses (e.g., by issuing a general administrative act).

One of the most important issues is the relations between the local government and the state, supervision of local governments. Relations between the state and local governments should be developed in the form of a dialogue, complying with the principle of good faith and mutual respect to ensure effective public administration and use of resources, the principle of good faith and interinstitutional loyalty.[439] These relations are characterised by the subsidiarity principle, which "per se does not totally prohibit the higher level of governance from interfering into the exercise of a lower-level competence but defines the scope of such interference and the required intensity".[440] It is possible to derogate from the subsidiarity principle in those case, where the scope and nature of the function requires its implementation in a larger territory, as well as in the presence of serious considerations regarding effectiveness and economy for the performance of the function on a broader level.[441]

The state has the obligation to supervise how the local government in its activities complies with the law and legal acts and ensure compliance. Moreover, such interference should be proportionate to the importance of interests that will be protected. For example, a local government council as a democratically elected institution can be dismissed only if substantial violations of legal norms are committed repeatedly, such that jeopardize the lawful interests of the inhabitants of the particular administrative territory or the entire society.[442]

The state should not wait for a court to establish a violation committed by a local government council; it can act prior to it. If

439 Judgement by the Constitutional Court of the Republic of Latvia on 15 May 2020 in Case No. 2019-17-05, Para 18 and Para 20.

440 Judgement by the Constitutional Court of the Republic of Latvia on 3 December 2020 in Case No. 2020-16-01, Para 25.

441 The Council of Europe, Explanatory Report to the European Charter of Local Self-Government. Available: https://rm.coe.int/16800ca437

442 Judgement by the Constitutional Court of the Republic of Latvia on 3 December 2020 in Case No. 2020-16-01, Para 24.1.

the supervision of local governments is analysed in a broader context, it is important to establish that the state had been active, rather than had been sudden actions and guided only by political motives. Likewise, dismissal of a council is not a punishment but action to prevent threats to inhabitants' interests. If the threat cannot be prevented by dismissing the council, it is not applied. Although the principle that a council should not be dismissed for violations committed by the previous council is correct, this approach cannot be used as a justification for the fact that the current council has not remedied the situation and, actually, has continued to commit violations, inter alia, after the supervisory institution had reminded of the need to prevent the situation. The possibility to dismiss a council should be separated from the right of the Minister for Environmental Protection and Regional Development to suspend an external regulatory enactment issued by a local government. The supervision of regulatory enactments is narrower and, per se, it does not guarantee that the council would not commit other violations. Hence, the right granted to the Minister to suspend an unlawful regulatory enactment of a local government or a paragraph in it is only one of the measures that ensure supervision of local government's functional operations.[443] Since the Minister's order is issued with respect to an external regulatory enactment, which is already in force, the Constitutional Court has stated in its older case law that an institution of public administration, upon identifying a substantive infringement of public interests, has not only the right but also an obligation to act, and, in such a case, elimination of an infringement on important public interests should be given priority over the principle of legal stability.[444] However, later the Court supplemented this thesis, noting that the law did not define a term, within which the Minister could suspend the external regulatory enactment, and, thus, the absence of such a term could collide with the principle

443 Judgement by the Constitutional Court of the Republic of Latvia on 15 November 2018 in Case No. 2018-07-05, Par 15.1.

444 Judgement by the Constitutional Court of the Republic of Latvia on 9 March 2004 in Case No. 2003-16-05, Para 2 of the Findings.

of legal stability, which is of particular importance for private persons, in planning their business activities.[445]

445 Judgement by the Constitutional Court of the Republic of Latvia on 27 March 2008 in Case No. 2007-17-05, Para 23.

Chapter 3

A STATE GOVERNED BY THE RULE OF LAW AND A WELFARE STATE

I. State Governed by the Rule of Law

1. Idea of a state governed by the rule of law. Democracy – the power of the people' s majority - is the best that society has created in its evolution. At the same time, also democratic states have their deficiencies because the majority opinion is not always also the correct opinion.[446] Due to these reasons, democracy must be implemented within the framework of a democratic republic, which would comply with the principles of a state governed by the rule of la . Norbert Horn notes that "the contemporary method for ensuring a fair order for a community of people is establishing a democratic state governed by the rule of law".[447] In such a state, the majority should guarantee the protection of not only minority rights but also those of each individual.[448] A state governed by the rule of law is not only one of the social values that reinforce the human origins of the state and justice but

446 Lepse A. Par konstitucionālās sistēmas attīstību mūsdienās. Latvijas Vēstnesis, 1998. 19.jūnijs, Nr.182/183.

447 Horns N. Ievads tiesību zinātnē un tiesību filosofijā. Likums un Tiesības, 1999, Nr.1, 16.lpp.

448 Lepse A. Par konstitucionālās sistēmas attīstību mūsdienās. Latvijas Vēstnesis, 1998. 19.jūnijs, Nr.182/183.

also a practical institution for ensuring and defending a person's freedoms, honour and dignity, means for combatting bureaucracy and a form for implementing the rule of the people.[449]

In a state governed by the rule of law, any action by the state with respect to a person must comply with legal acts and law. Usually, a democratic state governed by the rule of law is a constitutional state with a general basic law, i.e., a constitution, which regulates and legitimises the state's power and grants it to several autonomous and separated state institutions (separation of powers); at the same time it commands the state to respect human rights and mentions fundamental rights that are of special importance.[450] A state governed by the rule of law requires great legal clarity and foreseeability, turning against legal uncertainty; however, at the same time, and it is a paradox, the very notion of a state governed by the rule of law is quite unclear – there are plenty of disputes in the Western legal tradition regarding the concept and content of a state governed by the rule of law. However, these disputes may not diminish the value of the idea of a state governed by the rule of law and political commitment to abide by its principles.[451] A state governed by the rule of law, alongside democracy and human rights, is one the pillars of European constitutionalism. The idea of a state governed by the rule of law is an indispensable element of a democratic society.[452] The idea of a state governed by the rule can be considered to be the common intellectual legacy of European states, which demands respecting a person's freedom and turns against arbitrary exercise of power. A state governed by the rule of law is anathema to an authoritarian state or a dictator's

449 Теория права и государства. Лазарев В.В. (ред.) Москва: Новый Юрист, 1997, с.353.

450 Horns N. Ievads tiesību zinātnē un tiesību filosofijā. Likums un Tiesības, 1999, Nr.1, 16.lpp.

451 Dworkin R. The Rule of Law. Keynote speech. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2013)016-e

452 European Commission for Democracy through Law (Venice Commission). Report on the Rule of Law. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e

power because it does not allow anyone to be above legal acts or law or replacement of the rule of law by arbitrariness of power.[453]

Respecting a person's human rights, separation of powers, supremacy of law, principle of lawful basis, existence of a mechanism for rights protection, the state's liability, criminal procedural guarantees, legitimate expectations, inter alia, legal certainty, proportionality, priority of the constitution, consistency or absence of contradictions of the judicial order, the obligation to provide reasoning for a state's decisions and a person's right to be heard can be recognised and the elements of the principle of a state governed by the rule of law.[454] The Venice Commission has highlighted as the most important elements of a state governed by the rule of law the following: the rule of law (inter alia, also transparent, responsible and democratic procedure for adopting legal norms), legal security (inter alia, legal certainty and legal foreseeability), prohibition of arbitrary actions, a person's access to an independent and objective court (inter alia, review of the legality of administrative acts), respect for human rights, prohibition of discrimination, and legal equality of persons.[455] The principle of a state governed by the rule of law is directed at implementing justice, covering the aspects of both procedural and substantive law. However, a state governed by the rule of law is characterised not only by the implementation of certain general principles of law but also, even more so, by society's culture and values that comply with these principles. In a state governed by the rule of law, first and foremost,

453 Spano R. The Rule of Law as the Lodestar of the European Convention on Human Rights: the Strasbourg Court and the Independence of Judiciary. European Law Journal, Vol.26, 2020, No.3/4, pp.1 - 17; https://onlinelibrary.wiley.com/doi/epdf/10.1111/eulj.12377

454 Dravnieks A. Vai Latvija jau ir tiesiska valsts. In: Administratīvā procesa likums. Administratīvā procesa likuma spēkā stāšanās likums. 3.izdevums. Rīga: Tiesu namu aģentūra, 2006, 13.lpp.

455 European Commission for Democracy through Law (Venice Commission). Report on the Rule of Law. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2011)003rev-e. See also: European Commission for Democracy through Law (Venice Commission). Rule of Law Checklist. https://www.venice.coe.int/images/SITE%20IMAGES/Publications/Rule_of_Law_Check_List.pdf

society itself in its relations creates and maintains high legal culture, respecting the rule of law and turning against disregarding law.[456]

The constitution's supremacy over other legal acts can be considered as being the main feature of a state governed by the rule of law.[457] At present, the constitution means not only its written text but also its spirit. The main task of the legal technique in the work of courts follows from this conclusion – abandoning legal positivism. Legal positivism used to be a progressive step and complied with the transitional period from absolutism, with its nihilistic approach to law, to a state governed by the rule of law. However, in a state governed by the rule of law of the 21st century, freer interpretation of law should prevail. The age of codifications is past, and the age of constitutions has set it.[458] To ensure the supremacy of a constitution, its application and interpretation, implemented by an independent court, are required. The judicial power has been granted considerable power, and therefore judges are bound by the requirements of law and professional ethics. "A judge is a servant of the people who administers justice in the name of the people to ensure justice. While judges deliver judgements in the interests of society and a particular person, using in their judgements the values and principles existing in the legal system rather than carry out scientific experiments to prove their truth through the judgements, we can speak of a state governed by the rule of law, where constitutionality and fundamental rights are ensured."[459]

The idea of a state governed by the rule of law has developed in parallel within the Anglo-Saxon legal system as the rule of law and within continental Europe as the state governed by the rule of law

456 Ziemele I. Tiesiskuma audits: vai Latvija ir tiesiska valsts. Jurista Vārds, 2017. 7.novembris, Nr.46(1000).

457 Žilis J. Lietuvas Republikas jaunā Konstitūcija Eiropas tiesiskās sistēmas kontekstā. In: Baltijas valstis likteņgriežos. Jundzis T (red.) Rīga: Latvijas Zinātņu akadēmija, 1998, 226.lpp.

458 Lepse A. Par konstitucionālās sistēmas attīstību mūsdienās. Latvijas Vēstnesis, 1998.gada 19.jūnijs, Nr.182/183.

459 Osipova S. Tiesiska valsts vai "tiesnešu valsts". Jurista Vārds, 2016. 5.jūlijs, Nr.27(930).

(Rechtsstaat, etat de droit).[460] These two conceptional perspectives on the connection between the state and guarantees for a person's freedoms and rights are close as to their content;[461] they have harmoniously merged in a united idea within the European supranational constitutionalism.[462] The foundations of the idea of the rule law in the United Kingdom were created by Albert Venn Dicey. He was of the opinion that the rule of law meant, first and foremost, that nobody could be tried or punished otherwise than only by a regular court for a violation of law adopted in a regular legislative procedure. That ensures guarantees for a person's right to a fair trial and expectations that the framework of his freedom is defined by a general law, adopted in due procedure, rather than by arbitrary actions by the executive power. The rule of law demands that nobody would be above law but all were subject to law. Additionally, the rule of law covers such human rights of a person as personal freedom, the freedom of discussions and the freedom of assembly.[463] Pursuant to the requirements of the principle of the rule of law, a law should be accessible, clear, understandable and foreseeable. The issue of a person's rights and liabilities may be resolved through application of law and not by an official's arbitrary opinion. All persons are equal before law. Likewise, the rule of law envisages protection of human rights. A person is ensured access to ordinary court for their rights protection and guarantees for fair legal proceedings are provided. State officials must exercise their mandate in good faith and honestly, in compliance with

460 See more: Grigore-Bāra E. Tiesiskas valsts virsprincips. In: Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi. Autoru kolektīvs prof.R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2014, 183. - 190.lpp.

461 Tanchev E. Rule of Law and State governed by Law. In: New Millenium Constitutionalism: Paradigms of Reality and Challenges. Yerevan: Njhar, 2013, pp.251-278. See also: Venēcijas komisijas 2012.gada 2.marta konferences "Rule of Law as a Practical Concept" materiālus. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2013)016-e

462 European Commission for Democracy through Law (Venice Commission). Report on the Rule of Law. http:// www.venice.coe.int/webforms/documents/CDL-AD(2011)003re v- e.aspx

463 Dicey A.W, Introduction to the study of the Law of the Constitution. London: Macmillan and Co, 1889, pp.171-340.

the aims for which this mandate has been granted, in situations where it is necessary.[464]

The contribution of Germany's experience and theoretical findings is important for the development of the principle of a state governed by the rule of law.[465] It was initially recognised in Germany that the principle of a state governed by the rule of law did not characterise the purpose or the content of the state but rather the way and nature of their implementation. However, it was recognised already at the beginning of the previous century that a state governed by the rule of law was an internally complete system of principles that defined the boundaries of a state. Carl Schmitt divided the principle of a state governed by the rule of law into principles of division and organisation. The principle of division means that the area of personal freedom is considered as having existed prior to the state. Hence, all personal freedoms are unlimited, whereas the state's right to intervene is limited and always requires justification. The principle of division is manifested in the guarantees for a person's human rights. Whereas the principle of organisation serves for the implementation of the principle of division, i.e., defines the division and competences of the state power. The principle of organisation is manifested as the division of the state power. Carl Schmitt held that human rights and separation of powers were the most significant elements of a state governed by the rule of law .[466]

2. Principle of a state governed by the rule of law in the *Satversme*. Article 1 of the *Satversme* defines Latvia as an independent democratic republic. The Constitutional Court has concluded that all principles of a state governed by the rule of law, derived from the basic law of a democratic state governed by the rule of law, fall within the scope

464 Bingham T. The Rule of Law. London: Penguin Books, 2010, pp.37-109.

465 See more: Баев В.Г. Германский конституционализм (конец XVIII-первая треть XX вв.). Москва: Юрлитинформ, 2010.

466 Schmitt C. Constitutional Theory. Durham and London: Duke University Press, 2008, pp.169-170.

of Article 1 of the *Satversme*.[467] "Latvia is a democratic state governed by the rule of law. This decision was made by the sovereign (the people) of Latvia and it is the basic norm of the Latvian legal system. General legal principles, which define the content and structure of the legal system, are derived from this basic norm. The basic norm in conjunction with all other legal principles protects the sovereign's values."[468] The principle of a state governed by the rule of law is derived from the basic norm of the Latvian legal system and falls within the scope of Article 1 of the *Satversme*.[469]

Previously, the Constitutional Court had derived from the text of Article 1 of the *Satversme*: "Article 1 of the *Satversme* provides that "Latvia is an independent democratic republic". Several principles of a state governed by the rule of law follow from this article".[470] In another judgement, the Constitutional Court has underscored: "The obligation of all state institutions in their actions [..] to abide by legality, separation of powers and carry out mutual supervision, in compliance with the subordination of the public power to the law; i.e., supremacy of law and other principles of a state governed by the rule of law follows from the concept of democratic republic, included in Article 1 of the *Satversme*."[471] The principle of a state governed by the rule of law, which, as the result of such interpretation, follows from the principle of democracy, is to be considered as being an overarching principle, from which other legal principles are derived.[472] The Constitutional Court had not provided reasoning regar-

467 Judgement by the Constitutional Court of the Republic of Latvia on 11 December 2020 in case No. 2020-26-0106, Para 10.2.

468 Separate opinion of Justice Daiga Rezevska of the Constitutional Court of the Republic of Latvia on 2 November 2017 in Case No.2016-14-01 , Para 3.

469 Judgement by the Constitutional Court of the Republic of Latvia on 3 December 2020 in Case No. 2020-16-01, Para 19.1.

470 Judgement by the Constitutional Court of the Republic of Latvia on 1 October 1999 in Case No.03-05(99), Para 1 of the Findings.

471 Judgement by the Constitutional Court of the Republic of Latvia on 24 March 2000 in Case No.04-07(99), Para 3 of the Findings.

472 Levits E. Ģenerālklauzulas un iestādes (tiesas) rīcības brīvība (II). Likums un Tiesības, 2003, Nr.7(47), 197.lpp.

ding the methodological justification for the including the principle of a state governed by the rule of law in Article 1 of the *Satversme*. The Constitutional Court had always perceived the existence of the principle of a state governed by the rule of law in Article 1 of the *Satversme* as a legal axiom, i.e., and assumption, the existence of which does not require additional justification and from which, in turn, subsequent conclusions follow. Such reasoning, however, has been provided in legal science .[473] Currently, the interpretation of Latvia's basic legal norm in the case law of the Constitutional Court has developed the methodology for deriving the principle of a state governed by the rule of law. This has also brought it closer to the understanding of the principle of a state governed by the rule of law of the inter-war period when the principle of a state governed by the rule of law was not derived from the *Satversme*'s regulation but was considered as existing per se.[474] The case law of the Latvian Senate also testifies to this, as it had concluded in several cases that "The State of Latvia is a state governed by the rule of law"[475], without referring to provisions of positive law. To justify the idea of a state governed by the rule of law, Kārlis Dišlers developed in his work the idea of the sovereignty of law, that the state is not sovereign but is subject to law.[476]

The idea of a state governed by the rule of law, included in Article 1 of the *Satversme*, comprises several principles, which the Constitutional Court is gradually revealing in its judgements. In several judgements, the principles of separation of powers, legality, legitimate expectations, proportionality and justice have been underscored as

473 Levits E. Samērīguma princips publiskajās tiesībās - jus communeeuropaeum un Satversmē ietvertais konstitucionāla ranga princips. Likums un Tiesības, 2000, Nr.9(13), 266.-267.lpp.

474 Dišlers K. Latvijas valsts varas orgāni un viņu funkcijas. Rīga: Tieslietu Ministrijas Vēstneša izdevums, 1925, 13.-15.lpp.

475 Senāta Civilā kasācijas departamenta 1926.gada 25.novembra spriedums lietā Nr.121. In: Ieskats Latvijas Senāta spriedumos un senatora Augusta Lēbera rakstos (1920-1938). Lēbers D.A. (sast.) Rīga: Latvijas Enciklopēdija, 1992, 23.-25.lpp.; Senāta Civilā kasācijas departamenta 1921.gada 8.decembra spriedums lietā Nr.188. In: Latvijas Senāta spriedumi (1918-1940). 6.sējums. Rīga: Latvijas Republikas Augstākā tiesa, Senatora Augusta Lēbera fonds, 1997, 2368.-2372.lpp.

476 Grigore-Bāra E. Tiesiskas valsts virsprincips. In: Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi. Autoru kolektīvs prof.R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2014, 188. – 189.lpp.

the central principles of a state governed by the rule of law.[477] The Constitutional Court has found that "the principles of a democratic state governed by the rule of law are based on the fact that balance between fundamental values and exercise of rights exists in society. Decisions adopted by the government should create the belief that they are adopted in compliance with the principle of justice, to decrease, thus, the possibility for the existence of conflict of interests. In a democratic state governed by the rule of law, public administration must perform the functions, entrusted to it by society, honestly, effectively and justly, its actions must comply with laws".[478] The Constitutional Court has established that he principle of legality and separation of powers is the foundation for the existence of any state governed by the rule of law.[479] The principle of separation of powers is manifested in the division of the state power into the legislative, executive and judicial power, which are exercised by independent and autonomous institutions. This principle guarantees balance and mutual control and promotes moderation of power. The principle of legality, in turn, provides that legal acts and law are binding upon all institutions of state power, also the legislator itself. In a democratic republic, the parliament must comply with the constitution and other laws, including those adopted by the parliament itself.[480] The general rule of law or the principle of supremacy of law provides that the entire state power is bound by law and may act only within the framework of jurisdiction defined in legal norms.[481]

3. Content of the state governed by the rule of law. The basic conditions for a state governed by the rule of law are the people's

477 See more: Rezevska D. Vispārējo tiesību principu nozīme un piemērošana. 2.izd. Rīga: Daigas Rezevskas izdevums, 2015.

478 Judgement by the Constitutional Court of the Republic of Latvia on 24 March 2000 in Case No. 04-07(99), Para 3 of the Findings.

479 Judgement by the Constitutional Court of the Republic of Latvia on 10 June 1998 in Case No.04-03(98).

480 Judgement by the Constitutional Court of the Republic of Latvia on 1 October 1999 in Case No. 03-05(99), Para 1 of the Findings.

481 Judgement by the Constitutional Court of the Republic of Latvia on 3 December 2020 in Case No. 2020-16-01 Para 19.1.

sovereignty and the supremacy of law. The supremacy of law means equality of all people before the law and court and recognition of the inalienable human rights of each person.[482] To a certain extent, the democratic idea of the people's sovereignty is manifested in a state governed by the rule of law. In a state governed by the rule of law the entire power is vested in the people and the government is elected in democratic elections. Therefore throughout the world a democratic state governed by the rule of law is considered to be the best form of a state, which should be protected and aimed for. A democratic state governed by the rule of law is the framework and the foundation for complex, modern societies, allowing great personal freedoms in conditions of regular or even high welfare.[483] Kārlis Dišlers wrote similarly: "Only that power of the state is legal, which has been created or recognised by the people. Therefore we could also say that each democratic state is a state governed by the rule of law and that each state governed by rule of law, more or less, is a democratic state; but an undemocratic state can never be a state governed by the rule of law because the state power in an undemocratic state is only the actual power it is not and cannot be legal power."[484]

To implement a state governed by the rule of law, the executive power and the judicial power must be subject to law; however, this can be done only in those cases, where the principle of separation of powers is enacted because concentration of the state power in one hand will inevitably destroy a state governed by the rule of law.[485] To recognise a state as being governed by the rule of law, a constitutional reform is not enough because a state governed by the rule of law requires also a reform of administrative law, diminishing the arbitrariness of institutions and officials of the executive power, an subjective

482 Новоторжский И. Что такое правовое государство. Санкт-Петербург: Типографа Н. Фридберга, 1906, с.7.

483 Horns N. Ievads tiesību zinātnē un tiesību filozofijā. Likums un Tiesības, 1999, Nr.1, 16.lpp.

484 Dišlers K. Latvijas valsts varas orgāni un viņu funkcijas. Rīga: Tieslietu Ministrijas Vēstneša izdevums, 1925, 17.lpp.

485 Гессенъ В.М. Основы конституіоннаго права. Петроградъ: Право, 1918, с.66-67.

rights must be granted to persons.[486] In a state governed by the rule of law a person turns from an object of power into a subject of law; i.e., a state governed by the rule of law recognises a person as being the state's citizen with public obligations and rights.

In the 19th century, Germany first of all formulated the formal understanding of a state governed by the rule of law; i.e., a state governed by the rule of law is a legal structure, which does not depend upon any changes in the government or political system. As a system that is autonomous from the state power it recognised human rights and freedoms. However, a state governed by the rule of law in this understanding was nothing more than a formal, rational law, which defined relations between the state and its inhabitants.[487] Attempts were made to use the idea of a state governed by the rule of law to define the relations and interactions between law, the state, a person and society. A law was seen as a means for reaching this aim, as it would, on the one hand, regulate the relations between members of society and, on the other hand, would protect society against arbitrariness and tyranny.[488] A state governed by the rule of law appeared to restrict people's lust for power. It was caused by lack of trust, wish to control and balance the state power.[489] Therefore, in all times, the principle of separation of powers has been considered to be the most needed precondition for a state governed by the rule of law.[490] In formal understanding, a state governed by the rule of law is such a state, where the government's power is restricted and the government's actions are defined by law. Hence, administration of a legal state governed by the rule of law is characterised by three aspects: defining jurisdiction, restriction of administrative coercive measures, and decrees being subject to law, which must be ensured by a complaint about an

486 Гессенъ В.М. Основы конституіоннаго права. Петроградъ: Право, 1918, с.67.

487 Kommers D.P The Constitutional Jurisprudence of the Federal Republic of Germany. Durham and London: Duke University Press, 1989, p.42.

488 Jurciņa A. Valsts loma sabiedrību politiskajā sistēmā. Rīga: Latvijas Universitāte, 1990, 3.lpp.

489 Cipeliuss R. Tiesību būtība. Rīga: Latvijas Universitāte, 2001,54.lpp.

490 Гессенъ В.М. Основы конституционного права. Петроградъ: Право, 1918, с.66.

unlawful decree.[491] The twofold nature of a state governed by the rule of law followed from this principle. The state power as the legislator was the creator of positive law, not being bound by any customary or legislative law since there are no eternal laws or customs. Whereas a state power, which enacts laws or administers justice, is bound by the valid positive law. By issuing a law, the legislator not only imposes an obligation upon its citizens, by granting certain advantages to the state, but also restricts the state power, by granting certain rights to individuals. Such a state governed by the rule of law, in performing the functions of the executive and judicial power, is restricted and bound by positive law. A state is subject to law instead of existing outside it.[492]

In a state governed by the rule of law, the life of society and state is created by using legal means and following the criteria of law as a special factor of order . The basic principle of a state governed by the rule of law is not only protecting a person against infringements by the state but also simultaneously restricting and ensuring actions by the state to guarantee recognition of human dignity, freedom, justice and legal protection to them both in relations with the state power but also in reciprocal relations. The Federal Constitutional Court of Germany has recognised that "the principle of a state governed by the rule of law, defined incompletely in the constitution, does not comprise generally defined recommendations and prohibitions, it needs to be specified depending on the actual circumstances; moreover, the basic elements of the state governed by the rule of law and statehood must be retained".[493] The new understanding of a state governed by the rule of law includes also such a "supra-positive" law as the recognition of human dignity, freedom and justice.[494] Due to these very

491 Dišlers K. Ievads administratīvo tiesību zinātnē. Rīga: Latvijas Universitāte, 1938, 42.lpp.

492 Гессенъ В.М. Основы конституционного права. Петроградъ: Право, 1918, с.66.

493 Шмидт-Асман Е. Правовое государство. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.54.

494 Хенке В. Республика. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.30.

reasons, "a state governed by the rule of law, first of all, is a level of thinking. Such level of thinking where exactly those, who have the greatest power to influence the fate of others, most frequently ask themselves: "Are my actions legal, do my efforts comply with the ideals of democracy, are the interests that I defend those of Latvia or only mine?" A state governed by the rule of law is a system, where each individual has the possibility to verify that each official has this level of thinking and to respond effectively if the opposite is found. A state governed by the rule of law is not the parliament's dictatorship but a complex mechanism, within which the system of checks and balances is at work, the principle of the separation of powers is implemented".[495] It follows accordingly that all legal norms must be created and interpreted through the prism of human rights and the state's commitment to renounce threats to human rights and ensure their development.[496]

The legal nature of the state is a non-political principle of form.[497] A state governed by the rule of law reinforces political unity, by creating, within the framework of dynamic political process, relatively stable and durable structures. A state is granted a structure that it is unable to create itself as the result of constantly changing of integrating processes. In such circumstances, a state governed by the rule of law is a form for ensuring continuity. Democracy releases the state from links with particular persons, a state governed by the rule of law promotes the state's independence from the change of leading political groups. It is a guarantor of relative continuity within constant change, turning into an essential precondition for every process of change, if it is not outside the limits of the common political

495 Endziņš A. Latvijas demokrātija un īsteni tiesiskas valsts prakse. Jurista Vārds, 2000. 19. janvāris, Nr.3(156).

496 Куркин Б.А. Теория конституционализма и философия государства в ФРГ. Закон и право, 2001, №5, с.44.

497 Маунц Т. Государственное право Германии (ФРГи ГДР). Москва: Издательство иностранной литературы, 1959, с.118.

leadership and manifestation of will.[498] A state governed by the rule of law cannot guarantee correct exercise of power, without restricting the right to it. This is exactly why the idea of a state governed by the rule of law cannot be examined in isolation from the idea of a republic. Such linking of ideas precludes replacement of human dictatorship by the dictatorship of laws – an inhuman system of abstract rules or a hidden means of governance for people with anonymous power. It is important to take into account that, in a constitutional state, the interpreter of the constitution has a significant impact and "a state with a democratically parliamentary legislator, in the end, may turn into a state where jurisdiction dictates, turn from a parliamentary democracy into the power of constitutional justices".[499] In cases like these, the constitutional principle of a republic does not allow forgetting that "in the conditions of legal state order, live people rule, and the task of law is not to replace them but to grant to their actions an official character. This means not only simple rule of laws but the inclusion of a personal element into the system of state power, although with certain restrictions. Thus, both the ruling elite and ordinary citizens have the possibility to demonstrate their personal virtue".[500] The risk of judges' state exists in a democratic state governed by the rule of law; however, it is justifiable as a necessary precondition for implementing the principles of a state governed by the rule of law in the constitutional reality. Likewise, within the system of a democratic state governed by the rule of law, the judicial power is equally restricted as the legislative or the executive power by mechanism of separation of powers and generally recognised legal principles, which define the basic principles for the functioning of the judicial power.[501] In this respect, it has been validly recognised that interpretation of

498 Хессе К. Основы конституционного права ФРГ. Москва: Юридическая литература, 1981, с.100-101.

499 Forlenders H. Iztulkotājs kā suverēns ar neierobežotu varu. Likums un Tiesības, 2001, Nr.10(26), 300.lpp.

500 Хенке В. Республика. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.31.

501 Osipova S. Tiesiska valsts vai "tiesnešu valsts". Jurista Vārds, 2016. 5.jūlijs, Nr.27(930).

the constitution and the principle of a state governed by the rule of law are like a lock to be opened simultaneously by three keys, entrusted to different powers.[502]

A state governed by the rule of law as a constitutional principle is a complex system with the aim of ensuring the development of legal statehood within the respective political system. Legal statehood demands ensuring legal certainty, comprising the clarity of legal requirements and citizens' trust in the state, and legal peace as an expression of legal certainty.[503] Usually, elements of the principle of a state governed by the rule of law are included in the entire system of the constitution, making a reference in some articles of the constitution to the state governed by the rule of law or to some of its elements only a part in the implementation of this principle. There is no consensus among the scholars of state law regarding the most essential elements of the principle of a state governed by the rule of law. Some authors mention separation of powers, judicial independence, legality of government, legal protection of citizens if their rights had been infringed upon by the state, as well as compensation for damages caused by such violations as elements of a state governed by the rule of law.[504] Whereas others consider separation of powers, hierarchic system of regulatory enactments, priority of law, legality of statehood, legal certainty, prohibition to abuse the law and restricting power by law as elements of a state governed by the rule of law.[505] Likewise, differences between the branches of law and separation of powers, granting of personal human rights, legality of enacting laws, legal protection of some powers and prohibition of retroactive force of law are highlighted in the content of a state governed by the rule of law. In this context, separation of powers plays an important role

502 Bingham T. The Rule of Law. London: Allen Lane, 2010, p. 169

503 Жалинский А., Рёрихт А. Введение в немецкое право. Москва: Спарк, 2001, с.139.

504 Хенке В. Республика. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.30; Шмидт-Асман Е. Правовое государство. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.57.

505 Жалинский А., Рёрихт А. Введение в немецкое право. Москва: Спарк, 2001, с.139.

since it is separation of powers which ensures mutual control to prevent abuse of power and to protect the interests of individuals.[506] In the commentaries on the *Satversme*, the principle of separation of powers, the principle of the constitution's supremacy, hierarchy of legal norms, the principle of lawful basis and the priority of law, the principle of prohibition of arbitrariness and providing reasoning for a decision, the principle of legitimate expectations and legal certainty, the principle of good governance, procedural justice and the right to a fair trial have been pointed out as the most important elements of the principle of a state governed by the rule of law.[507] The Constitutional Court has derived from the principle of a state governed by the rule of law also the principle of good legislation.[508]

In view of the rich content of the principle of a state governed by the rule of law, the Constitutional Tribunal of Poland has validly compared the notion of a state governed by the rule of law to an open book. A state governed by the rule of law is a summarising concept, which comprises several provisions and principles of more specific and detailed nature. All these provisions and principles, although they are not included in a constitution directly, are of constitutional level, and they can be applied as independent grounds for reviewing the constitutionality of laws. It cannot be excluded either that the range of such principles cannot be defined with complete accuracy because, in accordance with need, the Tribunal will find also other components in the concept of a state governed by the rule of law.[509] The Constitutional Tribunal of Poland has included in the scope of the principle of a state governed by the rule of law also guarantees for human dignity and fundamental human rights, separation of powers,

506 Маунц Т. Государственное право Германии (ФРГи ГДР). Москва: Издательство иностранной литературы, 1959, с.119-122.

507 See more: Grigore-Bāra E. Tiesiskas valsts virsprincips. In: Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi. Autoru kolektīvs prof.R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2014, 193. – 210.lpp.

508 Judgement by the Constitutional Court of the Republic of Latvia on 6 March 2019 in Case No. 2011-11-01, Para 6.

509 Гарлицкий Л. Правовое государство и конституционное правосудие в Польше. Конституционное право: Восточноевропейское Обозрение, 2002, №1(38), с.19.

prohibition of retroactive force of law, ensuring an appropriate term between the publication of a law and its entry into force (vacatio legis), legal certainty and proportionality. Requirements of the principle of a state governed by the rule of law are aimed at promoting persons' trust in the state and its legal system.[510]

A state governed by the rule of law creates, develops and guarantees the legal order needed for an individual's existence and co-existence of individuals in society. This can be ensured only by law.[511] An individual's sense of freedom also follows from the rule of law, it is manifested as independence from any other power because all their fellow citizens are equal, thanks to the rule of law.[512] The people's representation is engaged in the creation of law, creating it as a general norm, which can be applied to a certain number of cases. The legislator itself is bound by the law it has adopted, until it has not revoked or amended it by a new law.[513] The supremacy of law envisages the supremacy of legal law because not every legal act, even if it comprises great efforts by the legislator, contains law. Supremacy of law is a formal external feature of a state governed by the rule of law, but the content of a legal act is the most essential feature of state governed by the rule of law.

In a democratic state governed by the rule law, a legal act must comply with law. For regulation defined by the legislator to be in force, it is not enough that it has been issued in compliance with the procedure set out for adopting the norm; this regulation needs to comply as to its content with the supra-positive natural law. The legislator is bound not only by procedural rules but also by the values and general legal principles, included in the constitutional provisions, recognising justice as the ultimate aim of legal regulation. Egils Levits has noted "the (general) justice of a law in a democratic state

510 Prokop K. Polish Constitutional Law. Biatystok: Temida 2, pp.34-37

511 Хессе К. Основы конституционного права ФРГ. Москва: Юридическая литература, 1981, с.102.

512 Дюги Л. Конституционное право. Обшая теорія государства. Москва: И.Д. Сытин, 1908, с.212.

513 Маунц Т. Государственное право Германии (ФРГ и ГДР). Москва: Издательство иностранной литературы, 1959, с.120.

governed by the rule of law is not only the primary purpose of a law but also a necessary feature of the law for it to be in force. Taking into account the global experience related to totalitarian "states of injustice" (Latvia also had to endure such a regime), one cannot uphold Hans Kelsen's teaching of "pure law" with is basic thesis that legal norms are in force per se, irrespectively of their ethical content. Those theories that consider that justice is the precondition for a law's validity should be upheld".[514]

Pursuant to the opinion of contemporary legal theory, norms of lower legal force not only should be adopted in the procedure set out in norms of higher legal force but should comply with these norms of higher legal force content-wise. This means that currently the prevailing opinion is the one that was denied by Hans Kelsen, i.e., that all legal norms, also as to their content, can be reduced to one norm not only to a norm of lower legal force derived in a procedure for adopting a norm of lower legal form set out in a norm of higher legal force, the content of which can be freely defined by the adopter of the norm. Gustav Radbruch emphasised, in particular, that positivism with its faith in its legal principle "law is law" made lawyers vulnerable before such laws, the content of which was criminal or arbitrarily dictated.[515]

The National Socialism regime and other totalitarian regimes of the previous century clearly demonstrated the deficiencies of positive law, when the ruling regime used law not to ensure justice and social peace in society but as the means for implementing aims of the regime and suppressing groups with dissenting views. In conditions of overcoming the heritage of these totalitarian regimes, the concept of natural law was revisited, admitting that a number of pre-defined legal norms, binding upon the legislator, existed, which determined the content of positive law and which, if contradictions with the positive

514 Levits E. Ģenerālklauzulas un iestādes (tiesas) rīcības brīvība (I). Likums un Tiesības, 2003, Nr.6(46), 163.lpp.

515 Радбрух Г. Законное неправо и надзаконное право. In: Радбрух Г. Философия права. Москва: Международные отношения, 2004, с.233.

law occurred, were able to remedy the positive law. Natural law is binding not only upon the legislator and those applying legal norms but also upon the constitutional legislator.[516] The Federal Constitutional Court of Germany has recognised that law is not identical only with the totality of written laws. Contrary to the positive rules of the state power, under the relevant circumstances, numerous laws may exist, the sources of which can be found in the constitutional legal order as a conceptual whole, and this law has a remedial impact upon written laws.[517]

In this court case, the Federal Constitutional Court of Germany also noted that finding the supra-positive law and review of the compatibility of the written law was the task of the party applying law, in particular, of a judge. This means that the party applying legal norms no longer may stay in the framework of the regulation of written law. Thus, supra-positive law, i.e., the general legal principles of a democratic state governed by the rule of law are binding not only upon the legislator but also upon those parties applying legal norms, who are obliged to examine the legislator's work and, if needed, correct an unlawful law. It also must be noted that the structure of law has become increasingly more complicated. The party applying legal norms cannot be limited only by being subject to law.[518] "In the complex contemporary social reality [..] [a judge's subordination to law] conceals the growing role of the case law as the source of law, refusal to administer justice due to "silence of the law", differentiation between a legal act and law, which has entered constitutional texts [..], increasing number of unforeseen legal situations in the areas of ecology, medicine, genetics, recognition of the supremacy of international law over the national law, existence of the soc-called unlaw legislation,

516 Vinters U., Kerns V. Ievads vispārīgajās administratīvajās tiesībās Saksijas zemes administrācijas kalpotājiem. Tulkojums no vācu valodas. Nepublicēts materiāls, 19.lpp.

517 Horns N. Ievads tiesību zinātnē un tiesību filosofijā. Likums un Tiesības, 2000, Nr.8(12), 232.lpp.

518 Neimanis J. Tiesību tālākveidošana. Rīga: Latvijas Vēstnesis, 68. – 83.lpp.

which legally is in force, but are contrary to the generally recognised principles of morality and humanism."[519]

4. Legal statehood. The main purpose of laws of a democratic state governed by the rule of law is justice and ensuring thereof.[520] Daiga Rezevska has underscored that "the ultimate aim of a democratic state governed by the rule of law is justice, ensuring it."[521] Non-compliance with the law cannot be justified by political reasons of state importance or the significance of national interests. Only compliance with legality can ensure the legitimising and stabilising impact on the state and society, characteristic of a state governed by the rule of law.[522] Legality also binds each persons' understanding of justice. A person's conscience is the supreme judge of what they consider to be good and just; however, it does not decide on which law must be complied with. Morality and legality are interconnected because the legitimacy of a law is justified by the fact that it is supported by the conscience of as many people as possible.[523] Attempts to differentiate between legal acts and law can be observed in society. However, there are values that are above the law – the truth, reason, conscience, honesty, freedom, brotherhood, and justice. The law and a legal act are something only if they express these values and facilitate their embodiment in social life.[524] Binding of the executive and judicial power with the unwritten law does not give the right to circumvent a legal act by referring to law because that would facilitate the levelling of constitutional functions and deprive the written law from rationalising and stabilising impact upon society, defined in the constitution.[525] The aim and the task of law is to shape human behaviour and societal

519 Мишин А.А., Страшун Б.А. Судебная власть. In: Конституционное (государственное) право зарубежных стран. Общая часть. Страшун Б.А. (ред.) 3-е изд. Москва: БЕК, 2000, с.659-660.

520 Čepāne I., Meiere S. Par tauvas joslas tiesisko statusu. Jurista Vārds, 2001.9.oktobris, Nr.30(223).

521 Separate Opinion of Justice Daiga Rezevska of the Constitutional Court of the Republic of Latvia on 2 November 2017 in Case No.2016-14-01 , Para 3.

522 Хессе К. Основы конституционного права ФРГ. Москва: Юридическая литература, 1981, с.103.

523 Cipeliuss R. Tiesību būtība. Rīga: Latvijas Universitāte, 2001,60.lpp.

524 Теория права и государства. Лазарев В.В. (ред.) Москва: Новый Юрист, 1997, с.358.

525 Хессе К. Основы конституционного права ФРГ. Москва: Юридическая литература, 1981, с.103.

relations that would be fair and justified by the right vested in human beings, naturally intrinsic or God-given, to life, freedom, security, and happiness. A human being is the supreme value that cannot be used as a means for reaching other aims.[526] If a conflict arises between the requirements of justice and legal security, then the state has to make a choice through legislation.[527] In some cases injustice is admissible as payment for social order.[528]

At the same time, the supremacy of law does not mean abstractness and unchangeability. Linkage with law becomes genuine only when legal norms are specified and updated. Legal norms cannot be separated from particularities and changes in the conditions of life.[529] Justice as an ethical moral category covers not only the legislator's actions but, even more so, application of law. Legal norms are to be interpreted in the process of their application, which, actually, means that the genuine legal norm appears only as the result of interaction between the written norm and its interpreter. A legal norm is just an empty string of words before the interpreter has filled it with content. Legal norms exist in human society, in actual historical environment, within the framework of certain processes, but, with changing circumstances, also the understanding of the legal norm changes, although its verbal recording in the law may remain unchanged.

The principle of a state governed by the rule of law manifests itself as binding the state power by law; however, two different forms of manifestation are possible: in the formal understanding – as the state of law, and in substantive understanding – as the state of justice.[530] In the context of substantive understanding of a state governed

526 Meļķisis E. Likums un taisnība. In Meļķisis E. Latvijas tiesiskās sistēmas ceļš uz demokrātisku tiesisku valsti. Rakstu krājums. Rīga: Tiesu Namu aģentūra, 2014, 126.lpp.

527 Жалинский А., Рёрихт А. Введение в немецкое право. Москва: Спарк, 2001, с.139.

528 Iljanova D. Vispārīgie tiesību principi un to funkcionālā nozīme. In: Mūsdienu tiesību teorijas atziņas. Meļķisis E. (red.) Rīga: Tiesu namu aģentūra, 1999, 104.lpp.

529 Хессе К. Основы конституционного права ФРГ. Москва: Юридическая литература, 1981, с.103.

530 See more: Grigore-Bāra E. Tiesiskas valsts virsprincips. In: Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi. Autoru kolektīvs prof.R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2014, 190. – 193.lpp.

by the rule of law, justice is used to designate an ideal order within the framework of law – as ideal human relations and a principle that regulates human rights and obligations to society. Any totalitarian state can be the state of law, whereas a state of justice is characterised by law as reinforcement of legal positions expressed in human rights.[531] In contemporary understanding, a state is governed by the rule of law not only in the formal understanding (a state of law), but also in substantive understanding - a state of justice. A state governed by the rule of law, in the meaning of the Basic Law of Germany, includes not only the principles of form - allocation of roles in the organisation of statehood and other rules of the game, but also specified components in the content. These must be sought, first of all, in guarantees for human rights in all their manifestations: as guarantees for subjective rights, as institutional safeguards, and binding judgements. The substantive law components of a state governed by the rule law are found also in the principles of proportionality and prohibition of excessiveness aimed at optimisation in ensuring society's interests.[532]

A state governed by the rule of law is a form of rationalising the life of a state.[533] In a formal understanding, a state, which recognises as being inalienable for it such institutions as separation of powers, judicial independence, legality of administration, legal protection of citizens if their rights have been infringed by the state, and compensation for damages caused by such infringements, is to be recognised a state governed by the rule of law. These criteria underscore the typical elements of subordinations of the state and public life - grounds for adopting decisions enshrined by legislation, division of competences between institutions of state power, and procedural norms. A state governed by the rule of law turns into an empty formality if its existence is limited to maintaining only these legally technical elements but the process of legislation is not aimed at reaching much higher ideals. A state of justice guarantees such vector of the state's

531 Жалинский А., Рёрихт А. Введение в немецкое право. Москва: Спарк, 2001, с.138-139.

532 Maunz T., Zippelius R. Deutsches Staatsrecht. 29.Aufl. München: Verlag C.H. Beck, 1994, S.85.

533 Хессе К. Основы конституционного права ФРГ. Москва: Юридическая литература, 1981, с.101.

actions that binds the legislator by constitutional principles and determines normatively the system of human rights.[534] In this area, the legislator is guided also by the constitutional court, the judgements of which are like a compass which reveals the direction of the national legislation.[535]

However, it is not enough to declare the principles of a state governed by the rule of law, they must be respected. A state governed by the rule of law is something more than an ordinary system of legal technical measures for ensuring the freedoms envisaged in law.[536] Legal statehood forms through consistent implementation of the idea of a state governed by the rule of law, where the formal and substantive understanding of a state governed by the rule of law intertwine. Legal statehood is at the same time a political principle because in a state where separation of powers, priority of law and judicial review of the state' s legal acts exist political processes are institutionalised differently than in a state where these principles are not in force.[537] Legal statehood requires the state to align political processes in accordance with the principles of a state governed by the rule of law and ensure constitutionally the area of individual and public functioning.[538] Both understandings of a state governed by the law cannot be separated because each of them on its own is unable to ensure the aims expected from them. The connection of the state power with law ensures that the acts adopted by it are foreseeable and secure. Legal statehood comprises a totality of formal and substantive elements because it is a totality of norms that regulate objective and subjective rights, linking these to obligations and, thus, creating the concept of liability.[539]

534 Шмидт-Асман Е. Правовое государство. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.57-58.

535 Lepse A. Par konstitucionālās sistēmas attīstību mūsdienās. Latvijas Vēstnesis, 1998. 19.jūnijs, Nr.182/183.

536 Хессе К. Основы конституционного права ФРГ. Москва: Юридическая литература, 1981, с.102.

537 Maunz T., Zippelius R. Deutsches Staatsrecht. 29.Aufl. München: Verlag C.H. Beck, 1994, S.86.

538 Жалинский А., Рёрихт А. Введение в немецкое право. Москва: Спарк, 2001, с.139-140.

539 Шмидт-Асман Е. Правовое государство. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.58-59.

Moreover, the idea of legal statehood is linked to the idea of a social state and its basic task – ensuring social justice, creating preconditions for personal development and equal opportunities to all.[540]

Currently, the principle of legal statehood is examined as a structural principle of constitutively free political life. The order of a state governed by the rule of law gives a form, stability and legitimacy to the state.[541] Legal statehood rationalises daily relations and ensures stable orientation and legal certainty.[542] Thus, legal statehood comprises not only justice but also legal certainty because freedom entails the possibility to lead one's life as one wishes.[543] Legal statehood is not limited to ensuring legal principles or simple restriction of the state power in the name of freedom. The principle of a state governed by the rule of law does not envisage political unity or unlimited power of the state that would be impossible to restrict. A state governed by the rule of law creates norms, principles and order that constitute the foundations of the legal order, foregrounds and consolidates political unity, and through implementation of these the state acquires a concrete historical form. A state governed by the rule of law establishes and reinforce substantive political unity through legitimisation.[544]

Where a state governed by the rule of law does not exist, people link it with yearning for justice. Justice requires repaying for the like with the like, creating the idea of equality. Gustav Radbruch wrote that justice replaced an unjust law if it was insurmountably contrary to justice.[545] However, the substance of the matter is not in the justice of law but in the legality of justice, since law does not follow from

540 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 74., 225.lpp.

541 Maunz T., Zippelius R. Deutsches Staatsrecht. 29.Aufl. München: Verlag C.H. Beck, 1994, S.86.

542 Жалинский А., Рёрихт А. Введение в немецкое право. Москва: Спарк, 2001, с.140.

543 Maunz T., Zippelius R. Deutsches Staatsrecht. 29.Aufl. München: Verlag C.H. Beck, 1994, S.86.

544 Хессе К. Основы конституционного права ФРГ. Москва: Юридическая литература, 1981, с.100.

545 Радбрух Г. Законное неправо и надзаконное право. In: Радбрух Г. Философия права. Москва: Международные отношения, 2004, с.233.

justice but justice is derived from law and expresses legal meaning.[546] Justice is a form of order, which becomes consolidated inside a free corporate body, inhabited by free people who are members of this body, whereas the corporate body becomes objectively established to guarantee maximum freedom of its members, thus, restricting itself. Justice stops being high abstraction and turns into the leading force operating within the area of organised existence. This understanding of justice complies with the notion that a state governed by the rule of law is the highest among the conceivable types of organisation because it is the most suitable to the nature of human beings, created in the image and likeness of the God. The constitution, which is the sole reality, by which the sovereignty of the national corporation becomes established, is only a legal element that complies with justice.[547] The entire system of representative democracy of a state governed by the rule of law serves only to find a legal solution, which would be upheld by the sense of justice of the majority of people.[548]

The existence of a law per se does not ensure justice because a law might have been adopted in unjust way or may include provisions that are contrary to justice. Therefore the justice of laws is subject to constitution, and compliance of a law with the principle of justice is supervised by constitutional review. In a state governed by the rule of law, measures are taken to avoid, to the extent possible, obviously unjust legislative regulations.

The justice or injustice of law is a subject of an open discussion. Such a clash of opinions must be resolved in a way appropriate for a democratic state governed by the rule of law by the parliament's ruling or at the constitutional court .[549] The parliamentary process of legislation, judicial review and the judge-made law is an institutional

546 Проблемы обшей теории права и государства. Нерсесянц В.С. (ред.) Москва: Норма, 2002, с.660.

547 Ориу М. Принципы публичного права. In: История политических и правовых учений. Малахов В.П. (сост.) Москва: Академический Проект, 2000, с.374-375.

548 Cipeliuss R. Tiesību būtība. Rīga: Latvijas Universitāte, 2001, 123.lpp.

549 Horns N. Ievads tiesību zinātnē un tiesību filozofijā. Likums un Tiesības, 1999, Nr.1, 17.lpp.

path to ensure justice, characteristic only of a democratic state governed by the rule of law; however, tyranny, by destroying these institutions, cannot destroy requirements of justice.[550] The state should be governed by the rule of law because it should be just. This requirement does not mean denial of either the power or the force because justice does not demand that we forget the surrounding physical and social reality but demands its transformation. The calling and justification of the supreme state power is embodiment of justice rather than formal application of custom or law; the state should bring justice into disputes and contradictions.[551]

II. Welfare state

1. Idea of a welfare state. The genesis of a welfare state is linked to the 19th century, when, as a response to the industrial revolution and workers' demands, an idea appeared that the state was obliged to take care of its inhabitants by regulating the social and economic sector. It was recognised that the state might have not only the right but also the obligation to be active and to interfere into the life of society by regulation.[552] The welfare state should be regarded as the opposite to the ideas of liberalism, which allocate to the state merely the role of a night watchman.[553] The origins of the principle of a welfare state are found in the constitutional experience of Germany where the idea of the state's obligations to ensure social justice and equality of citizens was clearly formulated for the first time.[554] Lorenz von Stein is the founder of the idea of a welfare state, he proposed dealing with

550 Cipeliuss R. Tiesību būtība. Rīga: Latvijas Universitāte, 2001, 98.lpp.

551 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.335-336.

552 Kovaļevska A. Sociāli atbildīgas valsts princips. Jurista Vārds, 2008.gada 26.augusts, Nr.32 (537).

553 Ibid.

554 Flogaitis S. The evolution of Law and the State in Europe. Seven lessons. Oxford and Portland: Hart Publishing, 2014, p. 57; Grigore-Bāra E., Kovaļevska A., Liepa L., Levits E., Mits M., Rezevska D., Rozenvalds J., Sniedzīte G. Satversmes 1.pants. In: Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi. Rīga: Latvijas Vēstnesis, 2014, 212. - 213.lpp.

the existing class contradictions by the state's mechanism of intervention. Implementation of the reforms required to ensure social peace is the state's responsibility, and the state should ensure both the protection of private property and free development of commercial activities and improvement of the employees' living and working conditions. A welfare state should facilitate social and economic development of all its citizens.[555] A welfare state is a state that has not only the right but also the obligation to be active and to intervene by regulation into the life of society. First and foremost, a welfare state must assume responsibility for the social protection of its inhabitants.[556] In attempts to abandon the police state, values with certain content are included in the constitution. The Weimar Constitution already included a relatively extensive catalogue of social and economic human rights, as well as envisaged certain obligations of the state in this area so that the constitutional order would ensure social progress.[557] Whereas Article 20 of the Basic Law, adopted after the Second World War, provides that the principle of a welfare state (Sozialstaat) is one of the basic principles of the German constitutional order, which cannot be amended.[558] By this, the state assumes new responsibilities with respect to its citizens and also recognises the aims of the state towards which the state's policy should be directed.

Thus, for example, the Constitution of Bavaria of 1946 defines this federal land as the state of the people, a state governed by the rule of law, a cultural state, and a welfare state.[559] The inclusion of such

555 Kovaļevska A. Sociāli atbildīgas valsts princips kā Latvijas Republikas valsts iekārtu raksturojošs princips. In: Ilgtspējīga attīstība un sociālās inovācijas. Bela B. (zin.red.) Rīga: LU Akadēmiskais apgāds, 2018, 36. - 37.lpp.

556 Kovaļevska A. Latvijas Republika kā sociāli atbildīga valsts. In: Tiesību interpretācija un tiesību jaunrade - kā rast pareizo līdzsvaru. Latvijas Universitātes 71zinātniskās konferences rakstu krājums. Rīga: Latvijas Universitāte, 2013, 256.lpp.

557 Preuss H. The significance of the democratic republic for the idea of social justice. In: Weimar. Jurisprudence of crisis. Edited by Arthur J. Jacobson and Bernhard Schlink. Berkley, Los Angeles, London: University of California Press, 2000, pp.116 – 127

558 See more: Currie D.P. The Constitution of the Federal Republic of Germany. Chicaho and London: The University of Chicago Press, 1994, pp. 20 – 24

559 Маунц Т. Государственное право Германии (ФРГи ГДР). Москва: Издательство иностранной литературы, 1959, с.123.

characterisation of a state into the texts of constitutions has not only declarative and political consequences. Trends in the development of constitutionalism in Europe may cause a situation where a state is actually forced to recognise a certain model of state order as binding upon it. The development of human rights standards, which require the states to ensure also economic, social and cultural rights, allows asserting that, to a large extent, the contemporary democratic state governed by the rule of law should be considered also as being a welfare state. Only different terms are used in constitutions to designate the structural characteristics of these state orders (e.g., welfare state, socially oriented state, socially responsible state). It may be provided expressis verbis in the national constitutions that the respective state is to be considered as being a socially responsible state (e.g., France, Germany, Russia, also Latvia, after the Introduction to the *Satversme* was adopted). Likewise, the principles of a welfare state may be developed in the practice of applying the constitution, taking into account values, aims of the state and human rights safeguards, included in the constitution (e.g., Estonia, Lithuania and Italy).[560] At present, the principle of a welfare state is a mandatory element for all contemporary democratic states, at least in Europe.[561]

Although the principle of a welfare state was not clearly formulated in the Baltic States prior to the Second World War, regulation included in constitutions and the practice of national politics show that, actually, already since their proclamation, the idea of social justice was implemented in the Baltic States. In Latvia, the principle of a welfare state has been recognised as one of the basic principles of the constitutional order that characterises the constitutional identity of the Latvian State. It should be considered as one the constitutional fundamental values, which cannot be amended or reviewed within the constitutional order. In its case law, the Constitutional Court

560 Kovaļevska A. Sociāli atbildīgas valsts princips kā Latvijas Republikas valsts iekārtu raksturojošs princips. In: Ilgtspējīga attīstība un sociālās inovācijas. Bela B. (zin.red.) Rīga: LU Akadēmiskais apgāds, 2018, 38. – 39.lpp.

561 Valsts prezidenta Konstitucionālo tiesību komisijas 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 232.punkts.

designates this principle as the principle of a socially responsible state.[562] The Constitutional Court of the Republic of Lithuania has concluded similarly that the Republic of Lithuania is a socially oriented state, which, substantially, means recognising the principle of a welfare state in the constitutional order.

The constitutional legislator in the Baltic States had been very cautious regarding recognition of the principle of a welfare state and including into it expressis verbis. For example, the principle of a welfare state is not mentioned in the text of the Constitution of the Republic of Lithuania of 25 October 1992. The authors of the Constitution took into account, first and foremost, the social reality at the time when the Constitution was created and the state's possibilities to ensure that the respective principle was implemented. The failure to mention the principle of the welfare state in the text of the constitution was linked to the desire not to discredit the text of the constitution.[563] The historical context also had some influence, namely, the experience of the socialist state was the reason why the constitutional legislator was reluctant to include the principle of a welfare state.

The principle of a welfare state is not included expressis verbis in the text of the Constitution of the Republic of Estonia of 28 June 1992. However, its Article 10 provides that the Estonian statehood is based on the principles of social justice, democracy, and a state governed by the rule of law. It has been sufficient grounds for recognising that the principle of a welfare state is one of the fundamental principles of the constitutional order of the Republic of Estonia. At the same time, texts of the constitutions of all Baltic States include a sufficient range of elements for deriving from them the principle of a welfare state.

2. A socially responsible state in the *Satversme*. The principle of a socially responsible state was enshrined in the text of the *Satversme* only on 19 June 2014 when the *Saeima* adopted an elaborated

562 Lietuvos Respublikos Konstitucinio Teismo 2005 m. vasario 7 d. nutarimas. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta234/content

563 Šileikis E. Alternatyvi konstitucinė teisė. Antras pataisytas ir papildytas leidimas. Vilnius: Teisinės informacijos centras, 2005, p.210

Introduction to the *Satversme*. It provides, inter alia, that Latvia is a socially responsible state. As noted in the annotation to the respective draft law, the principle of a socially responsible state was referred to in the Introduction to the *Satversme* alongside other fundamental constitutional principles of the Republic od Latvia to show clearly the foundations of Latvia's statehood.

In its first judgement, where the respective principle was mentioned expressis verbis, the Constitutional Court stated: "The Latvian constitutional legislator has determined several social rights in the *Satversme*. Thus, the legislator has determined that Latvia is a socially responsible State, namely, such a State, which is trying to potentially realize extensively social justice in legislature, administration and court adjudgment. The aim of a socially responsible state is to level the most vital social public difference and to ensure for every group of residents adequate living standard."[564] "The Court has established that the essence of Latvia as a socially responsible state follows from Article 1 of the *Satversme*, social rights, included in Chapter 8 of the *Satversme* , and the prohibition of differential treatment and discrimination, included in Article 91 of the *Satversme*, on the basis of economic or social aspects."[565] The Constitutional Court's case law shows that the principle of a socially responsible state means:

1) the state's obligation to ensure a standard of living compatible with human dignity, which includes provision of social assistance, basic services, as well as education, health and social care, as well as accessibility of cultural institutions;

2) the state's obligation to ensure protection in the case of a social risk;

3) the state's obligation to care for social justice, which includes caring for levelling out social disparities, protection of the weakest, and equal opportunities;

564 Judgement by the Constitutional Court of the Republic of Latvia of 2 November 2006 in Case No. 2006-07-01, Para 18.

565 Kūtris G. Tiesiskās paļāvības un sociāli atbildīgas valsts principi. Sociāli ekonomiskie procesi un konstitucionālās vērtības. Jurista Vārds, 2009. 18.augusts, Nr.33(576).

4) a person's links to society, which includes also a person's obligations towards other persons.[566]

The Constitutional Court has not examined the principle of a socially responsible state as an additional instrument for the protection of a person's fundamental rights but rather as an objective gauge that defines the state's obligations in implementing social, economic and cultural rights.[567] The principle of a socially responsible state was the decisive argument for the Constitutional Court to criticize the legislator's ill-considered expenditures from the special social insurance budget and calling for well-considered reforms that would ensure sustainability of the special social insurance budget.[568] Whereas the Constitutional Court of the Republic of Lithuania has discerned the principle of a socially oriented state in the context of the functions of a contemporary state and the constitutional traditions of the Republic of Lithuania. The principle of a socially oriented state is based on the idea of solidarity. A person and society have mutual responsibility for the common good of society.[569] The principle of a socially oriented state is an important mechanism of constitutional protection, which ensures implementation of a person's social, economic and cultural rights.[570]

The precise definition of the principle of a socially responsible state in the Constitutional Court' s judgements determined the framework of the legislator's discretion in restricting persons' economic, social and cultural rights. Gunārs Kūtris has noted: "Although the state's decision on the implementation of economic and social rights

566 Kovaļevska A. Sociāli atbildīgas valsts princips kā Latvijas Republikas valsts iekārtu raksturojošs princips. In: Ilgtspējīga attīstība un sociālās inovācijas. Bela B. (zin.red.) Rīga: LU Akadēmiskais apgāds, 2018, 42. - 57.lpp.

567 Balodis R., Pleps J. Financial Crisis and the Constitution of Latvia. In: Constitutions in the Global Financial Crisis. A Comparative Analysis. Edited by Xenophon Contiades. Farnham and Burlington: Ashgate, 2013, p.123.

568 Judgement by the Constitutional Court of the Republic of Latvia of 21 December 2009 in Case No. 2009-43-01, Para 31.1.2.

569 Žilys J. Socialinė valstybė konstitucinėje teisėje. Jurisprudencija, 2006, t. 12(90), p.19

570 Birmontienė T. Social Rights in the Jurisprudence of the Constitutional Court of Lithuania. Jurisprudencija, 2008, t. 9(111), p.8

usually has an important political dimension [..], norms of the *Satversme* and the principles and values included therein help in finding balance between political considerations and inhabitants' interests and rights. And even though in the implementation of economic and social rights, the requirements set for the legislator cannot be as strict as the ones with regard to non-interference in the implementation of a person's civil and political rights, the legislator must respect the constitution and the values included therein, which direct and regulate social-economic processes."[571]

The aim of a welfare state is to level out in society the most significant social differences and to ensure for each group of inhabitants an appropriate standard of living.[572] To assess whether the legislator has not exceeded the limits of its discretion, in choosing the most suitable regulation for the implementation of social, economic and cultural rights, the Constitutional Court must verify whether the principle of a socially responsible state has been abided by; i.e., whether a socially responsible solution has been chosen. A socially responsible solution is a solution, as the result if which the lawful interests of some persons are aligned with the interests of society as a whole.[573] The state's obligation to develop sustainable and balanced policy for ensuring public welfare follows from the principle of a welfare state. Therefore the legislator must create legal regulation that aims at sustainable national development.[574] The state can help reduce social inequalities through reasonable and responsible taxation policies. The legislator, taking care of the state budget revenues, is obliged to develop such a tax regulation that ensures fair and solidary re-allocation of income

571 Kūtris G. Tiesiskās paļāvības un sociāli atbildīgas valsts principi. Sociāli ekonomiskie procesi un konstitucionālās vērtības. Jurista Vārds, 2009. 18.augusts, Nr.33(576).

572 Judgement by the Constitutional Court of the Republic of Latvia on 2 November 2006 in Case No. 2006-07-01, Para 18.

573 Judgement by the Constitutional Court of the Republic of Latvia on 19 December 2011 in Case No.2011-03-01, Para 20.

574 Judgement by the Constitutional Court of the Republic of Latvia on 1 December 2010 in Case No. 2010-21-01, Para 21.3.

in society.[575] The need for the principle of a socially responsible state usually is linked to human dignity, justice, equality and solidarity. An individual should not live in such economic conditions that turn them into an object. At least minimum conditions should be ensured that would allow a person to enjoy their human rights.[576] In its recent case law, the Constitutional Court has increasingly more often examined the principle of a welfare state in the context of human dignity, underscoring that, in a democratic state governed by the rule of law, both the legislator, in adopting legal norms, an the party applying legal norms, in the application thereof, must respect human dignity as a constitutional value and fundamental rights, which are unconditionally vested in all persons. The Constitutional Court underscored: "The State's obligation to care for a fair social order, decreasing in society social disparities, facilitating social inclusion and providing to each group of inhabitants the possibility to lead a life that is worthy of human dignity follows from the principle of a socially responsible state, based on human dignity. Decreasing the risks of socioeconomic inequality and poverty is important also for national sustainability. Thus, the legislator is obliged to set up a social security system aimed at the protection of human dignity as the supreme value of a democratic state governed by the rule of law, levelling out of social inequality and sustainable national development."[577] This includes, for example, foreseeable and sustainable social security, which is achieved by respecting both the state's discretion in choosing suitable mechanisms and the minimum of obligations from which the state may not derogate. It is achieved by balancing the individual contribution with solidarity and justice.

In the particular cases, the Constitutional Court concluded that the minimum social disbursements to persons could not be set

575 Judgement by the Constitutional Court of the Republic of Latvia on 19 October 2017 in Case No. 2016-14-01.

576 Kovaļevska A. Sociāli atbildīgas valsts princips. Jurista Vārds, 2008. 26.augusts, Nr.32(537).

577 Judgement by the Constitutional Court of the Republic of Latvia on 10 December in Case No .2020-07-03, Par 15.1.

arbitrarily ("how much the state can afford"), but these should be defined with the aim of guaranteeing basic needs in the amount that complies with the principle of human dignity. The Constitutional Court noted: "A socially responsible state, based on human dignity, is obliged to set up such a system of social security that would be aimed at the protection of human dignity, levelling out of inequality and sustainable national development, moreover, not only formally but also by ensuring effective functioning of this support system."[578] The purpose of the *Satversme* is to ensure, to the extent possible, social justice and the possibility to all to lead a life worthy of human dignity.[579] The principle of a socially responsible state requires envisaging a minimum level of social security that ensures human dignity.[580]

The Constitutional Court has recognised that the state's possibilities to set up an effective and functioning social security system depends on the state's financial possibilities and the overall economic situation. However, the Constitutional Court has underscored, in particular, that the state may not assume entirely all care for a person' s social, economic and cultural needs. A contemporary state must be able to care for social justice, living conditions worthy of human dignity and general welfare, retaining as extensive as possible space for creative development of a personality.[581] The principle of a socially responsible state does not prohibit a state from reviewing the amount of social security, i.e., the state may restrict disbursement of benefit if s it is outweighed by public interests and the rights of other person to receive financial support from the state. However, the state must be able, in all circumstances, to ensure the minimum amount of a

578 Judgement by the Constitutional Court of the Republic of Latvia on 25 June 2020 in Case No. 2019-24-03, Para 19.1.

579 Judgement by the Constitutional Court of the Republic of Latvia on 10 December 2020 in Case No. 2020-07-03, Para 15.1.

580 See more: Kovaļevska A. Tiesības uz atbilstošu dzīves līmeni. Jurista Vārds, 2009. 22.decembris, Nr.51/52(594/595)

581 Judgement by the Constitutional Court of the Republic of Latvia on 11 December 2006 in Case No.2006-10-03, Para 13.3.

person's social, economic and cultural rights that it cannot derogate from on the grounds of lack of financial resources.[582]

Likewise, the Constitutional Court has not defined the system of service pensions as an important part of the right to social security. Article 109 of the *Satversme* does not guarantee a person' s right to certain types of pension, inter alia, a service pension. The state has broad discretion to decide on the period to be included into a person's period of service. A service pension is only an additional social guarantee to persons who, in the interests of the state, have performed certain functions, and therefore the state may choose various measures to compensate to persons for the special circumstances related to their service. However, if the state has established a system of service pensions, it becomes part of the state social security system š.[583]

3. Understanding of a welfare state. Describing a state as "a welfare state" means transition from the idea of a liberal state to the position of defending the weakest, ensuring the minimum material equality. The aim of such a state is to move towards social security and social justice.[584] A welfare state imposes an obligation upon the government to provide for inhabitants' basic needs, although this does not mean that every social good should be allocated by law, on the basis of the idea of social justice. The concept "social" is equivalent to the concept "societal", making the state responsible for the existence of society. This understanding underscored an individual's obligation towards other persons and link with society.[585] The idea of a welfare state forms the state's functions and tasks and ensures that freedom and equality are not assessed only formally but also substantially, striving for social freedom and social equality.[586] The state makes itself

582 Judgement by the Constitutional Court of the Republic of Latvia on 15 March 2010 in Case No. 2009-44-01, Para 16.

583 Judgement by the Constitutional Court of the Republic of Latvia on 31 March 2010 in Case No. 2009-76-01, Para 5.5..

584 Жалинский А., Рёрихт А. Введение в немецкое право. Москва: Спарк, 2001, с.141.

585 Цахер Х.Ф. Социальное государство. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.65.

586 Жалинский А., Рёрихт А. Введение в немецкое право. Москва: Спарк, 2001, с.142.

care for individuals facing blows of fate and ensure compensation in other accidents in life.[587]

A welfare state is a state, which has not only the rights but also obligations to be active and to interfere by regulation in the life of society to ensure social protection for its inhabitants and to implement social justice. A welfare state assumes responsibility for the existence of society.[588] A welfare state is a mechanism that is used to satisfy the demands of the weakest members of society for social justice, by re-allocating to them economic benefits.[589] Usually, the need for the principle of a welfare state is linked to human dignity, justice, equality and solidarity. A human being should not be living in such economic conditions that turn them into an object. At least minimum conditions should be ensured allowing a person to enjoy their human rights.[590]

A welfare state is built on the foundations of social justice, and law as whole should be socially oriented. Social justice is the principle of distribution, when each stratum or group of the population is granted the right to a certain level of economic and cultural existence envisaged for it. The welfare state rejects the economic or cultural oppression or the substantial restriction of the rights of a stratum or a group, fights against it and tries to overcome these contradictions in society.[591] Welfare statehood reveals the social differences of power and supports the weak by restricting the strong. Social justice means the principle of distribution that ensures a reasonable level of economic and cultural existence for every strata of society.[592] Understanding of the freedom of a state governed by the rule of law is replaced

587 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 275.lpp.

588 Kovaļevska A. Latvijas Republika kā sociāli atbildīga valsts. In: Tiesību interpretācija un tiesību jaunrade – kā rast pareizo līdzsvaru. Latvijas Universitātes 71.zinātniskās konferences rakstu krājums. Rīga: Latvijas Universitāte, 2013, 256.lpp.

589 Žilys J. Socialinė valstybė konstitucinėje teisėje. Jurisprudencija, 2006, t. 12(90), p.17

590 Kovaļevska A. Sociāli atbildīgas valsts princips. Jurista Vārds, 2008. 26.augusts, Nr. 32 (537).

591 Маунц Т. Государственное право Германии (ФРГ и ГДР). Москва: Издательство иностранной литературы, 1959, с.124-125.

592 Жалинский А., Рёрихт А. Введение в немецкое право. Москва: Спарк, 2001, с.142.

by the state's obligation to ensure socially-oriented politics to level out social injustice. It requires greater role of the state in economic processes, denial of the individualistic doctrine and the state's duty to use the power at its disposal in society. The right to education and work turns into the state's obligation to ensure education and work.[593]

A socially responsible state is usually understood as organisation that helps the weaker, trying to influence distribution of economic benefits in the spirit of principles of justice, to ensure to all existence worthy of human dignity. A socially responsible state tries to achieve unified freedom to all individuals; freedom should be equally accessible, initially, for security, but later also for external and internal independence.[594] The enshrining of the idea of a socially responsible state in the constitution does not reflect historically established relations but harmonises the constant contradictions between the participants in social relations. Therefore a welfare state does not impose an obligation upon the state to implement particular reforms but only binds by constitutional aims and values, which shape guidelines for the legislator and the executive power.[595] The German doctrine recognises subsistence minimum worthy of human dignity, social equality, social care and general welfare as the most essential elements of a welfare state.[596]

A welfare state is based on social human rights, imposing an obligation upon the state to take measures that would facilitate implementation of these rights. Here a contradiction arises between the state's social functions and unlimited economic freedom, which violates justice. The state restricts the rights of individuals, facilitates increasing the strata of passive persons who rely on the state's assistance and do not become engaged in the free market competition.

593 Проблемы обшей теории права и государства. Нерсесянц В.С. (ред.) Москва: Норма, 2002, с.700.

594 Хенке В. Республика. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.32.

595 Жалинский А., Рёрихт А. Введение в немецкое право. Москва: Спарк, 2001, с.138.

596 Цахер Х.Ф. Социальное государство. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.65-74.

Due to these reasons, a welfare state will always be an infringement on freedom because it inevitably leads to the state's interference in the area of economy. Welfare statehood is based on continuous and constant process of exercising social rights; however, the state's rights in this area are not absolute. The Constitutional Court has noted in one of its judgements: "The disputed legal norm refers to the sector of social rights. In constitutional laws and international human rights instruments social rights are regarded as a specific sector of human rights, which is defined as general obligations of the state. Legislator of any state may elaborate the regulating mechanism of the above. Realisation of social rights depends on the economic situation of the state and available resources."[597]

In a welfare state, human rights allow advancing claims towards the state or at least setting the state's tasks because the principle of equality before law turns into a means for arriving from simple formal legal equality to social, in particular, economic equalization. A welfare state becomes the advocate of general welfare and social justice.[598] In the new state, human rights are defined as priority, and it imposes an obligation upon the state to take measures to implement these rights. A high level of social care for individuals sets higher demands for the state, creates the need to increase the state's role in society.[599] This collides with the wish of a state governed by the rule of law to restrict the state power, reducing its role to functions of "a night watchman" , because a welfare state demands increasing impact of the state power. Social reforming is a new stage in the development of a state governed by the rule of law, aiming to overcome social contradictions of some social strata and humanising living conditions. A state governed by the rule of law and a welfare state are not antithesis but rather dialectics of the state's development. A caring democratic

597 Judgement by the Constitutional Court of the Republic of Latvia on 26 June 2001 in Case No. 2001-02-0106.

598 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 231.lpp.

599 Вольман Г. Чем обяснить стабильность политического и экономического развития Федеративной Республики Германии. Государство и право, 1992, №11, с.134.

welfare state must ensure that a seemingly adult citizen is protected against themselves, thus aligning the obligation of a welfare state to ensure social justice and general welfare with the state's obligation to leave as mush space as possible for personal development and free commercial activities.[600] "Subsistence minimum" worthy of human dignity comprises a person's free right to work, everyone's responsibility for the family's welfare, possibility to receive the share of benefits that an individual is entitled to, the need for society to provide the necessary benefits and services to part of people, free rights to unite in associations to acquire the necessary benefits, and the state monopoly in providing assistance to people to provide for their basic needs is prohibited. The recognition and enshrining of the state's social function in the constitution follows from the location of the state's system in the centre of the people, which can ensure harmonious development of the people and organic unity in the past, the present and the future.[601]

600 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 276. – 277.lpp.

601 Khachatryan H.M. The first Constitution of the Republic of Armenia. Yerevan: The United Nations High Commission for Refugees Republic of Armenia, 1998, p.29.

Chapter 4

HUMAN RIGHTS

I. Human rights and the *Satversme*

1. Development of human rights in contemporary Latvia. Restoration of the *Satversme* required remedying a number of shortcomings in the constitutional regulation. One of the most significant shortcoming of the *Satversme* of 1922 was the fact that the catalogue of human rights had not been added to it. However, only following the restoration of independence, the need to set the catalogue of human rights on the constitutional level was appreciated in full.[602] It was done by the amendments of 16 October 1998 to the *Satversme*, which added a new chapter to the *Satversme*, i.e., Chapter 8 "Human Rights." Until then, an elaborated catalogue of human rights was not included in the *Satversme* because the Latvian Constitutional Assembly could not agree on adopting Part II of the *Satversme* "Basic Rules on Citizens' Rights and Obligations." It was considered to be one of the most significant shortcoming of the *Satversme* because the guarantees for a person's rights vis-à-vis the state was not set on the constitutional level.[603] Already during the inter-war period, several scholars of law (Balduin von Düsterlohe, Paul Schiemann and Max

602 See more: Kusiņš G. Kā pilnveidot mūsu valsts Satversmi. In: Satversmes reforma Latvijā: par un pret. Rīga: Sociāli ekonomisko pētījumu institūts „Latvija", 1995, 39. – 42.lpp.

603 Laserson M. Die Verfassungsrecht Lettlands. Jahrbuch des öffentlichen Rechts, Bd. XII, 1923/1924, S.258.

Lazerson) referred to the absence of a human rights catalogue in the text of the *Satversme* as its most significant shortcoming.[604]

Adding Chapter 8 to the *Satversme* was of practical significance because a modern catalogue of a person's fundamental rights was included in the *Satversme*.[605] Latvia's international commitments, in particular, the European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as models of most recent constitutions of European states were taken into account in drafting this Chapter. After Chapter 8 was added to the *Satversme*, also Latvian institutions of state power and, in particular, inhabitants of the state became aware of the importance of human rights and the possibilities of applying these rights.

The most important civil and political rights of a person, as well as economic, social and cultural rights are included in Chapter 8 of the *Satversme*.[606] Content-wise, the regulation included in Chapter 8 is similar to the regulation on human rights included in the constitutions of other states and international treaties. However, it should be noted that also such person's right as the right to live in a benevolent environment has been included in the *Satversme* (Article 115), reflecting new trends in the development of constitutional law. Environmental protection, preservation of the existing ecosystem as a constitutional value and the need to prevent threats to environment caused by human economic activity have been the grounds for fast development of the principle of ecological state and for defining the state's

604 See more: Disterlo B. Juridiskas piezīmes pie Latvijas Republikas Satversmes. Tieslietu Ministrijas Vēstnesis, 1923, Nr.7, 1. – 2.lpp.; Šīmans P. Latvijas Satversmes astoņi gadi. In: Šīmans P. Eiropas problēma. Rīga: Vaga, 1999, 25.lpp.; Lazersons M. „Konstitucionālā" likumdošana un Saeimas publisko tiesību komisija. Jurists, 1928, Nr.6, 165. – 168.sl.

605 See more: Kučs A. Protection of Fundamental Rights in the Constitution of the Republic of Latvia during the Interwar period and after the Restoration of Independence. Law. Journal of University of Latvia. No.7, 2014, pp. 58 – 60. http://www.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/Juristuzurn_7.pdf

606 Rezevska D. The Republic of Latvia. In: Constitutional Law of the EU Member States. 2nd revised edition. Eds. Kortmann C., Fleuren J., Voermans W. The Hague: Kluwer Law International,2014, pp. 1017 – 1021.

obligations in this area.[607] Article 115 of the *Satversme* envisages the right to live in a benevolent environment as the so-called third-generation or collective right, which at the time was an innovative constitutional solution. Moreover, both the right to live in a benevolent environment and the social, economic and cultural rights are not worded in the text of the *Satversme* as the aims or obligations of national politics but as the guarantees for a person's subjective rights, which, if necessary, may be defended in judicial proceedings. If a person believes that a certain legal norm infringes upon their human rights, a person may submit a constitutional complaint to the Constitutional Court. In this context, the Constitutional Court's contribution to the formulation and protection of human rights standards needs to be noted. The Constitutional Court has ensured the functioning of an effective and modern system of human rights protection. Along with the Constitutional Court, the Ombud is an important mechanism for human rights protection whose task is to ensure protection of a person's human rights and good governance.

Supranational human rights mechanisms exist in the legal space of contemporary Europe, able to ensure the protection of an individual's human rights against the state. The European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the European Court of Human Rights, established by it, can be seen as an excellent consolidation of the idea of a democratic state governed by the rule of law and human rights in the cooperation of European states. Judgements by the European Court of Human Rights are binding upon the state, and the respective rulings must be enforced in good faith, aiming to ensure alignment of the national legal system with the human rights standards, formulated by the European Court of Human Rights.[608] A dialogue between the national courts and the European Court of Human Rights is possible and, on many

607 Čepāne I. Sabiedrības tiesību aizsardzības efektivitāte teritorijas plānošanas lietās. In: Aktuālās cilvēktiesību aizsardzības problēmas. Konstitucionālā sūdzība. Satversmes tiesas 2008. un 2009.gada konferenču materiālu krājums. Rīga: Tiesu Namu Aģentūra, 2010, 70. – 93.lpp.

608 See more: Ziemele I. Eiropas Cilvēktiesību konvencijas loma Satversmes tiesas judikatūrā. Jurista Vārds, 2017. 16.maijs, Nr. 21(975).

occasions, it facilitates the general development of human rights; however, respect for the Court's rulings and correct enforcement of judgements must be ensured in it.[609] The reservations, developed by Valery Zorkin, to justify the non-enforcement of judgements by the European Court of Human Rights, which later were reinforced by the amendments of 2020 to the Constitution of Russia, were not a long-term strategy for the development of a democratic state governed by the rule of law and do not facilitate consolidation of human rights and the principles of a state governed by the rule of law.[610] Rulings by the European Court of Human Rights ensure not only elimination of an infringement on the rights of the injured person, the state should take these into account in revising national procedures and eliminating the shortcomings that have led to the infringement on a person's rights to avoid similar infringements on rights in the future. The case law of the European Court of Human Rights proves that certain rights guarantees are included in the national law, i.e., although the state has introduced into the normative regulation the required procedures, which ensure the right to a fair trial, nevertheless, it is never enough to have only normative regulation per se to recognise that human rights have been ensured.

Human rights is a set of provisions, common to all democratic states, which is protected not only in each state separately but also with the help of international law. Hence, in interpreting human rights provisions, the party applying law cannot determine the content of these provisions arbitrarily; they must take into account also Latvia's international commitments in the area of human rights and the common experience of democratic states governed by the rule of law. The Constitutional Court has concluded that in those cases, where the content of a human rights provision, included in the *Satversme*,

609 See more: Padskocimaite A. Constitutional Courts and (Non)execution of Judgments of the European Court of Human Rights: A Comparison of Cases from Russia and Lithuania. https://www.zaoerv.de/77_2017/77_2017_3_a_651_684.pdf

610 Zorkin V. Challenges of implementation of the Convention on Human Rights. https://rm.coe.int/16806fe1a5, pp. 11 – 17. See more: Russia and the European Court of Human Rights. Mälksoo L., Benedek W. (eds.) Cambridge: Cambridge University Press, 2018.

needs to be clarified, this norm should be interpreted as close as possible to the interpretation that is used in the practice of applying international human rights provisions.[611] This means that the *Satversme* should be interpreted, insofar possible, in a way to avoid contradictions between this interpretation and the international commitments of the Republic of Latvia in the area of human rights protection.[612]

Chapter 8 of the *Satversme* is not a codification of a perfect catalogue of human rights. Already at the time of its adoption, Latvian scholars of law in scientific articles noted several shortcomings. Legal scholars have pointed to problems in the very title of Chapter 8 of the *Satversme*, as well as in the wording of some norms.[613] Likewise, the procedure for restricting human rights, which is regulated by Article 116 of the *Satversme*, has been criticised in legal science. This article was seen as the weakest construction in Chapter 8 of the *Satversme* already at the time of its adoption.[614] Article 116 of the *Satversme* defines the technique for restricting human rights only partially, referring to the need for a law, by which human rights are restricted, and a legitimate aim, for the reaching of which such restriction is necessary, without mentioning proportionality as the criterion for the admissibility of a restriction on human rights.[615] Likewise, Article 116 of the *Satversme* sets no provisions regarding the admissibility of restricting other human rights, not referred to in this article, and, alongside

611 Judgement by the Constitutional Court of the Republic of Latvia of 30 August 2000 in Case No. 2000-03-01.

612 Judgement by the Constitutional Court of the Republic of Latvia of 13 May 2005 in Case No. 2004-18-0106.

613 Levits E. Piezīmes par Satversmes 8. nodaļu – Cilvēka pamattiesības. Cilvēktiesību Žurnāls, 1999, Nr.9-12, 11. – 40. lpp.; Buka A. Satversmes astotā nodaļa – medus muca ar … Jurista Vārds, 1999. 11.marts, Nr. 9(116), 1999. 18.marts, Nr.10(117).

614 Levits E. Piezīmes par Satversmes 8. nodaļu – Cilvēka pamattiesības. Cilvēktiesību Žurnāls, 1999, Nr. 9-12, 21. lpp.

615 Even more, at the time, Members of the Saeima even dismissed the proposal to include in draft Article 116 of the Satversme a reference to proportionality. See more: Mits M. European Convention on Human Rights in Latvia. Impact on Legal Doctrine and Application of Legal Norms. Lund: Media Tryck, 2010, pp. 163 - 165

Article 116 of the *Satversme*, there are three other constructions in the *Satversme* that envisage restricting certain human rights.[616]

However, over more than two decades, the Constitutional Court, using both findings of the Latvian legal science and the experience of other states, in its case law has eliminated these shortcomings of the provisions of Chapter 8 of the *Satversme*. The Constitutional Court has formulated and developed in its case law the content of some human rights established in the *Satversme*, as well as created a methodology for restricting human rights that complies with Latvia's international commitments. Interpretation of the norms of Chapter 8 of the *Satversme* has proceeded in a meaningful dialogue between the constitutional legislator and the Constitutional Court, bringing positive results for the development of a democratic state governed by the rule of law.

2. Interaction between the *Satversme* and international documents. Alongside Chapter 8 of the *Satversme*, international human rights provisions, which are included in international contract law or customary law, are also binding upon Latvia. International human rights provisions are directly applicable in Latvia. The Constitutional Court Law provides that the compliance of laws and other regulatory enactments with not only the *Satversme* but also provisions of international law, binding upon Latvia, may be contested at the Constitutional Court. Often, international human rights provisions, binding upon Latvia, comprise different regulation on rights granted to a person. Likewise, in some cases, the norms, included in Chapter 8 of the *Satversme*, differ from the norms of international human rights, binding upon Latvia. Hence, it is possible that different norms that set out the same human rights collide. To prevent such possible contradictions, when the content of Chapter 8 of the *Satversme* and of the international human rights provision, binding upon Latvia, differs, the Constitutional Court, similarly to the Federal Constitutional Court of Germany, has formulated the approach of the *Satversme*'s

616 Plakane I. Pamattiesību ierobežošana Satversmē. Jurista Vārds, 2003.gada 8.aprīlis, Nr.14(272), 2003.gada 15.aprīlis, Nr.15(273).

favourableness towards international law. The Constitutional Court substantiated this approach by directly referring to the German experience: "The other Constitutional Courts of the European States, when interpreting the national constitution norms, similarly use the EHRC [European Human Rights Convention] and other international human rights norms as well as the practice of the European Court of Human Rights (ECtHR). The German Federal Constitutional Court has established that guarantees [of the European Convention for the Protection of Human Rights and Fundamental Freedoms] influence interpretation of fundamental rights included in the Basic Law and the principle of the law-governed state. The text [of the European Convention for the Protection of Human Rights and Fundamental Freedoms] and the practice [of the European Court of Human Rights] serve as means of interpretation on the level of constitutional law to determine the contents and scope of fundamental rights and the principle of the law-governed state, as far as it does not lead to decrease or limitation of fundamental rights, included in the Basic Law, that is – to influence, which is precluded by Article 53 [of the European Convention for the Protection of Human Rights and Fundamental Freedoms]. The constitutional legal meaning of international human rights is the expression of favourableness (Völkerrechtsfreundlichkeit) of the Basic Law towards the international law, which strengthens the state sovereignty by an international legal norm and the aid of general principles of international law. Therefore the Basic Law shall be interpreted as much as possible in such a way that the conflict with international liabilities of the German Federative Republic does not arise."[617]

In the case of Latvia, to substantiate this approach, the Constitutional Court has used the regulation included in the first part of Article 68 of the *Satversme*. "Article 68 [of the *Satversme*], inter alia, envisages that all international agreements which settle matters that may be decided by the legislative process shall require ratification by the *Saeima*. The Constitutional Assembly, when including the above

617 Judgement by the Constitutional Court of the Republic of Latvia of 13 May 2005 in Case No.2004-18-0106, Para 5 of the Findings.

norm in the *Satversme*, has not conceded that the State of Latvia could avoid fulfilling its international commitments. The demand to require ratification of the international agreements by the *Saeima* was incorporated in the *Satversme* with the aim of precluding such international liabilities, which shall regulate issues under the procedure of legislature without the assent of the *Saeima*. Thus it can be seen that the Constitutional Assembly has been guided by the presumption that international liabilities "settle" issues and they shall be fulfilled."[618] The Constitutional Court has concluded that the legislator's aim had not been to contrast the human rights norms included in the *Satversme* with the international human rights norms but quite to the contrary – achieve harmony of these norms. Hence, in those cases where the content of a human rights provision, included in the *Satversme*, needs to be clarified, this provision should be interpreted as close as possible to the interpretation used in the practice of applying international human rights provision.[619] This means that the *Satversme* should be interpreted, insofar possible, to avoid a contradiction between this interpretation and the international commitments of the Republic of Latvia in the area of human rights protection.[620] The *Satversme*, by its very nature, cannot envisage a smaller scope of provision or protection of human rights than any international acts on human rights, binding upon Latvia.[621]

Such methodological approach by the Constitutional Court means that human rights, substantively, prevail over the grammatical form, in which the right had been enshrined in the *Satversme*. Hence, in interpreting a human rights provision of the *Satversme*, the interpreter may not restrict themselves by the meaning of words used by the

618 Judgement by the Constitutional Court of the Republic of Latvia of 13 May 2005 in Case No.2004-01-06, Para 6 of the Findings.

619 Judgement by the Constitutional Court of the Republic of Latvia of 30 August in Case No. 2000-03-01, Para 5 of the Findings.

620 Judgement by the Constitutional Court of the Republic of Latvia of 13 May 2005in Case No. 2004-18-0106, Para 5 of the Findings.

621 Judgement by the Constitutional Court of the Republic of Latvia of 14 September 2006 in Case No. 2005-02-0106, Para 10.

legislator but they must identify the rights that the respective norm of the *Satversme* protects and, accordingly, must fill in the content of such a right, by using the content of international norms binding upon Latvia, which define the state's obligation to ensure that the particular human right is respected.

One should not forget that the *Satversme* may provide for greater protection of the respective human right than the international acts on human rights.[622] The grammatical formulation of the norm or the constitutional legislator's will, reflected in the preparatory materials relating to the norm, may point to a broader scope of the human right included in the *Satversme*. If it is concluded that, on the level of the *Satversme*, the particular human right has been granted broader content, more favourable for a private person than provisions of international law, binding upon the state, require it to do, then the interpreter is obliged to not lower the standard set in the *Satversme* but to assume that it is higher than the one required by international commitments and apply it as such. This is also confirmed by the Court's judicature.[623] The Constitutional Court, in determining the standard of human rights, defined in the *Satversme*, assesses the level of human rights protection set in international documents, as well as analyses rulings by the European Court of Human Rights. Usually, the Court defines an equivalent level of protection; however, it should be taken into account that the Constitutional Court's task is to prevent such legal regulation (incomplete, but to be interpreted correctly), which, even if applied correctly (e.g., in the opinion of the European Court of Human Rights), could lead to a human rights infringement. The functions and tasks of the Constitutional Court are broader than the ones of the European Court of Human Rights. As the result, for example, regarding the breadth and form of justification for

622 Judgement by the Constitutional Court of the Republic of Latvia of 14 September 2006 in Case No. 2005-02-0106, Para 10.

623 Judgement by the Constitutional Court of the Republic of Latvia of 14 June 2018 in Case No.2017-23-01.

dismissing a cassation complaint in civil proceedings[624], the Constitutional Court upheld the findings made by the European Court of Human Rights, whereas, in criminal proceedings, the Court set a higher standard, underscoring that one of the elements of procedural justice and, thus, also of the right to a fair trial, is the principle of reasoning, and, accordingly, a reasons ruling proves that the person has been heard and, thus, facilitates a person's acceptance of the court's findings.

II. Impact of the Constitutional Court's case law in the area of human rights on the main branches of law in Latvia

1. Human dignity. The central concept in the Constitutional Court's judicature is that Latvia is a democratic state governed by the rule of law and all other general principles of law, which determine the content and structure of the legal system, are derived from this sovereign's decision as the basic norm of the legal system. The basic norm, in conjunction with the general legal principles, protects the sovereign's values, inter alia, justice as the ultimate aim of the legal system.[625] Ineta Ziemele has noted that, currently, the theory that substantiates that the general legal principles follow from the basic norm and determine the content of Article 1 of the *Satversme* has been recognised as the leading one on Latvia. The general principles of law can influence the scope and content of all constitutional norms. The general legal principles fall within the scope of Article 1 of the *Satversme*, defining the constitutional values of Latvia, and they are of higher legal force than the written legal norms. Review of compatibility with the general legal principles is one form of constitutionality

624 Judgement by the Constitutional Court of the Republic of Latvia of 12 March 2020 in Case No.2019-13-01.

625 Separate Opinion of the Justice of the Constitutional Court of the Republic of Latvia Daiga Rezevska in Case No. 2016-14-01, Para 5.

review. [626] The impact of this conclusion on a case may mean that the Court does not have to follow meticulously the articles, referred to upon initiation of the case, because a situation where the contested norm would not be analysed in the context of general legal principles would be impermissible. In deciding on the discretion granted to institutions, the *Saeima* must take into account that a situation, where the discretion granted to authorities were defined as unrestricted power, would be incompatible with the general principles of law.[627] At the same time, it needs to be acknowledged that the general legal principles, although universal, may be manifested differently in different areas of law. In examining a legal norm adopted in one area, the Court takes into account also its compatibility with the social reality, for example, if a legal norm adopted some time ago contradicts the legal relations that, in the course of society's development, have become dominant, and in such a case the constitutionality of this legal norm may be reviewed (was constitutional but no longer is).[628]

The statemen made in the Introduction to the *Satversme* that Latvia, as a state governed by the rule of law, is based on human dignity – human right that is unconditionally vested in all human beings – is of principal importance.[629] Within the Latvian legal system, human dignity is to be applied both as a particular human right with broad scope and as a constitutional value of the Latvian State, the source of human rights guaranteed to persons.[630] It follows from the fourth paragraph in the Introduction to the *Satversme* that all State's actions are based on human dignity and freedom as the axioms

626 Decision by the Constitutional Court of the Republic of Latvia of 21 October 2016 on Terminating Legal Proceedings in Case No. 2016-03-01, Para 10.

627 Judgement by the Constitutional Court of the Republic of Latvia of 18 October 2018 in Case No. 2017-35-03, Para 12.

628 Judgement by the Constitutional Court of the Republic of Latvia of 25 October 2011 in Case No. 2011-01-01, Para 14.3.1.

629 Judgement by the Constitutional Court of the Republic of Latvia of 25 June 2020 in Case No. 019-24-03, Para 17.1.; Judgement of 16 July 2020 in Case No. 2019-25-03, Para 11.1.

630 Ījabs I. Politikas teorija: pirmie soļi. Rīga: Lasītava, 2017, 143.lpp.See more: Plepa D., Pleps J. Human Dignity in Latvia. In: Becchi P., Mathis K. (eds) Handbook of Human Dignity in Europe. Cham: Springer Nature Switzerland AG, 2019, pp. 479 – 503

of law philosophy of the state and human rights as the external framework for the state's actions.[631] Human dignity as a constitutional value characterises a human being as the supreme value of a democratic state governed by the rule of law and demands that, during a person's lifetime, their need for environment that is safe for their health, as well as, after their death, their body should be respected, and this approach is based also on the cultural and religious traditions, which are included in the Introduction to the *Satversme* by referring to the Latvian folk wisdom. An opinion that the dignity of one person is of lesser value than the dignity of another person is incompatible with the principle of human dignity. The principle of human dignity does not allow the state to renounce the provision of human rights to a certain person or a group of persons. "In a democratic state governed by the rule of law, both the legislator when adopting legal norms and the entity applying legal norms must both protect and ensure human dignity."[632] "The rights specified in Article 96 of the *Satversme* are inextricably linked with the constitutional axiom included in the first sentence of the fourth paragraph in the Introduction to the *Satversme*: Latvia as a democratic state governed by the rule of law is based upon human dignity and freedom. A person's private life is the sphere of human existence where an individual as a reasonable being and the supreme value of a democratic state governed by the rule of law exercises their freedom. Exercising of this freedom is a manifestation of a person's autonomy and self-determination ".[633]

2. Impact upon other branches of law. Human rights have a comprehensive impact on the interaction between the state, society and individuals. For quite some time already, human rights have not only vertical effect, envisaging restrictions on a state's actions vis-à-vis a person and granting to a person the respective right to bring claims

631 Laviņš A. The Constitutional Status of Human Dignity: Case-Law of the Constitutional Court of the Republic of Latvia. Almanac. Constitutional Justice in the New Millennium, 2014, p.90

632 Judgement by the Constitutional Court of the Republic of Latvia of 12 November 2020 in Case No. 2019-33-01, Para 12.2.

633 Judgement by the Constitutional Court of the Republic of Latvia of 5 December 2019 in Case No. 2019-01-01, Para 16.1.

against the state. Human rights have also a horizontal impact, influencing legal relations of persons.[634] Human rights influence almost all areas of personal and social life and there is judicial review regarding these matters, providing the possibility to verify the compliance of actions with human rights provisions. Human rights influence almost all branches of law and, often, this perspective changes radically the traditional understanding of the basic principles of the respective branch and their application in practice. The Constitutional Court's case law includes quite frequent cases where narrow perspective of one's own branch (for example, the vantage point of civil procedure or criminal law) in the wording or application of legal norms has led to anti-constitutional consequences. It should be taken into account that the Constitutional Court rules on the compatibility of legal norms with legal norms of higher legal force; however, the Constitutional Court, at the same time, influences not only the process of creating legal norms but also the process of their application, inter alia, by influencing practice in other cases. Actually, in some cases it can be concluded that full constitutional review exists indirectly in Latvia; i.e., although a court's ruling cannot be contested at the Constitutional Court, in rare cases, it is possible to achieve that the judicature of other courts is re-examined.[635] The Constitutional Court usually underscores that reassessment of the rulings and interpretation of legal norms provided by courts of general jurisdiction and other parties applying legal norms does not fall within its jurisdiction, as well as that its task is not to decide what is the correct interpretation and application of legal norms in each particular case.[636] However, the Constitutional Court responds quite frequently to the application of legal norms that is inconsistent with the *Satversme*, adjusting the

634 See more: Danovskis E. Horizontal Effect of Basic Human Rights in Private Law as a Common Trend of European Integration. In: European Integration and Baltic Sea Region: Diversity and Perspectives. Rīga: The University of Latvia Press, 2011, pp. 118 – 130

635 For example, Decision by the Constitutional Court of the Republic of Latvia of 13 December 2011 on Terminating Legal Proceedings in Case No. 2011-15-01 and Decision of 30 December 2020 on Terminating Legal proceedings in Case No. 2020-08-01.

636 Decision by the Constitutional Court of the Republic of Latvia of 30 December 2020 on Terminating Legal proceedings in Case No.2020-08-01, Para 13.

interpretation of legal norms provided by other courts and elaborating the content of the legal norm in compliance with the *Satversme*. Thus, actually, neither the Supreme Court nor other parties applying law are free from the Constitutional Court's control. This promotes unity and effectiveness of the legal system, by resolving, within the framework of a judicial dialogue, potential disputes regarding anti-constitutional application of legal norms.[637] The Constitutional Court may become involved in deciding on a legal matter if no other remedies for resolving the legal dispute exist within the legal system or if the available remedies have been exhausted, and if, in the particular situation, it has to be recognised as being the final judicial instance.[638] The Constitutional Court's statement that, in the interests of achieving a just outcome, the party applying a legal norm is obliged to interpret the norm in compliance with legal norms of higher legal force, is binding both upon the Supreme Court and all other parties applying law. Application of legal norms in compliance with the *Satversme* includes finding the applicable legal norm and using appropriate methods of interpretation, assessing the intertemporal and hierarchic applicability, using judicature and the legal doctrine, as well development of law.[639]

3. The right to a fair trial. A fair trial manifests itself both as the accessibility of a court and as fair proceedings. The right to a fair trial is always linked to some other rights of a person or an infringement on rights due to which a person is involved or becomes involved in legal proceedings. Quite often, it is impossible to protect the fundamental rights of other persons if the right to a fair trial is not ensured, therefore the right to a fair trial serves as a safeguard for the protection of other rights that have been infringed upon. An example of the legislator's positive obligation, following from Article 92 of the

637 Judgement by the Constitutional Court of the Republic of Latvia of 4 January 2005 in Case No.2004-16-01.

638 Decision by the Constitutional Court of the Republic of Latvia of 30 December 2020 on Terminating Legal Proceedings in Case No.2020-08-01, Para 13.

639 Decision by the Constitutional Court of the Republic of Latvia of 8 March 2011 on Terminating Legal Proceedings in Case No.2010-52-03, Para 7.

Satversme, first and foremost, must be mentioned as its obligation to adopt legal norms that are needed for fair administration of justice.[640] The right to a fair trial includes also the development of uniform case law - the state is responsible for organising its legal system in such a way as to prevent the adoption of contradictory court rulings.[641] The right to free access to a court is an individual, not a collective right. Persons may not be imposed the obligation to unite in order to exercise this right.[642] In both administrative and civil, as well as criminal proceedings, the respective right is characterised by the following main theses. Firstly. The right to a fair trial may be restricted. Secondly, it does not guarantee that all matters will be examined by a court. Thirdly, a court may be also another institution, provided that it is independent and ensures the adversarial proceedings, the right to a fair trial may, to a certain extent, influence also regulated out-of-court proceedings. Fourthly, hearing of a case in three instances must not be ensured in all cases. Fifthly, the right to a fair trial demands such proceedings that are completed timely and ensure legal stability (res judicata). Fifthly, the third sentence of Article 92 of the *Satversme* regarding commensurate compensation is directly applicable, even in the absence of appropriate legal regulation. Six, if, in order to turn to court, a state fee, a deposit or security payment is required, there should be a possibility to decide on decreasing it and to recover it if the respective statutory requirement has set it. Seven, in certain cases, the state should ensure the possibility to receive qualified legal aid to persons who cannot afford it.[643] The right to a fair trial includes also a person's right to access to court for the protection of their

640 Judgement by the Constitutional Court of the Republic of Latvia of 6 June 2012 in Case No.2011-21-01.

641 Judgement by the Grand Chamber of ECtHR of 20 October 2011 in Case "Nejdet Şahin and Perihan Şahin v. Turkey" , Para 55.

642 Judgement by the Constitutional Court of the Republic of Latvia of 20 April 2012 in Case No.2011-16-01.

643 See more: Latvijas Republikas Satversmes 92.pants: tiesības uz taisnīgu tiesu. Satversmes tiesas judikatūra. Rīga: Tiesu Namu Aģentūra, 2020.

lawful interests also in the case if a person's rights have not been infringed upon yet.[644]

4. The principle of legal certainty. The principle of legal certainty falls within the scope of Article 1 of the *Satversme*, i.e., it is derived from the basic norm of a democratic state governed by the rule of law and protects only such rights, with respect to exercise of which a person could have developed lawful, justified and reasonable expectations.[645] The principle of legal certainty ensures the stability it requires, by prohibiting inconsistent actions by the state. This principle is linked not only to trusting the state power but also the possibility of exercising the discretion of the addressees of legal norms. It protects the rights a person has once acquired, i.e., the rights that have been acquired in compliance with a valid legal act; however, it does not exclude the possibility that the rights, once acquired by an individual, could be amended in a lawful and legal way. One cannot expect that the legal situation, once established, will never change, since the legal certainty may be restricted by providing for "a more lenient" transitional period or adequate compensation.[646]

The Constitutional Court has underscored it repeatedly in its case law; however, the Court has usually recognised the state's right to derogate from the previous legal order if only it has established that the state's action was reasonably justified and reached the aim set for it. Usually, a person's right to consistency of legal regulation had not been assessed as prevailing over the legislator's decision to change legal relations. Likewise, compensation for changing legal regulation has not been observed in practice. Hence, currently, defining of "lenient transition" is the dominant type of compensation for restricting legal certainty. However, even this solution is not always used. For example, in taxation law, the Constitutional Court allows the false

644 Decision by the Constitutional Court of the Republic of Latvia of 30 December 2020 on Terminating Legal Proceedings in Case No. 2020-08-01, Para 14.

645 Judgement by the Constitutional Court of the Republic of Latvia of 21 October 2016 in Case No. 2016-03-01.

646 Judgement by the Constitutional Court of the Republic of Latvia of 8 March 2017 in Case No. 2016-07-01.

retroactive force, i.e., if a person has deposited money, at the time of disbursement, the interest can be taxed, although it had not been envisaged at the time of making the deposit.[647] A good example of regulation that is incompatible with the principle of legal certainty is the case which lead to the conclusion: since the *Saeima*, in setting new limits on satisfying employees' claims in the case of employer's insolvency, had not envisaged a lenient transition – not applying it to those employers whose insolvency had been declared before amendments entered into force, the principle of legal certainty had been violated.[648]

Likewise, the state is obliged to not only adopt normative acts that regulate persons' behaviour in most diverse legal relations but also to create a mechanism that would ensure that persons are informed about changes to and the content of legal regulation.[649] This also includes a sufficient period of time between promulgation of a law, its entering into effect and the moment as of which legal consequences set it, and, in this sense, the way the legislator has defined the respective transitional period is important. For example, if a clear obligation is defined for a person in the transitional provisions of law to do something within a certain period expressis verbis then the transitional period may be shorter compared to a case where the entering into force of a law is simply postponed for a certain period, without specifying the respective obligations during the transitional period (persons have to understand them themselves). In the latter case, usually, it has to be six months, if the changes are substantial.[650] Understanding of an adequate period between publishing a legal norm and its entering into force (vacatio legis) still needs to be developed in the

647 Judgement by the Constitutional Court of the Republic of Latvia of 6 December 2010 in Case No.2010-25-01.

648 Judgement by the Constitutional Court of the Republic of Latvia of 10 June 2011 in Case No.2010-69-01.

649 Judgement by the Constitutional Court of the Republic of Latvia of 20 December 2006 in Case No.2006-12-01.

650 Judgement by the Constitutional Court of the Republic of Latvia of 19 June 2010 in Case No.2010-02-01.

Latvian legal system, it would ensure to the potential addresses of the norms sufficient time to familiarise themselves with the new regulation and to plan their conduct.[651]

In a democratic state governed by the rule of law, law should promote legal certainty, and this applies also to ensuring a foreseeable legal environment. The principle of legal certainty follows from the autonomy of persons required by the principle of a state governed by the rule of law. For persons to be able to enjoy autonomy, they should be able to plan their actions with a degree of certainty. From this, in turn, the requirement of equality is derived.[652]

5. The principle of equality and prohibition of discrimination. Quite often the principle of equality and the principle of prohibition of discrimination are used simultaneously in reviewing restrictions on human rights. Although they are included in one article of the *Satversme* (Article 91), however, in operation, these are two different principles.

The Constitutional Court has noted that the constitutional legislator has included two closely interconnected principles in Article 91 of the *Satversme*; the principle of equality in its first sentence and the principle of prohibition of discrimination – in its second sentence. Moreover, both the principle of equality and the principle of prohibition of discrimination act immediately, i.e., these principles have direct effect. The principle of prohibition of discrimination prohibits differentiating between persons on the basis of certain criteria, e.g., age, nationality, language, race. These criteria are not exhaustive, they develop.[653] The prohibition of discrimination has not evolved abstractly but rather as a legal tool to ensure political and social emancipation, integration and welfare of previously oppressed, endangered

651 Separate Opinion of Justice of the Constitutional Court of the Republic of Latvia Daiga Rezevska of 2 November 2017 in Case No.2016-14-01, Para 5. See also: Valsts prezidenta Egila Levita 2020.gada 11.decembra paziņojuma Nr.17 "Par valsts budžeta likumu paketi 2021.gadam" VII sadaļa.

652 Judgement by the Constitutional Court of the Republic of Latvia of 2 November 2020 in Case No. 2020-14-01.

653 Judgement by the Constitutional Court of the Republic of Latvia of 14 September 2005 in Case No.2005-02-0106.

or otherwise excluded groups. Exceptions to the strict prohibition of discrimination are allowed in certain situations to promote by special positive measures (and thus, differential treatment with respect to one of the prohibited categories) emancipation, integration and welfare of the representatives of some groups. However, the permitted exceptions are always subject to a rigorous necessity test. Egils Levits has noted that, until now, the exceptions permitted in the theory and practice of Western countries could be conditionally divided into four groups: these are cases of positive discrimination, ensuring protection and welfare of special social groups, protection of indigenous inhabitants, and protection of groups' identities.[654]

The principle of equality, in turn, works more widely, and is applicable also to differential treatment on the basis of other criteria. This principle demands equal treatment of persons who are in similar and comparable circumstance. This principle allows and even demands differential treatment of persons who are in different circumstances. However, the equality principle allows differential treatment of persons who are in similar circumstances or equal treatment of persons in different circumstances only if objective and reasonable grounds for it are established. To establish the existence or non-existence of such objective and reasonable grounds, the legitimate aim to be achieved and compliance with the proportionality principle are examined[655], i.e., whether the differential treatment can be reasonably explained.

However, it should be kept in mind that the principle of equality is comparative. If some privileges have been established for one group without grounds this only means that the first group can be deprived of them or that they can be granted to the other group. Therefore, the equality principle does not guarantee that the less-privileged group will be granted what it had hoped for.

654 Levits E. Par tiesiskās vienlīdzības principu. Latvijas Vēstnesis, 2003.gada 8.maijs, Nr.68(2833).

655 Judgement by the Constitutional Court of the Republic of Latvia of 13 May 2005 in Case No.2004-18-0106.

One of the cases worthy of a more detailed analysis is the case regarding differences in sentence execution for men and women in prisons in cases when adults had been sentenced for similar crimes. The Constitutional Court recognised that the state could envisage more favourable regime for women; however, legal regulation, which, only on the basis of the gender criterion, without taking into consideration the individual needs and risks of each sentenced person, envisages for the sentenced men a harsher sentence serving regime and different rights and restrictions that follow from it, compared to women, does not ensure that the rights of sentenced men are respected. Thus, in this case, the Court retained the advantages envisaged for women but recognised the restrictions on men's rights as unfounded, narrowing the legislator's discretion so that it would not ensure equality by worsening the women's condition.[656]

6. The right to property. Article 105 of the *Satversme* sets out comprehensive guarantees for rights of financial nature and is not limited only to the property right. "The right to property" is understood as all rights of financial nature, which a person may exercise in their interests and may handle as one wishes, e.g., immovable and movable property, the rights of pledge, claims following from obligations law, based on a contract or tort, etc.[657], contractual rights of economic value, and various economic interests.[658] "Property" may be either "existing property", or assets, including claims, with respect to which the applicant can substantiate having at least legal certainty regarding effective acquisition of property rights.[659] A person's economic interests related to engaging in commercial activities fall within the scope

656 Judgement by the Constitutional Court of the Republic of Latvia of 7 November 2019 in Case No.2018-25-01.

657 Decision by the Constitutional Court of the Republic of Latvia of 20 April 2010 on Terminating Legal Proceedings in Case No. 2009-100-03.

658 Judgement by the Constitutional Court of the Republic of Latvia of 7 June 2012 in Case No. 2011-19-01, Para 9.1.

659 Judgement by the Constitutional Court of the Republic of Latvia of 19 June 2010 in Case No. 2010-02-01.

of the first sentence of Article 105 of the *Satversme*.[660] The fact that a person owns a joint stock company, which is experiencing financial difficulties (liquidation quote does not have positive value), does not exclude them from the scope of Article 105 of the *Satversme*.[661] The state is not obliged to prevent the loss of property's value caused by market factors.[662] Likewise, Article 105of the *Satversme* does not provide for the legislator's obligation to adopt such normative regulation that would envisage compensating from the state budget any risk that persons take when engaging in private law relations.[663] The right to property comprises also the owner's social obligation towards society – property may not be used contrary to public interests.[664] At the same time, it defines the state's obligation to promote and support the right to property, i.e., adopt laws that would ensure protection of this right.[665] Human rights established in Article 105 of the *Satversme* may be restricted not only by narrowing the scope of a person's right to property but also by imposing certain property-related obligations upon a person, for example, to maintain the territory adjacent to the property.[666]

The Constitutional Court has pointed out that that the interests in the area of spatial planning, which follow from the right to property, should be examined in broad scope. It may comprise also, .e.g., a

660 Judgement by the Constitutional Court of the Republic of Latvia of 12 December 2014 in Case No. 2013-21-03.

661 Judgement by the Constitutional Court of the Republic of Latvia of 19 October 2011 in Case No. 2010-71-01.

662 Judgement by the Constitutional Court of the Republic of Latvia of 1 March 2013 in Case No.2012-07-01.

663 Judgement by the Constitutional Court of the Republic of Latvia of 8 March 2017 in Case No.2016-07-01.

664 Judgement by the Constitutional Court of the Republic of Latvia of 10 October 2014 in Case No. 2014-04-03.

665 Judgement by the Constitutional Court of the Republic of Latvia of 28 September 2020 in Case No.2019-37-0103.

666 Judgement by the Constitutional Court of the Republic of Latvia of 21 May 2004 in Case No. 2003-23-01.

certain view out of the window, insulation of an apartment.[667] One of the ways how the right to property can be restricted in public interests is spatial planning (also with respect to territories where gambling halls cannot be set up),[668] however, restrictions on the use of property can be only future-oriented.[669] The right to property should be examined also in the context of rights defined in Article 115 of the *Satversme*, and it cannot be interpreted as a person's right to live in an absolutely virgin environment or the state's obligation to ensure such environment to a person.[670] A trend of decreasing scope of the right to use the land owned by the proprietor is observed.[671] As regards the use of land, private persons have never enjoyed absolute rights.[672] It is recognised also in case law that the right to property does not guarantee such protection of rights to achieve that "a person would be isolated from the impact of other people" and would live "on a lonely island." A person must put up, to a certain extent, with the noises, smells and other environmental pollution, caused by other natural and legal persons, insofar these meet certain standards and, thus, do not violate a person's right to private life.[673] No person, whose property borders on vacant, undeveloped plots of land, may expect that the adjacent vacant plots of land will remain undeveloped. A person must take into account that the owner of the adjacent property has the same right to use their property, also to erect buildings on

667 Judgement by the Constitutional Court of the Republic of Latvia of 24 September 2008 in Case No. 2008-03-03.

668 Judgement by the Constitutional Court of the Republic of Latvia of 16 May 2019 in Case No. 2018-17-03.

669 Judgement by the Constitutional Court of the Republic of Latvia of 24 September 2008 in Case No. 2008-03-03.

670 Judgement by the Constitutional Court of the Republic of Latvia of 24 February 2011 in Case No. 2010-48-03.

671 Judgement by the Constitutional Court of the Republic of Latvia of 3 May 2011 in Case No. 2010-54-03.

672 Ibid.

673 On standards of pollution and human dignity, see Judgement by by the Constitutional Court of the Republic of Latvia of 19 December 2017 in Case No.2017-02-03.

it.[674] This approach also complies with the case law of European Court of Human Rights, which recognises that the right to preservation of the existing landscape per se is not protected by Article 8 of the Convention.[675]

A local government's task is to create pre-conditions for ensuring environmental quality and rational use of territory. In drafting a spatial plan, environmental protection measures regarding biological diversity should be envisaged.[676] Compensation for restrictions on economic activities (preserving animals of protected species) has economic value, the right to claim it is a right of financial nature. Therefore it falls within the content of the term "property" referred to in Article 105 of the *Satversme*. Without transferring all costs of damage caused by animals of protected species to land owners, it would be ensured that they continue their business successfully, at the same time caring for the preservation and protection of environment.[677]

Authors' economic rights are reviewed in the framework of Article 113 of the *Satversme*, and it includes author's right to gain financial benefit from the use of their work; however, as to its nature, this right is not absolute.[678]

The right to property is closely linked to protection against loss of property and this, in particular, applies to immovable property. Expropriation of property for public needs must be separated from restrictions on the use of property, inter alia, such where, as the result of state's actions, the owner loses the title to the property. Examination of the formal mechanism of expropriation for public needs shows that Latvia still adheres to dated approach that it must done by

674 Decision by the Assignments Sitting of the Department of Administrative Cases of the Supreme Court's Senate in Case No. SKA-431/2010.

675 Judgement by ECtHR of 22 May 2003 in Case Kyrtatos v. Greece , Para 51 – 55.

676 Judgement by the Constitutional Court of the Republic of Latvia of 6 July 2009 in Case No.2008-38-03.

677 Judgement by the Constitutional Court of the Republic of Latvia of 19 March 2014 in Case No.2013-13-01.

678 Judgement by the Constitutional Court of the Republic of Latvia of 2 May 2012 in Case No. 2011-17-03.

a special, individual law adopted for each separate case. The prevailing practice in other countries shows that this is done by the executive power, on the basis of a law.[679] Preferably, expropriation for public needs should be as foreseeable as possible and defined in connection with spatial planning.[680] The Constitutional Court has highlighted this requirement of Article 105 of the *Satversme* regarding the need for a separate law, although aged, as essential, it is specified that the property is required, indeed, for public needs (not in the interests of another private person), there are no reasonable alternatives, and exactly in the respective scope.[681] These procedural guarantees include timely expropriation, comprehensible process, participation and hearing of the person, inter alia, in the *Saeima* when the respective law is adopted. Moreover, the *Saeima* itself must ascertain that the entire process of expropriation is correct.[682] Compensation is disbursed as immediately as possible (not at some time in the future and only after losing the title to property) and it is fair – using, to the extent possible, the market value; however, it may be also different, depending upon the specifics of the case. For example, the state is not obliged to purchase equivalent property; however, it is not prohibited to use this solution. Likewise, the specifics of the expropriated property should be taken into consideration if it is an enterprise or a farm. Since the market value is defined by demand and supply in the particular region, the amount of compensation should not be influenced by the owner's emotional attitude towards their property. However, in assessing the amount of compensation, the institution or the

679 See more: Research conducted by law firm Borenius on determining fair compensation in case of expropriation of property for public needs.
Available: http://petijumi.mk.gov.lv/sites/default/files/file/SAM_Petij_Taisnigu_atlidzibu_izpete_gala_zinojums_2015.pdf. One the authors of this book was also involved in this research.

680 Judgement by the Constitutional Court of the Republic of Latvia of 21 October 2009 in Case No. 2009-01-01, Judgement of 16 December 2005 in Case No.2005-12-0103, and Judgement of 9 December 2016 in Case No.2016-08-01.

681 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2005 in Case No.2005-12-0103.

682 Judgement by the Constitutional Court of the Republic of Latvia of 21 October 2009 in Case No. 2009-01-01.

court must take into account the economic importance of the property to be expropriated for the particular owner (for example, property is used to gain subsistence).[683] The fact that the property has been acquired recently or has been obtained as a gift is not important.[684]

Expropriation for public needs in formal understanding of it should be differentiated from de facto expropriation of property for public needs, i.e., the state's actions actually restrict the use of property in a particular way or restrict it in the scope that, substantially, makes the right to property meaningless, and, thus, this gives the right to demand that this property is bought out or compensation is provided.[685] Until now, the Constitutional Court has not heard such cases, however, the European Court of Human Rights and the Supreme Court have identified such For example, it was established in the Supreme Court's case that a person was "an unauthorised person" in their own property.[686] In addition to this, practice needs to be mentioned where territories are reserved for prospective use in public interests, e.g. for the development of infrastructure of national and local importance, establishing an absolute ban on new construction because an important object is planned in the future, which can be both de facto expropriation of property or disproportional restriction on the right to property. It was recognised in case Skibinscy v. Poland that prolonged reservation of a land plot (was reserved in 1994, plans to build a road in 2010), by imposing a ban on construction with respect to already commenced construction, was not proportional to public medium-term or immediate interests. It was not foreseeable when and whether the highway would be built at all.[687]

683 Das Bürgerliche Gesetzbuch, Großkommentar, izdevniecība de Gruyter, 12. izdevums, 1989, 84.rindkopa pirms Vācijas Civillikuma 839.§.

684 Judgement by ECtHR of 25 October 2012 in Case Vistiņš and Perepjolkins v. Latvia , Para 119 and Para 121.

685 Ancillary Decision by the Department of Administrative Cases of the Supreme Court's Senate of 8 May 2012 in Case No. SKA-16/2012

686 Ancillary Decision by the Department of Administrative Cases of the Supreme Court's Senate of 8 May 2012 in Case No. SKA-16/2012

687 Judgement by ECtHR of 14 November 2006 in Case No. Skibinscy v. Poland , Para 90.

Not always the loss of the title to property is deprivation of property, receiving compensation for it. The right to property may be lost also as the result of control over property, when the aim of the contested norm is not depriving an owner of property from the title to it but to regulate the property right regarding property that has lost the owner or possessor, as it was during the reform of commercial law when all enterprises that had not re-registered and their property accrued to the state in the simplified liquidation procedure.[688] Property may be lost also when a sentenced person's property is confiscated or alienated without compensation in the state's ownership, or when a person is punished by recovery of financial nature.[689]

Land consolidation is an additional, peculiar way of restricting the right to property. In global practice, it may be both forced and voluntary. It is usually applied to agricultural lands to ensure united and large plots of land. Several owners become involved in the procedure and their land units are rearranged equally so that property could be used as effectively as possible, eliminating historical shortcomings or a situation that had occurred as the result of construction (e.g., building a highway). If land consolidation is a forced measure it cannot be considered as expropriation of property for public needs but a measure for controlling property. Its aim is not depriving anyone of the title to property but to rearrange them equally for more effective use.[690]

7. Civil law. Although civil law is characterised by significant private autonomy of subjects of law when the involved parties themselves to a large extent have the right to agree on important issues in their relations, undoubtedly, human rights affect and have influenced quite extensively also civil law regulation and application thereof in

688 Judgement by the Constitutional Court of the Republic of Latvia of 6 October 2010 in Case No. 009-113-0106.

689 Judgement by the Constitutional Court of the Republic of Latvia of 8 April 2015 in Case No. 2014-34-01, Para 12.3.

690 See more: Research conducted by law firm Borenius on determining fair compensation in case of expropriation of property for public needs.
Available: http://petijumi.mk.gov.lv/sites/default/files/file/SAM_Petij_Taisnigu_atlidzibu_izpete_gala_zinojums_2015.pdf. One the authors of this book was also involved in this research.

cases when the interests of a person and society clash or one of the parties in civil law relations has to be recognised as being weaker and, thus, in need of special protections. Notwithstanding this, only a comparatively small part of restrictions has reached the Constitutional Court to be reviewed. In the area of civil law, the conclusions made until now basically pertain to expropriation of immovable property for public needs, development of property and infrastructure, envisaging changes in environment or with respect to neighbours, family law, legal capacity, lease, rent, and servitudes.

Clearly, one of the most significant cases in the Constitutional Court's judicature, affecting civil law, is the case regarding the institution of a person's incapacity.

Article 96 of the *Satversme* guarantees an individual's right to be different, to retain and develop traits and abilities that differentiate them from other persons and individualise them. The Constitutional Court concluded that the approach where the Civil Law did not provide for the possibility to establish restrictions proportional to a person's loss of mental capacities but envisaged establishment of the same status and the same type of restrictions for persons with mental and intellectual development disorders of different nature and severity as unfounded. Such mechanisms for restricting capacity that included individual assessment of the situation and the choice of restrictions most appropriate for each individual situation should be envisaged.[691] In the context of this case, another case that was terminated due to amendments to the law also must be mentioned, it resulted in the provision that the court rather than a council of physicians decide on involuntary treatment. To this end, a special procedure for examining such cases was introduced in the law.[692]

Cases regarding the right to property constitute the largest part of cases pertaining to civil law issues. At the beginning of its practice,

691 Judgement by the Constitutional Court of the Republic of Latvia of 27 December 2010 in Case No.2010-38-01.

692 Decision Judgement by the Constitutional Court of the Republic of Latvia of 3 April 2007 on Terminating Legal Proceedings in Case No.2007-05-0106.

the Constitutional Court's active stance was that the right to property could be restricted not only in private law procedure and for civil law aims but, mainly, in public interests, and that not every restriction like that required monetary compensation. During this stage, the Court defended long-term planning and environmental interests.

Rent and lease have been examined in several Constitutional Court's cases. The traditional view has been that, in relations of rent, the tenant is the weaker party to the agreement, therefore the legislator tended to set out rules that restricted the landlord's rights to increase the rent, discontinue provision of services because of debt, to terminate the rental agreement unilaterally or to envisage special procedure for exercising such rights. The Constitutional Court, similarly to the European Court of Human Rights, recognises the state's right to interfere in regulation on the legal relations of renting; however, the state and not private persons should assume long-term responsibility for social issues. Hence, in legal tenancy relations, irrespectively of the important social aspect (tenants), it may not cause disproportional restrictions on the rights of other persons (lessors, owners).[693] Legal residential tenancy relations is a socially important area. The *Satversme* does not refer to the right of housing as such, however, it follows from several articles of the *Satversme*. Firstly, the state's obligation to ensure it as a measure of social security, being aware that the state is unable to provide housing to all. Secondly, the right to inviolability of private life, including one's housing, and it comprises also rented premises. Thirdly, the legislator's discretion to regulate the respective cases to achieve balance between the involved parties. At the same time, it should be kept in mind that a private person cannot be imposed the same obligations vis-à-vis another private person as the state in relations with a private person. For example, not only the tenant but also the owner has the right to housing, moreover, the owner has the right to use their property to gain profit, and, in this situation, the legislator's task is to achieve fair regulation. This is why, for example,

693 Judgement by the Constitutional Court of the Republic of Latvia of 8 March 2006 in Case No.2005-16-01.

it is within the legislator's discretion to decide whether "purchase breaks lease" or "purchase does not break lease." There may be differences in a particular case regarding the particular rights that are compared, for example, a creditor's, who takes over the immovable property, and the current tenant's, or an owner's, who wants to live in this property, and those of the current tenant.[694]

In the context of the right to property of another, the case regarding the compliance of restrictions on forced lease with the landowner's right to property must be mentioned. Until now, the Constitutional Court's case law has been critical of severe restrictions. In one of the first cases regarding forced lease, it was assessed whether the solution of establishing servitude instead of forced lease would be proportional. The Court dismissed this approach, concluding that the institution of lease was appropriate for regulating legal relations; however, some other legal restrictions regarding the application of the institution of forced lease had to be reviewed.[695] Although it is recognised that restrictions are needed to ensure justice in the situation that had developed historically, at the same time, it is underscored that the lease payment should be adequate in free market conditions. The legislator is obliged to find a more proportional benchmark for measuring proportional return on capital – in the amount of statutory interest or in another amount.[696] Because of the number of involved persons and due to legal stability, in the case of residential buildings, until now the legislator has not considered the approach of the court's opinion on case-by-case basis regarding a fair amount of lease payment as consistent with legal certainty and is still searching for the right approach to regulating and terminating legal forced lease relations.

694 Judgement by the Constitutional Court of the Republic of Latvia of 7 July 2014 in Case No.2013-17-01.

695 Judgement by the Constitutional Court of the Republic of Latvia of 13 February 2009 in Case No.2008-34-01.

696 Judgement by the Constitutional Court of the Republic of Latvia of 2 April 2018 in Case No.2017-17-01.

In another case, the Court analysed the interconnections between forced lease and joint ownership, i.e., when one residential building is located on a land plot in joint ownership, as the result of which one joint owner cannot demand and receive lease payment without the other's initiative. However, the Court concluded that civil law solutions existed in laws and case law for resolving this matter; hence, it could be concluded that legal regulation per se did not violate the applicant's rights set out in Article 105 of the *Satversme*.[697]

As regards establishing servitudes, in a case in which a court's right to establish servitudes was contested, it was concluded that all cases where a servitude had to be established could not be mentioned in a law. Therefore law allows establishing a servitude also by a court's judgement. By allowing a court to establish servitudes, the legislator has set out a procedure for restricting the right to property that guarantees justice and decreases arbitrariness. It is legal proceedings, during which a decision is made on establishing a servitude by hearing the parties and assessing the actual conditions and the need to establish a servitude.[698]

As regards rental agreements on graves, the Constitutional Court recognised that it was a public function and not a local government's service in the area of private law, for which payment could be collected with the aim of gaining revenue.[699]

In the area of consumer rights, the Constitutional Court has always underscored the aim of these rights - to ensure fair treatment of the consumer and prevent situations where the creditor, using its economic advantages, could gain disproportional financial benefit at the consumer's expense. The aim of these rights is to restrict the creditor's financial interests. The restriction on the creditor to demand compensation from the consumer for early discharge of obligations

697 Judgement by the Constitutional Court of the Republic of Latvia of 25 October 2011 in Case No. 2011-01-01.

698 Judgement by the Constitutional Court of the Republic of Latvia of 22 December 2008 in Case No. 2008-11-01.

699 Judgement by the Constitutional Court of the Republic of Latvia of 5 March 2019 in Case No. 2018-08-03.

was recognised as being justified.[700] In another case related to consume rights protection, the Court dismissed the applicants' argument that the newly introduced limiting rates on the total costs of credit for a consumer per day unfoundedly hindered them in using the licence granted to them. The Court, however, recognised that establishment of such rates was a restriction on a creditor's rights, set out in Article 105 of the *Satversme*, and yet, it was justified, in particular, in order to decrease expensive short-term loans.[701] Thus, in both cases interference into the freedom to enter into agreements and the freedom of their content was recognised as being justified.

As regards family law, the Constitutional Court has generally stated that "the legal framework for familial relationships, established by the legislator, must comply with the general principles of law and other norms of the *Satversme*, the international and the European Union law as well as, pursuant to the second sentence in the fifth paragraph of the Introduction to the *Satversme*, it should be aimed at creating a cohesive society."[702] In matters of family law, the Constitutional Court mainly focuses on the rights of the child. In at least three cases, the Constitutional Court has concluded that the state's obligation to ensure legal protection for the family requires such legal regulation that forms and maintains the legal framework for the family relations existing in social reality. De facto family relations also require protection.[703] This includes also families of same-sex couples, inter alia, such couples referred to above who have children[704], and also in cases where one of the spouses has another child outside

700 Judgement by the Constitutional Court of the Republic of Latvia of 8 April 2011 in Case No. 2010-49-03.

701 Judgement by the Constitutional Court of the Republic of Latvia of 12 February 2020 in Case No. 2019-05-01.

702 Judgement by the Constitutional Court of the Republic of Latvia of 5 December 2019 in Case No. 2019-01-01.

703 Ibid.

704 Judgement by the Constitutional Court of the Republic of Latvia of 12 November 2020 in Case No. 2019-33-01.

matrimonial relationship.[705] Thus, it has been concluded in these cases that the prohibition for the female partner of a child's mother to use the leave intended for the child's father is contrary to Article 110 of the *Satversme*, just as the restriction for the child's father, who is in another marriage, allowing to submit an application for recognising paternity only with the other spouse's consent.

On the matter of the right to adopt, the Constitutional Court has concluded that the right to adopt a particular child does not fall within the scope of Article 96 of the *Satversme*, regarding the right to inviolability of private life, and that Article 96 of the *Satversme* does not include the state's obligation to ensure this to a person. The Court recognised as being ungrounded the absolute prohibition for a person, who had been punished for a violent criminal offence, to adopt the other spouse's child. In establishing any absolute prohibition, it should be ascertained that absolute prohibition is the only means for reaching its aim. If it can be reached by individual assessment then such prohibition is not proportional. [706]

Regarding the issue of recognising paternity, the Constitutional Court concluded that in order to ensure a child's right to personal identity, legal certainty must be ensured and, to reach this aim, a term for contesting paternity can be defined, as well as the circle of persons who may do so, cases when paternity can be contested can be regulated, and it is possible not to envisage such rights to a certain circle of persons.[707]

In one case, the Constitutional Court reviewed the obligation defined in regulatory enactments to compensate to the service provider for economic damages(losses) if inappropriate use of the service had been established (for example, by damaging the meter). The Court deemed such compensation to be equal to penalties. Its aim is both

705 Judgement by the Constitutional Court of the Republic of Latvia of 11 October 2004 in Case No. 2004-02-0106.

706 Judgement by the Constitutional Court of the Republic of Latvia of 5 December 2019 in Case No. 2019-01-01.

707 Judgement by the Constitutional Court of the Republic of Latvia of 3 June 2009 in Case No. 2008-43-0106.

compensating for economic losses and ensuring prevention, as well as performing a punitive function. The method chosen for calculating the compensation may not allow that the service provider enriches itself at the users' expense, it should ensue reasonable individualisation rather than, for example, multiply the allowed maximum consumption per hour by a double tariff.[708]

8. Civil procedure. Civil procedure is considered as belonging to public law and forms a unified system of public law relations, moreover, its task is to ensure to a person the possibility to defend their lawful interests in a fair trial. Therefore, private persons can defend their rights not in the procedure they prefer and subjectively deem to be the most expedient but in the procedure established by the legislator.[709]

Several adjudicated cases are related to the functioning of the cassation instance court – submitting a complaint, security deposit, refusal to initiate cassation proceedings, filing a protest. In all cases described below, it has always been underscored that the cassation instance has a special role in dealing with important issues of law, balancing an individual's and society's interests to ensure that the principles of legality and justice are implemented in a democratic state governed by the rule of law and, thus, access to it can be restricted to greater extent and higher requirements may be set for parties. However, this does not mean that this aim justifies any restrictions. Firstly, initially, the requirement that the involvement of a sworn advocate was mandatory for filing a cassation complaint (their signature in order for the complaint to be accepted) was recognised as being incompatible with Article 92 of the *Satversme*.[710] At the same time, in another case, in analysing regulation on representation in the first and the appellate instance, it was recognised that narrowing

708 Judgement by the Constitutional Court of the Republic of Latvia of 28 September 2020 in Case No. 2019-37-0103.

709 Judgement by the Constitutional Court of the Republic of Latvia of 1 November 2012 in Case No. 2012-06-01.

710 Judgement by the Constitutional Court of the Republic of Latvia of 27 June 2003 in Case No. 2003-04-01.

of representation (apart from an advocate, only relative and possessor of property) was incompatible with Article 92 of the *Satversme*, although reasonable exceptions were admissible. Later, when the actual circumstances changed, proceedings involving an advocate were introduced in the cassation instance, providing that only the person, their legal representative or a sworn advocate could submit a cassation complaint, without prejudice to this thesis and taking into account the Court's findings. Secondly, immediate coming into force of an appellate instance court's judgement could not be justified by the speed of civil turn-over since it places disproportional restrictions on a person's rights, inter alia, creates the grounds for the cassation review to become ineffective and only formal.[711] Thirdly, since, in a democratic state governed by the rule of law, it is inadmissible to make appealing against a ruling dependent upon a person's financial means, it should be possible to release from the payment of security deposit.[712] The same principle was applied also to the security deposit related to a complaint about a decision by a Land Register's judge to the Chamber of Civil Cases of the Supreme Court, at the time it still existed.[713] Fourthly, the right to a fair trial is not violated by the fact that, with the aim of relieving the cassation instance from unfounded cassation complaints, the collegium of Senators has the right to assess whether there are doubts regarding the legality of the appellate court's judgement and whether the case to be examined is important for the development of judicature and, accordingly, refuse initiation of cassation proceedings.[714] One of the assessment criteria could be a criterion of financial nature, thus, restricting access to the cassation

711 Judgement by the Constitutional Court of the Republic of Latvia of 2 June 2008 in Case No. 2007-22-01.

712 Judgement by the Constitutional Court of the Republic of Latvia of 20 November 2008 in Case No. 2008-07-01.

713 Judgement by the Constitutional Court of the Republic of Latvia of 14 March in Case No. 2005-18-01.

714 Judgement by the Constitutional Court of the Republic of Latvia of 21 October 2013 in Case No. 2013-02-01.

instance court for insignificant cases .[715] Finally, the principle that reasoning must be provided for in a court's ruling requires indicating substantiation in the ruling, however, this depends upon the nature of the particular ruling and the area of law. It is admissible to refuse initiation of cassation proceedings in a civil case without detailed substantiation.[716]

Judges must not only administer justice fairly but also create the conviction that justice is administered fairly. Moreover, the right to a fair trial requires providing sufficient measures for ensuring the court's objectivity to exclude reasonable doubts about its objectivity; however, it should be taken into account that the right to demand recusal of a judge is only one means for ensuring the court's objectivity and that it can be ensured in various ways, inter alia, by not using the institution of recusal, in particular, in the stage of initiating a case. Hence, a judge's refusal to accept recusal cannot be appealed against separately because a court of higher instance may express its opinion on it (a case heard in an unlawful composition),[717] as well as in the cassation instance, in deciding on the initiation of a case, it is possible to not have the right to demand recusal.[718] Likewise, it is not necessary to ensure the possibility to appeal against a procedural sanction, in view of the fact that the application Article 92 of the *Satversme* to such situations is very limited (the right to be heard must be ensured).[719] However, not only the decision on not applying the security but also on applying it and on the refusal to revoke it should be subject to appeal to ensure the procedural equality of parties (a later application requesting change of the security measure cannot

715 Judgement by the Constitutional Court of the Republic of Latvia of 12 March 2020 in Case No. 2019-11-01.

716 Judgement by the Constitutional Court of the Republic of Latvia of 12 March 2020 in Case No. 2019-13-01.

717 Judgement by the Constitutional Court of the Republic of Latvia of 15 February 2005 in Case No. 2004-19-01.

718 Judgement by the Constitutional Court of the Republic of Latvia of 16 July 2020 in Case No. 2019-23-01.

719 Judgement by the Constitutional Court of the Republic of Latvia of 5 November 2008 in Case No. 2008-04-01.

be recognised as being an equal right). It was found in the case that the balance between procedural economy and ensuring adequate and equal rights had been upset.[720]

The right to submit a protest regarding a court' s ruling that has entered into force should be differentiated from the right to appeal against a court's ruling. The right to protest affects directly the stability of court rulings that have entered into force (res judicata). "The institute of protest has been created as the final instrument of legal remedies – an additional guarantee in the case where no other legal remedies are available."[721] Firstly, it was concluded that the right to a fair trial included also the requirement that court rulings that have entered into force are no revoked. Filing of a protest due to some substantive violations is considered as an exception to res judicata. Generally, such solutions are not considered desirable, should be introduced as narrowly as possible (e.g., with respect to only rulings by the first instance court that are not subject to appeal) but are admissible to remedy a court' s error, in particular, taking into account transformation of the legal system. Too long a term for submitting a protest would not be admissible.[722] Secondly, the right of the Chairperson of the Senate' s Department of Civil Cases to submit such a protest violates the court's neutrality (a court should not initiate cases itself), therefore it is incompatible with Article 92 of the *Satversme*.[723]

In one of its cases, the Constitutional Court reviewed restrictions on the wording of the claim in the application. The claim to eliminate, by a court's ruling, infringement on substantive rights is considered to be the subject of the claim. I.e., there may be cases when the claims of a certain type must be examined within the framework

720 Judgement by the Constitutional Court of the Republic of Latvia of 30 March 2010 in Case No. 2009-85-01.

721 Judgement by the Constitutional Court of the Republic of Latvia of 9 January 2014 in Case No. 2013-08-01.

722 Ibid.

723 Judgement by the Constitutional Court of the Republic of Latvia of 14 May 2013 in Case No. 2012-13-01.

of one case, associated claims, which are worded clearly and comprehensibly, are also admissible. However, claims, which are subordinated - based on different grounds, using the combination of words "in case if," are inadmissible.[724] In another case, the Court indirectly admitted that non-existence of claims regarding a negative declaration would restrict persons' right to a fair trial, in the sense that the possibility to protect it effectively would not be ensured.[725]

The issue of the involvement of a third person in the case and the possible restriction on the right to a private life, resulting from it, was dealt with in one of the cases. I.e., it was a divorce case, in which a creditor also participated as a third person. The Court recognised that the right of third persons to participate in a case was not absolute and that courts could decide on the most appropriate moment for the third person to exercise their rights, with maximum respect for the aspects of parties' private lives.[726] However, this is not the only case, in which the inviolability of private life in civil proceedings was analysed; i.e., the claimant, in submitting a claim, must know the defendant's place of residence, which are protected personal data. The Court recognised such restriction on the defendant's rights as being appropriate since this is the only way, in which another person may exercise their right to a fair trial. The contested norm was recognised as being compatible because the claimant, upon turning to a court, has to provide information at their disposal about the declared place of residence of the probable defendant, in case of incorrect reference, the Court may indicate the correct address of the defendant's declared place of residence and the court to which the claim should be brough, or they must submit an application to the competent authority,

724 Judgement by the Constitutional Court of the Republic of Latvia of 1 November 2012 in Case No. 2012-06-01.

725 Decision by the Constitutional Court of the Republic of Latvia of 30 December 2020 on Terminating Legal Proceedings in Case No. 2020-08-01.

726 Judgement by the Constitutional Court of the Republic of Latvia of 20 October 2011 in Case No. 2010-72-01.

substantiating the need for requesting such data (e.g. the defendant's address is needed to initiate legal proceedings).[727]

The Constitutional Court has reviewed several cases related to the repayment of the state fee and expenses related to conducting a case. The Constitutional Court has underscored repeatedly that a court must assess carefully the applicant's arguments regarding decreasing the state fee or being released from it.[728] The legal norm that provided that the state fee was repaid if the application requesting its repayment was submitted within three years form the date the state fee had been paid, irrespectively of the moment when the legal grounds for repaying the state fee arose, and irrespectively of the fact, the court of which instance decided to terminate legal proceedings in the case on the grounds that the court has no jurisdiction over the case, was recognised as being incompatible with Article 91 of the *Satversme*. This approach was held to be incompatible with the principle of equality because it made the repayment of the state fee dependent on the length of hearing the case and this does not always depend directly on the person. Those, whose cases were examined swifter, could exercise this right.[729] Whereas the legal norm that did not provide for repayment of the state fee paid for an appellate complaint in case where the appellate complaint was dismissed due to incompatibility with a formal requirement regarding its content was recognised as being compatible with the principle of equality. The legislator may envisage a principle that, in particular cases, the state fee is not to be reimbursed to discipline persons and protect courts against overload.[730] The Court has provided several valuable conclusions regarding reimbursement of the costs of a lawyer. Firstly, costs of legal aid fall within

727 Judgement by the Constitutional Court of the Republic of Latvia of 211 October 2018 in Case No. 2017-30-01.

728 Judgement by the Constitutional Court of the Republic of Latvia of 17 May 2010 in Case No.2009-93-01.

729 Judgement by the Constitutional Court of the Republic of Latvia of 2 November 2020 in Case No.2020-14-01.

730 Judgement by the Constitutional Court of the Republic of Latvia of 16 July 2020 in Case No. 2020-05-01.

the scope of the first sentence of Article 92 of the *Satversme*, therefore must be decided on in the same proceedings and not in a separate case, as it should be done if it were found that Article 105 of the *Satversme* should be applied to reimbursement of such costs. Secondly, the circle of those persons, on the basis of whose invoice the costs of providing legal assistance may be recovered from the losing party, can be restricted in civil proceedings. In Latvia, these are sworn advocates and their assistants, and because of the requirements and responsibilities set for advocates, this approach is not contrary to the principle of equality. Thirdly, the amounts may be limited, and the court is not imperatively required to assess itself the compensation for such costs.[731]

Several important conclusions have been made with respect to the operation of arbitration courts, of which one could be mentioned as an overarching thesis, i.e., that the first sentence of Article 92 of the *Satversme* provides for both the state's obligation to create effective legal regulation that would ensure the possibility to eliminate substantial procedural violations made in the arbitration proceedings and the obligation to not recognise the outcome of such arbitration proceedings, in which such violations had been committed.[732] Regulation on arbitration proceedings, applied by the courts of general jurisdiction, has a certain impact in civil proceedings. Firstly, the choice to put the dispute for examination by an arbitration court should be free, compatible with the law, as well as unequivocal. Secondly, if the disputes are reviewed by an arbitration court, on the basis of free will of the parties, the arbitration proceedings must not mandatorily meet all the requirements of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The state is not responsible for the fairness of reviewing cases at arbitration courts; however, in cases where a court of general jurisdiction

731 Judgement by the Constitutional Court of the Republic of Latvia of 29 April 2015 in Case No. 2014-31-01 and Judgement of 7 February 2014 in Case No.2013-04-01.

732 Judgement by the Constitutional Court of the Republic of Latvia of 17 January 2005 in Case No. 2004-10-01.

controls arbitration proceedings it must ascertain that the legal proceedings at the arbitration court had been just. Thirdly, the principle of an arbitration court's jurisdiction does not exclude the possibility that the arbitration court's jurisdiction is examined by a court of general jurisdiction. A court of general jurisdiction has the right to request from the institution of arbitration court materials in the case that are necessary to examine the presence of conditions indicated in the explanation as well as to request the original copy of the agreement on arbitration court to transfer it for expertise.[733]

Apart from the regulation on arbitration courts, the Constitutional Court has examined also such simplified forms of civil proceedings as undisputed compulsory execution of obligations and selling of pledge for a free price. Both cases were related to recovery of debt in a situation where the immovable property was encumbered by a mortgage. In these cases, the Court recognised the importance of the following – warning of the debtor (renouncing it would be inadmissible), the existence of a judge's decision (in particular, to establish, whether the agreement does not include provisions that are unfair for the consumer, or, in the case of selling the pledge, – whether there are no legal obstacles for selling the immovable property on the conditions indicated in the application), and that the recovery is in the amount of the mortgage or the commercial pledge (separate legal proceedings – for the remaining amount), as well as the debtor's right to bring an action against the creditor. Such procedure is not contrary to Article 92 of the *Satversme* if the case is decided on the basis of only the documents submitted by the creditor, in cases provided for in law, or, in the case of selling the pledge for a free price – in accordance with the agreement. Hence, introduction into civil procedure simplified and accelerated procedures for debt recovery is admissible because they are aimed at facilitating civil turn-over and simplification of case hearing. Justice may not be examined separately from effectiveness. Moreover, the creditor does not have to wait until the

733 Judgement by the Constitutional Court of the Republic of Latvia of 28 November 2014 in Case No. 2014-09-01.

final term for meeting obligations, missing the contractual term of payment is enough. In such cases, it is not mandatory to obtain the debtor's explanations for making the decision.[734]

Insolvency proceedings have been analysed in several Constitutional Court's cases, inter alia, in the first case regarding the Civil Procedure Law, wherein it was concluded that the provision that a court's judgement in an insolvency case was not subject to appeal (fair legal proceedings regarding the debtor's violations can be ensured in one judicial instance) had been valid.[735] Likewise, a ruling, by which a natural person's insolvency proceedings are terminated, without releasing them from the remaining debt commitment, may be such that is not subject to appeal.[736] Since the insolvency proceedings, in difference to cases to be examined in the procedure of claim, are examined in special legal proceedings and have no dispute regarding rights, it is admissible that a court's ruling on dismissing an administrator in particular proceedings is not subject to appeal.[737] It has been concluded that, predominantly, it is aimed at protecting the rights of creditors and debtors.[738] The purpose of both insolvency and bankruptcy proceedings is to protect creditors' interests and satisfy their claims against the debtor as fully as possible. The speed of insolvency proceedings may not be an end in itself and it cannot lead to substantive infringements on a person's rights.[739] Administrator's main task is to ensure effectiveness of insolvency proceedings,[740] which requires appropriate

734 Judgement by the Constitutional Court of the Republic of Latvia of 17 May 2010 in Case No. 2009-93-01 and Judgement of 24 November 2010 in Case No. 2010-08-01.

735 Judgement by the Constitutional Court of the Republic of Latvia of 17 January 2002 in Case No. 2001-08-01.

736 Judgement by the Constitutional Court of the Republic of Latvia of 28 September 2016 in Case No. 2016-01-01.

737 Judgement by the Constitutional Court of the Republic of Latvia of 12 March 2015 in Case No. 2014-23-01.

738 Judgement by the Constitutional Court of the Republic of Latvia of 20 April 2010 in Case No. 2009-100-03.

739 Judgement by the Constitutional Court of the Republic of Latvia of 29 October 2012 in Case No. 2012-25-01.

740 Judgement by the Constitutional Court of the Republic of Latvia of 23 February 2006 in Case No. 2005-22-01.

qualification, knowledge and experience,[741] as well as, if the legislator has ruled like that, being a public official.[742] No person is prohibited from submit a claim against the debtor to court to protect their interests, on their own initiative, if the court, in hearing a case of insolvency proceedings, has not established a dispute regarding rights . If the court satisfies the claim brought by the possible creditor, this means that there had been a dispute regarding rights. Therefore, such action by a person cannot be regarded as being such that encumbers the system of courts or delays the insolvency proceedings. In such a case, the principles of legality and protection of a person's civil interests prevails over the special principles of insolvency proceedings.[743] An employee's right to initiate the employer's insolvency proceedings cannot be regarded as an effective mechanism for exercising a person's fundamental social rights.[744]

It has been recognised in the Latvian doctrine of civil law that the right to compensation for the harm inflicted on person's health or the right to compensation for moral damages, as to their nature, are personal rights and, therefore, cannot be inherited. However, the Constitutional Court recognised that the legislator could provide for exceptions to such approach, for example, it was analysed in connection with disbursements from the Medical Treatment Risk Fund to the relatives of a deceased patient, as the result of which compensation for non-pecuniary damages becomes part of the estate.[745]

The issue of the reversal of enforcement of a judgement in cases of labour disputes is examined in the section on labour law.

741 Judgement by the Constitutional Court of the Republic of Latvia of 22 November 2011 in Case No. 2011-04-01.

742 Judgement by the Constitutional Court of the Republic of Latvia of 21 December 2015 in Case No. 2015-03-01.

743 Judgement by the Constitutional Court of the Republic of Latvia of 29 October 2012 in Case No. 2012-25-01.

744 Judgement by the Constitutional Court of the Republic of Latvia of 20 April 2012 in Case No. 2011-16-01.

745 Judgement by the Constitutional Court of the Republic of Latvia of 18 October 2018 in Case No.2017-33-03.

9. Commercial law. Commercial law is the area, in which the Constitutional Court in two of its cases had methodologically separated the fourth sentence of Article 105 of the *Satversme* regarding compensation in the case of expropriation of property from restricting the right to property in public interests. One of these cases pertained to restrictions on disbursement of interest payments for subordinated liabilities at the time when the credit institution was receiving state aid (concluding that such restriction due to the nature of subordinated liabilities and fairness in using state aid was admissible). The Court recognised that such restriction did not alienate irreversibly the right to claim .[746] Whereas in the case regarding the reform of the Commercial Law, an even more far-reaching conclusion was made, which is significant beyond the area of commercial law. I.e., the contested legal norm provided that the companies, which are not re-registered during the reform, turn into property without heirs and is transferred into the state's ownership. Referring to the European Court's of Human Rights approach to the right to property, the Court separated the measures for controlling property (using in public interests, which is not always compensated for) from expropriation of property, which always should be compensated for. It was concluded that the particular case was compatible with measures of controlling property and should not be compensated for.[747] Thus, this case makes one take a critical look at which sentence of Article 105 of the *Satversme* is applicable in which cases, even if the right to property is not restricted temporarily (e.g., disbursement of interest payments) but is lost entirely. The loss of title to property does not automatically mean that consequences of the fourth sentence of Article 105 of the *Satversme* would be applied.

One judgement, which pertains strictly to the area of shareholders' rights, needs to be mentioned, and it pertains to the majority of

746 Judgement by the Constitutional Court of the Republic of Latvia of 13 October 2015 in Case No. 2014-36-01.

747 Judgement by the Constitutional Court of the Republic of Latvia of 6 October 2010in Case No. 2009-113-0106.

votes required for making important decisions after amendments to the law had determined it concretely – at least three fourths; however, a higher threshold had been set in the particular company. Hence, restrictions on the rights of minority shareholders was analysed in this case. The Court did not discern rational grounds for the imperative norm.[748]

Historically, one of the main issues in commercial law has been separation of the liability of a shareholder and a commercial company, as well as a board member's liability for company's commitments. In the particular case, however, the Court distanced itself from the issue of piercing the so-called "corporate veil" but recognised that, in the interests of effective tax collection, it would be proportional that, in some cases, board members would be liable for the company's tax obligations. The Court repeatedly underscored the board's special role in managing a legal person. To regulate this process, the legal presumption of a fact may be used, and this does not violate the presumption of innocence.[749] Several years later, the Supreme Court provided a general assessment on piercing the corporate veil and established the practice that separation between the liability of a commercial company and its shareholder may not be used to cover shareholder's intentional actions to avoid fulfilment of commitments by evading law. [750] The piercing of this veil in some particular cases, in principle, is not an obstacle for creating additional solutions in laws if they are necessary and proportional.

The Court's case law regarding credit institutions needs to be examined separately - making decisions on saving them, shareholders' rights, and the transfer of company. The Constitutional Court recognised as compatible special derogations from the Commercial Law in transferring the credit institution company without the joint and

748 Judgement by the Constitutional Court of the Republic of Latvia of 4 February 2009 in Case No. 2008-12-01.

749 Judgement by the Constitutional Court of the Republic of Latvia of 15 November 2016 in Case No. 2015-25-01.

750 Judgement by the Department of Civil Cases of the Senate of the Republic of Latvia of 30 January in Case SKC-466/2020.

several liability of the transferor and transferee of the company, as well as without the consent of creditors and other persons. It was also found that, in case of losses, legal proceedings regarding recovery thereof, which would satisfy the interests of potentially injured parties, could not be excluded. In this case, stability of the financial system and the need to act decisively, inter alia, in the interests of depositors, was the justification for the special procedure.[751] Later, similar legal norms were included in laws with respect to other cases (area of insurance, covered bonds), which justified a similar legitimate aim.

In another case, the Constitutional Court found it justified that a creditor of a credit institution could not influence entirely the insolvency proceedings of a credit institution (the administrator's decision on whether financial recovery or liquidation will be chosen), pointing not so much to the private nature of such insolvency proceedings as its impact on economy and depositors .[752] After united regulation was introduced regarding the competence of Latvian institutions to decide on saving or liquidation of a credit institution, the findings in this case probably are not to be considered as being particularly important.

The Court arrived at different conclusions in the case where the rights of a credit institution's shareholders had been restricted. It was concluded that with respect to a shareholder's, board and council member's right to deposit protection such rights could be restricted, taking into account the involvement of the person in operations of the credit institution.[753]

Whereas the legal norm, which, in the case of state aid for a credit institution, allowed the council to decide on the emission of new shares, without the priority rights of the existing shareholders to it, was recognised as being unfounded. This case is significant also for

751 Judgement by the Constitutional Court of the Republic of Latvia of 30 March 2011 in Case No. 2010-60-01.

752 Judgement by the Constitutional Court of the Republic of Latvia of 1 March 2013 in Case No. 2012-07-01.

753 Judgement by the Constitutional Court of the Republic of Latvia of 13 June 2014 in Case No. 2014-02-01.

stating that share of capital or a share is property in the meaning of Article 105 of the *Satversme*, and the circumstances that it, perhaps, is no longer of economic value, do not change this fact. This article protects not only valuable properties but any financial interests, as well as the rights of a shareholder or a participant after the merchant has been excluded from the commercial register.[754]

Providers of various licenced services often provide the same type of services; however, the regulatory requirements for the provision of this service sometimes differ. In the particular case, different requirements regarding identification of clients had been set for currency exchange points licenced and supervised by the Bank of Latvia and for credit institutions, licenced and supervised by the Finance and Capital Market Commission. The Court concluded that these market players were in similar and comparable circumstances with respect to provision of this service.[755]

10. Right to work and service. It has been recognised in judicature that the *Satversme* does not guarantee directly the right to work but the right to freely choose employment and workplace, as well as to retain the existing employment and workplace. Employment is such work in the private or public sector, which requires appropriate preparedness and which is the source of human existence, as well as professions that are closely related to each individual's personality in general. Choice of employment means purposeful actions, not only an internal decision. It is important that persons have equal access to labour market. [756] Insofar it pertains to work in the framework of service relations, it is examined, primarily, in the context of Article 101 of the *Satversme*, rather than that of Article 106, taking into account

754 Judgement by the Constitutional Court of the Republic of Latvia of 19 October 2011 in Case No. 2010-71-01.

755 Judgement by the Constitutional Court of the Republic of Latvia of 2 March 2016 in Case No. 2015-11-03.

756 Judgement by the Constitutional Court of the Republic of Latvia of 10 February 2017 in Case No. 2016-06-01.

that persons in the public service[757] are in special relations with the state and, therefore, the rights of these persons are restricted and special duties are imposed upon them.[758] Article 106 of the *Satversme* is applicable also to such self-employed person as an insolvency administrator, who needs a certificate for their professional activities, and the cases where it is revoked can be examined in compliance with this article.[759] The maximum length of the working week should be normatively defined in the state, envisaging also the minimum time of rest and paid annual leave.[760] Protection of the actual value of remuneration for work has been derived from Article 107 of the *Satversme*,[761] however, it has not been examined broadly enough to allow making general conclusions.

The understanding of forced labour in cases where the employer orders an employee to do work, which is not stipulated in the contract, or makes to work overtime without the employee's agreement is the case that should be mentioned as the first and the most important one. In this case, the Court differentiated between forced labour as a political or economic measure for enslaving persons, i.e., forced labour is any work or service that the persons has not agreed to provide and which is unfair and cruel, and such that is envisaged by the Labour Law in very special cases – to ensure normal course of activities of the employer and employee themselves.[762]

As regards the issue of working hours or the extended working hours set for medical practitioners, the part of which was not

757 On types of public service, see: Briede J., Danovskis E., Kovaļevska A. Administratīvās tiesības. Rīga: Tiesu namu aģentūra, 2016, 173.lpp.

758 Judgement by the Constitutional Court of the Republic of Latvia of 11 April 2006 in Case No. 2005-24-01.

759 Judgement by the Constitutional Court of the Republic of Latvia of 23 November 2016 in Case No. 2016-02-01.

760 Judgement by the Constitutional Court of the Republic of Latvia of 21 October 2008 in Case No. 2008-02-01.

761 Judgement by the Constitutional Court of the Republic of Latvia of 28 March 2012 in Case No. 2011-10-01.

762 Judgement by the Constitutional Court of the Republic of Latvia of 27 November 2003 in Case No. 2003-13-0106.

regarded as overtime and was introduced due to economic recession, the Court did not establish a legitimate aim for the differential treatment of medical practitioners and other employees.[763]

With respect to academic staff, both the restriction on the maximum admissible age[764] and fixed-term employment agreements (without additional solutions)[765] were recognised as being incompatible with legal norms of higher legal force. As regards teachers, it was concluded that absolute prohibition for sentenced persons to work in this job without a special assessment mechanism was incompatible with Article 106 of the *Satversme*. [766] This judgement had further impact on other professions,[767] although the Court has allowed exceptions to it, for example, with respect to judges. Whereas the requirement set for the head of an educational institution to have impeccable reputation and to be loyal to the State of Latvia was recognised as being compatible with Article 100 and Article 106 of the *Satversme*.[768] Restrictions related to the status of an official are based on the requirement of special trustworthiness and loyalty towards the state and per se they are not to be considered as being contrary to the equality principle.[769]

The Constitutional Court recognised as being incompatible with Article 106 of the *Satversme* the absolute prohibition to issue the certificate of a security guard to a person who had been diagnosed with alcohol dependency because absolute prohibition was admissible if

763 Judgement by the Constitutional Court of the Republic of Latvia of 15 May 2018 in Case No. 2017-15-01.

764 Judgement by the Constitutional Court of the Republic of Latvia of 20 May 2003 in Case No. 2002-21-01.

765 Judgement by the Constitutional Court of the Republic of Latvia of 7 June 2019 in Case No. 2018-15-01.

766 Judgement by the Constitutional Court of the Republic of Latvia of 24 November 2017 in Case No. 2017-07-01.

767 Judgement by the Constitutional Court of the Republic of Latvia of 17 December 2020 in Case No. 2020-18-01.

768 Judgement by the Constitutional Court of the Republic of Latvia of 21 December 2017 in Case No. 2017-03-01.

769 Judgement by the Constitutional Court of the Republic of Latvia of 23 November 2015 in Case No. 2015-10-01.

the legislator had substantiated that, by providing for exceptions to this absolute prohibition, its aim would not be reached in equal quality. The Court held that there could be different absolute prohibitions, for example, both regulation that allows individual assessment in certain cases and exceptions that are precisely formulated in a law, as well as regulation that required regular review of the need for the prohibition.[770]

The Constitutional Court has reviewed a number of cases regarding service relations and, in particular, the possibility to discontinue service relations with a civil servant who has reached the age of retirement, if only age is not the only criterion, on which the respective decision is based,[771] as well as several cases regarding education requirements for persons in service relations, recognising such requirement as justified or demanding that an adequate period for acquiring education is ensured.[772] It has been recognised that persons, who have been entrusted with the performance of public tasks, are in public law relations with the state and that, within this legal relation, the principle of equality of parties does not function. In public service, the state has the right to regulate unilaterally the rights and obligations of persons in public service; however, establishing restrictions on uniting in trade unions was not allowed.[773] In assessing the established restrictions, also persons who have legal employment relation with state or local government institutions, in accordance with the circumstances in the case, may use the approach that they are in public service. Education requirements in public sector also were assessed, and, in this case, the Court was more critical towards the solution chosen by the legislator – to demand quite specific education

770 Judgement by the Constitutional Court of the Republic of Latvia of 28 January 2021 in Case No. 2020-29-01.

771 Judgement by the Constitutional Court of the Republic of Latvia of 18 December 2003 in Case No. 2003-12-01.

772 Judgement by the Constitutional Court of the Republic of Latvia of 10 May 2007 in Case No. 2006-29-0103 and Judgement of 11 April 2006 in Case No. 2005-24-01.

773 Judgement by the Constitutional Court of the Republic of Latvia of 23 April 2014 in Case No. 2016-15-01.

for a manager of a residential building. It was concluded in the case that it was possible to not apply the requirement regarding specific education, its level to persons who had practical work experience and who had acquired another vocational education, which guaranteed the skills and knowledge defined in the manager's standard.[774]

Establishing of restrictions on combining offices for those working in the public sector is recognised as the state's discretion, which should be exercised in compliance with the general legal principles, and the Court examines only their obvious incorrectness. In the framework of this discretion, the legislator may respond to specific situations, also by envisaging certain exceptions, if these are duly justified.[775] Levelling equality is not required in such cases.

As regards employment of convicted persons, the Court recognised as appropriate the solution that, in certain cases, remuneration for such work could have a lower minimum hourly rate because this work, primarily, facilitates re-socialisation.[776] However, the Court recognised the differential treatment of convicted persons, who were employed in prisons, with respect to a leave (was not permitted) and the length of the working week (six instead of five days) as being incompatible with Article 107 of the *Satversme*.[777]

Since in the case of labour disputes a court may rule that the judgement must be enforced immediately, recovering remuneration for work in favour of the employee, an infringement on an employer's fundamental rights by a legal norm, which restricted the reversal of a judgement in cases of labour dispute, was recognised.[778]

774 Judgement by the Constitutional Court of the Republic of Latvia of 18 February 2010 in Case No. 2009-74-01.

775 Judgement by the Constitutional Court of the Republic of Latvia of 17 December 2019 in Case No.2019-03-01.

776 Judgement by the Constitutional Court of the Republic of Latvia of 9 June 2011 in Case No. 2010-67-01.

777 Judgement by the Constitutional Court of the Republic of Latvia of 21 October 2008 in Case No. 2008-02-01.

778 Judgement by the Constitutional Court of the Republic of Latvia of 16 April 2015 in Case No. 2014-13-01.

The Constitutional Court also recognised that the persons, enrolled in residency, who, by expressing their free will, chose to conclude an agreement on payment for the training from the state budget resources, at the same time also assume certain commitments vis-à-vis the state, and, therefore, the state has the right to demand that the persons meet the commitments they have undertaken to ensure the benefit of the entire society from the restriction on the rights of these persons, i.e., the possibility to receive the health care services, guaranteed pursuant to Article 111 of the *Satversme*.[779]

11. Criminal law. In the area of criminal law, the Court has examined both the presumption of innocence and double jeopardy, as well as liability without law and matters of penal policy, except the amount of punishment. In analysing the rulings by the Constitutional Court and the European Court of Human Rights in the area of criminal law, it should be kept in mind that they cover not only the provisions of the Criminal Law but also the procedure of administrative violations or other activities of punitive nature established by the state.

The Constitutional Court concluded that criminal liability directly for defamation and injuring the dignity of a public official (there was also uncertainty in the case regarding the scope of this concept) violated the right to the freedom of speech.[780]

As regards the proportionality of penalties and additional penalties, the Court has pointed to self-restraint; however, the legislator may not violate the *Satversme* obviously.[781] Two cases relating to confiscation of property were examined in this context. If property has been recognised as being proceeds of crime, the person who has obtained it does not have the right to property protected by Article 105 of the *Satversme*, and, within the Court's case law, there have been no doubts regarding this aspect, but it was further emphasised in cases

779 Judgement by the Constitutional Court of the Republic of Latvia of 3 May 2012 in Case No. 2011-14-03.

780 Judgement by the Constitutional Court of the Republic of Latvia of 29 October 2003 in Case No. 2003-05-01.

781 Judgement by the Constitutional Court of the Republic of Latvia of 6 January 2011 in Case No. 2010-31-01.

pertaining to issues of civil law nature. However, main doubts related directly to confiscation as a type of penalty. In between the first case, in which legal proceedings were terminated due to procedural issues, and the second case, which concluded with a judgement, the legislator had revised significantly the cases where this penalty was applied, and, therefore, it was recognised that, in principle, envisaging confiscation as penalty was not obviously incompatible with the *Satversme*.[782]

In several cases, the Court faced the issue of the clarity of punitive norms. First of all, the Court underscored that blanket norms could be used in the Criminal Law. The more severe the sentence, the more accurate the provisions on what the offence is should be. A blanket legal norm is not automatically an unclear legal norm.[783] Secondly, in the case regarding circulation of goods of strategic importance, the Court found that a legal regulation that was often difficult to understand for individuals, but was not unenforceable, was justified. It was also emphasised that an approach that the application of a criminal law provision was specified through the development of judicature or consolidated by the interpreting the norm for the first time was not incompatible with the *Satversme*.[784] In the third case regarding the clarity of a legal norm, the Court underscored that the legal norm should allow its addresses to understand what kind of behaviour the law demanded. If the legal norms allows its addressee to understand and to foresee the obligation imposed upon them and the parties applying the legal norm – to establish all actual and legal circumstances, then this norm should be deemed as being sufficiently clear. The main issue in the case was, whether a board member of a state capital company was a public official, specifically in the understanding of the Criminal Law. Although it was not included in the legal norm

782 Judgement by the Constitutional Court of the Republic of Latvia of 8 April 2015 in Case No. 2014-34-01.

783 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2008 in Case No. 2008-09-0106 and Judgement of 19 February 2021 in Case No. 2020-23-01.

784 Judgement by the Constitutional Court of the Republic of Latvia of 21 February 2019 in Case No. 2018-10-0103.

initially and was added later, the Court recognised that, substantially, the concept that had been defined initially had to be interpreted autonomously and recognised the legal norm as being compatible with the *Satversme*.[785]

In the case referred to above, the Court continued assessing methodologically the cases, where the law was unclear and, hence, could not be used for applying liability, pursuant to the second sentence of Article 92 of the *Satversme* – everyone shall be presumed innocent until their guilt has been established in accordance with law. The principle nullum crimen, nulla poena sine lege followed from it, providing that a person could be recognised as being guilty and penalty could be applied only in connection with such actions by the person that have been recognised as being unlawful by law. However, in one of the cases pertaining to the area of criminal law, in analysing the Latvian Administrative Violations Code and the Road Traffic Road, the Court established that derogations from this principle were admissible, in special cases and by introducing, with utmost care, the legal presumption of a fact. However, it should clearly follow from a law, which, in the particular case, was not done with sufficient precision.[786] Likewise, the Court established a violation of Article 105 of the *Satversme* in the instance where, in the case of an administrative violation, the vehicle owner's right to handle it was restricted, although the violation had been committed by another person.[787] The Court also concluded that the legislator, the legislator, in decriminalising an offence that entailed criminal liability or significantly reducing the penalty, should not deny the revising past effect of this favourable legal regulation (revising retroactive force of law).[788]

785 Judgement by the Constitutional Court of the Republic of Latvia of 24 September 2020 in Case No. 2019-22-01.

786 Judgement by the Constitutional Court of the Republic of Latvia of 29 October 2012 in Case No.2012-05-01.

787 Judgement by the Constitutional Court of the Republic of Latvia of 24 November 2013 in Case No.2012-23-01.

788 Judgement by the Constitutional Court of the Republic of Latvia of 19 February 2021 in Case No. 2020-23-01.

The presumption of innocence had been examined also in other cases, however, more in the context of a situation, where prohibition was applied to a person, e.g., to employment at the time when the person had not been sentenced yet but the criminal proceedings were ongoing (in each case, a certain stage of the process may be envisaged). In the first case, the Court clearly concluded that it primarily was manifested only in criminal proceedings. The presumption of innocence protects a person, with respect to whom an assumption or statement has been made regarding an crime that they have allegedly committed, from being recognised as being guilty before it has been proven in the procedure set out in law and established by a ruling in a criminal case that has entered into force. The principle of the presumption of innocence also means that a person does not have the obligation of self-incrimination. The presumption of innocence gives to the accused in criminal proceedings several additional procedural guarantees to create the possibility for restoring their reputation. However, the presumption of innocence per se does not prohibit from imposing temporary restrictions on a person, which are related to the person's reputation. The restriction regarding certain employment that is related to a person's legal status in criminal proceedings must be reviewed also in the framework of other norms of the *Satversme*.[789] However, this thesis has been developed in a more nuanced way in the judicature. Without amending this conclusion, in another case, the Court, nevertheless, held that, although the presumption of innocence per se did not prohibit from removing a person from office in connection with criminal proceedings initiated against them if such removal was in public interests and not punitive by nature; however, in the case of prolonged removal from office the compatibility of the restriction with the second sentence of Article 92 of the *Satversme*

789 Judgement by the Constitutional Court of the Republic of Latvia of 23 February 2006 in Case No. 2005-22-01.

could be reviewed as a possible risk of violating the presumption of innocence.[790]

The Constitutional Court has examined the compliance of legal norms with the principle of inadmissibility of double jeopardy (ne bis in idem) mainly with respect to taxes. The principle of inadmissibility of double jeopardy, which follows from the first sentence of Article 92 of the *Satversme*, provides that a person can be tried and punished for the same offence only once. It does not matter whether the person has been recognised a being guilty in the first proceedings and had been punished. This ensures legal stability. Moreover, in two proceedings different conclusions regarding the person's guilt could not be made. The principle of inadmissibility of double jeopardy does not prohibit the trial of different offences in separate proceedings even if these follow from one set of unlawful activities

In the particular case, the Court recognised that application of a monetary fine in accordance with the Latvian Administrative Violations Code and the fine surcharge for the unpaid tax, although, substantially, followed from bringing into the country undeclared excise goods, evading the customs control and without paying the tax, did not constitute a violation of the principle of inadmissibility of double jeopardy.[791] Likewise, an additional tax rate for uncultivated agricultural land does not constitute such violation.[792]

The Constitutional Court has not set strict limits to individualization of penalty but only has concluded that the state is obliged to protect a person from disproportional penalties, even if such are applied for violations of taxation laws. The legislator's task with respect to application of penalty is to achieve as great individualisation of legal regulation as possible, being aware that specific exceptions are

790 Judgement by the Constitutional Court of the Republic of Latvia of 23 December 2019 in Case No. 2019-08-01.

791 Judgement by the Constitutional Court of the Republic of Latvia of 18 October 2012 in Case No. 2012-02-0106.

792 Judgement by the Constitutional Court of the Republic of Latvia of 18 October 2018 in Case No. 2018-04-01.

possible.[793] In the case regarding restrictions on cases where a case of administrative violation can be terminated due to its insignificance, the Court recognised the correctness of the legislator' s choice in ensuring important public interests.[794] In the case regarding the court' s right to impose a penalty that was lower than the minimum sanction, legal proceedings were terminated due to the amended law; however, the available case law from other cases allows concluding that the legislator should not get too carried away by setting the minimum thresholds, in particular, regarding offences, where the facts of the case and the guilt may differ significantly but the sanction is serious. Each case like this needs to be proven as being such that does not violate the proportionality principle.

Criminal liability for the use of narcotic substances does not violate a person's right to private life. The right to private life includes also the right to commit suicide.[795]

12. Criminal procedure. Over the last two decades, criminal procedure has undergone significant changes, being transformed from the Soviet criminal procedure to more contemporary procedural order. Hence, some of the issues related to compliance with the fundamental rights defined in the *Satversme* is linked to the legacy of the previous legal system, however, there is no shortage of cases regarding the compliance of the new order with the *Satversme*.

The first case to be mentioned pertained to the application of the decisions by the Plenary Session of the Supreme Court, i.e., binding thesis of the case law, in particular, in criminal proceedings. The Constitutional Court recognised the use of such sources of law as being incompatible with Article 1 and Article 83 of the *Satversme*.[796] The

793 Judgement by the Constitutional Court of the Republic of Latvia of 15 April 2013 in Case No. 2012-18-01 and Judgement of 3 April 2008 in Case No.2007-23-01.

794 Judgement by the Constitutional Court of the Republic of Latvia of 19 November 2013 in Case No. 2013-09-01.

795 Judgement by the Constitutional Court of the Republic of Latvia of 26 January 2005 in Case No. 2004-17-01.

796 Judgement by the Constitutional Court of the Republic of Latvia of 4 February 2003 in Case No. 2002-06-01.

merits of the case did not pertain to criminal procedure but was very significant because the Plenary Session' s decisions was an important source in the area of criminal law.

An important case regarding respecting human rights in criminal proceedings pertained to the procedure of applying arrest. Firstly, in deciding on extending the arrest, the seriousness of the committed criminal offence may be examined, without pointing to guilt, and this does not violate the presumption of innocence. Secondly, the defendant must be granted the right to familiarise themselves with the reasoning for extending the arrest and should have the possibility to express their own considerations.[797] Thirdly, after the Constitutional Court had initiated legal proceedings, the *Saeima* amended the law, which provided that the time when the counsel and the accused familiarised themselves with materials in the case was not included in the term of arrest applied as a security measure.[798]

The Constitutional Court concluded that not every decision by the investigator or the prosecutor in criminal proceedings should be subject to judicial review. If all requirements of the right to a fair trial would be uncritically applied to the pre-trial stage, the right to a fair trial would become meaningless. By the introduction of the institute of investigating judge this matter was entirely resolved.[799] Whereas greater control should be ensured with respect to the finality of a prosecutor's decision on newly discovered circumstances and the same prosecutor, who brought the charges, may not decide on newly discovered circumstances. The case resulted in introduction of an approach that a prosecutor's decision may be appealed against in a district court and if it ruled positively the case was automatically

797 Judgement by the Constitutional Court of the Republic of Latvia of 27 June 2003 in Case No. 2003-03-01.

798 Judgement by the Constitutional Court of the Republic of Latvia of 15 February 2005 in Case No. 2004-23-01.

799 Judgement by the Constitutional Court of the Republic of Latvia of 11 October 2004 in Case No. 2004-06-01.

transferred to the Supreme Court.[800] Also, this was the first time when, to enforce the Constitutional Court's judgement, the amendments to the Criminal Procedure Law included a reference to the judgement so that applicants could use the new legal regulation.

The issue of defence has been repeatedly analysed in the Constitutional Court's case law. Firstly, it was recognised that it was justified that only sworn advocates could be counsels in criminal proceedings but upon the condition that certain reforms to the work of the Bar would be introduced.[801] Secondly, analysing broader the possibilities of defence, the Court underscored the principle of equal opportunities in criminal proceedings; i.e., to the extent a court could not review the legality and validity of the decision by the official in charge of the proceedings regarding a person's right to familiarise themselves with materials in the case regarding proceeds of crime it was incompatible with Article 92 of the *Satversme*.[802] Thirdly, reasonable balance should be set between keeping the secret of investigation and respecting the rights of other persons and respect for the principle of equal opportunities of parties (also, counsel), in deciding which materials should be presented to the counsel before deciding on imposing arrest. Not all materials need to be presented but only such that substantiate the need for applying arrest and cannot inflict substantive harm upon the rights of other persons or interests of investigation. Moreover, the proceedings should be organised in a way that would allow separating the materials, if necessary.[803]

Proceedings regarding criminally acquired property is considered an exception to the basic criminal procedure but per se does not

800 Judgement by the Constitutional Court of the Republic of Latvia of 29 April 2016 in Case No. 2015-19-01.

801 Judgement by the Constitutional Court of the Republic of Latvia of 6 October 2003 in Case No. 2003-08-01.

802 Judgement by the Constitutional Court of the Republic of Latvia of 23 May 2017 in Case No. 2016-13-01.

803 Judgement by the Constitutional Court of the Republic of Latvia of 3 April 2014 in Case No. 2013-11-01.

infringe upon human rights.[804] Criminally acquired property creates an exception to the civil turn-over, as the result of which a bona fide acquirer (also, if relies on an entry in the Land Register, because there are exceptions to the principle of public credibility, and it can be restricted to ensure important public interests) may not keep it. This applies both to movable and immovable property, so that it can be returned to the owner who lost it as the result of a criminal offence. The conclusions made in the case law regarding confiscation are not applicable to returning of property to its lawful owner. The injured pledgee has the right to bring a claim against the guilty person.[805]

As regards the term of validity of criminal procedural norms, the Constitutional Court underscored that retroactive force was not typical of criminal procedure norms. New regulation on criminal procedure applied also to the criminal proceedings that already had been initiated and not only with respect to the course of criminal procedure but also to the legal status of persons involved in the proceedings and the coercive measures applied to these persons.[806]

It has been concluded regarding initiation of legal proceedings at the cassation instance court that it is not mandatory; however, it is envisaged that the principles that follow from the right to a fair trial must be respected. The term for submitting a cassation complaint – 10 days – is sufficient because it can be expected that, in this stage of the proceedings, a person is aware of the circumstances in the case and the counsel's presence facilitates it.[807] If initiation of cassation proceedings is refused it cannot be done by a resolution that does include reasoning; reasoning is necessary.[808]

804 Judgement by the Constitutional Court of the Republic of Latvia of 11 October 2017 in Case No. 2017-10-01.

805 Judgement by the Constitutional Court of the Republic of Latvia of 8 March 2017 in Case No. 2016-07-01.

806 Judgement by the Constitutional Court of the Republic of Latvia of 29 April 2008 in Case No. 2007-25-01.

807 Judgement by the Constitutional Court of the Republic of Latvia o f26 March 2020 in Case No. 2019-15-01.

808 Judgement by the Constitutional Court of the Republic of Latvia of 14 June 2018 in Case No. 2017-23-01.

The Constitutional Court has reviewed limits to determining non-pecuniary damages not only in administrative proceedings but also in criminal proceedings. In the case of criminal proceedings – the restrictions defined in law. Although the Constitutional Court terminated legal proceedings in the case, it provided a number of valuable conclusions. Even though the limits on calculating compensation, set in laws, per se are not contrary to Article 92 of the *Satversme*, depending on the established calculation and limits, a contradiction with Article 92 of the *Satversme* may occur. Therefore it is important that indemnification ensures both satisfaction and compensation, as well as reconciliation and prevention, considering the nature of infringement, suffering, inconvenience, injury to reputation. It should be taken into account that non-pecuniary damages do not have direct monetary equivalent. A person "instead of it is granted satisfaction with the aim to reconciliate the victim and the infringer." It should be equivalent to those granted in other cases and may not be disproportionally lower than the compensation granted by the European Court of Human Rights in similar cases.[809]

The Constitutional Court recognised that determination of suspects' DNA profiles in the stage of investigating alleged criminal offences was a suitable measure for reaching the legitimate aim of the restriction. However, deficiencies in the procedure to which the data were subject after criminal proceedings had ended were found in the case.[810]

13. Administrative law. Due to the breadth of sub-branches of administrative law, the case law of the Constitutional Court, which mainly concerns the structure of public administration and such main processes as issuing of regulatory enactments, authorisation

809 Judgement by the Constitutional Court of the Republic of Latvia of 7 May 2020 in Case No. 2019-21-01.

810 Judgement by the Constitutional Court of the Republic of Latvia of 12 May 2016 in Case No. 2015-14-0103.

of officials, as well as transparency in the activities of the executive power, will be considered first..[811]

The issuing of internal and external, subordinated to law, regulatory enactments has been analysed in several cases; however, some of the conclusions call for cautiously critical assessment already now, taking into account the time that has elapsed and the Supreme Court's judicature on these matters. In the case of the State Real Estate Agency, the Court recognised that regulatory enactment was such that comprised legal norms - abstract precepts on conduct, and a private person was not an addressee of an internal regulatory enactment. Therefore, apartments could not have been allocated on the basis of it.[812] However, after the State Administration Structure Law and the Administrative Procedure Law entered into force, as well as in accordance with the Supreme Court's judicature, [813] to differentiate between an external and internal regulatory enactment only by the approach that considers its addressee in the narrow sense is not justified, although, at the time, the prevailing incorrect practice had to be discontinued, i.e., extensive use of internal regulatory enactments instead of external ones. An internal regulatory enactment also can be used (not applied) in relations with a private person, e.g., criteria for awards in project proposals, recommendations on determining penalties or interpretation of undefined legal concepts.[814] The possibility to restrict a person's rights (and not every administrative act that refuses some benefit is an unfavourable administrative act)

811 The Constitutional Court's findings on public service relations are analysed in the section on labour law. Whereas the findings regarding the work of local government are analysed in the section on local government's work. Issues related to organisation of public administration in Latvia are examined in the respective section of the chapter dedicated to the executive power, and the issues relating to the state's accountability – in the section on the state's accountability of this chapter. An extensive set of conclusions, which is not examined in this section, pertains to the area of spatial planning, which was in the Constitutional Court's focus for a long time.

812 Judgement by the Constitutional Court of the Republic of Latvia of 9 July 1999 in Case No.04-03(99) and Judgement of 22 February 2002 in Case No.2001-06-03.

813 Judgement by the Department of Administrative Cases of the Supreme Court of the Republic of Latvia of 21 March 2017 in Case SKA-213/2017.

814 Pastars E., Novicka S., Priekulis J. Iestāžu vadlīnijas – labā prakse vai likuma atrunas principa pārkāpums. Jurista Vārds, 24.01.2017., Nr. 4 (958).

and the allocation of benefits essential for society should follow from an external regulatory enactment or even a law; however, the level of detail may differ, depending on the substance of the matter. The Constitutional Court expressed conclusions on the issuing of external regulatory enactments in a case regarding the rights of the Council of the Finance and Capital Market Commission, whose members were both persons appointed by the *Saeima* and persons not appointed by the *Saeima*, to issue external regulatory enactments. The Court found that "a mandatory pre-condition for a public body in a democratic state to acquire the right to issue external regulatory enactments is its democratic legitimisation, i.e., this body should be included in the chain of democratic legitimisation, which links it to the will of the bearer of sovereign power – the people."[815] At the time, the composition of the Council did not meet these requirements.

The Constitutional Court also recognised that the existence of autonomous institutions, if they met certain criteria, was not incompatible with Article 58 of the *Satversme*.[816] First of all, the executive power is that, which is not the legislative or the judicial power. Therefore, such institutions belong to the executive power, although some of them in their functioning might have features that are characteristic of the judicial power (e.g., the Ombudsman).[817] Such institutions may be both independent legal persons or belong to the Republic of Latvia as a legal person.[818] They may have an independent budget. Secondly, the subordination of institutions of public administration to the Cabinet, first and foremost, constitutionally excluded the transfer of any institution of public administration into the President's subordination, which was one of the main aims of Article 58 of the

815 Judgement by the Constitutional Court of the Republic of Latvia of 20 February 2020 in Case No. 2019-09-03.

816 Judgement by the Constitutional Court of the Republic of Latvia of 16 October 2006 in Case No. 2006-05-01.

817 Latvijas Republikas Augstākās tiesas Administratīvo lietu departamenta 2007.gada 14.decembra lēmums lietā SKA 679/2007

818 Briede J., Danovskis E., Kovaļevska A. Administratīvās tiesības. Rīga: Tiesu namu aģentūra, 2016, 53.lpp.

Satversme. Thirdly, autonomy is granted to an institution in special cases, when in a democratic state governed by the rule of law it is impossible to ensure otherwise adequate administration in a certain area of the executive power's operations. Institutions of national security, for example, may not be among such institutions. In creating such public institutions, democratic legitimisation of this institution must be ensured and effective mechanisms for supervising the institution's operations must be integrated in law.

The Constitutional Court pawed the way for transparency in public administration demanding to make information on the renumeration of public officials, set according to special managerial contracts. Pursuant to the *Satversme*, every person has the right to be informed about the operation of institutions belonging to the system of public administration to ascertain that they perform the functions, entrusted by society, effectively, honestly and fairly, in compliance with law. The right to accessibility of information may be restricted only by law and only in especially envisaged cases. A person's right to obtain information is unlimited, insofar law does not provide otherwise, assuming that any restriction on obtaining information must be interpreted as narrowly as possible.[819] During last 16 years, the Supreme Court has broadly elaborated this principle, focusing on a number of complicated issues, e.g. that the right to information may be exercised only in good faith,[820] restrictions on accessibility of information are set by providing reasoning for it and not in cases of hypothetical situations,[821] the use of tax-payers' money is legitimate interest (not only with respect to public officials but also employees of an

819 Judgement by the Constitutional Court of the Republic of Latvia of 6 July 1999 in Case No. 04-02(99).

820 Decision by the Assignments Sitting of the Department of Administrative cases of the Supreme Court of the Republic of Latvia of 20 November 2013 in Case No. 933/2013.

821 Judgement by the Department of Administrative Cases of the Supreme Court of the Republic of Latvia of 21 March 2011 in Case No. SKA-254/2011.

institution),[822] as well as protection of whistle-blowers,[823] the rights of sworn advocates to request information.[824] The Supreme Court also has differentiated requests of information from submission, in the meaning of Article 104 of the *Satversme*, the right to obtain one's own data and administrative procedure, electors' correspondence with deputies, requesting information from capital companies of a public person, more details on this can be found in the judicature of this Court. It is important to keep in mind that the obligation to disclose information applies to information at the institution's disposal. Unless specifically provided by law, pursuant to Article 100 of the *Satversme*, an institution is not obliged to generate information for the purpose of providing it; however, the institution has the obligation to explain its actions in accordance with Article 104 of the *Satversme*.

In the case regarding the rights of convicted persons to correspondence, the Court recognised that also the fact that a person was unable to forward a proposal, submission or complaint restricted the right to a fair trial.[825] It was recognised with respect to persons in custody that the legal norm, insofar it provided for control of correspondence throughout the term of arrest without individual assessment and without establishing threats for the rights of other persons or public security, was incompatible with Article 96 of the *Satversme*.[826]

The status of publicly-owned property was highlighted the most in the case regarding renting a grave.[827] Hence, in such cases the pro-

822 Judgement by the Department of Administrative Cases of the Supreme Court of the Republic of Latvia of 16 June 2016 in Case SKA-347/2010.

823 Judgement by the Department of Administrative Cases of the Supreme Court of the Republic of Latvia of 28 December 2015 in Case SKA-380/2015.

824 Judgement by the Department of Administrative Cases of the Supreme Court of the Republic of Latvia of 9 Febraury 2010 in Case SKA-214/2010.

825 Judgement by the Constitutional Court of the Republic of Latvia of 6 February 20006 in Case No. 2005-17-01.

826 Judgement by the Constitutional Court of the Republic of Latvia of 28 June 2019in Case No. 2018-24-01.

827 Judgement by the Constitutional Court of the Republic of Latvia of 5 March 2019in Case No. 2018-08-03.

hibition or restriction on the use of such property must be regulated by a regulatory enactment.[828]

14. Administrative procedure. The most important case related to the administrative procedure was the case regarding untypical cases and how to identify them in administrative proceedings, i.e., the law provides for issuing of a mandatory administrative act; however, this regulation has been created for typical situations and, when applied, in the particular situation would cause a violation of a person's fundamental rights. However, it would not be appropriate to conclude in these cases that the legal regulation should be amended because all situations cannot be specified in law. Therefore, the Court concluded that respecting the proportionality principle did not mean making only considerations regarding expedience. The purpose of a mandatory administrative act is to determine precise conduct of an institution in all typical cases envisaged in the norm; in such a situation, the discretion of an institution of public administration has been reduced to a minimum. However, in a democratic state governed by the rule of law, public administration should strive to ensure justice and, therefore, formal application of the contested norms, by disregarding the actual circumstances, is inadmissible. In untypical cases, an institution has the right to derogate from implementation of legal consequences. However, such derogation must be substantiated by special arguments that are indicated in the decision and are convincing. One of such cases could be a test of proportionality if a person's fundamental rights are restricted by the mandatory administrative act.[829] Often, this was interpreted in practice that the institution itself refrained from making such a decision, allowing the court to identify an untypical case. Another aspect of this issue has been dealt with in the Supreme Court, i.e., that also a preclusive term may be restored, i.e., that respecting the human rights vested in a person prevails

828 Decision by the Department of Administrative Cases of the Supreme Court's Senate of 22 February 2010 in Case No. SKA-101.

829 Decision by the Constitutional Court of the Republic of Latvia of 28 February 2007 on Terminating Legal Proceedings in Case No. 2006-41-01.

over abiding by the procedural order defined in a substantive legal norm.[830]

The Constitutional Court has reviewed several cases on how an administrative act should be contested or appealed against. Firstly, the legislator may provide that the legality and expedience of an administrative act is examined by administrative courts in three instances, as it is in the majority of cases; however, the legislator may decrease the number of instances. Likewise, the first sentence of Article 92 of the *Satversme* does not prevent the legislator from providing that the legality of specific actions by public administration will be reviewed in other legal proceedings, [831] taking into account the specificity that appears in the interaction of public and private law. Secondly, in several cases, appeal of administrative act to the Prosecutor General as the final instance was recognised as being incompatible with Article 92 of the *Satversme* because they could not be considered as being sufficiently objective and neutral in cases, in which they could have supervised some processes (e.g., refusal to issue the special permit for accessing official secrets, prohibition from entering the country or a decision on expulsion).[832] The prohibition to appeal an administrative act also was not recognised as being compatible with Article 92 of the *Satversme*.[833] Thirdly, in cases of administrative violations, which currently are not considered as being administrative proceedings, examination of a case in only two instances has been recognised as being compatible with Article 92 of the *Satversme*.[834]

One of the most important issues that needs to be mentioned in the context of Article 92 of the *Satversme* is an administrative court's

830 Decision by the Department of Administrative Cases of the Supreme Court's Senate of 20 September 2010 in Case SKA-755/2010.

831 Judgement by the Constitutional Court of the Republic of Latvia of 14 March 2006 in Case No. 2005-18-01.

832 Judgement by the Constitutional Court of the Republic of Latvia of 25 September 2020 in Case No. 2019-35-01.

833 Judgement by the Constitutional Court of the Republic of Latvia of 6 December 2004 in Case No. 2004-14-01.

834 Judgement by the Constitutional Court of the Republic of Latvia of 7 October 2010 in Case No. 2010-01-01.

right to amend an administrative act, e.g., if it envisages a penalty and the court concludes that another penalty would be more proportional. There were doubts in the case whether the norm of the administrative Procedure Law, which allowed such actions only if the law permitted them expressis verbis, collided with "the principle of a court with full jurisdiction." With respect to the administrative proceedings, the Constitutional Court held that there was no contradiction because the court itself could establish all circumstances and make appropriate conclusions, and, if necessary, revoke an administrative act or instruct to issue an administrative act with different content. The right to a fair trial does not always demand the court to re-examine the considerations regarding expedience and determine another solution itself. Such approach is more characteristic of criminal law and the area of administrative violations.[835]

With respect to the proceedings of administrative violations, which, pursuant to the Administrative Procedure Law, are not administrative procedure, the Constitutional Court found that review of such cases should be similar to reviewing criminal cases to ensure equal scope of the right to a fair trial. The court must collect evidence also in these proceedings, but it relies on the evidence collected by the competent authority. The accessibility of appeal is a special guarantee in cases of administrative violations, and it includes both the right to request recusal of a judge in the stage of initiating appeal and also the right to reasoned refusal.[836] Likewise, in the proceedings of administrative violation, it is justified to demand the person to cover the costs of storing the seized property until the decision on its confiscation becomes enforceable, unless, in the particular case, it is established that due to their social status the person is unable to cover these costs.[837]

835 Judgement by the Constitutional Court of the Republic of Latvia of 22 December 2017 in Case No. 2017-08-01.

836 Judgement by the Constitutional Court of the Republic of Latvia of 15 March 2018 in Case No. 2017-16-01.

837 Judgement by the Constitutional Court of the Republic of Latvia of 14 December 2018 in Case No. 2018-09-0103.

In several cases, issues relating to the legal regulation on compensation for damages in administrative proceedings and cases of administrative violations have been examined. Legal proceedings were terminated in several of the cases, providing valuable conclusions. The concept of "commensurate compensation", used in Article 92 of the *Satversme* must be interpreted as satisfaction that is appropriate for each infringement on rights, comprising both compensation for losses and compensation for non-pecuniary (moral and personal) damages. Appropriate indemnification has several functions – compensation, reconciliation, as well as the function of general and special prevention.[838] If we analyse the cases themselves, four main conclusions can be mentioned. Firstly, the statutes of limitation for claiming compensation are not preclusive but are procedural terms.[839] Secondly, the possibility to request the state to compensate the costs of representative in administrative proceedings already during the course of the proceedings, in principle does not exclude the possibility to demand costs of legal aid later, in the proceedings on compensation for damages.[840] Thirdly, with respect to legal persons, exhaustive enumeration of protected interests as a restriction on compensation in the case of unlawful actions is incompatible with Article 92 of the *Satversme*. [841] Fourthly, a person, who has no concrete status in the case but who incurs financial damages, also has the right to appeal against the respective decision (e.g., on seizing property).[842]

In the case on the freedom of assembly, the Constitutional Court highlighted the approach found in administrative law to what should be done to allow a person to take certain actions, inter alia, exercise

838 Judgement by the Constitutional Court of the Republic of Latvia of 6 June 2012 in Case No. 2011-21-01.

839 Decision by the Constitutional Court of the Republic of Latvia of 11 December 2012 on Terminating Legal Proceedings in Case No.2012-10-01.

840 Decision by the Constitutional Court of the Republic of Latvia of 11 June 2010 on Terminating Legal Proceedings in Case No.2010-11-01.

841 Judgement by the Constitutional Court of the Republic of Latvia of 6 June 2012 in Case No. 2011-21-01.

842 Decision by the Constitutional Court of the Republic of Latvia of 11 March 2015 on Terminating Legal Proceedings in Case No.2014-33-01.

human rights, defined in the constitution. For example, whether it can be done freely, with previous announcement, or by establishing an obligation to receive prior permission from competent authorities before taking such actions. Both the system of announcing and permission is a restriction on human rights, which can be both justified and unjustified. Since the *Satversme* provides for the freedom of assembly as a system of announcement but the law includes a system of permission, the Court identified incompatibility.[843]

The Constitutional Court recognised that the prohibition for a private person to submit evidence both to the institution and the court after the time determined by the institution, which followed from law, restricted a person's right to a fair trial.[844] However, this thesis should not be generalised since the right to a fair trial comprises also the requirement of a defined procedural order so that the decision would made within a reasonable term. It is important to elucidate the aim of any restriction like this and whether this aims is reached by the restriction without creating an impossible burden for a private person.

843 Judgement by the Constitutional Court of the Republic of Latvia of 23 November 2006 in Case No.2006-03-0106.

844 Judgement by the Constitutional Court of the Republic of Latvia of 11 April 2007 in Case No. 2006-28-01.

Chapter 5

HEAD OF STATE

I. Head of state within the state's political system

1. Understanding of the head of state. The head of state is an official institution or a person who formally occupies the hierarchically highest place within the system of institutions of state power and which represents the state both in domestic and foreign policy, namely, implements the supreme representation of the state.[845] The head of state is not merely a decorative or representative figure, it is the supreme leader of the state and the guardian of the people's interests.[846] The head of state ensures national unity, stability and continuity of the constitutional order, as well as harmonious interaction between the institutions of state power.[847] Quite often, due to these reasons, the head of state is allocated the powers of the guarantor of the constitution.[848] Hence, formally, the head of state is the supreme institution of a state, which is characterised, first and foremost, by representing the state in international and, if necessary, also federative relations. The powers of the head of state usually ensure their

845 Алиев Ш., Магерром О. Научно-практический комментарий к конституции Азербайджанской Республики. Баку: Юридическая литература, 2000, с.31.

846 Гольденвейзеръ А.А. "Чрезвычайные указы" Германскаго Президента. Законъ и судъ, 1932, №4(24), с.769.

847 Конституционное право зарубежных стран. Лейбо Ю.И., Баглай М.В., Энтин Л.М. (ред.) Москва: Норма- Инфа М, 2003, с.210-211.

848 Шмитт К. Гарант конституции. In: Шмитт К. Государство. Право и политика. Москва: Территория будущего, 2013, с.187-220.

participation in legislative, administrative and judicial acts and in some cases, the constitution grants to the head of state extraordinary prerogatives.[849] In a contemporary state, the head of state has internal and external functions. The external functions are linked to representing the state and their scope is defined by international public law and the constitution. The internal functions of the head of state, in turn, are set out in the constitution in accordance with the constitutional order of each state. The minimum of the head of state's internal functions is representing the unity of the state (more or less symbolic), which allows citizens to "discern" the state in general and identify better with it, thus facilitating the public awareness of statehood.[850] The head of state personalises and symbolises the respective statehood. The head of state ensures the required stability of the state order, and society expects that the head of state would determine a certain standard or morals and civic behaviour in society.[851] To a large extent, the head of state is a symbol of power with symbolic power, expresses the considerateness of the power, facilitates societal cohesion and acts as an ombud in the dialogue between society and the power.[852] The deepest meaning of the head of state is to reinforce nationhood and patriotism in society, facilitate society's democratic participation and co-responsibility. "The President does not have the power of force but the soft power, provided by the people's trust. The President does not have the power of money allocation; however, he has been given the power of the word."[853]

Historically, the origins of the institute of the head of state are linked to monarchies and the monarch as the bearer of the state

849 Дурденевский В.Н. Иностранное конституционное право. Ленинград: Государственное издательство, 1925, с.27.

850 Valsts prezidenta Konstitucionālo tiesību komisijas 2011.gada 10.maija viedokļa "Par Valsts prezidenta funkcijām Latvijas parlamentārās demokrātijas sistēmas ietvaros" 29-31.punkts.

851 Havel V. To the Castle and Back. New York: Vintage Books, 2008, p.171

852 Dravnieks A. Prezidenta vēlēšanas - taisnīgums caur tiesiskumu. http://providus.lv/article/prezidenta-velesanas-taisnigums-caur-tiesiskumu

853 Vīķe-Freiberga V. Prezidentam ir jāspēj būt par visas tautas vienotāju. Jurista Vārds, 2012. 25. decembris, Nr.52(751).

power. Founders of the USA, deciding to create a republic, substituted the monarch by an official elected for a certain term who was granted the traditional powers of a monarch, establishing the office of the president.[854] The monarch and the president are typical forms of the head of state; however, other solutions have functioned in different state orders.

2. Collegial head of state. Most frequently, a collegial institution performs the functions of the bearer of the executive power; however, functions of the head of state are usually performed by a single person. It could be even recognised that a sole head of state is contrary to the nature of a republic as a state that is governed by many.[855] Therefore, some orders of the state have intentionally entrusted functions of the head of state to a collegial institution. In this respect, first and foremost, the Roman Republic needs to be mentioned, it was jointly ruled by two consuls who were elected for the term of one year and were equal in their powers. Initially, the idea of a collegial head of state had been popular in the French constitutional experiments. For example, the Constitution of 1795 enshrined as a collegial head of state the Directory, composed of five directors. Each year, one of the directors had to leave, after casting lots, and he could be re-elected no sooner than after five years. Each director presided at the collegium for three months. The Directory had jurisdiction over the internal and external security of France, overseeing the army, military and diplomatic operations, as well as appointing to their offices the most responsible public officials. In principle, the Directory was not only the head of state but also enjoyed the entire executive power in its completeness in the state.[856] Following the coup d'état coup of 1799, Napoleon Bonaparte (Napoleon I) established the successive

854 Еллинекъ Г. Обшее учение о государстве. Санкт-Петербург: Издание Юридическаго Книжнаго Магазина
Н.К. Мартынова, 1908, с.542-543.

855 Алиев Ш., Магерром О. Научно-практический комментарий к конституции Азербайджанской Республики. Баку: Юридическая литература, 2000, с.31.

856 Chevallier J.-J. Histoire des institutions et des régimes politiques de la France de 1789 à 1958. Paris: Dalloz, 2001, pp.100-104.

collegial head of state – the Consulate, which was enshrined in the Constitution of 1799. The supreme executive power of the state was transferred to three Consuls, which, pursuant to the Constitution, had to be elected by the Senate for the term of ten years. Although, following the coup, formally, all Consuls had equal powers and the issues relating to governing the state were decided in a collegial manner, actually, Napoleon Bonaparte's sole power was consolidated, which was recorded already by the Constitution of 1799, by transferring all most important powers of the head of state under the First Consul's authority.[857]

The French experience left significant impact upon the European constitutional thought. E.g., following invasion of Switzerland in 1798, a constitution, based on the French model, was drafted. The Constitution envisaged a collegial head of state, which has been retained in the Swiss constitutional order until the present. The Federal Council was recognised as the supreme institution of executive power in Switzerland, consisting of seven members, elected by each new convocation of the Federal Assembly, taking into account the provision that only one member of the Federal Council can come from one canton. The Federal Council is headed by the President of the Federal Council, elected to this office for the term of one year, without the right to be re-elected to this office. The Federal Council adopts decisions by majority vote. The functions of this collegial head of state is planning and coordination of the state's actions, drafting and implementation of the budget, ensuring enforcement of federal laws, foreign affairs and representing Switzerland abroad, as well as ensuring security and independence, as well as compliance with federal law in cantons. In view of the fact that the President of the Federal Council has been granted the functions of representing the state internationally, it could be recognised that, in Switzerland, the functions of the

857 Chevallier J.-J. Histoire des institutions et des régimes politiques de la France de 1789 à 1958. Paris: Dalloz, 2001, pp.115-127.

head of state have been divided between the Federal Council and its President.[858]

A collegial head of state was popular also in the new Baltic States after independence was proclaimed. Pursuant to the provisional Constitution of Lithuania of 1918, functions of the head of state were performed by the Presidium of the Council of State, consisting of the President and two Vice-presidents. The Constitution granted the legislator's functions to the Council of State, whereas the Presidium of the Council of State performed functions of the head of state and, jointly with the Cabinet, - the executive power. However, this model did not work in practice and did not function for long.[859] The Constitution of 1920 of Estonia, in turn, following the model of Switzerland, did not provide for a separate office of the head of state. Functions of the head of state were divided between the Assembly of the State (Riigikogu), the government, and the head of government. The Constitution had even created a special name for the head of government - the elder of the state (Riigivanem), symbolically uniting in it the titles of the head of state and the head of government. The Assembly of the State acquired specific powers of the head of state, related to legislation or formation of the government; e.g., the adopted laws were signed by the Presidium of the Assembly of the State, the Assembly of the State formed the government. The majority of the head of state's powers were transferred into the government's competence - it concluded agreements with foreign countries, declared war and concluded peace, on the basis of the decisions by the Assembly of the State, and it also had the power of clemency. Thus, actually, a situation developed where the important functions of the head of state defined in the Estonian Constitution were performed jointly by a parliamentary cabinet. Since a collegial head of state could not jointly perform all functions

858 Dišlers K. Demokrātiskas valsts iekārtas pamati (Ievads konstitucionālajās tiesībās). Rīga: A.Gulbis, 1931, 163.-164. lpp.; Vainiute M., Beinoravičius D. Sveicarijos Konfederacijos 1999 m. balandžio 18 d. Konstitūcija. In: Konstitucinio reguliavimo įvairovė. Vilnius: Mykolo Romerio Universitetas, 2006, pp.99-101.

859 Maksimaitis M. Lietuvos valstybes konstitucijų istorija (XXa. pirmoji puse). Vilnius: Justitia, 2005, pp.60-75.

of the head of state, for example, to take representative measures, the Constitution provided that the head of the government represented the Republic of Estonia and led the government's work. Kārlis Dišlers noted that "para 61 of the const. grants to this elder of the state the right to represent the Republic of Estonia, but other, regular functions of the head of state are performed by the Cabinet as a collegium."[860] In the inter-war period, this model was quite widespread as embodiment of genuine democracy and the rule of the people, based on the Swiss model. During the period of democratic idealism, the prevailing opinion was that "democracy and the people's right are not to be sought in the fact that the people elect once in five years a trusted man for themselves with a broad mandate, but rather in the fact that the people, insofar cultural, administrative, technical and other conditions allow it, exercise its rights of a sovereign frequently and actively, deciding in the last instance most important matters in the life of the state, and constantly and actively controls the actions by its deputies, trusted men, and agents."[861] Kārlis Dišlers held that "therefore those constitutions are in the right who, by placing parliamentarism in the foundations of the system of governance, abolish the head of state as a separate institution of the state, moreover, the functions of the head of state (representing the state) are usually performed by the President of the Cabinet of Ministers, who is directly elected by the parliament (in Estonia and numerous German states - Württemberg, Bavaria, Baden, etc.)."[862] The Estonian innovation did not justify itself because frequent government crisis and, hence, change of the head of state, were typical of the inter-war period. At the referendum of 1933, the totality of Estonian citizens amended the Constitution, envisaging the elder of the state as a directly elected head of state with extensive powers and established a separate office of the Prime Minister for

860 Dišlers K Demokrātiskas valsts iekārtas pamati (Ievads konstitucionālajās tiesībās). Rīga: A.Gulbis, 1931, 164.lpp.

861 Dišlers K. Dažas piezīmes pie Latvijas Republikas Satversmes projekta. Tieslietu Ministrijas Vēstnesis, 1921, Nr.4/6, 149.lpp.

862 Ibid, 150.lpp.

governing the state.[863] In frequent government crisis, the head of state is needed as a stabilising factor.

3. Speaker of the parliament as the head of state. Several cases can be found in the Latvian constitutional experience when the speaker of the parliament performed the functions of the head of state. The provisional rules on the state order of Latvia of 1920 provided that the President of the Constitutional Assembly performed also the functions of the head of state.[864] Pursuant to this provisional constitution, the office of the President of the Latvian Constitutional Assembly combined both the functions of the head of state and the speaker of the parliament.[865] Later, social democrats urged to enshrine this experience also in the *Satversme*, without establishing the office of the President of the State.[866] Kārlis Dišlers was also in favour of this proposal: "Currently, we do not have a separate President of the State, and the President of the Latvian Constitutional Assembly performs his functions well, and our political apparatus also operates well. [..] The Chairman of the *Saeima* could have continued to perform these functions also in the future, and, by retaining this order, Latvia would have followed the classical model of the democratic republic of Athens."[867] Jānis Lazdiņš has noted that the origins of the institute of the President of the State should be sought in the Provisional rules on the state order of Latvia of 1920,[868] however, it should be noted that, in the constitutional practice, the President of the People's Council of Latvia already performed the functions of the head of state. Although the Political Platform of the People's Council of Latvia of 1918 , while it was in force, did not deal with the issue of the head of state, the

863 See more: Igaunijas Republikas jaunā satversme. Latvijas - Igaunijas biedrības mēnešraksts, 1933, Nr.4-6, 20. - 25.lpp.

864 Dišlers K. Latvijas pagaidu konstitūcija. Vispārīgās piezīmes. Tieslietu Ministrijas Vēstnesis, 1920, Nr.2/3, 54.lpp.

865 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 73.lpp.

866 Cielēns F. Latvijas Satversmes sapulce. Latvju Ziņas, 1948. 8.maijs, Nr.35.

867 Dišlers K. Dažas piezīmes pie Latvijas Republikas Satversmes projekta. Tieslietu Ministrijas Vēstnesis, 1921, Nr.4/6, 145.lpp.

868 Lazdiņš J. Valsts prezidenta institūta tapšana Latvijā. Likums un Tiesības, 2001, Nr.6(22), 170.lpp.

Chairman of the People's Council of Latvia performed the head of state's functions.[869] Thus, both in the first and second provisional constitution of Latvia, Jānis Čakste, as the Chairman of the People's Council of Latvia and the President of the Latvian Constitutional Assembly, performed the functions of the head of state.

Following the restoration of independence, the Chairman of the Supreme Council performed the functions of the head of state. When the basic law was drafted for the transitional period, it was envisaged that the Chairman of the Supreme Council was the supreme public official of the Republic of Latvia, subject only to the Supreme Council and elected by the Supreme Council by majority vote from among the deputies for the term of their mandate. The typical functions of the head of state were divided among the Chairman of the Supreme Council and the Presidium of the Supreme Council.[870] Although the basic law for the transitional period was not adopted, the division of the head of state's powers was implemented in the constitutional practice and reflected in the law "On Organisation of the Work of the Supreme Council before the *Saeima* is Convened." A separate law was adopted to determine the status of the Chairman of the Supreme Council - "On the Head of State of the Republic of Latvia before the *Saeima* is Convened." Thus, until the functioning of the *Satversme* was restored in full scope, Anatolijs Gorbunovs, the Chairman of the Supreme Council, performed the functions of the head of state. As Gunārs Kusiņš underscored at the time, "the status of the Chairman of the Supreme Council is equivalent to the status of the President of the State."[871]

The Latvian Constitutional Assembly, however, opted for establishing a separate office of the President of the State. It could be explained by the fact that the speaker of the parliament, due to his dual status, could not perform the role of the head of state in full, which was required to ensure aligned operations of the institutions of state

869 Valsts prezidenta vietas izpildītāja - Saeimas priekšsēdētāja Paula Kalniņa 1927.gada 14.marta paziņojums. Valdības Vēstnesis, 1927. 15.marts, Nr.59

870 Levits E. Jaunā pamatlikuma projektu analizējot (IV). Diena, 1991. 10.augusts, Nr.152.

871 Bojāre I. Gorbunovs drīkst runāt ANO, norāda jurists. Diena, 1992. 3.septembris, Nr.164

power. The *Satversme* does provide for the right of the Speaker of the *Saeima* to fill the President's place if the latter is delayed in performing their office or are outside the boundaries of the state as well as in the case where the President resigns, passes away or is dismissed. The Speaker of the *Saeima* ensures continuity in the performance of the President's functions.[872] Being the acting President does not include the right to exercise all powers of the President; however, the scope of rights may differ in both cases, i.e., in replacing an existing President and in replacing a non-existent President.[873]

4. Sole head of state. Following the overthrow of ruler Tarquinius Superbus and establishment of a republic, the problem of the head of state had to be resolved. In fear of possible usurpers, the Romans transferred the entire power of the ruler to the collegium of two consuls who were elected for a year. Moreover, the order of the Roman Republic envisaged also extraordinary magistrates, i.e., it was envisaged that, in situations of crisis, the consuls put down their powers and a sole head of state – a dictator – was elected instead of them for six months. However, as to his powers, the dictator was restricted not only by his term in office, because the people elected, together with him, also the head of cavalry who balanced out the dictator's power and allowed retaining the traditions of a republic. The institute of a dictator allowed to seek help in absolute sole power as safeguard against both ambitious intrigues of some persons aimed at establishing tyranny and large societal groups who strived to abolish the order of the state, as well as external enemies whose aim was to invade Rome.[874] The institute of a dictator served as a reminder that, on some occasions, a constitutional order needed sole power, able to overcome all threats to the state and to ensure that the constitutional

872 Levits E. Valsts prezidenta aizvietošana. Satversmes 52.pants. Jurista Vārds, 2016. 2.februāris, Nr.5(908).

873 Pleps J. Latvijas Centrālās padomes prakses nozīme Satversmes interpretācijā. In: Ārvalsts investīcijas: kad tiesības mijiedarbojas. Latvijas Universitātes 74. zinātniskās konferences rakstu krājums. Rīga: LU Akadēmiskais apgāds, 2016, 50. – 51.lpp.

874 Hamilton A. The Federalist No.70. Gram.: Hamilton A., Jay J., Madison J. Federalist Papers: 85Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.534-544.

order was retained. This model of the Roman Republic inspired the authors of the US Constitution, in creating the institute of the President. The head of state is the most mobile institute of the state power who, in case of necessity, is able to organise defence of the state against external threats or if internal unrest has occurred or is about to occur in the state but other institutions of state power are delayed in exercising their constitutional powers or if that requires time. An active head of state is not contrary to the republican form of governance, and the head of state is not the main threat to the separation of powers. The head of state is the mechanism that ensures alignment of the executive and legislative power, even if being closely linked to them. The head of state ensures unity of the state power, not allowing to undermine unity of state power, which can manifest itself as both broadening and narrowing of the principle of separation of powers, thus, at the same time, also implements the principle of separation of powers. In difference to the institute of a collegial head of state, the sole head of state is more independent and responsible in decision making, therefore it is more expedient to entrust more significant powers to such a head of state. In cases where several persons deal with matters of the state or private matters, disputes, undesirable competition, hatred arises more often. When it happens, the institute's authority decreases, the state power weakens and plans, forged for long, are undermined. If, during this period, the state experiences misfortune, then it is difficult or even impossible to take the necessary preventive measures. Disputes in state governance at critical moments may exacerbate the situation and even divide society.[875] Therefore, since the very first state orders, states, predominantly, have chosen a sole head of state – a monarch or a president. Historically, all monarchies predominantly have been absolute, the monarch's power in them was limited neither by other institutions of state power nor laws. The dominant form of monarchy in contemporary Europe is constitutional monarchy, in the framework of which, the

875 Hamilton A. The Federalist No.70. Gram.: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.534-544.

monarch has retained the symbolic status of the head of state, whereas the state power is exercised by other institutions of state power, based upon the people's will expressed in elections. In this model of monarchies, the monarch as the head of state formally may have extremely important prerogatives; however, usually these prerogatives are not exercised or are exercised by other institutions of state power, or by the monarch who follows the advice of these institutions.[876]

The institute of a president clearly must be viewed as the successor of a monarch as the head of state because, historically, beginning to base one's power on precepts of law and with the development of constitutionalism, the people and institutions of state power accountable to them were allocated an increasingly greater role. Therefore, during the last hundred years, presidents have gradually replaced kings, kaisers and emperors both in domestic and foreign relations.[877] Hence, as to their place and functions within the constitutional order, the difference between a monarch and a president is not great, and they have only historical, emotional differences, although often, as a dogma, the monarch's reliance on autarchy is underscored, in difference to the president who enjoys democratic legitimisation by the people. Ringolds Balodis has noted that the main difference between a president and monarch is found in the scope of responsibility and place within the executive power. In difference to the monarch, a president is an elected official, whereas monarch is an inherited title. Hence, monarchs have such scope of privileges and rights that is not characteristic of presidents as the supreme elected officials of the state.[878] In modern states, many presidents have been granted even greater powers than monarchs in the ancient world. Likewise, not a few presidents in various countries of the world, actually, have the status of a monarch, even if the respective state order is a republic and the president's office is used to legally mask an undemocratic

876 Конституционное право зарубежных стран. Лейбо Ю.И., Баглай М.В., Энтин Л.М. (ред.) Москва: Норма- Инфа М, 2003, с.215-216.

877 Balodis R. Kā izpaužas Valsts prezidenta kreatīvā funkcija. Jurista Vārds, 2003. 7.janvāris, Nr.1(259).

878 Ibid.

regime. In this respect, the focus should be not so much on the text of the constitution as on the practice of its application and the political regime that actually exists within the state.

Pursuant to the principles of a republican form of governance, a real restriction on the president's term in office and mandatory re-election of the president after a reasonable term, direct or indirect derivation of the powers of the president from the people, as well as abiding by the separation of powers are required. The most important principle of the republican form of governance is regular re-election of the officials in the supreme institutions of the state power, which is done by the people, and the president is no exception.[879] The office of an elected president is the most widespread model in various republics where the people themselves or the parliament, on their behalf, elect the head of state. The institute of the president for life occurs in some undemocratic regimes. For example, the Constitution of the Democratic People's Republic of Korea provides that immortal founder of the state Kim Il-sung holds the office of the President for life. Although Kim Il-sung died in 1994, pursuant to the constitutional precepts, he is still recognised as being the eternal President and new President is not elected. Usually, the presidency for life develops over time, with the President fortifying its political position in the state's governance and establishing an authoritarian regime. Constitutionally this status is guaranteed by not applying to the particular president the prohibition to hold the office repeatedly or by providing directly that the president will perform his functions for his entire life. Thus, actually, one of the basic principles of a democratic republic is revoked, namely, that any political official, even the president, is granted the power for a certain period and, after expiry of the term, they should relinquish their power not only formally but actually. Leaving into the president's office a candidate that is advantageous for one (Dmitry Medvedev's presidency in Russia) does not mean actual replacement of the centre of power. Likewise, undemocratic transition

879 Madison J. The Federalist No.39. In: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.287-295.

of power is facilitated by retaining some powers with special status (status of the leader of nation and the Chairman of the National Security Council for the first President of Kazakhstan Nursultan Nazarbayev, the powers of the Central War Committee of China and Head of the War Council of the Central Committee of the Communist party were retained for some time for the Chairman of the People's Republic of China prior to Xi Jinping) or intentionally leaving a successor in the office (experience of presidency in Azerbaijan, the "heir's" operation, implemented by President of the Russian Federation Boris Yeltsin). Society's demand to have some politicians re-elected into the President's office repeatedly may develop in democratic republics. For example, the first President of Czechoslovakia Tomáš Garrigue Masaryk was elected President four times. Although the Constitution limited the President's term in office to two, an exception was made with respect to the founder of the state by a special provision. Also at the Latvian Constitutional Assembly, deputy Francis Trasuns proposed introducing the President for life: "We have the following ideas: if it were possible to implement in life then it would be the best, that we would need a president for life (interjections from the left: "A pope, a pope!"), than it would be truly significant, and would have authority."[880] Following coups, it is possible that the president's office is obtained without the formal election procedure. For example, in countries of Africa and Latin America, the president's office could be ironically viewed as the supreme rank of an officer in the armed forces.

II. Head of state's place in the system of separation of powers

The classical system of separation of powers, developed by Charles-Louis de Montesquieu, envisaged restricting the initial sovereign

880 Latvijas Satversmes sapulces V sesijas 1922.gada 8.februāra sēdes (11.sēde) stenogramma.

power of the monarch, leaving under its control only the executive power. On the basis of this view, at the time of constitutional monarchies, the monarch was recognised as being the head of the executive power who exercised the executive power together with his ministers. For example, the Polish Constitution of 1791 provided, under the influence of the theory of separation of powers: "Therefore, having reserved unto the free Polish people the authority to make laws for itself and the power to keep watch upon all executive authority, as well as to elect officials to magistracies, we confer the authority of supreme execution of the laws to the King in his council, which council shall be called the Guardianship of the Laws."[881] In drafting the US Constitution, its authors created the head of state, which in monarchy has a status similar to the monarch. Hence, the President of the USA is only the chief of executive, as he is defined by the Constitution, and is placed within the system of separation of powers. The historical development in the European parliamentary republics, in turn, as stated by Arveds Bergs, "proceeds like this: from unrestricted monarch to restricted monarch and, later, to the head of state, who is already restricted in all functions of the state",[882] to which deputy Andrejs Petrevics responded by noting that "presidents of the state appeared as monarchs' successors; however, it is also true that already long ago, in all countries, the presidents' power has moved away more and more from the former power of monarchs."[883]

France played an important role in creating the European presidential model. In drafting the Constitution of the Second Republic of 1848, the US Constitution was taken as the model, and the president, endowed with great power, was created as the head of the executive power. Louis Napoléon Bonaparte won the presidential election and the experiment of the Second Republic ended in the coup of 1851 and establishment of the Second Empire with the President crowning

881 Poland 1791 Constitution. https://www.constituteproject.org/constitution/Poland_1791?lang=en

882 Latvijas Republikas 2.Saeimas 1926.gada 14.aprīļa ārkārtējās sesijas sēdes stenogramma.

883 Ibid.

himself as Emperor Napoleon III.[884] Following the fall of the Second Empire, this sad experience was taken into account in establishing the Third Republic. The constitutional order of the Third Republic was influenced by the parliamentarism of the United Kingdom, as in this country the King had become the nominal head of state, leaving the real power in the hands of the parliamentary majority and the Cabinet. Initially, in 1870, the executive power in France was transferred to a collegium of ministers, in which the President had solely the rights of a prime minister. By the constitutional law of 25 February 1975 on organisation of the state power, the President was taken out of the cabinet's composition; however, all real power remained with the cabinet, which was based on the confidence of the parliamentary majority.[885] The President of the Republic was intended as the substitute for the monarch, with extensive powers, however, these powers were not implemented in practice because the principle of countersignature was enshrined in the constitution, thus binding the President's actions by the need to have the cabinet's approval. Under the impact of monarchists, according to the letter of the constitution, the President had to become the head of executive power, who should supervise and guarantee enforcement of laws; however, over time he turned into an institute without real impact, solely holding a honorary position.[886] The cabinet turns into the most active institution of the executive power, which in this branch of power paralysed the actions of the president as the head of state. Modern constitutions also, predominantly, recognise the government as the supreme institution of executive power. In this situation, the president's place in the system of separation of powers needs to be defined. The initial finding that the institution of executive functions generally consists

884 Chevallier J.-J. Histoire des institutions et des régimes politiques de la France de 1789 à 1958. Paris: Dalloz, 2001, pp.237-242.

885 Еллинекъ Г. Обшее учение о государстве. Санкт-Петербург: Издание Юридическаго Книжнаго Магазина Н.К. Мартынова, 1908, с.543.

886 Dišlers K. Francijas prezidenta Miljerana atkapšanas valststiesiska nozīme. Tieslietu Ministrijas Vēstnesis, 1924, Nr.6/7, 257.-264.lpp.

of two elements, i.e., the head of state and the cabinet,[887] is no longer able to explain the nature of the president's institute in contemporary state orders. It needs to be noted that the Constitution of Finland of 2000 and the Constitution of Poland of 1997 provide that the executive power is exercised by the president and the government. These states have retained the traditional approach to the president's institute within the system of separation of powers.

Nowadays, the nature of the president's power cannot be closely linked to only one element in the triad of power.[888] The president of the republic is the head of state, the supreme official of the state, the symbol and guarantor of the unity of state power, inviolability of the constitution and the rights and freedoms of man and citizen. The president is an autonomous political institute, placed at the top of the hierarchy of state power.[889] Analysis of the president's power may not be limited to one or more elements of the power triad. The president's power should not be perceived literary as the fourth power; however, a correct system of checks and balances should be in place to ensure understanding of the interconnection between the three powers and the unity of state power. Exaggeration of the state power undermined the reciprocal balance and diminishes the effectiveness of public administration. The classical triad of separation of powers does not exclude the unity of the state power, only the concentration of the entire power in the hands of one person or one institution may not be allowed. All branches of the state power should have not only unified social character but should ensure unity also in political- legal terms (aligned actions by the institutions of state power relating to fundamental issues of national politics and setting a common aim).

Such status of the head of state follows from the theories of Benjamin Constant, who advanced the idea that, in a constitutional state, the monarch exercised the executive power together with a

887 Dišlers K. Izpildu varas evolūcija. Tieslietu Ministrijas Vēstnesis, 1921, Nr.4/6, 95.lpp.

888 Чиркин В.Е. Президентская власть. Государство и Право, 1997, №5, с.16.

889 Михалева Н.А. Конституционное право зарубежных стран СНГ. Москва: Юристъ, 1999, с.254-255.

government accountable to the parliament, whereas some functions of the head of state constituted a special area of the head of state's competence, which was called the balancing (neutral) power (pouvoir neutre).[890] The power of the head of state is above the legislative, the executive and the judicial power as independent power, ensuring unity of the state power. Such power of the head of state, which should be vested in the monarch, may not be associated with the executive power of the monarch and his ministers. Neutral power should operate in those moments when the three branches of state power are in conflict, as well as in determining the beginning and the end for the operation of other powers. Hence, the neutral power must be granted functions in the areas of competence of all three branches of the state power, including political control over the parliament's actions.[891] This concept has been put also in the foundations of the *Satversme*. Jānis Purgals, the rapporteur on the draft *Satversme*, acknowledged, "neutral and levelling power, which, in certain cases, has the task to keep the balance between other powers of the state, is vested in the President of the State."[892] Whereas in contemporary constitutional law, within the system of the *Satversme*, the President has also a backup function. This means that the President of the State "comes on stage", in particular, when a serious parliamentary crisis has set it. Then he tries, by using his authority and the possibility to dismiss the parliament, to resolve this crisis. The *Satversme* includes such a backup function for the President; however, it exists only formally because it is linked to the risk that the President might lose their office, therefore, usually, he won't be able to act as a neutral arbiter."[893] This concept has been recognised also by the Committee of Experts on Constitutional Law established by the President of Latvia,

890 Констан Б. Принципы политики. Gram.: Классический французский либерализм. Москва: Российская политическая энциклопедия, 2000, с.37-50.

891 Захаров Н.А. Система русской государственной власти. 2.-е изд. Москва: журнал "Москва', 2002, с.305-309.

892 Latvijas Satversmes sapulces IV sesijas 1921.gada 20.septembra sēdes (1.sēde) stenogramma.

893 Saulītis A. Levits: prezidentam ir arī "rezerves funkcija." http://www.knl.lv/raksti/344/

noting that the President has the function of an arbiter and backup. "The President's arbiter function means that, in the case of political dispute between the state's constitutional institutions, the President's task is to try to reach an agreement or to resolve the dispute. The President's backup function means that the President starts to act only as the final instance if it had been impossible to resolve disputes in any other way."[894]

Numerous theoreticians of constitutional law have objected to granting neutral power to the president in republics because the concept of neutral power has been inherited from monarchies where the special status of the monarch was justified by his status of legal sovereign. In republics, where the people are the sovereign, these special powers of the sovereign do not need theoretical substantiation. Perhaps Fydor Kokoshkin's opinion that the right to neutral power has been transferred together with the status of the sovereign from the monarch to the people should be recognised as the most correct interpretation of neutral power.[895] However, this opinion requires critical assessment because, actually, it would mean renouncing control over the parliament's actions and performance of other functions of neutral power. Likewise, it is contestable whether the people are able to perform all functions of neutral power effectively. Therefore, it could be recognised that, in a republic, performance of the functions of neutral power is divided between the sovereign – the people and the president, but the president, definitely, does not enjoy the scope of power that was accessible to the monarch.[896] The president no longer has the function of the monarch's neutral power but has the impact of a neutral arbiter. A president who does not make the final decisions is able to perform the functions of a neutral arbiter in conditions of

894 Valsts prezidenta Konstitucionālo tiesību komisijas 2008.gada 30.aprīļa viedokļa "Par Saeimas priekšlaicīgu vēlēšanu mehānisma pilnveidošanu" 39.atsauce.

895 Кокошкин Ф.Ф. Русское государственное право. Вып. II. Москва: [b.i.], 1908, с.120.

896 Pleps J. Kādā veidā var atlaist Saeimu. In: Pleps J., Pastars E. Saeimas atlaišana. Rakstu krājums. Rīga: Latvijas Vēstnesis, 2009, 10.-11.lpp.

constitutional crisis, based on their personal authority and prestige in the circles of politicians and by striving to reach a compromise .[897]

The president's special role and being outside the classical system of separation of powers may have different political manifestations. In classical parliamentary countries this means reducing the role of the head of state to performing representative functions, with the real state power remaining in the competence of the parliamentary majority or the cabinet. For example, although the President of Israel has been brought closer to the executive power, he cannot be considered as being the head of executive power but rather as a moral arbiter, whose significance to a large extent depends on the personal traits of the person holding this office rather than the prerogatives granted to them.[898] In Israel, persons with great merits for the Jewish people and deeply respected in the country are nominated for the President's office because the President's office has turned into the official symbol of the state. Also Germany, after the painful experience of the President of Weimar system revised its approach to the President's place in the political system of the state. The basic law of Germany does not define the Federal President as the head of state because the authors of the basic norm considered this concept as being a monarchist tradition and remnant of National Socialists. The Federal President performs their functions as one of constitutional institutions of power. The President not been granted considerable political power but, at the same time, has the possibility to leave moral impact upon public policy. The President embodies that, which unites all, thus, becoming, as it were, embodiment of the spirit of the constitution. The President does not belong to any of the three state powers.[899] However, isolating the President outside the classical triad of separation of powers, by granting to them extensive powers, in practice, may

897 Schmitt C. Constitutional Theory. Durham and London: Duke University Press, 2008, p.270.

898 Воробьев В.П. Конституционно-правовой статус президента государства Израиль. Moscow Journal of international Law, 2001, №2(42), с.62.

899 Шлайх К. Федеральный президент. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.2. Москва: Институт государства и права РАН, 1994, с.238.

create an undemocratic regime, in which the requirement regarding separation of powers is ignored. In a state order like this, the president is separated from the executive power not to ease the work of the government as executive power but to establish the president's dominance over institutions of legislative and judicial power. Such approach does not facilitate concerted actions by institutions of state power and subjects the entire mechanism of state power to the will of one leader. By determining that the President is the supreme official of the state, the legislator has wanted to indicate that the legislator does not belong to any of the state powers and occupies a special place in the system of institutions of state power .[900]

III. Institute of countersignature

The existence of the institute of countersignature is one the most important principles for correctly assessing the head of state's role within the political system of the respective state. Usually, this principle is included in one particular article of the constitution but all articles pertaining to the powers of the head of state should be examined only within a united system with the constitutional norm regarding countersignature. Thus, in Latvia, to assess correctly the President's rights, these rights must be examined in the context of Article 53 of the *Satversme*. Neglecting of this essential principle, in turn, leads to increasing the President's role and violation of the *Satversme*.[901] The meaning of countersignature is defined by two circumstances: it creates the political dependence of the head of state from the government and is manifested as the government's political accountability to the parliament.[902] These are two essential elements, without

900 Сапаргалиев Г.С. Республика Казахстан. Вводная статья. In: Конституции государств - участников СНГ. Москва: Норма, 2001, с.259-260.

901 Pleps J., Pastars E. Vai Valsts prezidents, veicot apžēlošanu, pārkāpj Satversmi. Jurista Vārds, 2002. 12.marts, Nr.5(238); 2002. 26.marts, Nr.6(239).

902 Шлайх К. Федеральный президент, In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.2. Москва: Институт государства и права РАН, 1994, с.233.

them correct implementation of the institute of countersignature is impossible in the state. The institute of countersignature follows from the presumption of the political unaccountability of the head of state when the validity of acts by the head of state require the prime minister's or any other government member's signature. In the constitutional practice, countersigning was used for the first time in the Roman Empire. In 341, Emperor Constantin the Great provided that each Emperor's order should have the signature of a quaestor. The genuine purpose of this requirement was most prosaic: the quaestor's signature certified the authenticity of the monarch's act. Thus, the 114th Novel of Justinian provided that the one who had delivered the emperor's order without a quaestor's confirmation was to be punished as a forger of document.[903] Such meaning of countersignature – certify the authenticity of the monarch's act – later acquired a totally different meaning and transformed into the institute of countersignature that is known today.

In absolute monarchies, the monarch was the embodiment of the God's will on earth and the people had neither the right to contest the expedience of the monarch's acts nor demand responsibility from the monarch for erroneous actions. Ministers were merely servants of the monarch who fulfilled the monarch's will without the right to contest the legality or expedience of the monarch's order but were accountable for the performance of their task only before the monarch.[904] The constitutional monarchy, in turn, restricted the monarch's will by countersignature. Countersignature restricts the monarch's discretion and places the responsibility for the act, which formally is considered to be the monarch's act, upon the co-signing minister.[905] The ministers who had co-signed this act were made culprits for the damage inflicted upon the people by issuing the king's act. In absolute

903 Dišlers K. Ministru kontrasignacija monarchijā un republikā. Tieslietu Ministrijas Vēstnesis, 1923, Nr.3/4, 98.lpp.

904 Mucenieks P. Ministru atbildības institūts vēsturiskās attīstības gaitā. Tieslietu Ministrijas Vēstnesis, 1922, Nr.5, 216.lpp.

905 Dišlers K. Ministru kontrasignacija monarchijā un republikā. Tieslietu Ministrijas Vēstnesis, 1923, Nr.3/4, 98.lpp.

monarchy, a minister's signature on the act meant only that the king's act was authentic, whereas in constitutional monarchy, a minister, by co-signing a king's act, assumes responsibility for the legality of the act and his signature is needed to ensure the validity of this act.[906] Formally, the king's power was not limited but, actually, the king's ministers started acting on his behalf, and they, in fact, no longer were the king's servants but the leaders if the parliamentary majority whose might was founded on the confidence of the Lower House and not on the monarch's favour. At this point, the presumption "the king can do no wrong" can be certainly supplemented by the sentence "the king can no act alone."[907]

Thus, in a constitutional monarchy, countersignature only underscores the minister's responsibility for the content of the king's act, whereas its nature is totally different in parliamentary monarchy. When the parliament comes forward as the dominant institution of a political system and the ministers, as public officials who enjoy the confidence of the parliamentary majority, turn into the bearers of executive power who have full responsibility over implementation of the executive power in the state, countersignature deprives the monarch from his right of the active bearer of state power. From this moment on, gradual theoretical and practical forcing out of the head of state from the branch of executive power can be discussed. In parliamentary monarchy, countersignature diverts the monarch from the matters of state governance and turns the monarch's competence fictitious. Without losing its legal meaning – to impose the responsibility for the content of the act upon the minister – it allows the ministers to determine the content of the act instead of the monarch. The political nature of countersignature is thus manifested - the initiative in issuing acts transits to the cabinet of ministers and the monarch is moved away from the daily politics and, actually, loses his competence. Adolphe Thiers' thesis complies with these circumstances - le roi

906 Mucenieks P. Ministru atbildības institūts vēsturiskās attīstības gaitā. Tieslietu Ministrijas Vēstnesis, 1922, Nr.5, 220.lpp.

907 Ibid, 217. – 224.lpp.

regne, les ministres gouvernent, les chambres jugent (the king rules formally but, actually, ministers deal with all matters of the state).[908] The need for the institute of countersignature remains also in constitutional monarchies, where the monarch had to share his power with the elected parliament. The monarch's unaccountability needs to be mentioned as one of the significant actual rights. If problems occur with respect to the political decisions adopted by the monarch, responsibility lies with those persons, whose competence includes drafting and enforcement of such an act. It is an old tradition, which was incorporated in laws and a formal manifestation of which – the signature by the accountable person on the monarch's act - was demand for its application.[909] Following the fall of monarchies, usually parliamentary republics formed in European states, retaining the institute of countersignature, which restricted the power of the president as the head of state. In defining extensive rights for the president in constitutions, their actual importance was diminished by releasing the president from political responsibility. "In bourgeois constitutions, the head of state is vested with unaccountability, and its legal manifestation is countersignature. Any act, issued by the head of state, acquires legal force only if it has received the signature of the prime minister or the minister, to whose sector this act applies. Without this signature, the acts by the head of state are insignificant."[910] This principle was introduced by the Constitution of the French Third Republic, consolidating the principle of countersignature: "Each act by the President of the State shall be countersigned by a minister."

A slightly different solution was created in the Constitution of the Weimar Republic, where the Reich President was not created for representative purposes but was intended as active institute of the state. Article 50 of the Constitution provided that "all orders and decrees of

908 Dišlers K. Ministru kontrasignācija monarchijā un republikā. Tieslietu Ministrijas Vēstnesis, 1923, Nr.3/4, 100.-102.lpp.

909 Арановский К.В. Государственное право зарубежных стран. Москва: Форум, 2000, с.404.

910 Мишин А.А., Барабашев Г.В. Государственное право буржуазных и развивающихся стран. Москва: Юридическая литература, 1989, с.261. See also: Cielava V. Latvijas Republikas Satversme: vēsture un mūsdienas.Cīņa, 1989. 22.marts.

the Reich President, including those concerning the defence forces, require for their validity the countersignature of the Chancellor of the Reich or the competent Minister of the Reich. By countersignature responsibility is assumed."[911] A similar provision is included also in Article 58 of the Basic Law of Germany. The concept of "orders and decrees" should be understood as all actions by the President aimed at legal regulation (international declarations, appointments), irrespectively of the fact, whether the President express his will in writing or orally.[912] A state governed by the rule of law requires the issuer to be responsible for its act, therefore countersignature turns an act issued on behalf of the head of state into an act, signed jointly by the head of the state and the co-signing minister. Hence, the head of state in their actions is bound by the approval of the respective minister.[913] Benno Ābers once noted: although formally such acts are presidential acts, which are countersigned by ministers, actually, these are acts of the cabinet of ministers, countersigned by the president.[914] Countersignature changes the relations between the head of state and the cabinet: ministers are no longer advisors to the head of state but, quite to the contrary, a capable president of the state or an elderly king can be useful to the cabinet as advisors.[915]

In the Third French Republic, countersignature was a general rule, which did not allow for any exceptions. It was applicable to all acts, issued by the President. Legal acts should be understood, firstly, as his decrees, even such that follow from his discretionary power, and event acts of clemency. Ministers were responsible for all presidential acts without any exception, even for their own appointment.[916] It has

911 Constitution of the German Reich, August 11, 1919. http://hydraprod.library.cornell.edu/fedora/objects/nur:01840/datastreams/pdf/content

912 Шлайх К. Федеральный президент. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.2. Москва: Институт государства и права РАН, 1994, с.234.

913 Dišlers K. Latvijas Valsts prezidenta kompetence. Tieslietu Ministrijas Vēstnesis, 1922, Nr.3, 109.lpp.

914 Ābers (Ābele) B. Polijas jaunā konstitūcija. Tieslietu Ministrijas Vēstnesis, 1935, Nr.2, 359.lpp.

915 Dišlers K. Francijas prezidenta Miljerana atkāpšanās valststiesiskā nozīme. Tieslietu Ministrijas Vēstnesis, 1924, Nr.6/7, 259.lpp.

916 Latvijas Republikas 2.Saeimas 1926.gada14.aprīļa ārkārtējās sesijas sēdes stenogramma.

been recognised in legal science that the only act of state law that the President of France could issue without a minister's countersignature was his last act: announcement to the Parliament regarding his resignation from office.[917]

The political meaning of countersignature is to prevent the president from adopting decisions contrary to the government's will, to infringe upon the government's unity. The function of countersignature is to restrict the president's mandate in such cases, where they have the possibility to make decisions independently, but, exactly in these cases, countersignature deprives them of this independence. Since the head of state usually cannot dismiss the government contrary to the will of the parliamentary majority, the head of state cannot force ministers to countersign their act, the issuing of which the minister does not desire.[918] A minister who has countersigned the respective act is responsible for its content and, thus, expresses their approval on its merits, and only with the minister's co-signature the act acquires its legal force. Within Weimar system, a minister who did not approve of the content of the Reich President's act had the right to resign,[919] whereas currently it is recognised in Germany that a minister may block the issuing of an undesirable presidential act if the minister has gained the Parliament's confidence. It is essential to keep in mind that the signature of the respective minister means not only their own personal accountability before the parliament for the content of this act but the responsibility of the entire government for this act.[920]

In a republic, countersignature is needed only insofar the president's competence exceeds their responsibility, but a curios situation occurs in parliamentary republics. The president has broad powers

917 Dišlers K. Latvijas Valsts prezidenta kompetence. Tieslietu Ministrijas Vēstnesis, 1922, Nr.3, 109.lpp.

918 Шлайх К. Федеральный президент. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.2. Москва: Институт государства и права РАН, 1994, с.233-234.

919 Latvijas Republikas 2.Saeimas 1926.gada 14.aprīļa ārkārtējās sesijas sēdes stenogramma.

920 Pleps J., Pastars E. Vai Valsts prezidents, veicot apžēlošanu, pārkāpj Satversmi. Jurista Vārds, 2002. 26.marts, Nr.6(239).

but countersignature subordinates these powers to the president's political unaccountability. "If the modern constitution grants to the head of state some powers, this is done, undoubtedly, with the intention that they, where needed, could exercise this power. Fictious rights (Scheinrechte) are incompatible with the spirit and purpose of a modern republican constitution."[921] Kārlis Dišlers, in turn, taking as the point of departure the theses that there cannot be unaccountable officials, construes the republican substance of countersignature. In a republic, it is not a single minister who is responsible for the countersigned act but also the president, jointly with the minister. Countersignature requires participation of two or more responsible public officials in issuing the most important acts of the government and the executive power, greater caution and seriousness in the drafting of the act are related to it. And responsibility for the act would set in not only for the countersigning minister but also for the president. This theory is substantiated by the provision of Article 51 of the Constitution of Poland of 1921 that the president bears constitutional liability for violating the Constitution. If the presidential act were contrary to the Constitution, liability would set in also for the President.[922]

The contemporary constitutional thought, however, has rejected such approach to the institute of countersignature. In the states where this institution remains, usually, the traditional approach, coming from the times of the parliamentary monarchy, prevails, whereas more recent trends envisage abolishing the institute of countersignature or limiting its significance. This is related to the status of the president as the head of state and separating it from the executive power. Usually, the constitution defines a certain range of powers for the president, within the limit of which they may act independently. However, this approach causes certain problems, linked to, as it were, the creation of one more power – that of the president, alongside the

921 Erich R. Die Entwicklung des öffentlichen Rechts in Finnland. Jahrbuch des öffentlichen Rechts. Bd.XI. 1922, S.110.

922 Dišlers K. Ministru kontrasignacija monarchijā un republikā. Tieslietu Ministrijas Vēstnesis, 1923, Nr.3/4, 100.-102.lpp.

government's power, but the institute of countersignature that could align the will of both institutes and turn it in aligned direction is absent. This causes disputes and contradictions that do not facilitate normal functioning of the state order. Nowadays, the institute of countersignature has turned into an indispensable shock-absorber in the relations between the head of state and the government, although many see this institute as archaism. The Constitutional Court has seen the meaning of countersignature institute in the fact that the functions of the executive power that have been entrusted to the President by the *Satversme* are subject to the Cabinet's will.[923] Likewise, the requirement of countersignature excludes the possibility that the President could give orders to institutions of public administration and manage their work without the Cabinet's consent.[924] In the area of executive power, countersignature serves to prevent dualism in the executive power and to ensure that the President's act is enforced and the Cabinet member who countersigned it assumes political responsibility for it. The President may exercise other competences at their discretion without countersignature.

In some states, where extremely strict countersignature requirements have been set for the presidential act, the boundaries of this institute become blurred. Already since the period of Weimar Presidency, the issue of the President's speeches is relevant in Germany. If the President expresses freely in their speeches their political views, it can be discussed whether the President may express freely their opinions or whether the government should countersign these speeches. Countersigning of speeches and public announcements would be manifested as an official announcement of consent by the Federal Chancellor or a minister to the President's speech but in the case of dissent the federal government would have to express protest, otherwise its silence would be interpreted as consent. Nowadays, the Federal President's speeches on foreign affairs are meticulously aligned with the

923 Judgement by the Constitutional Court of the Republic of Latvia of 16 October 2006 in Case No.2006-05-01, Para 15.3.

924 Ibid, Para 15.1.

federal government. The Ministry of Foreign Affairs prepares the draft speech and, actually, countersigning takes place. Such coordination with the foreign department emphasizes the special nature of the President's speech. The President speaks not as an independent institution of the constitutional power that is bound by countersignature but simply as the official representative of the federal government. In these speeches, the President makes public the political will of Germany, expressed by the federal government. The President's office and personal traits give them certain freedom in the wording of speeches and in actions outside the need for countersignature. With respect to domestic matters, the President speaks on their own behalf and, in this area, the issue of countersigning these speeches becomes insignificant. The Federal President would be unable to perform their coordinating function if they were totally dependent on the government, at the same time, too independent speeches by the President should not undermine the unity of the state's leadership. In any case, the Federal President should act within the framework of the policy defined by the federal government and must facilitate this policy.[925] If the Federal President's speech were in stark contrast to the political course of the federal government, the government would be obliged to submit an official protest. Thus, in the domestic policy, until the Federal President does not stir away from the political line defined by the federal government and does not undermine the unity of the state's leadership, the federal government silently consents to the President's speech and, if necessary, is ready to assume responsibility for its consequences. However, if the federal government does not consent to the President's speech it must make its attitude known, otherwise the government might be accountable to the parliament for the President's speech.

Countersignature is non-existent in state orders, in which strict separation of powers is consistently implemented and the executive power is exercised by the president who is not accountable before

925 Шлайх К. Федеральный президент. Gram.: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.2. Москва: Институт государства и права РАН, 1994, с.234-237.

the legislative power. This is the case in the USA and Brazil. Likewise, the USA does not have a cabinet of ministers in the traditional European understanding, it is rather a collegium of advisors to the President or administration. The President appoints their advisors at their discretion, and they are not politically accountable before the Congress. The President of the USA has the right to exercise all their rights and is the sole active element in the executive power of the republic. "The relations between the President and his ministers are contrary to the ones existing in the parliamentary monarchies in Europe. There, the monarch is unaccountable and the minister is accountable for the acts that he issues on behalf of the monarch. In America, the President is accountable because the minister is nothing more than his servant, subject to him and independent from the Congress. Therefore, formally, a minister's acts are presidential acts."[926] In circumstances like these, the President is the sole head of the executive power and bears responsibility for the content of all their acts.

IV. The acting head of state

In the states where the head of state is one person, it is possible that this person may be delayed in performing the official duties due to disease, death or some other reasons. In cases like these, the state may not be left without the head of state, therefore, regulation on those instances where the head of stat is not performing their duties is usually set out in constitutions or other acts. Legal regulation and practice of application vary in different state orders, moreover, often nuances in replacing the head of state are not regulated in detail, are not publicly announced, and, frequently, this is even classified information.

Analysis of monarchies reveals that, at the moment when the monarch has passed away, the appropriate person is invited, in

926 Dišlers K. Demokrātiskas valsts iekārtas pamati (Ievads konstitucionālajās tiesībās). Rīga: A.Gulbis, 1931, 151.-152.lpp.

accordance with the succession to the throne. If this person is a minor or if the regent has become incapable, then usually a council of regents is established or a guardian regent is appointed. A more complicated situation may arise if the heir is unknown, i.e., it is a temporary condition when the successor to the throne has not been identified, there is uncertainty regarding continuation of the dynasty or preserving the monarchy itself. While the situation is unresolved, a regent-like person is chosen - a provisional governor. In all cases, where the monarch is replaced by a regent or a special council, the powers of these substitutes are usually restricted.[927] If the head of state - the monarch - leaves the state they can entrust another person or persons (also, a council) to govern the state on their behalf.

Analysis of a republic allows identifying the following feature – the greater the power and responsibility granted to the president the more precisely the procedure of replacing should be regulated. Even if the president is only a symbolic official within the state's political system, unexpected vacancy of the office can cause instability. For example, following the death of President Jānis Čakste on 14 March 1927, an extraordinary sitting of the Cabinet was held at the Riga Castle, with the participation of the Speaker of the *Saeima* Pauls Kalniņš, other members of the Presidium of the *Saeima*, and the commanders of the army. Pauls Kalniņš, accordingly, became the acting President by a special announcement, and the Cabinet, in turn, decided to declare the state of mourning.[928] Similarly, also in the constitutional practice of the USA, following the President's death, the Vice-president immediately gives the President's oath and commences performing the presidential duties. Pursuant to the Constitution of the USA, if the President's office becomes vacant, the Vice-president becomes a full-fledged President and may exercise unrestrictedly all powers granted to the president during the remaining term in office. This practice was established by John Tyler who, in 1841, following

927 Арановский К.В. Государственное право зарубежных стран. Москва: Форум, 2000, с.410.

928 Latvija sērās. Latvijas Kareivis, 1927. 15.marts, Nr.59(2071).

the death of William Harrison, became the President, dismissing any possibility of being interpreted as the acting president.

The first part of Article 2 of the Constitution of the USA and the 25th Amendment to the Constitution define precisely the procedure on how to act if the President passes away, has been suspended or is unable to perform their duties. A situation where the USA would be left without the President is unconceivable because there is the institute of Vice-president and the Congress has the right to appoint the President if the Vice-president is unable to hold this office. The 25th Amendment to the Constitution envisaged the possibility to replace the Vice-president if their office became vacant. After the Amendment entered into force, the procedure for electing the Vice-president at the House of Representatives has been set out in case the respective office has become vacant. Vice-president Gerald Ford, who was elected in this procedure, became the President of the USA in 1974 because Vice-presidents Spiro Agnew and President Richard Nixon, elected in the election of 1973, successively resigned from their offices. Moreover, the 25th Amendment to the Constitution defines very precisely the procedure for acting in the case where the President is unable to discharge their duties and how the President can prove their ability to do it. The Amendment envisages the possibility for the Vice-president, together with the supreme officials of the President's administration, to adopt a joint declaration on the President's inability to discharge their duties of office and transferring the presidential powers to the Vice-president. This declaration then must be approved by the Congress. In January 2021, after rioters broke into the Capitol building, the Democratic Party demanded Mike Pence to suspend Donald Trump from discharging the President's duties. Vice-president Mike Pence refused to apply the procedure of the 25th Amendment to this case, noting that this mechanism had been envisaged for those cases, where the President's inability to discharge his obligations could be medically determined, and not for disliking the President's actions or opinion. He underscored that the procedure of the 25th Amendment was not envisaged for political retaliations or usurping

the power but to ensure that the presidential powers were exercised if the President's health condition did not allow it.[929] Article 92 in the Constitution of the Russian Federation defines the need for the acting president in cases where the President resigns from office pre-term, is unable to perform their duties for a long time due to health condition or is dismissed from office in impeachment procedure. Moreover, the presidential elections must be held no later than within three months after the discharge of powers had been discontinued pre-term. In all those instances where the President is unable to perform their duties, they are performed on his behalf by the head of the government. Such acting President does not have the right to dismiss the State Duma, announce a referendum, as well as initiate amendments to the Constitution or review of its provisions. The respective regulation was applied at the end of 1999 when the first President, Boris Yeltsin, resigned from office pre-term, leaving the head of government Vladimir Putin as the acting President. In states where the president's role is not decisive, the president is usually replaced by the speaker of the parliament. This solution has been chosen also in Estonia, Lithuania, Poland, and Latvia. For example, if the Estonian National Court establishes prolonged inability of the President to perform their duties or inability to perform them temporarily, in cases provided for in law, or if their mandate has expired pre-term, then their duties are temporarily discharged by the Chairman of the State Assembly. While discharging these duties, the mandate of the Chairman of the State Assembly as a Member of the State Assembly is suspended. During the period of performing the duties of the President of the Republic, the Chairman of the State Assembly, the acting President, may not announce extraordinary election of the State Assembly without the State Court's consent or refuse to promulgate laws (Article 83 of the Constitution). Article 89 of the Constitution of the Republic of Lithuania deals with this issue similarly, providing that the obligation of the Speaker of the Seimas to perform the President's obligations

929 Statement of Vice President Mike Pence, January 12, 2021. https://edition.cnn.com/2021/01/12/politics/pence-letter/index.html

if the President has passed away, has resigned, has been dismissed in the procedure of impeachment, or his inability to discharge the official duties due to health condition has been established. In cases like these, until a new President is elected, the Speaker of the Seimas becomes the interim President, losing the right to exercise their mandate of a Member of the Seimas. The first Vice-speaker performs their duties on their behalf in the Seimas. The respective regulation was applied in Lithuania following the impeachment of Rolandas Paksas when, until the new President was sworn in, Arturas Paulauskas, the Speaker of the Seimas, performed the President's duties. Article 131 of the Constitution of the Republic of Poland provides that the Marshal of the Sejm (speaker of the lower house) has the obligation to discharge the duties of the President of the Republic, whereas if the Marshal of the Sejm is unable to do it, it must be done by the Marshal of the Senate (speaker of the upper house). Polish practice, this regulation was applied in 2010 when the President of Poland Lech Kaczyński and several supreme officials of the state perished in air disaster near Smolensk. In this situation, the Marshal of the Sejm Bronislav Komarovski immediately took over discharge of the presidential duties and ensured the continuity of the state power successfully.[930]

Article 52 of the *Satversme* of the Republic of Latvia establishes the procedure of replacement if the President resigns from office, dies or is removed from office before their term has expired, is away from Latvia or for any other reasons are unable to fulfil the duties of office. No division of the functions between the President and the official replacing them is envisaged in the *Satversme* and in some cases it might not be needed, e.g., if the President has passed away. Presumably, the Speaker of the *Saeima* as the acting President has been chosen due to historical traditions and concerns regarding possible increasing power of the Prime Minister in replacing the President. After the *Satversme* was reinstated in full, the prevailing opinion was

930 Prokop K. Constitutional Aspects of the Death of the Head of State. Polish Experiences of 2010. https://dukonference.lv/files/proceedings_of_conf/53konf/tiesibas/Prokop.pdf

that the Speaker of the *Saeima* was the only one who personally had the right to replace the President and that the neither the Vice-speaker of the *Saeima* during the Speaker's absence or any other official of the *Saeima* or the Cabinet could do so.[931] At the same time, the Senators of the Latvian Senate had recognised already in 1948 that the Vice-speaker of the *Saeima* also could replace the President, when solving the matter regarding the second Vice-speaker of the *Saeima* Jāzeps Rancāns' right to hold the President's office if the President, the Speaker and the first Vice-speaker of the *Saeima* had died. "The Speaker of the *Saeima* i.e., his deputy [..] has the obligation to work constantly throughout the term of the *Saeima* (Art. 16) and, moreover, to open the first sitting of the newly elected *Saeima* (Art. 17). Since, pursuant to the above, the mandate of the *Saeima* elected in 1931 is still valid, it has to be concluded that also the mandate of the Speaker of the *Saeima* or his deputy is still valid until the obligation set out in Article 17 has been discharged. The *Satversme* also shows that the Speaker of the *Saeima*, inter alia, has the obligation to perform the official duties of the President if the latter "is away from Latvia or for any other reasons are unable to fulfil the duties of office" (Art. 52). However, as it is notoriously known, the President of Latvia is unable to fulfil his duties of office because the occupants have deported him from Latvia. In such circumstances, the Speaker of the *Saeima* should discharge the President's official duties but sine he has died then the Vice-speaker (compare Article 21 of the *Satversme* and Article 23 of the Rules of Procedure of the *Saeima*) and, moreover, until the moment when a new President is elected or the current Vice-speaker is replaced by the newly elected Speaker of the *Saeima*. The aforementioned acting President has all the President's rights."[932] At the time, such interpretation of the *Satversme* was criticised, as it was held that only the Speaker could replace the

931 Par Valsts prezidenta vietas izpildīšanas kārtību. Saeimas Juridiskā biroja 1994.gada slēdziens Nr.6/2-4-57. In: Saeimas Juridiskā biroja dokumenti.1993-2013. Rīga: Latvijas Vēstnesis, 2013, 39.lpp.

932 Latvijas Senāta senatoru atzinums par Latvijas Satversmes spēkā esamību un Saeimas pilnvarām okupācijas apstākļos. Latvju Ziņas, 1948. 17.aprīlis, Nr.29. See more: Pleps J. Bīskaps Rancāns un Satversme. Valsts prezidenta vietas izpildīšana. Jurista Vārds, 2009. 3.marts, Nr.9(552).

President and that the Vice-speaker did not have this right.[933] However, following the restoration of independence, the respective interpretation of Article 52 of the *Satversme* was confirmed by recognising Jāzeps Rancāns as full-fledged acting President.[934] President Egils Levits also has accepted Jāzeps Rancāns as the acting President by special announcements.[935]

After entering the President's office, Egils Levits, referring to the opinion of the Senators of the Latvian Senate, has found that also the Vice-speaker may replace the President if the President and the Speaker of the *Saeima* are away from Latvia at the same time. "If during the time when I have planned to be outside the state, and the Speaker of the *Saeima* also will be away, pursuant to Article 52 of the *Satversme* and Para 21 of the Rules of Procedure of the *Saeima*, I shall examine the possibility to instruct the Vice-speaker, who at the time will be discharging the duties of the Speaker of the *Saeima*, to be the acting President."[936] Following this announcement, Vice-speaker of the *Saeima* Dagmāra Beitnere-Le Galla has discharged the official duties of the President several times, with President Egils Levits making a separate announcement on it.[937]

Article 52 of the *Satversme* of the Republic of Latvia is functional, i.e., it operates irrespectively of whether the President's document exists. In practice, however, such document is usually prepared and published in the official journal "Latvijas Vēstnesis", it announces the

933 Feldmanis J. Satversmes jautājums. Nedēļas Apskats, 1948. 4.jūnijs, Nr.89.

934 Un visos laikos – gan labos, gan grūtos – Jāzeps Rancāns ir bijis kopā ar savu tautu. Latvijas Vēstnesis, 1995. 6.jūnijs, Nr.86(369); Mūrniece: Jāzeps Rancāns jāgodina kā Saeimas priekšsēdētājs trimdā. https://www.saeima.lv/lv/par-saeimu/saeimas-darbs/12-saeimas-priekssedetajas-aktualitates/26120-murniece-jazeps-rancans-jagodina-ka-saeimas-priekssedetajs-trimda

935 08.07.2019. Valsts prezidenta runa Saeimā, amatā stājoties. https://www.president.lv/lv/valsts-prezidents/valsts-prezidents-egils-levits/valsts-prezidenta-runas/valsts-prezidenta-egila-levita-runa-saeima-amata-stajoties; Valsts prezidenta Egila Levita uzruna Vissvētākās Jaunavas Marijas debesīs uzņemšanas svētkos Aglonā. https://www.president.lv/lv/jaunumi/zinas/valsts-prezidenta-egila-levita-uzruna-vissvetakas-jaunavas-marijas-debesis-uznemsanas-svetkos-aglona-25845

936 Valsts prezidenta Egila Levita 2019.gada 5.augusta paziņojums Nr.3 "Par Latvijas Republikas Satversmes 52.panta piemērošanu."

937 See, for example: Valsts prezidenta Egila Levita 2019.gada 12.augusta paziņojums Nr.4 "Par Valsts prezidenta vietas izpildīšanu."

period when and the reasons why the President will be unable to discharge the official duties. The most frequent reason is visits abroad or a leave. Moreover, during the leave, which is spent in Latvia, the President may not transfer the powers to the Speaker of the *Saeima*, as it has happened during several presidencies. On special occasions, such announcement by the President may also be restricted-access information. Such cases are possible where the Speaker of the *Saeima* themselves has to announce that they assume the President's office without a respective announcement by the President.[938] In such cases, the Speaker of the *Saeima* should comply with the precedent of 14 March 1927, i.e., to the extent possible, align their actions with the Cabinet and other members of the Presidium of the *Saeima*, involving in the decision making also public officials responsible for the national security and officials from the President's Chancery.

The second sentence of Article 52 of the *Satversme* defined the grounds for replacing the President, alongside the President being away, also the condition that President is delayed in discharging the official duties due to other reasons. In practice, such case was President Raimonds Vējonis' illness , during which Speaker of the *Saeima* Ināra Mūrniece replaced the President.[939] The President's delay means a situation caused by external conditions, at the moment beyond the person's control. Delay usually is obvious or can be established rather easily. This concept should not be confused with "the President's inability to discharge the official duties because that causes a contradiction between the objective term "being delayed", used in Article 52 of the *Satversme* and the subjective, internal "inability."[940] Such situations should be specified in internal guidelines and plans, also appointing officials responsible for the implementation thereof,

938 See, for example: Valsts prezidenta vietas izpildītāja - Saeimas priekšsēdētāja Paula Kalniņa 1927. gada 14.marta paziņojums. Valdības Vēstnesis, 1927. 15.marts, Nr.59

939 Valsts prezidenta Raimonda Vējoņa 2016.gada 19.janvāra paziņojums Nr.2 "Par Valsts prezidenta vietas izpildīšanu" un 2016.gada 23.marta paziņojums Nr.4 "Par Valsts prezidenta pienākumu pildīšanu pilnā apmērā"

940 Meļķisis E. "Bīstams" pants Nacionālas drošības likumprojektā. Likums un Tiesības, 2000, Nr.3(7), 91.lpp.

i.e., who will inform the Speaker of the *Saeima* about the situation, in which they should assess what has happened (for example, the President's severe medical condition) and act, as well the criteria for considering that the President has been delayed in discharging their duties (inability to communicate, sign documents, etc.).[941]

The concept of "assuming duties"" is used in Article 52 of the *Satversme*, which has raised questions regarding the scope of the Speaker's powers. Prima facie, it seems that this concept excludes the moment of one's own will in assuming the President's place. This means that the powers pertain only to urgent matters, i.e., promulgation of laws. The acting president may only fulfil functions, without the right to discretion, this follows from the very status of an acting President, because, if necessary, they may not take a stance against the *Saeima*, being part of it. There is a trend in the Latvian constitutional law to differentiate between the President's rights that can be exercised only by the President from the rights that can be exercised also by the acting President. Anita Rodiņa once proposed that, in a case like that, the phrase " shall assume the duties of a President" used in Article 52 of the *Satversme* should be taken into consideration; i.e., assuming the President's place does not mean fulfilling all functions of the President.[942] "The letter of the Latvian *Satversme* does not provide for special rights of the President that could not be exercised by the Speaker of the *Saeima* during the President's absence or while being delayed otherwise. However, the principle has become consolidated in practice that when the President leaves the state, only those duties of the President that must be discharged mandatorily (with no option of choice) are transferred to the Speaker of the *Saeima*, whereas those obligations and rights, the exercise of which depends on the President's free will and exercise of discretion, are not transferred [..]

941 See also: Saeimas Juridiskās komisijas deputātu darba grupas Valsts prezidenta pilnvaru iespējamai palielināšanai un ievēlēšanas kārtības maiņai 2017.gada 25.aprīļa atzinuma 32. – 36.lpp. https://www.saeima.lv/lv/par-saeimu/saeimas-darbs/deputatu-grupas/darba-grupa-valsts-prezidenta-pilnvaru-iespejamai-paplasinasanai-un-ievelesanas-kartibas-izvertesana

942 Pleps J., Pastars E. Par prezidenta lomu demokrātiska sabiedrība. Jurista Vārds, 2002. 3.decembris, Nr.24(257).

although limited transfer of functions to the Speaker of the *Saeima* while the President is away is not envisaged in the text of the *Satversme*, the opposite follows from the spirit of the *Satversme*, which is confirmed by practice . [..] Substantially, the only obligations that do not require expressions of the President's will and cannot be discharged yet, during the President's absence, is proclamation of laws (Article 69), declaration of war on the basis of the *Saeima*'s decision, as well as suspending proclamation of laws if is demanded by one-third of Members of the *Saeima* (Article 72)."[943] Such interpretation of Article 52 of the *Satversme* is confirmed by further practice of its application.[944] For example, it was recognised that during the period of President Raimonds Vējonis' illness "similarly to periods when the President is on leave or is away from the state, the Speaker of the *Saeima* performs only those official duties of the President, the discharge of which does not depend upon the President's discretion and will. Such obligations are, for example, proclamation of laws and suspending publication of a law for two months if it is required by one-third of Members of the *Saeima*."[945] Whereas the acting President could exercise other rights only with the President's respective consent.[946] President Egils Levits has accepted the same interpretation of Article 52 of the *Satversme*: "[While being away from the state] I shall continue exercising all those rights of the President, which the *Satversme* and the existing constitutional tradition allows the President to exercise while being away from the state. During this period, the acting President will perform the President's duties if that would be

943 Zalana L. Valsts prezidenta tiesības nosūtīt likumu otrreizējai caurlūkošanai. Jurista Vārds, 2003. 3.junijs, Nr.21(279).

944 Valsts prezidenta vietas izpildīšana un informācija par viņa veselības stāvokli: tiesiskie aspekti. Jurista Vārds, 2016. 26.janvāris, Nr.4(907).

945 Mūrniece vēl Valsts prezidentam drīzu izveseļošanos un apliecina, ka tiek risināti valstī aktuālie jautājumi. https://www.saeima.lv/lv/aktualitates/saeimas-zinas/24320-murniece-vel-valsts-prezidentam-drizu-izveselosanos-un-apliecina-ka-tiek-risinati-valsti-aktualie-ja

946 See, for example: Valsts prezidenta Raimonda Vējoņa 2016.gada 8.februāra paziņojums Nr.3 "Par Korejas Republikas ārkārtējā un pilnvarotā vēstnieka akreditāciju"

necessary. I shall always agree separately on the scope of the acting President's powers during my absence." [947]

The Senators of the Latvian Senate once noted that "all the President's rights envisaged in the *Satversme* must be recognised as being vested in the acting President."[948] Such interpretation of the *Satversme* should be retained for cases referred to in Article 44 of the *Satversme*.[949] In emergency situations, the *Satversme* requires the acting President to take over all functions of the President to govern the state successfully until the situation has normalised. The *Satversme* requires the acting President to act in emergency situation when, possibly, the acting President must assume almost all functions of the President.

It should be taken into account that obligations of the President and the Speaker of the *Saeima* as the acting President are separated through communication and agreement. Nowadays, when the President goes abroad, they are not excluded from the circulation of information and continue discharging also domestic duties, inter alia, to exercise the right to veto[950] and to nominate the Prime Minister.[951] Likewise, the President may instruct the acting president by a separate announcement to perform some functions of the President.[952] It would be advisable to regulate the basic rules on the foreign visits of the supreme public officials in law, providing that the President and the Speaker of the *Saeima* may not be simultaneously leave the

947 Valsts prezidenta Egila Levita 2019.gada 5.augusta paziņojums Nr.3 "Par Latvijas Republikas Satversmes 52.panta piemērošanu."

948 Latvijas Senāta senatoru atzinums par Latvijas Satversmes spēka esamību un Saeimas pilnvarām okupācijas apstākļos. Latvju Ziņas, 1948. 17.aprīlis, Nr.29.

949 Pleps J. Latvijas Centrālās padomes prakses nozīme Satversmes interpretācijā. In: Ārvalsts investīcijas: kad tiesības mijiedarbojas. Latvijas Universitātes 74. zinātniskās konferences rakstu krājums. Rīga: LU Akadēmiskais apgāds, 2016, 50. - 51.lpp.

950 For example: Valsts prezidentes Vairas Vīķes-Freibergas 2001.gada 22.decembra veto raksts par likumu "Grozījumi Komerclikumā" un Valsts prezidenta Raimonda Vējoņa 2018.gada 9.februāra veto raksts par likumu "Grozījumi Publisko iepirkumu likumā"

951 For example: Andra Šķēles aicināšana sastādīt Ministru kabinetu, par ko Valsts prezidents Guntis Ulmanis paziņoja 1995.gada 14.decembrī, atrodoties vizītē Vācijā

952 See, for example: Valsts prezidenta Raimonda Vējoņa 2018.gada 7.novembra paziņojums Nr.13 "Par Valsts prezidenta vietas izpildīšanu"

state territory, as well as that the majority of the Cabinet may not be abroad at the same time. Such situations occur frequently in the Latvian practice.

V. Defensive function

The defensive function of the head of state originated historically, it is based on the structures of the orders of pre-democratic states, where the administrative and military power was concentrated in one hands.[953] The very genesis of the institute of the head of state has been linked to the need of the early state-like formations to defend themselves against external threats.[954] To protect themselves against external threats, communities used to elect commanders-in-chief who were granted the right to command the troops and to organise defence. Over time, the power of military commanders became autonomous and transformed into the power of the monarch as the head of state.[955]

In democratic states, the president usually is the commander-in-chief of armed forces but not the direct supreme commander. The President's powers and status may differ in times of war and peace. The presidents of parliamentary states, in fulfilling the defensive function, depend directly on officials of the executive power because the most important tasks can be performed only if mediated by countersignature. The defensive function comprises also broad ceremonial duties of the President, as well as certain civil control over the armed forces. Usually, constitutions describe the defensive function briefly, leaving more extensive regulation for the laws that regulate national security and the military field, as well as the developed plans. The

953 Valsts prezidenta Konstitucionālo tiesību komisijas 2011.gada 10.maija viedokļa "Par Valsts prezidenta funkcijām Latvijas parlamentārās demokrātijas sistēmas ietvaros" 176.punkts.

954 Dišlers K. Demokrātiskas valsts iekārtas pamati (Ievads konstitucionālās tiesībās). Otrs izdevums, caurlūkots un papildināts. Rīga: A.Gulbis, 1931, 9.lpp.

955 Cicerons M.T. Par valsti. Rīga: Zvaigzne ABC, 2009, 33. - 35.lpp.

defensive function consists of several elements, i.e., the obligation to organise defence of the state against a particular attack, to wage and lead a war, by concentrating military and civil resources, to declare an emergency situation, to decide on the personnel of the armed forces or the candidate for the office of the Minister for Defence, to participate in the decision-making of an international defence system. Depending on the state order, each of these tasks may entail certain involvement of the executive power or require significant decisions by the parliament. Likewise, collegial advisory institution (council of national security or military council) are also involved in decision making, usually the aim of these institutions is to coordinate actions, although the particular official, who exercises the powers, bears the responsibility for the adopted decisions. There may be critical moment in the life of a state, requiring clear and effective actions to ensure that the state plays its main role, i.e., protects its people, prevents destruction of the nation. During such periods, all institutions of state power must function in a concerted way. If other institutions are objectively unable to make the necessary decisions, the obligation to act follows from the backup functions of the head of state.

When the Constitution of the US was drafted, all speakers at the Convention underscored that war was so undesirable that one person could not be granted the right to involve the state in a war, except for the need to take the necessary defensive steps. Only the people's representatives may involve the USA in a war or declare war.[956]Alexander Hamilton also has noted that the President, being the commander-in-chief of the armed forces during war, leads the armed forces; however, in difference to the British King, may not single-handedly involve the nation in war.[957] Although this is the exact provision in the Constitution of the USA and the authors of the Constitution did not allow any other possibility, the practice has expanded the

956 Степанова О.Л. Комментарий. In: Гамильтон А., Мэдисон Д., Джей Д. Федералист. Москва: Весь мир, 2000, с.581.

957 Hamilton A. The Federalist No.69. In: Hamilton A., Jay J., Madison J. Federalist Papers:85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.524-533.

President's rights significantly, leaving the letter of the Constitution unchanged. Presidents of the USA, in their practice, have often involved their state in a war even without receiving formal sanction permission from the Congress.[958]

Article 134 of the Constitution of Poland of 1997 provides that the President of the Republic is the Supreme Commander of the Armed Forces of the Republic of Poland and, in times of peace, exercises command over the Armed Forces through the Minister for National Defence. For a period of war, the President appoint the Commander-in-Chief of the Armed Forces on request of the Prime Minister. A similar regulation on the President's powers is included in Article 42 of the *Satversme*: "The President shall be the Commander-in-Chief of the armed forces of Latvia. During wartime, the President shall appoint a Supreme Commander."

The Commander-in-Chief of the armed forces is not a military rank and it does not grant the right to lead troops.[959] Thus, the President is defined as the supreme public official who is responsible for the national armed forces.[960] Laws, adopted by the *Saeima*, provide detailed regulation on the President's powers in the area of national security and defence. Generally, it could be recognised that, pursuant to the first sentence of Article 42 of the *Satversme*, the President has the right and the obligation to ensure that the national armed forces are well-prepared and provided with the necessary resources, are correctly distributed and deployed, etc. Likewise, the President has the right to receive detailed information about the situation of the national armed forces and, if necessary, to show their initiative in these matters. The President also has the right to appoint officers and

958 Мишин А.А., Барабашев Г.В. Государственное право буржуазных и развивающихся стран. Москва: Юридическая литература, 1989, с.261.

959 Valsts prezidenta Konstitucionālo tiesību komisijas 2011.gada 10.maija viedokļa "Par Valsts prezidenta funkcijām Latvijas parlamentārās demokrātijas sistēmas ietvaros" 177.punkts.

960 Valsts prezidenta Egila Levita 2020.gada 22.decembra paziņojuma Nr.18 "Par Valsts aizsardzības mācības un Jaunsardzes likumu un pilsoniskās izglītības koncepciju" I sadaļa.

to promote them, as well as to dismiss them from service.[961] As the supreme commander of the national armed forces, the President coordinates the operations of the national defence institutions .[962]

From the perspective of state law, the provision of Article 42 of the *Satversme* on separating the offices of the President and Supreme Commander in times of war is entirely correct because combining the offices of the President and the Supreme Commander of the armed forces could lead to an undesirable confusion of functions, taking into account that some of the acts, which the President can issue only with countersignature, the Supreme Commander could issue without countersignature.[963] The meaning of the second sentence of Article 42 of the *Satversme* is that, in times of war, the offices of the President and the Supreme Commander of the armed forces cannot be combined.[964] The Law on the Supreme Commander of Armed Forces for the Time of War of 1932 provided for a combined Commander of the armed land and naval forces, who directs war operations and knows the military districts. Similarly, the National Security Law of 2000 initially provided that the President appointed, for the time of war, the Supreme Commander of the National Armed Forces, who directed the military defence of the state. The appointment of the Supreme Commander for the period of war was envisaged with the aim of entrusting the command of the national armed forces, in times of war, to a person who was sufficiently competent in directing military operations, and who would not be appointed before war but in times of war. This could be a high-ranking military person with appropriate military education and experience .[965] Amendments to the National

961 Dišlers K. Latvijas Valsts prezidenta kompetence. Tieslietu Ministrijas Vēstnesis, 1922, Nr.3, 119.lpp.; Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 171. - 172.lpp.

962 Valsts prezidenta Konstitucionālo tiesību komisijas 2011.gada 10.maija viedokļa "Par Valsts prezidenta funkcijām Latvijas parlamentārās demokrātijas sistēmas ietvaros" 180.punkts.

963 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 172.lpp.

964 Dišlers K. Latvijas valsts varas orgāni un viņu funkcijas. Rīga: Tieslietu Ministrijas Vēstneša izdevums, 1925, 103.lpp.

965 Par Valsts prezidenta tiesībām iecelt virspavēlnieku un NBS vadīšanu kara gadījumā. Saeimas Juridiskā biroja 2001.gada 26.novembra vēstule Nr.12/17-705 Valsts kancelejas Krīzes kontroles centram. In: Saeimas Juridiskā biroja dokumenti. 1993-2013. Rīga: Latvijas Vēstnesis, 2013, 105.-106.lpp.

Security Law of 2016 provide that the Supreme Commander directs the defence of the state to prevent threats to the independence of the state, its constitutional order and territorial integrity, if the Cabinet is delayed in performing wartime tasks. Pursuant to contemporary military doctrines, the Supreme Commander's position will rather fulfil a backup function if the Cabinet was delayed or unable to discharge the obligations entrusted by law. If the Cabinet were delayed in time of war, its functions would take over the Supreme Commander, appointed by the President, who would continue to lead the national defence. Hence, the powers granted to the Military Commander is not so much military but rather political powers for times of war. The Supreme Commander's main function would be preventing external threats to the independence of the State of Latvia and unimpeded restoration of the operations of the bodies of state power, envisaged in the *Satversme*, if the Cabinet, due to reasons caused by the treat to the state, is delayed in performing its functions.[966]

The *Satversme* and laws do not set the requirements that the candidate for the office of the Supreme Commander should meet and also do not specify the circle of persons, from the which the President could choose the Supreme Commander. Appointment of the Supreme Commander for the period of war is the President's, as the Commander-in -Chief of the national armed forces, prerogative.[967] The second sentence of Article 42 of the *Satversme* gives the President the possibility to appoint to the Supreme Commander's office an authoritative and experienced person who would be able to ensure, in an emergency situation, defence of the State of Latvia against external threats and restore peace when the bodies of state power, envisaged in the *Satversme*, can resume their activities. For example, in the autumn of 1944, the Latvian Central Council considered the possibility of appointing as the Supreme Commander General Jānis Kurelis, thus

966 Pleps J. Latvijas Centrālās padomes prakses nozīme Satversmes interpretācijā. In: Ārvalsts investīcijas: kad tiesības mijiedarbojas. Latvijas Universitātes 74. zinātniskās konferences rakstu krājums. Rīga: LU Akadēmiskais apgāds, 2016, 52.lpp.

967 Valsts prezidenta Konstitucionālo tiesību komisijas 2011.gada 10.maija viedokļa "Par Valsts prezidenta funkcijām Latvijas parlamentārās demokrātijas sistēmas ietvaros" 185.punkts.

granting him the right to declare restoration of the independent statehood and take over the entire military and civil power until a provisional government was established.[968]

It should be kept in mind that if all institutions of state power are completely liquidated, Section 25 of the National Security Law outlines a sui generis constitutional act, on the basis of which the state power would be transferred to the government in exile.[969] Section 25 (3) of the National Security Law provides: if the authorities implementing legitimate state power and administration have been liquidated in an antidemocratic way or as a result of military aggression of another state, then in the interests of maintaining or restoring the independence the Ambassador Plenipotentiary of Latvia to the United Nations has the powers to represent the legitimate state power of Latvia. The right to represent the legitimate state power is not personal and, if necessary, must be transferred in compliance with the established procedure.

The President of Estonia as the head of state and symbol of unity has been entrusted with tasks of national defence. Nowadays, the state of war, mobilisation and demobilisation are declared by the State Assembly upon the President's proposal and the President may act without waiting for the State Assembly's decision only in cases where the Republic of Estonia is targeted by aggression. However, if the Estonian Constitutional Order is under threat, the State Assembly, upon the President's or the government's proposal, may declare state of emergency for no longer than three months. The Estonian National Court recognised that the government's and the President's powers in directing the national defence should be based on balanced cooperation of these two institutes, which follows from Article 1 and Article 4 of the Constitution. By this decision, the National Court has substantially transformed the understanding of the constitutional

968 Pleps J. Latvijas Centrālās padomes prakses nozīme Satversmes interpretācijā. In: Ārvalsts investīcijas: kad tiesības mijiedarbojas. Latvijas Universitātes 74. zinātniskās konferences rakstu krājums. Rīga: LU Akadēmiskais apgāds, 2016, 52.lpp.

969 See also: Valsts prezidenta Konstitucionālo tiesību komisijas 2013.gada 25.jūlija sēdes protokols Nr.3. Nav publicēts.

provisions regarding the President's rights in the area of defence. Initially, it might have seemed that the President as the Supreme Commander of the national defence had real powers, following this judgement, the President may exercise their powers only in cooperation with the government. The reference made by the National Court that the President is politically unaccountable and political decisions must be taken on matters of national defence, where the government also should have its say, means that the President's powers in the area of defence turn into the government's powers, which it may exercise with the mediation of the head of state. This position characterises precisely the president's role in a parliamentary republic.[970]

VI. President's right to issue legal acts

The president is granted the right to issue legal acts so that they could exercise their powers; however, the procedure for exercising the said right, the place of these legal acts in the hierarchy of regulatory enactments and preconditions for their entering into force differ significantly.

In parliamentary republics, the legal acts issued by the presidents usually are of minor importance, because countersignature is required for issuing legal acts or the constitution defines exhaustively these special powers of the President, which are limited to making a choice, in rare cases providing for discretion, in particular, in performing the creative function, to the right to grant clemency or to legislative actions. Sometimes president are granted the powers of delegated legislation in special circumstances. Article 109 of the Estonian Constitution allows the President of the Republic to issue decrees, countersigned by the President of the State Assembly and the Prime Ministers, which have the force of law, in case of urgent national need and if the State Assembly cannot be convened. It is needed to ensure

970 Decision of the Constitutional Review Chamber of the National Court of Estonia of 21 December 1994. https://www.riigikohus.ee/en/constitutional-judgment-III-4A-1194

the continuity of legislative power in circumstances where the State Assembly has been delayed in exercising its legislative functions. When the State Assembly is convened, the President immediately submits the decrees to it and the State Assembly immediately decides on adopting a law to approve or to revoke them.[971] The situation is different in presidential or semi-presidential republics. Thus, for example, the US Congress delegates part of the legislative powers to the President. The President of France may adopt an ordinance on the respective matter if the Parliament has not adopted a law within 70 days following the submission of a draft law. The President of Russia, also, exercises extensively the right granted to him to issue decrees. The decrees may be both normative and non-normative as to their nature; moreover, decrees of normative nature may be subject to law (a federal law requires to issue them) or may be issued to fill in "lacunae" in laws .[972]

Analysis of the powers of the presidents of republics to issue legal acts reveals that states have very different practices; however, several common principles may be identified. Firstly, the president's legal acts usually are not normative in nature, except for acts issued on the basis of exclusive rights (emergency situations, substituting an act not issued by the parliament or by exercising delegation), in directing the executive power or organising institutions subject to them (internal regulatory enactments). Secondly, the president's powers to issue legal acts are directly proportional to the president's role in the respective state order. Thirdly, a legal act may require countersignature. Fourthly, legal acts usually are issued in writing, some of them may be administrative acts. Fifthly, legal acts that do not directly pertain to private persons may be classified information.

In analysing the powers of the President of Latvia to issue legal acts, they, first and foremost, must be examined in the context of

971 Decision of the Constitutional Review Chamber of the National Court of Estonia of 13 June 1994. https://www.riigikohus.ee/en/constitutional-judgment-III-4A-494

972 Баглай М.В. Конституционное право Российской Федерации. 4-е изд. Москва: Норма, 2004, с.461-462.

Article 53 of the *Satversme*. This article provides that all orders by the President must be countersigned, except the ones on inviting a Prime Minister and proposing dissolution of the *Saeima*. The aim of this Article is to prevent dualism in the executive power. Orders are only part of the President's legal acts,[973] which mainly apply to the area of executive power, i.e., appointing diplomatic representatives, exercising the powers of the Commander-in-chief of the national armed forces and dealing with other matters of public administration, e.g., defining some policy aims or establishing a collegial institution of the executive power. Moreover, due to the specificity of the military area, an order may be called a command and, due to diplomatic customs, an order on choosing an ambassador can be presented as a letter, which is confirmed by the President's seal.

To assess the presidential legal acts, it is important to understand the area that they pertain to,[974] i.e., is it a matter of the executive power (due to which the legal act must be countersigned), of the area of legislation or a matter of the judicial power (the legal act must be countersigned). All those acts, which the President, on the basis of their powers, submits to the parliament, are not orders because the *Saeima* is the supreme institution of the state power and the President may not give orders to it.[975] The title of the legal act is not of decisive importance it is recommended to design the title to make the content of the document more comprehensible. The President publishes legal acts or information about them in the official journal "Latvijas Vēstnesis." The requirements set for the legal effect of organisation's document are applicable to legal acts, except for the provisions made in Article 41 of the *Satversme*. The President's administrative acts, which are usually issued in accordance with the Military Service Law, may be appealed in court if the statutory requirements are

973 Valsts prezidenta Konstitucionālo tiesību komisijas 2011.gada 10.maija viedokļa "Par Valsts prezidenta funkcijām Latvijas parlamentārās demokrātijas sistēmas ietvaros" 101.punkts.

974 Juristi analizē Valsts prezidentes rīcību un Satversmes 81.pantu. Jurista Vārds, 2007. 20.marts, Nr.12(465).

975 Dišlers K. Latvijas valsts varas orgāni un viņu funkcijas. Rīga: Tieslietu Ministrijas Vēstneša izdevums, 1925, 98.lpp.

met. The decisions regarding persons, issued in accordance with the State Awards Law, are political decisions and cannot be considered as being administrative acts.

The basic classification of the President's legal acts should be the following: orders (including commands and letters on the appointment of diplomatic representatives, description of a local government's coat-of-arms or confirmation of an internal regulatory enactments), acts of clemency (including decisions on refusing clemency), announcements (inter alia, on absence, activities in the area of legislation and other activity, which does not interfere with the operations of institutions subject to the Cabinet, i.e., permission to wear an award of a foreign state or appointing the Head of the President's Chancery),a reasoned writ on re-examination of a law, promulgation of a law, an act on accepting a judge's oath and confirmation of such internal regulatory enactment that has been set out in law and does not pertain to operations of institutions subject to the Cabinet (i.e., approval of the regulation of the Chapter of Orders or the State Heraldry Commission. In addition to that, the President solely signs the decisions by the National Security Council, which are adopted by a collegial institution, which includes also the Prime Minister.[976] Rather frequently an opinion has been voiced in legal literature and practice that certain sequence of signing must be observed with respect to a countersigned President's order or that the President only controls the content of the legal act, which is initiated by the respective minister. It should be taken into account that the order may be initiated both by the President and the minister. Moreover, it can be signed with both officials being present. Usually, the Member of the Cabinet is the first to sign the document; however, the sequence may be different due to political considerations. Also, several Members of the Cabinet may countersign the legal act.

976 Pastars E. Ievadtēzes diskusijai par atsevišķu prezidenta pilnvaru īstenošanas kārtību. Jurista Vārds, 2012. 25.decembris, Nr.52(751); Valsts prezidenta kancelejas 2012.gada 17.aprīļa kārtība Nr.0444 "Valsts prezidenta tiesību aktu noformēšanas, reģistrēšanas, publicēšanas un aktualizēšanas kārtība." Nav publicēta.

A specific legal act, issued by the head of state, is the act of clemency, the need for it is often derived from the fact that a convicting judgement may be just at the moment of its delivery but after some time circumstances make it unjust, and the balance between the humane and the legal must be restored. [977] During the inter-war period, scholar of criminal law Paul Mintz wrote that clemency meant pardon: "God pardons in heaven, whereas the monarch, who has been anointed by Him and has inherited from Him the complete power, pardons on earth. "[978] With the consolidation of the idea of parliament's superiority, which defined the politically responsible Cabinet as the head of the executive power, the need to limit the dualism of the executive power appeared because, historically, the president, as the heir to the monarch, dominated. Therefore, some parliamentary states, which had been established during the period of parliamentary romanticism, required countersignature to the act of clemency (constitutions of Latvia, Austria, Lithuania of 1922) but others did not demand it (Poland).[979] Nowadays, the Federal President of Germany may transfer exercise of this right to other institutions. The federal minister drafts the President's decision on clemency; however, the initiative should come from the President. In Germany, it is considered that the act of clemency is not legally free and "there is legal protection against it."[980] The head of state's right to grant clemency is placed between the functions of the judicial and the executive power. By granting clemency, the President does not revoke the court's judgement but only revokes the obligation to punish, i.e., the obligation of the executive power to enforce the sentence given by the judicial power. Simon Vittenberg in his book "The Legal Significance and Effect of the Act on Clemency" rejects the need of countersigning

977 Vitenbergs S. Apžēlošanas akta juridiskā nozīme un sekas. Rīga: Rota, 1940, 3-7.lpp.

978 Mincs P Krimināltiesību kurss. Vispārējā daļa. 2.izd. Rīga: autora izdevums, 1934, 310.lpp.

979 See more: Pleps J., Pastars E. Vai prezidents, apžēlojot notiesātos, pārkāpj Satversmi. Latvijas Vēstnesis, 2002. 12.marts.

980 Paine F.J. Vācijas vispārīgās administratīvās tiesības. Vācijas Administratīvā procesa likums. Rīga: Tiesu namu aģentūra, 2002, 111.lpp.

the clemency act. Nowadays, the role of the President of Latvia in the system of separation of powers and coordination of the branches of state power has increased sufficiently to justify the creation of a conventional norm – issuing and validity of a clemency act without countersignature. The right to clemency is exercised individually, rather than being impersonal and mass-scale, although President of the Republic of Latvia Guntis Ulmanis in his speech at the Parliamentary Assembly of the Council of Europe announced that he would not dismiss a requested for clemency by any person sentenced to death.[981]

981 Tihonovs J. Pasludina moratoriju nāvessodam. Diena, 1996.gada 25.septembris.

Chapter 6

LEGISLATIVE POWER

I. Concept of the legislator's power

A state governed by the rule of law cannot exist without the supremacy of law, as well as without the judicial power and public administration being subject to law.[982] The legislator's role in a state governed by the rule of law is invaluable, to a large extent, it is the foundation for the existence of a state governed by the rule of law. Pursuant to the theory of separation of powers, the legislative power, traditionally, is ranked as the first among other branches of the state power. The legislator's priority may be explained by the fact that the judicial and the legislative powers act on the basis of law and to ensure enforcement of laws. However, such supremacy of the legislator cannot be absolutized because that would be incompatible with the very idea of a state governed by the rule of law and the principle of separation of powers. In a democratic republic, the parliament itself must comply with the constitution and other laws, including those adopted by the parliament itself.[983] However, the legislator's exclusive right and ability to define certain rules of conduct, issue legal acts with higher legal force are undeniable. The legislator's power is such power that organises and reinforces the state order.

982 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.81.

983 Judgement by the Constitutional Court of the Republic of Latvia in Case No.2001-06-03, Para 4 of the Findings.

In a democratic state governed by the rule of law, the legislator itself must decide on the most important issues in the life of the state and society by law. The highest degree of democratic legitimisation granted to the parliament is the grounds for granting the parliament the exclusive right to decide on all important and significant matters in the life of the state and society.[984] Likewise, actually, it is the parliaments itself who has the right to decide first, in case of doubts, which issue is to be considered as being sufficiently important and significant so that the parliament itself would decide exclusively on it. Whereas in the framework of constitutional review, the constitutional court has the right to verify whether, in the particular case, the parliament's own decision had not been required.[985] The theory of materiality is one of the general legal principles in the Latvian legal system.[986] Also the principle of lawful basis and the priority of law are closely linked to the theory of materiality. The principle of lawful basis provides that a restriction on human rights may be established only by law or on the basis of law, i.e., that the legislator itself has decided on the need for the respective restriction in democratic society.[987] The principle of the priority of law, in turn, requires the legislator itself to decide also on matters pertaining to issues that are important for democratic society and state order, envisaging a more favourable regulation for a person or a group of persons.[988]

The idea of the legislative power's dominance over other branches of power failed in revolutionary France. The Constitution of 1791 subjected the executive power to the legislator totally, leaving only

984 Valsts prezidenta Konstitucionālo tiesību komisijas 2010.gada 18.janvāra viedokļa "Par Saeimas apstiprinājuma nepieciešamību liela apjoma aizņēmumu saņemšanai" 26. – 28.punkts.

985 Judgement by the Constitutional Court of the Republic of Latvia of 21 December 2009 in Case No. 2009-43-01, Para 30.1.

986 Judgement by the Constitutional Court of the Republic of Latvia of 11 March 1998 in Case No. 04-05(98).

987 Biksiniece-Martinova L. 11.pants. In: Administratīvā procesa likuma komentāri. A un B daļa. Sagatavojis autoru kolektīvs Dr.iur. J. Briedes zinātniskajā redakcijā. Rīga: Tiesu Namu Aģentūra, 171. – 176.lpp.

988 Levits E. 14.pants. In: Administratīvā procesa likuma komentāri. A un B daļa. Sagatavojis autoru kolektīvs Dr.iur. J. Briedes zinātniskajā redakcijā. Rīga: Tiesu Namu Aģentūra, 196. – 209.lpp.

technical enforcement of laws in its competence. However, over time, the parliament's supremacy was sacrificed to reinforce the executive power, Napoleon's dictatorship replaced the National Convention's autocracy.[989] Practice proved the erroneousness of John Locke's idea that only one supreme power, i.e., the legislative power could exist in a constitutional state to which all others had to submit.[990] The legislator's supremacy in the organisation of the state power does not mean its absolute and unrestricted power. In a democratic state governed by the rule of law, the legislative power has several essential political and legal restrictions.[991] Subordination of other powers to the law adopted by the legislator does not mean subordination of these branches of power to the legislator personally. It follows from the nature of the legislative power because the people, who have elected the parliament, still retain the ultimate power to dismiss or replace this parliament when the people have seen the legislative power acting contrary to the people's interests.[992] The legislative power is delegated collegial power so that persons, representing various interests, who have convened in due procedure could create laws in due procedure. The power of the people where the people themselves adopted laws and oversaw their enforcement, is replaced by the power of the people's representatives.[993] In a democratic state governed by the rule of law, where the principle of separation of powers operates, the legislative power is exercised by a democratically elected parliament or, in a federative state, several parliaments, separated in their competences. It is considered that a modern parliament consists of two chambers, thus ensuring greater separation of powers within the

989 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.65.

990 Locke J. The Second Treatise of Civil Government. https://www.gutenberg.org/files/7370/7370-h/7370-h.htm

991 Теория права и государства, Лазарев В.В. (ред.) Москва: Новый Юрист, 1997, с.327.

992 Locke J. The Second Treatise of Civil Government. https://www.gutenberg.org/files/7370/7370-h/7370-h.htm

993 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.143.

legislative branch of power itself.[994] However, in many states, in compliance with the principle of the people's sovereignty, a one-chamber parliament is created, representing undivided people's power. The legislative power is exercised not only by the parliament but also by the people themselves in a referendum or by other institutions of the state power if the constitution provides for the institute of delegated legislation.

Article 64 of the *Satversme* provides that the legislative power is vested in the *Saeima* and the people, to the extent provided for by the *Satversme*. Pursuant to the *Satversme*, the legislative power in Latvia is divided between the *Saeima* and the totality of Latvian citizens, who decides on the legislative issues in referendums.[995] Alongside the *Saeima*, the totality of Latvian citizens is the second full-fledged legislator within the Latvian legal system. The competence of the totality of Latvian citizens, defined in the *Satversme*, considerably exceeds the elements of direct democracy, included in constitutions of European states, in this respect being behind only Switzerland.[996] The totality of Latvian citizens as the legislator may decide itself on adopting laws and amendments to the *Satversme* (Article 78 of the *Satversme*), as well as on revoking laws adopted by the *Saeima* (Article 72 of the *Satversme*) and on approving some amendments to the *Satversme* made by the *Saeima* (Article 77 of the *Satversme*).[997] The mechanisms of a referendum, as well as the right granted to the totality of citizens to submit a fully elaborated draft law or draft amendments to the *Satversme*, although complicated procedural order has been set for exercising it, turn the totality of Latvian citizens not only into a separate body of the state power, which democratically legitimises the *Saeima*

994 Проблемы обшей теории права и государства. Нерсесянц В.С. (ред.) Москва: Норма, 2002, с.581.

995 Judgement by the Constitutional Court of the Republic of Latvia of 29 November 2007 in Case No.2007-10-0102, Para 56.

996 Levits E. Demokrātiskā valsts iekārta, brīvas vēlēšanas un parlamentārā demokrātija. Struktūra, loģika un priekšnosacījumi. In: Parlamentārā izmeklēšana Latvijas Republikā. 1. Parlaments. Parlamentārā kontrole. Prof. Ringolda Baloža zinātniskā redakcijā. Rīga: Latvijas Vēstnesis, 2016, 21. – 22.lpp.

997 Judgement by the Constitutional Court of the Republic of Latvia of 2009.gada 19.maija sprieduma lietā Nr.2008-40-01 11.punkts.

in elections, but gives it the right to participate directly in deciding on particular legislative issues.[998]

The order of the State of Latvia can be characterised as representative democracy in the typical form of parliamentary democracy but with strong elements of direct democracy. Egils Levits has proposed to characterise such order of the state as parliamentary plebiscitary.[999] The Latvian Constitutional Assembly has tried to use elements of direct democracy to restrict and balance the dominant role of the *Saeima* within the constitutional system.[1000] "In some cases, the legislative power or the *Saeima* may digress from the opinion of the people's majority, or may, to a large extent, contradict the people's will and this may cause conflicts, which may end in acute complications, severe consequences. The people's direct participation in legislation makes the state only stronger, as it gives greater flexibility to normal development of legislation."[1001] Within the framework of legislative power, defined by the *Satversme*, the *Saeima* is omnipotent, i.e., it may adopt laws on any issue.[1002]

Delegated legislation is constitutional authorisation given to the head of state or the government to issue regulatory enactments with the force of law instead of the legislator.[1003] The delegated right to legislate to other institutions "is a derogation from the normal model of the state order because, with the introduction of a constitutional act, the negation of the legislative path is permitted, since this

998 See more: Nikuļceva I. Tautas nobalsošana un vēlētāju likumdošanas iniciatīva. Promocijas darbs. Rīga: Latvijas Universitāte, 2012.

999 Levits E. Demokrātiskā valsts iekārta, brīvas vēlēšanas un parlamentārā demokrātija. Struktūra, loģika un priekšnosacījumi. In: Parlamentārā izmeklēšana Latvijas Republikā. 1. Parlaments. Parlamentārā kontrole. Prof. Ringolda Baloža zinātniskā redakcijā. Rīga: Latvijas Vēstnesis, 2016, 39.lpp.

1000 Pleps J. Latvijas valsts konstitucionālie pamati. In: Latvija un latvieši. Akadēmiskie raksti divos sējumos. I sējums. Rīga: Latvijas Zinātņu akadēmija, 2018, 115. - 116.lpp.

1001 Latvijas Satversmes sapulces IV sesijas 1921.gada 21.septembra sēdes (2.sēde) stenogramma.

1002 Valsts prezidenta Konstitucionālo tiesību komisijas 2011.gada 31.maija viedokļa "Par iespējamo ministra noteikumu satversmību" 24.punkts.

1003 Pastars E. Kas ir deleģētā likumdošana. Jurista Vārds, 2003. 14.janvāris, Nr.2(260), 2003. 21.janvāris, Nr.3(261).

can violate the procedure set out in general laws."[1004] However, in the circumstances of forming a new state, this cannot be avoided.[1005] Within the Latvian legal system, Article 81 of the *Satversme* granted to the Cabinet the right to issue regulations with the force of law if there was an urgent need for it. Until Article 81 was deleted from the *Satversme* in 2007, the Cabinet exercised this right to legislate, granted by this article, existing within the Latvian legal system as an institute of delegated legislation.[1006] Likewise, the institute of delegated legislation may be needed in emergency situations to ensure that the right to legislate is exercised if the parliament is delayed or the respective issue needs to be resolved urgently. For example, the Covid-19 pandemic highlighted the need for restoring modernised Article 81 of the *Satversme*, granting again to the Cabinet the right to issue regulations with the force of law in emergency situations.[1007] Irrespectively of who exercises the legislative power – the people, the parliament that has been democratically legitimised by them or the government, by issuing regulations having the force of law, this is the power that has the right to point out how the force of the state should be used for the preservation of society and its members.[1008] In addition to delegated legislation, there is a wide range of regulatory enactments subordinated to law, which have been adopted to regulate issues that the legislator has seen as such that can be more effectively regulated on the level of the executive power, at the same time, retaining the possibility that it could itself regulate the issue by law at any time. Regulatory enactments subordinated to law (Cabinet

1004 Mucenieks P. Valdības tiesības izdot noteikumus ar likuma spēku. Tieslietu Ministrijas Vēstnesis, 1924, Nr.11,473.lpp.

1005 Griķis J. Ministru kabineta likumdošanas darbība Latvijas praksē. Tieslietu Ministrijas Vēstnesis, 1924, Nr.9, 388.lpp.

1006 See more: Jelāgins J. Tiesību pamatavoti. In: Jelāgins J. Latvija ceļā uz tiesiskumu. Rakstu krājums. Rīga: Tiesu Namu Aģentūra, 2020, 107. – 110.lpp.

1007 See more: Levits E. Satversme ārkārtas apstākļos. Jurista Vārds, 2020. 5.maijs, Nr.18(1128); Balodis R. Ir nepieciešama adekvāta pēcnācējnorma svītrotā Satversmes 81.panta vietā. Jurista Vārds, 2020. 27.oktobris, Nr.43(1153).

1008 Locke J. The Second Treatise of Civil Government. https://www.gutenberg.org/files/7370/7370-h/7370-h.htm

regulations, local government binding regulations, etc.) are issued in administrative order as the executive power's actions.[1009] They should not be considered as being acts of delegated legislation, in exercising the right to legislate, i.e., they are not issued in the framework of legislative actions.[1010]

II. Concept of the parliament

The parliament and the legislative power are not identical concepts. The legislative power is the constitutional right to issue generally binding abstract precepts to regulate the most important aspects in public life and to implement constitutional principles and norms in the constitutional reality. Whereas the parliament is an institution whose separate acts form a certain segment of this constitutional reality. Institutions of legislative representation are among those institutions of state power that are comprised not of a single person but of a collegium. The representative system is organisation through which the people entrust some persons with tasks that the people themselves are unable or unwilling to perform. The people entrust a certain group of persons to exercise the authorisation, wishing to see their interests protected as the people themselves are unable to defend them at all times.[1011]

The concept of the parliament stems from the English word parliament, which, in turn, originates from the word in French parler - "to speak ." Institutions of representation are encountered already in the poleis of Ancient Greece, in Rome and the lands of ancient Russia. The idea of parliamentarism was born in the fight against feudal

1009 Judgement by the Constitutional Court of the Republic of Latvia of 9 October 2007 in Case No.2007-04-03, Para 14, and Judgement of 2 March 2016 in Case No.2015-11-03, Para 21.1..

1010 See more: Pastars E. Kas ir deleģētā likumdošana. Jurista Vārds, 2003. 14.janvāris, Nr.2(260), 2003. 21.janvāris, Nr.3(261). Compare: Levits E. Normatīvo tiesību aktu demokrātiskā leģitimācija un deleģētā likumdošana: teorētiskie pamati. Likums un Tiesības, 2002, Nr.9(37), 261. – 268.lpp.

1011 Гомеров И.Н. Государство и государственная власть. Москва: Юкэа, 2002, с.584.

impunity and the king's absolute power.[1012] The origins of the contemporary parliament can be traced in England of XIII century, where the parliament was regarded as the institution representing the estates to restrict the king's power. Later such institutions formed also in France, Spain, Poland, and in other states. At the time, the origins of a state were viewed from the positions of the patrimonial theory, i.e., the genesis of a state was linked to the owner's right to land, which determined the private law constitution of representation. Deputies were only representative of their estates, which the estates sent to defend their interests before the king.[1013]

Nowadays, the legislative work is considered to be the main function of all parliaments. However, in the historical development of parliamentarism, the involvement of the parliament of estates in deciding on budgetary matters was recognised as the first, i.e., the monarch did not have the right to collect taxes without the parliament's consent.[1014] For example, the English Parliament demanded to be given the right to legislate only in 1381, so that no law could enter into force without the parliament's consent, whereas the parliament's competence on budgetary matters was clearly defined already in 1297. This law provided that the King could not collect taxes and duties without the consent and common will of archbishops, bishops and other prelates, counts and barongs, knights, city-dwellers and other free people. The situation was similar in France of Middle Ages, the Estates General were convened to decide on budgetary matters, without them interfering into the king's right to legislate. Jean Bodin, in defending the king's sovereignty and contesting the Estates' General right to make decisions that bind the king, at the same time admitted: there is no king in the world who could tax his subjects

1012 Энтин Л.М. Разделение властей: опыт современных государств. Москва: Юридическая литература, 1995, с.65.

1013 Елистратовъ А.И. Очеркъ государственнаго права. Москва: Мысль, 1915, с.66.

1014 Sajó A. Limiting Government. An Introduction to Constitutionalism. Budapest: Central European University Press, 1999, p.103.

arbitrarily, without their consent.[1015] Initially, the parliament's right to legislate was considered as only the right to participate in the king's legislation; later, however, the king's power was reduced to minimum, and in England, since 1707 when Queen Anne exercised her absolute veto right, no other monarch has exercised it.[1016] The composition of parliaments also has changed significantly over time, departing from the idea of representing estates, which, consequently, allowed the parliament to take a much more significant place in the life of the state, based on extensive public legitimacy. Parliaments acquired the right to legislate and, most importantly, the right to decide on taxes and the budget. In England, representation of estates was abolished in the times of Tudors, when the parliament already was the people's representation and not an assembly of representations of some estates or regions. It was emphasised already in 1774 that "the parliament is not a congress of ambassadors, serving various contradictory interests, where everyone should, as an agent or an advocate, fight against other agents or advocates; a parliament is a free, advisory assembly of a nation, acting in the general interests, and not the local aims, local prejudices should prevail in it but rather - common welfare, which follows from the general common sense. You are the ones who elect a deputy; however, after you have elected him, he is no longer a representative of Bristol but is a Member of the Parliament."[1017]

The representative nature of the parliament demands that at least part of its members must be elected, otherwise, even if it exercised the legislative power, this institution could not be recognised as being a parliament. Parliamentary representation is a constitutional principle, which specifies the paths for implementing the people's sovereignty. The state power comes from the people but it is exercised only in forms that are regulated in the constitution, i.e., with the mediation of

1015 Котляревский С.А. Конституционное государство. In: Котляревский С.А. Конституционное государство. Юридические предпосылки русских Основных Законов. Москва: Зерцало, 2004, с.130-131, 135.

1016 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 316.lpp.

1017 Ibid, 314. – 315., 158.lpp.

special institutions, including institutions of the legislative power.[1018] Hence, the people's sovereignty cannot be implemented by any subject but only by the specific institutes for implementing the people's sovereignty that are included in the constitution.[1019] The doctrine of the people's representation is aimed at making the deputies express the will of the citizens themselves because this doctrine wishes to see through the vantage point of the people's representation in the parliament's actions the implementor of inhabitants' lawful demands.[1020]

John Locke and Charles-Louis de Montesquieu associated the parliament only with the legislative function. The legislative power may not have the right to suspend (control) the actions of the executive power because the latter, as to its nature, is already restricted by law and matters of the executive power require swift solutions, which would be greatly slowed down if the legislative power intervened.[1021] The legislator's intervention into the work of the executive power would transform it into the second legislator or a branch thereof. Jean-Jacques Rousseau objected against such a position, insisting on the indivisibility of the people's sovereignty, from which the legislator's right to control the executive power followed. As James Madison wrote, the legislator has the right to decide freely on the people's purse, therefore the legislator retains control over the executive power.[1022] Léon Duguit considered the parliament as being the mandator of the representation of the entire nation, i.e., the existence of relations of representation between the entire nation and the entire parliament.[1023]

1018 Бадура П. Парламентская демократия. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.48.

1019 Mikainis Z. Konstitucionālisma izpausmes Latvijas Republikas Satversmē. In: Tiesību transformācijas problēmas sakarā ar integrāciju Eiropas Savienībā. Rīga: Latvijas Universitāte, 2002, 380.lpp.

1020 Елистратовъ А.И. Очеркъ государственнаго права. Москва: Мысль, 1915, с.64.

1021 Montesquieu C.L. The Spirit of Laws. https://oll.libertyfund.org/title/montesquieu-complete-works-vol-1-the-spirit-of-laws

1022 Madison J. The Federalist No.51. In: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.394-400.

1023 Дюги Л. Конституционное право. Обшая теорія государства. Москва: И.Д. Сытин, 1908, с.416.

The concept of "parliament" should be differentiated from that of "parliamentarism", although they are closely interconnected. Parliamentarism is inconceivable without a parliament; however, the supreme institution of representation and legislation may also not comply with such features of parliamentarism as a debate, which forces the powers search for the truth together, public nature, which gives citizens an overview of the process in which the power looks for the truth and control over it, as well as the freedom of the press, which makes citizens themselves look for the truth and to make it known. Carl Schmitt advanced also such principles of parliamentarism as separation and balancing of powers and the relative rationalism of parliamentary thinking.[1024] Historically, parliamentarism has developed as a contradiction between the government and the parliament, which concluded by subjecting the government to the parliament's control.[1025] The parliament as the concept of the people's representative is characterised by the fact that the people's representation is enshrined in the constitution, the people as the bearer and source of sovereignty authorise the parliament to exercise on their behalf the legislative power, as well as the principle that a member of the parliament represents the people as a whole rather than those who elected him, and therefore he does not depend upon voters.[1026]

The powers of the parliament are broader than only participation in the exercise of the legislative power. Thomas Smith, the Secretary of State of Queen Elisabeth I, already provided a quite extensive definition of the parliament's power: "The supreme and absolute power in the state is vested in the Parliament [..]. The Parliament revokes the old laws, drafts new ones, issues orders on matters past and future, changes rights and the status of private person's property, legitimises bastards, establishes forms of religion, changes measures and weighs,

1024 Schmitt C. The Crisis of Parliamentary Democracy. Cambridge and London: The MIT Press, 1988, pp.33-50.

1025 Gribovskis V. Neizpildāmas prasības. Brīvā Zeme, 1923.gada 8.janvāris.

1026 Алиев Ш., Магерром О. Научно-практический комментарий к конституции Азербайджанской Республики. Баку: Юридическая литература, 2000, с.342.

determines the procedure for inheriting the throne, defines contestable rights, [..] exonerates, [..] convicts or releases those whose the Kings has brought before the court."[1027]

III. Parliament within the system of separation of powers

1. Status of the parliament within the constitutional system. The parliament as the bearer of the legislative power occupies an important role in the constitutional system. It is determined by the fact that the parliament is elected in direct election by all people. The more involved the people are in the formation of the parliament, the higher the legitimacy of such a parliament is and its gains greater authority vis-à-vis other institutions of state power.[1028] However, the parliament does not exist outside the system of separation of powers either. The constitutional principles are binding not only upon the institutions of state power but also upon the people, until they have not amended the constitution, and the representatives elected by them. The objective of the principle of separation of powers is to prevent inclinations to usurp the power in all three branches of power to ensure stability of the legal institutes of the state and continuity in the functioning of the state power. Political power in society is vested in the people, the sole bearer of the sovereign power and the sole source of this power. Since today the people themselves no longer decide on all matters of the state, the most important mechanism for implementing the rule of the people is election of the people's representatives, who act on behalf of the people, the people themselves retaining the right to decide on the most important matters in referendums.[1029] The people's

1027 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 316.lpp.

1028 Деметрашвили А.В. Грузия. Вводная статья. In: Конституции государств - участников СНГ. Москва: Норма, 2001, с.184.

1029 Тохян Ф. Конституционный порядок президентских выборов в современном мире. Ереван: Мхитар Гош, 1998, с.3.

representatives, elected in elections, generally constitute the institution that implements or should implement the people's sovereign will.[1030] Parliamentary acts should reflect the interests of the majority of society and of the parliamentary majority. Members of the parliament are representatives of the people as a whole and the people exercise their sovereign power with their mediation.

In a democratic parliamentary republic, the parliament and laws adopted by it are on the level of direct democratic legitimisation. The democratic legitimisation of the parliament is derived from the election of the parliament in free, general, direct, equal and secret election.[1031] Democratic legitimacy means a person's obligation to comply with only such order of the public power, which they themselves could have influenced by participating, together with others, in the political process, which leads to the expression of the public power's will.[1032] The Constitutional Court has concluded that a situation, where generally binding legal norms are issued by an institution that has not been democratically legitimised, is inadmissible in a democratic state governed by the rule of law.[1033] "In a democratic state governed by the rule of law, regulatory enactments are one of the instruments of the people's self-determination and self-governance. A mandatory requirement for a public body in a democratic state to acquire the right to issue external regulatory enactments is democratic legitimisation, i.e., this public body should be included in the chain of democratic legitimisation that links it to the will of the bearer of the sovereign power, that of the people."[1034]

1030 Энтин Л.М. Разделение властей: опыт современных государств. Москва: Юридическая литература, 1995, с.71.

1031 Judgement by the Constitutional Court of the Republic of Latvia of 2 March 2016 in Case No.2015-11-03, Para 21.2.

1032 Birkavs V. Satversme – domāšanas līmenis. Likums un Tiesības, 1999, Nr.3, 67.lpp.

1033 Judgement by the Constitutional Court of the Republic of Latvia of 220 March 2020 in Case No.2019-10-0103, Para 32.3.2.

1034 Judgement by the Constitutional Court of the Republic of Latvia of 20 February 2020 in Case No.2019-09-03, Para 23.

It is customary to try to derive the parliament's dominant role in the constitutional system from the direct legitimisation of the parliament in democratic elections. The Constitutional Court has noted in its judgement that "Legitimacy is the combination of the principles of legality, usefulness and reasonability. Those, who are authorised to implement legitimacy, shall take into consideration that, when adopting decisions, one has to check whether the above principles have been observed, without violating the principle of the separation of powers, envisaged by the *Satversme*."[1035] The parliament has the right to act insofar the direct expression of the people's will does not provide otherwise, whereas the constitution of a state sets the limits to the parliament's legislative rights. Marģers Skujenieks also underscored at the Latvian Constitutional Assembly that "public bodies are only the people's plenipotentiaries, in the name of who they exercise the state power."[1036] Enshrining of the parliament as the sole legislator in the state means its exclusive right to be the only one who implements the legislative function in the state. Acts by other institutions of the state power may be issued only to enact the constitution and laws, and they should be based on laws.[1037]

2.Types of parliaments. Several types of parliaments may be identified, depending on the parliament's constitutional status within the system of institutions of state power. An absolutely dominant parliament prevails totally over the executive power, and, usually, the head of the parliament performs also the functions of the head of state. A system like this existed in Latvia during the period of the People's Council and the Constitutional Assembly, as well as the Supreme Council. This type of parliament is characterised by the total dominance of the legislator, restricted only by the constitution and laws. No other institution of state powers has been given sufficient

1035 Judgement by the Constitutional Court of the Republic of Latvia of 24 March 2000 in Case No.04-07(99), Para 3 of the Findings.

1036 Latvijas Satversmes sapulces IV sesijas 1921.gada 20.septembra sēdes (1.sēde) stenogramma.

1037 Бурчак Ф.Г. Украина. Вводная статья. In: Конституции государств - участников СНГ. Москва: Норма, 2001, с.645.

competence to oppose the parliament. Within this system, the separation of powers is quite relative because the centre of all power sits in the parliament's assembly room.

A restrictedly dominant parliament is characterised by restriction on its power over the executive power by some mandates of the head of state or the government itself. In a situation like this, one can speak about the relative separation of powers, which is enshrined also in the *Satversme* of the Republic of Latvia. "The *Satversme* was adopted as a constitution of a pronouncedly strong legislative power, with the parliamentary regime being similar to the Westminster model."[1038] In view of its competence, defined in the *Satversme*, the *Saeima* may be considered as being one of the strongest parliaments in the world because the *Saeima* has broad possibilities to set the political agenda and be the centre of the constitutional order.[1039] It is ensured by extensive guarantees for the parliament's autonomy and the broadest possible competence of the parliament.[1040] Another important element in it is the political government, which depends upon the parliamentary majority's confidence, from which the obligation of the leaders of the parliamentary majority to become members of the government follows. Currently, however, the *Saeima*'s power has been decreased in the *Satversme* because the initially enshrined Westminster model "should not be dogmatised and turned into a benchmark but, quite to the contrary, should be assessed and improved. This was exactly the model that once led to dictatorship in several states."[1041] Thus, for example, parliamentarism did not become consolidated in inter-war

1038 Mikainis Z. Satversme - Latvijas Republikas konstitucionālais pamats. Latvijas Vēstnesis, 1997. 14.februāris, Nr.48(763).

1039 Latvijas Republikas 13.Saeimas rudens sesijas pirmās sēdes 2019.gada 5.septembrī stenogramma. See also: Ījabs I. Parlaments un reprezentācija mūsdienu demokrātijās. In: Priekšlikumi Latvijas publiskās varas pilnveidošanai. Ekspertu grupas pārvaldības pilnveidei materiāli. Rīga: Latvijas Vēstnesis, 2015, 145.lpp.

1040 Levits E. Demokrātiskā valsts iekārta, brīvas vēlēšanas un parlamentārā demokrātija. Struktūra, loģika un priekšnosacījumi. In: Parlamentārā izmeklēšana Latvijas Republikā. 1. Parlaments. Parlamentārā kontrole. Prof. Ringolda Baloža zinātniskā redakcijā. Rīga: Latvijas Vēstnesis, 2016, 39. – 42.lpp.

1041 Endziņš A. Latvijas demokrātija un īsteni tiesiskas valsts prakse. Jurista Vārds, 2000. 19.janvāris, Nr.3(156).

Lithuania, i.e., "within the short period of seven years and six months after gaining independence, seven Cabinets replaced each other within short intervals; parliamentary interpellations and debates were petty and nasty and testified to eternal, concealed crisis; the largest part of bourgeoisie lacked experience, and not a few of officials could be blamed for mistakes, corruption and exceeding their authority; taxation and social security systems were primitive and unjust."[1042] Lithuanians themselves call their first period of parliamentarism "seimocraty", emphasising its problems and deficiencies, which allowed abolishing the parliamentary order through coup d'état.[1043]

The autonomous parliament is the next type of parliaments to be mentioned, in its actions it is equal to the head of state and the government. Parliaments of this type exist in states where strict separation of powers between the legislator and the executive power has been implemented. A classical parliament like this is the US Congress. Restrictedly dependent parliament, in a certain way, depends on o the head of state's will. Such parliaments exist in states where the parliament's competence has been clearly defined and restricted in the constitution in favour of stability of the executive power. The president is also an essential element of the rational parliamentarism, balancing the parliamentary power and guaranteeing the stability of the constitutional order.[1044] This system has been implemented, first of all, in the Constitution of the Fifth Republic of France and the Constitution of Poland of 1935, which partially became the model for the French constitutional reform, implemented by the Gaullists.[1045]

An absolutely dependent parliament is totally dependent on the head of state or a political party. Thus, in 1933, Estonia abolished the parliamentary system by reforming the Constitution, introducing the

1042 Rothschild J. East Central Europe between the Two World Wars. Seattle and London: University of Washington Press, 1998, p.378.

1043 Maksimaitis M. Lietuvos valstybes konstitucijų istorija (XXa. pirmoji puse). Vilnius: Justitia, 2005, p.138.

1044 Pleps J. Latvijas prezidentūra reģionālā kontekstā. Jurista Vārds, 2012. 25.decembris, Nr.52(751).

1045 Rothschild J. East Central Europe between the Two World Wars. Seattle and London: University of Washington Press, 1998, p.69.

institute of a strong head of state. The legislative power was divided between the parliament, consisting of 50 members, and the head of state. The head of state could issue decrees with the force of law on all legislative matters, except the law on electing the head of state and the parliament. The parliament, however, could annul these decrees by the head of state but only before the session was closed. President of Estonia Konstantin Päts did not want to use this system of governance, which required sharing the legislative power with the parliament, and announced the historical necessity of adopting a new Constitution.[1046] In February of 1937, a new Constitution of Estonia was adopted, providing for a two-chamber parliament, consisting of the House of Deputies and the State Council. The power of the parliament was significantly limited by the reform. However, also this parliament was totally dependent upon Konstantin Päts' favours.[1047]

The Russian Federation, for example, in its short period of constitutional evolution, has implemented all types of parliaments. From June 1990 to June 1991, its Congress of the People's Deputies and the Supreme Council were an absolutely dominant parliament. Whereas in the summer of 1991, the Congress of the People's Deputies and the Supreme Council existed as a restrictedly dominant parliament. After August 1991, the president and parliament became autonomous and independent of each other. In November 1991, the Russian parliament became restrictedly dependent from the president, continuing like that until the events of October 1993. Pursuant to the Constitution of 1993, the Federal Assembly is absolutely independent from the president. Whereas before the changes of 1990s, the parliament was totally dependent on the Communist Party's dictate. Within a couple of years, parliamentarism in Russian has experienced all possible types of parliamentarism.[1048]

1046 Keesments J. Igaunijas republikas valdības svarīgākie likumi un akti laikā no 1934.gada 1.janvāra līdz 1935.gada 15.septembrim. Tieslietu Ministrijas Vēstnesis, 1935, Nr.4, 833. – 836.lpp.

1047 Якоби П. Основныя черти новой Эстонской конституци. Законъ и судъ, 1938, №7(87), с.4055-4057.

1048 Гомеров И.Н. Государство и государственная власть. Москва: Юкэа, 2002, с.587.

3.Transformation of the parliamentary power. Vladimir Hessen has concluded that such parliamentary order, in which the executive power is fully subject to the legislator, complies with the rule of the people. Several Latvian scholars of state law once also held that the separation of powers was contrary to the principle of the people's sovereignty and that the people's will could find its most complete expression only in a parliamentary order. However, Vladimir Hessen, in writing about the need for a parliamentary order, has combined it with the principle of separation of powers. The origins of the principle of separation of powers is found in subjecting the executive power to the legislator's will. The head of state, not being the legislator, is subject to law, but the ministers, who are appointed by the governing parliamentary majority, only implement the will of the head of state who is subject to law. The government, within the limits of its competence, implements the will subject to law, the will that is defined and limited by law.[1049]

Separation of the united state power into the branches of the legislative power, the executive power and the judicial power envisages establishing such a system of legal safeguards, checks-and-balances, which would ensure independent functioning of all branches of the state power and, simultaneously, their concerted actions. Institutions of the legislative power and the executive power function independently, within the limits of their competence, and each branch of the power is formed separately. The mandate of one branch of power to suspend the activities of another branch of power is admissible only if such mandate is balanced by a decision adopted in legislative procedure. The principle of separation of powers demands the legislative and the executive powers to be independent, which must be complied with in order to avoid making the executive power dependent on the parliament, which would be contrary to constitutional principles. Stability of both powers and balance of mandates can be achieved only if the mandate of one institution is in adequate balance

1049 Гессенъ В.М. Основы конституціоннаго права. Петроградъ: Право, 1918, с.291.

with the constitutional mandate of the other institution. It has been underscored in the interpretation of Article 59 of the *Satversme* that "the parliamentary responsibility is based on equal relations between the parliament and the government. If one body were to prevail over the other, the institute of parliamentary responsibility would not function effectively and would be degraded into a mere formality. The opinion that the government is "subject" to the parliament and should be viewed only as its executive body is wrong."[1050]

Currently, the omnipotence of parliaments is a myth of the past because all real power is concentrated in the hands of the leaders of the parliamentary majority who usually hold dominant positions in the government. A dominant political leader combines three positions; most frequently, he is the Prime Minister, the leader of his party and a member of the Parliament. He has great power but he depends on the confidence of the parliamentary majority. If this confidence is lost, the leader loses his might.[1051] As regards the transfer of the parliament's influence on the government, it has been recognised that "parliamentary powers are said to be like virginity; it never disappears on its own, is seldom taken by force and almost always is surrendered voluntarily."[1052] In this respect, Ralph Darendorf has set a harsh diagnosis: "In some cases, parliaments have turned into minions of the executive power rather than being the source of sovereignty. Italian Prime Minister Silvio Berlusconi has convinced the Italian Parliament to adopt laws that, first of all, are advantageous for himself and his business interests."[1053] However, Sergey Kotlyarevksi noted in 1915 that the whole load the legislative work was increasingly moving towards the government, which, actually, was the only one capable of exercising qualitatively the right to legislative

1050 Lēbers D.A., Bišers I. Ministru kabinets. Komentārs Latvijas Republikas Satversmes IV nodaļai "Ministru kabinets." Rīga: Tiesiskās informācijas centrs, 1998, 111. – 112.lpp. See also Judgement by the Constitutional Court of the Republic of Latvia of 1 October 1999 in Case No.03-05(99), Para 1 of the Findings.

1051 Levits E. Jaunā pamatlikuma projektu analizējot (IV). Diena, 1991.gada 10.augusts.

1052 Мишин А.А. Государственное право зарубежных стран. Москва: Белые альвы, 1996, с. 287.

1053 Dārendorfs R. Parlamentu noriets. Diena, 2002. 3.septembris.

initiative. Thus, it could be recognised that the parliament's legislative function was less important than the function of forming a responsible government.[1054] Parliaments often find that they lack time and technical knowledge for drafting laws and they cannot do more than define general legislative and political principles.[1055] Thus, the government not only decides on the best way for implementing the parliament's decisions, which characterises the traditional situation of the government in the system of separation of powers, but also directs state matters, although the parliament continues to define the strategic aims and tasks of the state. The parliament often adopts the most important laws upon the government's legislative initiative, and the government or its head is not granted the constitutional right to elaborate national politics and a mechanism for is implementation. This has allowed some scholars to substitute the concept of "executive power" by the concept of "governmental power", pointing out that the government for quite some time no longer is an obedient implementor of the parliament's will. Rather though, while the Cabinet enjoys the parliament's confidence, the Cabinet shapes the politics of the parliamentary majority.[1056] The Cabinet's role is growing because "the parliamentary machine is completely unsuited for swift examination of large number of draft laws."[1057] Being aware of this, governments are increasingly looking for opportunities to take over regulation of matters by delegated legislation or acts that are subordinated to laws.

The parliament's impact is decreasing due to various reasons, including globalisation and the fact the politics is becoming more distanced from the concerns and interests of the people's majority. The loss of the parliament's impact is determined by the increasing

1054 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.256.

1055 Grīnbergs O., Cielava V. Lielbritānijas valststiesību pamati. Rīga: Pētera Stučkas Latvijas Valsts Universitāte, 1979, 21.lpp.

1056 Энтин Л.М. Разделение властей: опыт современных государств. Москва: Юридическая литература, 1995, с.9-92.

1057 Хайек Ф.А. Дорога к рабству. Вопросы философии, 1990, №10, с.149.

complexity of the legislative work and the need for specific knowledge, which, most often, is concentrated in the apparatus of the executive power and subjects the parliament to the more competent reasoning provided by the drafter of laws. Likewise, the *Saeima*'s weight is specifically decreased by the insufficient scientific analytical support for its work, which prevents from preparing independent, competent analysis, equivalent to the government's reasoning. Likewise, also membership in the European Union means that the national laws are more extensively interwoven by the European Union law, which decreases the parliament's possibilities of autonomous legislation.[1058]

The demise of parliaments first of all is decline of democratic debates and control.[1059] The most classical shift of the leverages of power from the *Saeima* to the Cabinet becomes obvious in comparing the interwar parliamentary order and the current system of governance. Kārlis Dišlers called the interwar system "authoritarianism of the *Saeima*", where the power clearly was in the hands of the representatives elected by the people. Also Roberts Akmentiņš in the lecture of 23 April 1934 noted that "the parliament in it actions is not restricted by anyone, therefore it is quite erroneous to say that a state like this has a democratic order because the parliament's absolutism is in no way different from the ordinary concept of absolutism."[1060] Until the parliament is without a stable ruling coalition, the leaders of parties in their ministerial positions cannot feel safe and are forced to reckon with the will of parliamentarians. However, if the government is based on large parliamentary support, it becomes the leading body within the constitutional system.

Routine legislation is the task for the *Saeima*, the representation elected by the citizens. It is the representation of the totality of citizens, where various thoughts, ideals and interests existing among

1058 Levits E. Demokrātiskā valsts iekārta, brīvas vēlēšanas un parlamentārā demokrātija. Struktūra, loģika un priekšnosacījumi. In: Parlamentārā izmeklēšana Latvijas Republikā. 1. Parlaments. Parlamentārā kontrole. Prof. Ringolda Baloža zinātniskā redakcijā. Rīga: Latvijas Vēstnesis, 2016, 48. – 49.lpp.

1059 Dārendorfs R. Parlamentu noriets. Diena, 2002.gada 3.septembris.

1060 Akmentiņš R. Latvijas Satversmes reforma. Jurists, 1934, Nr.6(57), 107.sl.

the people become crystallized. They are constantly formulated and updated with the mediation of political parties. The parliament is the arena for the fight between arguments. It results in the political majority forming in the *Saeima*, the leading coalition that forms the government. On daily basis, the government implements and creatively specifies the thoughts, ideas and interests of the coalition, established in the *Saeima*.[1061] However, actually, sometimes the state power is too much concentrated in the hands of the government and the prime minister, moreover, in the hands of a government, which is not sufficiently stable and safeguarded against destructive expression of no-confidence. In circumstances like these, the parliamentary opposition plays an important role in retaining the parliamentary power.

In fact, the strength of the parliament is the opposition's ability to control and influence actions of the government and of the parliamentary majority that supports it.[1062] In the absence of a strong opposition in the parliament, this institution will obediently implement the government's political course. Hence, in the conditions of modern parliamentary republic, the relative separation of powers, where the executive power and the legislator are separated and made autonomous, is not as institutionally important as the personal separation of powers, where the state power is divided between the individual political forces represented in the parliament. The institutional separation of powers subjects both the legislative and executive power to the will of the governing coalition, whereas the personal separation of powers ensures the desirable interaction and mutual control. However, only a state with a stable and strong spectrum of political parties is able to implement such personal separation of powers. In a parliamentary republic, the separation of powers between institutions who exercise these powers are not as important as the separation of

1061 Gailis M. Valsts prezidenta pilnvaras? Latvijai vajadzīga tautvaldība. Diena, 1995.gada 9.marts.

1062 Pleps J., Kuzņecovs A. Parlamentārā kontrole Latvijas valsts iekārtā. In: Parlamentārā izmeklēšana Latvijas Republikā. 1. Parlaments. Parlamentārā kontrole. Prof. Ringolda Baloža zinātniskā redakcijā. Rīga: Latvijas Vēstnesis, 2016, 56.lpp.

powers between the governing coalition and the opposition.[1063] This model functions in Great Britain where the opposition establishes "a shadow cabinet", which controls the government's work, has good knowledge of the state matters and is ready to take over governance of the state at any moment. "The shadow cabinet" receives remuneration from the state budget and is considered to be Her Majesty's opposition.

IV. Relations between the parliament and the people

1. Legal status of representation. The idea of the sovereignty belonging to the private will of particular individuals or corporations is in the focus of attention of Jean-Jacques Rousseau's theory of social contract, namely, sovereignty dwells in the general will of the people (volonté générale), which is aimed at common good. People cannot be equal in their abilities but are equal according to the contract and law. The sovereignty vested in the people is inalienable. There may not be such general will that would rule over an individual without being their own individual will. An individual may not be free if anyone rules over their will. In obeying law, an individual obeys themselves. An individual renounces the private will and prefers the common interest vested in them, i.e., the civil society. Thus, the general will means an individual's rule over themselves or the rule of reason over an individual's emotional nature. The majority rules not because it has special rights to power but because it establishes the general will residing within an individual. The general will cannot be tyrannical because the subject of every law is the common good.[1064] Georg

1063 See more: Levits E. Demokrātiskā valsts iekārta, brīvas vēlēšanas un parlamentārā demokrātija. Struktūra, loģika un priekšnosacījumi. In: Parlamentārā izmeklēšana Latvijas Republikā. 1. Parlaments. Parlamentārā kontrole. Prof. Ringolda Baloža zinātniskā redakcijā. Rīga: Latvijas Vēstnesis, 2016, 43. – 48.lpp.

1064 Ruso Ž.Ž. Par sabiedrisko līgumu jeb politisko tiesību principi. Rīga: Zvaigzne ABC, 2013, 113. – 118.lpp.

Jellinek has noted that the people is a legal term, the subject of which does not coincide with the totality of separate individuals. The people's will is immortal and is binding upon also for the future generations. However, individuals are not immortal. The people's will is not a material but a legal category.[1065]

Looking at it from the perspective of the classical theory of the people's representation, the general will resides in the people. The parliament expresses not only its own will but also that of the people and is the mirror of the people's views. The people speak with the mouth of the parliament. Notwithstanding the religious belief in the general will of the people, both Charles-Louis de Montesquieu and abbot Emmanuel-Joseph Sieyès questioned the people's infallibility in all cases, underscoring that they were incapable of legislating independently. An opinion that the people in general were unable to form and express the general will was also expressed, and this is the unsurmountable difficulty encountered in the development of democracy. The general will as the will of all is impossible; however, as the will aimed at common good, the general will is not reflected but it is shaped by the people's representation through compromises and quests; it is the result of struggles between social groups.[1066]

The classical theory of the people's representation adheres almost in full to the teaching of Jean-Jacques Rousseau, however, deviates from it in favour of Charles-Louis de Montesquieu's teachings of the people's representation. Sovereignty is absolute and it is vested in the people, formed by free and equal individuals. The people's will is the arithmetic sum of individual wills. The people are not viewed as a product of history. They are said not to be born and not to die but appearing through the agreement between individuals. Such sovereignty of the people is the majority's sovereignty. However, the people themselves are unable to implement their sovereignty because

1065 Еллинекъ Г, Обшее учение о государстве. Санкт-Петербург: Издание Юридическаго Книжнаго Магазина Н.К. Мартынова, 1908, с.104. See also: Гессенъ В.М. Основы конституціоннаго права. Петроградъ: Право, 1918, с.95-97, 116-121.

1066 Гессенъ В.М. Основы конституціоннаго права. Петроградъ: Право, 1918, с.126-128.

the modern states differ as to the breadth of their territories and population, likewise, modern nations, bu definition, are unable to exercise the power directly. This does deprive a person from the right to participate in law creation, which they can do by entrusting certain functions to some from among themselves.[1067]

Jean-Jacques Rousseau's demand that the people should always have the final say does not resolve the general need. If the people do not want to succumb to some external force that issues laws but want to participate themselves in the creation of their laws, no one can prohibit them from doing so. If due to the size of the population and the populated are the people are unable to do it themselves, they cannot be prohibited from doing so through delegation. Abbot Sieyès has noted quite validly that the institute of the people's representation is the supreme form in society's development. In his opinion, by this, the people did not wave their will, i.e., the right to will something because it is unalienable right of the people. The people entrust their representatives with the implementation of it; however, this trust is limited. The best form of governance is republic, which has been founded on the expression of the people's will, authoritative order (constitution), which reflects the social contract existing between members of society. Abbot Sieyès noted that the people entrusted their representatives with only that part of the right to express their will on their behalf, which was required for maintaining and protecting order. Violation of these limits creates the people's right to take respective actions.

The legislative power of the people's representation is not absolute and unlimited and the people's representatives exercise the rights of others rather than their own rights. However, it cannot be considered that the people authorise their representatives. It is not a relationship between the principal and trustees. Legally the soundest is the approach to representation on the basis of the constitution when the deputies of the parliament receive their authorisation not from

1067 Гессенъ В.М. Основы конституціоннаго права. Петроградъ: Право, 1918, с.102-104.

the people but from the constitution, i.e., the constitution determines how the right to express the will is exercised and acquired. It also needs to be noted that the people as the sovereign through elections delegate the right to enact the state power not to individual deputies but the parliament in general. This means that all deputies of the parliament as a totality represent the will of the people as a totality, instead of each deputy representing the will of separate electors.[1068] Article 5 of the *Satversme* also provides that 100 deputies of the *Saeima* as a totality are the people's representatives, representing the will of the people expressed in elections.[1069] A deputy of the *Saeima* is obliged to be the people's representative and each deputy of the *Saeima* must be considered as being the representative of the entire Latvian people.[1070] Thus, the *Satversme* defines constitutionally the *Saeima* as the body of the people's representation.[1071] No other body of the state has the right to represent the people. The body of the people's representation is a collegial body, constituted of equivalent representatives of the people who make their decisions only after appropriate debates and by legally defined majority of votes, paying attention also to the public opinion on the issue under consideration.[1072]

2. Acquiring and approval of the deputy's mandate. In constitutional law, mandate is explained as authorisation (task) for the deputy, acquired in elections. It is possible to differentiate between several types of mandates, which characterise the deputy's dependence on electors.[1073] A voter, in electing representatives, performs a particular function, determined by the state order, which has been enshrined in the constitution. Paul Laband insisted that the voter had

1068 See also: Sinkevičius V. Seimas - Tautas atstovybe (konstituciniai pagrindai). Jurisprudencija, 2006, t.9(87), pp.52-60.

1069 Kuzņecovs A. Satversmes 5.pants. In: Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2020, 69. – 70.lpp.

1070 Judgement by the Constitutional Court of the Republic of Latvia of 23 December 2019 in Case No.2019-08-01, Para 11.

1071 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 42.lpp.

1072 Sinkevičius V. Lietuvos parlamento teisė. Vilnius: Mykolo Romerio Universitetas, 2013, p.30.

1073 Mikainis Z. Mandāts. In: Juridisko terminu vārdnīca. Rīga: Nordik, 1998, 149.lpp.

only a function, a reflex of objective order. However, it must be admitted that a voter has not only a function but also rights.[1074] The voter is limited by the choice of one candidate or another and they can in no way influence the representative's situation. This situation is determined by the constitution and laws, the representative receives their authorisation not from the people, not from an individual voter but from the constitution. The mandate or the right of representation should not be understood in the meaning of civil law. Adherence to such interpretation is the road towards the imperative mandate. The chosen person, in directly and freely implementing the will of the nation, is totally independent.[1075]

The verification of deputies' mandates has remained from the times of estate representation when the delegates of estates received the authorisation from their voters but presented it for verification to an official, appointed by the king. Members of the contemporary parliaments do not receive their authorisation directly from the voters; therefore the legality and correctness of elections must be verified. In the course of time, the rights of the person authorised by the king to conduct such verification was cast aside because it could influence the composition of the parliament. Substantially, this function falls within the jurisdiction of judicial institutions. Initially, it was performed by the parliaments themselves but in the second half of XIX century this function was gradually transferred to judicial institutions. Later, the practice to return these functions to the parliament consolidated again.[1076] The French theory, which, essentially, originated at the moment when the French third estate declared itself as being the National Assembly, emphasising exaggeratedly strict principles of the separation of powers, the people's sovereignty and inviolability of elections, denied the other institutions of the state power the

1074 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.220.

1075 Конституционное (государственное) право зарубежных стран. Страшун Б.А. (ред.) Москва: БЕК, 2000, с.449.

1076 Dišlers K. Demokrātiskas valsts iekārtas pamati (Ievads konstitucionālajās tiesībās). Rīga: A.Gulbis, 1931, 141. – 142.lpp.

right to decide on actions related to verification of mandates. Thus, it reached the conclusion that verification of mandates was within the legislative power's competence. Due to the fear that no court could be completely independent from the executive power, the verification of mandates was fully transferred to the parliament, considering it to be a political act of the parliament - the parliament's ruling on the correctness of the election. Such ruling is said to be based on its sovereignty. However, science moved on, focusing on the principle of the unity of the state power, which is not at all hindered by allocation of the power's functions. Hence, the opinion held by Georg Jellinek that the act of verifying mandates is res iudicata must be recognised as being correct. According to the theory of the unity of power, the issuing of such an act was no longer the monopoly of a court but could also belong to the parliament's competence. Then the parliament substantially acted as judges, issuing an act subordinated to law. In verifying mandates, the parliament is bound by law and the results of general election. In all cases, the parliament will issue an act of jurisdiction and not an administrative act.[1077] Several opinions on who should be entrusted with the verification of deputies' mandates existed also in the Latvian Constitutional Assembly. Arveds Bergs objected against such right of the *Saeima* because, in performing this function, it would view it from the political perspective, would be the interested party. A supreme court should be entrusted with the verification of deputies' mandates. However, this and other proposals regarding amendments to this article were dismissed, inter alia, establishing a mixed committee and that the *Saeima* verifies the authorisation of its members with the majority of two thirds.[1078]

Following the adoption of the Administrative Procedure Law, the *Saeima* Election Law was amended, providing that the decision by the Central Election Commission, which determined the deputies elected to the *Saeima*, could be appealed at the Supreme Court. The

1077 Gutmans A. Deputātu mandātu pārbaudīšana. Tieslietu Ministrijas Vēstnesis, 1926, Nr.2/3, 101. – 120.lpp.

1078 Latvijas Satversmes sapulces IV sesijas 1921.gada 12.oktobra sēdes (11.sēde) stenogramma.

intended Court's jurisdiction on this matter was to be the guardian of the procedure, i.e., to verify whether the counting and calculations had been correct. Such limits to the Court's jurisdiction would comply precisely with Article 18 of the *Satversme*, which provides that the *Saeima* itself verifies the qualifications of its Members. Pursuant to theoretical findings, the constitutional practice and the unambiguous will of the Constitutional Assembly, this Article means that the *Saeima* itself acts as a court and may decide on the correctness of elections. The aim for which this article was adopted by the Constitutional Assembly is clear – to prevent courts from ruling on such matters.[1079] However, the Senate of the Supreme Court concluded that, with the evolution of the principle of democracy, broader jurisdictions of the court followed from Article 1 and Article 18 of the *Satversme* in their conjunction, inter alia, to examine the impact of pre-election campaign on election outcomes and to assess the legality of election in much greater detail.[1080] The further case law will show how the compromise will be found between the powers of the *Saeima* and courts to verify the legality of elections and the deputies' mandates, considering that the jurisdiction of the judicial power will have a more important role in this matter.[1081] In general, the text of the *Satversme* excludes any possibility for the court to organise repeated elections. Article 12 of the *Satversme* provides expressis verbis that the *Saeima*, elected on the first Saturday of October, convenes for its first sitting on the first Tuesday of November. No exceptions to this have been provided in case if the court revokes the election results. Article 13 of the *Satversme* notes that the *Saeima* may convene for its first sitting also on another date; however, it is possible only if the previous *Saeima* had been dissolved. Thus, a mechanism for enforcing a probable judgement by the Supreme Court's Senate

1079 Pastars E. Spriedums par Saeimas vēlēšanām: vai tā ir juridiska kļūda. Jurista Vārds, 2006.gada 19.septembris, Nr.50 (453). See also: Latvijas Republikas Saeimas I sesijas 1922.gada 10.novembra sēdes (2.sēde) stenogramma.

1080 Judgement by the Department of Administrative Cases of the Supreme Court's Senate of 3 November in Case No.SA-5.

1081 Levits E. Nozīmīgs spriedums par vēlēšanām. Jurista Vārds, 2006. 19.septembris, Nr.50(453).

on organising repeated elections has not been included in the *Satversme*. One might rather say that the fiction that all elections are legal by definition has been included in the *Satversme*. Disregarding any procedural violations that had been committed in elections, the convened *Saeima* is to be recognised as having been elected lawfully if it confirms its own mandate. The *Saeima*'s vote on conforming its mandate dispels any doubts about the correctness of the *Saeima* elections and turns it into a legal institution of the state power with the right to exercise the competence granted to it. The *Satversme* even does not envisage the possibility that the *Saeima* itself could establish that it had been elected wrongfully and therefore decide on holding new elections.[1082] At the same time, the possibility to not confirm the election results in a certain voting station due to violations and amending accordingly the distribution of mandates and the elected persons is not excluded. Likewise, the possibility to annul some mandates of a particular person or party is not excluded if serious violations in the election process have been detected. The Senate of the Supreme Court, in interpreting the *Satversme* and the *Saeima* Election Law, has reserved the right to not approve of the election results in a certain polling station, constituency or in the state in general if gross violations of the electoral rights had been committed. In such a case, it is important that the court's control over the legality of the election process is meaningful and effective.[1083]

The confirmation of the deputies' mandates is an essential requirement since the deputy acquires the mandate of the Member of the *Saeima* only after that. This is one more manifestation of the *Saeima* as a permanent legislative institution. The confirmation of mandates includes both verification of the legality and correctness of elections and giving the solemn promise, as well as the decision on confirming the mandate. It is important to note that the parliament does not

1082 See more: Pleps J. Senāts un Satversme: vēlēšanu lieta. Jurista Vārds, 2006. 19.decembris, Nr.50(453).

1083 Judgement by the Department of Administrative Cases of the Supreme Court (Senate) of 31 October 2014 in Case No.SA-5/2014.

enjoy broad discretion to decide whose mandate to confirm and whose – not to. It is a constitutional obligation, not a political decision, moreover, the possibility to not confirm a deputy's mandate in a certain case should be included in the law expressis verbis and should follow from the respective norms of the *Satversme*.

Pursuant to Section 2 of the Rules of Procedure of the *Saeima*, the *Saeima* elects a committee that verifies the election materials, complaints about elections if such have been submitted to the Central Election Commission after the official election results had been announced. At the sitting of the *Saeima*, following the report of this committee, the Members of the *Saeima* must comply with another essential condition – they must give the solemn promise in Latvian and confirm it by signing the text of the solemn promise. As noted by Solvita Harbaceviča, the solemn promise is of relative legal nature, i.e., "if this person gives such a promise, which includes the first four most important articles of the *Satversme*, then you as the citizens of the Republic of Latvia – the voter and deputy – have agreed on the most important matters. And you know – whatever the political views of these persons, they have gathered there to protect that what, actually, is the foundation of the State of Latvia. Looking at it from this perspective, such a promise is a good idea. That what until now was a moral obligation now turns into a legal commitment."[1084]

When the 11th *Saeima* of the Republic of Latvia convened for its first sitting, two Members of the *Saeima*, Gunārs Igaunis and Juris Viļums, who had been elected from Latgale constituency, chose to give the oath in the Latgalian language instead of Latvian. The Speaker of the *Saeima* insisted that the promise had to be repeated in Latvian and both deputies repeated the oath.[1085] This case caused extensive debates in legal science. One of the opinions expressed was that "in giving the oath, certain procedure must be complied with, but the most important thing is to not make mistakes in pronouncing the text

1084 Gailīte D. Kā, stiprinot valodu, saglabāt Satversmes tradīciju. Latvijas Vēstnesis, 2002.gada 20.marts, Nr.44(2619).

1085 Latvijas Republikas 11.Saeimas rudens sesijas pirmās sēdes 2011.gada 17.oktobrī stenogramma.

because such an oath is not valid. [..] If the deputy of the *Saeima* pronounces another formula, which is similar in its content, he has not given the oath of the deputy of the *Saeima* in compliance with the *Satversme*."[1086] Others, however, held that the oath had been given in due procedure because the sequence of words in the oath had been meticulously complied with, the oath was clear un understandable to the listeners. The fact that the deputy had decided to articulate some sounds in the way typical of his region does not violate the procedure of giving the oath.[1087] Egils Levits offered reasonable balance in this discussion, namely, giving the deputy's oath at the *Saeima* in the Latgalian language would also be acceptable because the interests of united governance of the state were not significantly affected by it; however, to give this option to the deputies, amendments to the *Satversme* would be required.[1088]

At the first sitting of the 12th *Saeima*, Juris Viļums again gave the oath in Latgalian and refused to repeat in Latvian, upon request by the chairperson of the sitting Solvita Āboliņa. The Provisional Mandate, Ethics and Submissions Committee recognised that Juris Viļums was not required to repeat the oath and that his oath in Latgalian complied with the requirements set out in the *Satversme*.[1089] Whereas at the sitting of the 13th *Saeima*, this issue no longer caused legal problems when some deputies gave the oath in Latgalian or in the middle dialect of Kurzeme.[1090] It can be concluded that the use the

1086 Osipova S. Zvērests ir sena tradīcija, kur jāievēro precīza forma. Jurista Vārds, 2011.gada 25.oktobris, Nr.43(690). In particular, see.: Gailīte D. Oficiālajā saziņā, arī Saeimas debatēs, jālieto latviešu literārā valoda. Intervija ar Saeimas Juridiskā biroja vadītāju Gunāru Kusiņu. Jurista Vārds, 2011.gada 25.oktobris, Nr.43(690).

1087 Rudevsks J. Vai Latgalei ir armija un flote. Jurista Vārds, 2011.gada 25.oktobris, Nr.43(690).

1088 Levits E. Par latviešu valodu Satversmes 4.pantā nacionālas valsts kontekstā. Jurista Vārds, 2011. gada 25.oktobris, Nr.43(690).

1089 Latvijas Republikas 12.Saeimas rudens sesijas pirmās sēdes 2014.gada 4.novembrī stenogramma. See more: Amoliņa D. Dzimtā valoda. https://juristavards.lv/eseja/265555-dzimta-valoda/

1090 Latvijas Republikas 13.Saeimas rudens sesijas pirmās sēdes 2018.gada 6.novembra stenogramma. See more: Rodiņa A., Kļaviņa I., Plepa D. Satversmes 18.pants. In: Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2020, 306. – 309.lpp.

Latgalian language as a historical variant of the Latvian language and of the dialects and sub-dialects is admissible in giving the oath.[1091]

A deputy of the *Saeima*, upon assuming duties of office, solemnly promises to strengthen the Latvian language as the only official language. At the time when collection of signatures was organised to submit to the *Saeima* for consideration draft amendments to the *Satversme* that would define the Russian language as the second official language, deputy of the *Saeima* Nikolajs Kabanovs announced that he had signed in support of this draft law. This action caused extensive debates, in which the opinion was expressed that, by this, the respective deputy of the *Saeima* had broken his oath and he should be deprived of his mandate as a deputy. It must be noted that honouring the given oath is political commitment of a deputy of the *Saeima*. If after giving the oath, a deputy of the *Saeima* has acted contrary to it, these actions cannot be legally assessed and sanctioned. "This promise does not give the grounds for assessing the deputy's activities and how honestly he performs his duties. However, voters always have this right. This is the mechanism for accountability. [..] This promise is based on each deputy's integrity. Upon entering office, they are asked to consent to these basic principles – whether they will comply with them, in representing the citizens of the Republic of Latvia. Such is the meaning and the mission of this promise."[1092] The oath of the *Saeima* deputy, introduced in the *Satversme*, is not linked to the deputy's legal responsibility. A procedure of impeachment that would allow establishing that the solemn promise had been broken and would cause certain legal consequences, i.e., loss of the mandate, has not been introduced in the *Satversme* and the Rules of Procedure of the *Saeima*. Having assessed Nikolajs Kabanovs' actions, the Mandate, Ethics and Submissions Committee of the *Saeima* found that he, by signing in support of initiating amendments to the *Satversme*

1091 Pleps J. Satversmes 21.pants. In: Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2020, 363.lpp.

1092 Gailīte D. Kā, stiprinot valodu, saglabāt Satversmes tradīciju. Latvijas Vēstnesis, 2002. 20.marts, Nr.44(2619).

to grant the status of the official language to Russian, had violated Article 4 of the Code of Ethics of the *Saeima* Deputy and issued a warning to the deputy, announcing it at the sitting of the *Saeima* and publishing the Committee's decision in newspaper "Latvijas Vēstnesis." Thus, violations of the oath given by the *Saeima* deputy are treated and assessed as violations of the Code of Ethics of the *Saeima* Deputy. To transform a legal commitment into constitutional liability, rather than it being only political accountability, the law usually provides for an impeachment procedure, which exists, for example, in Lithuania.

3. Free and imperative mandate. The free mandate allows the deputies to act in the interests of the entire state, in accordance with their conscience and conviction, it guarantees greater protection for the deputies. If there were imperative mandate, most probably deputies wishing to achieve social reforms and national development would not be active in the parliament. It would lead to gathering of demagogues and populists in even greater numbers in the parliaments. Moreover, with the multi-party system, it is not quite clear; which voters elected the deputy and what orders they have to fulfil. Recalling a deputy, actually, is merely a democratic trick. The free mandate is far from being as "free" as it might seem.

Candidates for the deputy's office are proposed by parties and, at elections, electors vote for the party programmes. The party programmes are the tasks given by voters to the deputies in democratic states and the party controls how the deputies fulfil their tasks. Of course, one cannot exclude the possibility that the deputies, while being in the parliament, leave the party or change their political affiliation, however, voters have the possibility to not elect the undesirable deputy at the next elections. This is why the free mandate can be understood only in close interconnection with political parties, outside them deputies, indeed, could act only in their own interests, ignoring the people.[1093] At the same time, the free mandate, substantially,

1093 Конституционное (государственное) право зарубежных стран. Страшун Б.А. (ред.) Москва: БЕК, 2000, с.450.

prohibits from linking too closely the deputy's office to the party affiliation; i.e., leaving the party should not automatically lead to losing the deputy's mandate.[1094]

The idea of the free mandate gained popularity during the Great French Revolution. Abbot Emmanuel-Joseph Sieyès noted that one representation of the people, one nation and one general will had to be created. Each deputy was elected from a separate constituency on behalf of other constituencies, and this deputy becomes the totality of the people's deputies. A deputy is the people's representative and may not be bound by instructions of his voters. The Legislative Assembly of France would have been denied power because, by giving the right to veto to all 170 constituencies of the kingdom, it would be impossible to arrive at the general will and that would mean subjecting the people's will to the will of one province.[1095] However, the free mandate was first accepted in England, actually renouncing the imperative mandate for the Members of the Parliament already in the Middle Ages.[1096]

The imperative mandate was applied for the first time in the Paris Commune in 1871, and Karl Marx drew attention to it, writing that the deputies of the Commune had to abide strictly by the mandat imperatif (accurate instruction) of their voters and that they could be revoked at any time.[1097] The imperative mandate was extensively used in the countries with the system of socialist law because "the deputy should know that he is the servant of the people and he should adhere to the direction given to him by the voter's instruction."[1098] This allowed the sole party to control the deputies - if a deputy, indeed, started acting in the interests of the people as whole, he, undoubtedly,

1094 Pastars E. Partija un deputāts - vai nešķirami. Neatkarīgā Rīta Avīze, 2004.gada 12.februāris.

1095 Гессенъ В.М. Основы конституционного права. Петроградъ: Право, 1918, с.106-108.

1096 Nikuļceva I., Litvins G. Satversmes 14.pants. In: Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2020, 241.lpp.

1097 Маркс К., Энгельс Ф. Сочинения. Т.17, с.343.

1098 Сталин И.В. Речи на предвыборных собраниях избирателей Сталинского избирательного округа г. Москвы. Москва: 1952, с.7.

would be recalled, as well as to demonstrate the democratic nature of its state order. The imperative mandate is possible only in a single-party election system when deputies are elected from single-mandate constituencies, whereas the parliament is a decorative institution of the state power. It is easier to comprehend the contemporary understanding of the imperative mandate by examining the practice of China, Vietnam and the Democratic People's Republic of Korea. The imperative mandate has two characteristic features: the task given by voters (China, Vietnam) and the voters' right to recall the deputies at any time if they do not fulfil the tasks given by voters (China).[1099] To establish the existence of the imperative mandate, the state order should have at least one of these features.

In electing deputies of the national parliament, their abilities and views are taken into account, so that they would be able to decide on all matters of the state, and, therefore, their close connection to one region is not admissible, since its needs often are entirely opposite to the national interests. It also divides the parliament's political composition and makes the formation of a functional parliament difficult. In Latvia, the close ties of a group of deputies with one region was relevant in the interwar period when "Latgale duplicated and complicated Latvia's general system of parties, by creating its own regional network. [..] The Latvian parliamentary politics was even more fragmented and complicated than in Estonia; it was impacted by the peculiar social situation in its southwest region – in Latgale."[1100]

Article 14 of the *Satversme* provides that voters cannot recall individual Members of the *Saeima*. Thus, the free mandate is included in the *Satversme*.[1101] In its case law, the Constitutional Court has underscored the construction and the meaning of the free mandate,

1099 Златопольский Д.Л. Государственное право зарубежных стран Восточной Европы и Азии. Москва: Зерцало, 1999, с.246-247.

1100 Rothschild J. East Central Europe between the Two World Wars. Seattle and London: University of Washington Press, 1998, pp.374-375.

1101 See more: Nikuļceva I., Litvins G. Satversmes 14.pants. In: Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2020, 240. – 242.lpp.

writing that, when the status of a deputy is based on the free mandate of representation, it followed from Article 5 of the *Satversme* that the main purpose of this mandate was to protect a deputy against alien impact and allow autonomous development of the state's decision in the *Saeima*. The *Saeima* deputy holds a public law office. The Court underscored, in particular, that the deputies represented the people in their totality and not each of them separately and individually.[1102] This finding has been applied also to deputies of local government council, i.e., that the deputy is subject neither to their parties nor other organisations but only to their own consciousness of the inhabitants' interests. "Legal means cannot be used to verify, whether the deputy exercises their rights according to their conscience; however, the deputy's conscience protects only the freedom of exercising one's mandate and does not release the deputy from the obligation to abide by law in decision-making."[1103] Thus, the constitutional thought is moving in the opposite direction to the populists' slogans that the free mandate should be restricted so that some deputies of the parliament could be recalled.

V. Election and dissolution of the parliament

1.Principles of parliamentary elections. The deputy's mandate is acquired in different forms; however, direct, indirect or multi-level elections is the most frequently used form. Elections by all people should be recognised as a general principle, however, such elections must be held in accordance with certain principles; i.e., certain requirements must be met to consider the manifestation of the people's will as being legal. Article 3 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms defines

1102 Judgement by the Constitutional Court of the Republic of Latvia of 23 December 2019 in Case No.2019-08-01, Para 11.

1103 Judgement by the Constitutional Court of the Republic of Latvia of 29 June 2018 in Case No.2017-32-05, Para 19.

the Member State's obligation to hold free elections at certain intervals by secret ballot, under conditions that ensure free expression of the opinion of the people in the choice of the legislature. "There are five universally recognized election principles in the democratic states of the world. Elections have to be general, equal, free, secret and direct. The above five principles have been fixed both in international instruments and the national law of the states."[1104] The general electoral rights, which are based on direct vote by secret ballot, is the only and inevitable conclusion that follows from the principle of the people's supremacy.[1105] Implementation of these principles is not always absolute because they are restricted by direct qualifications and the election system introduced in the state, i.e., proportional, majority or mixed.

Qualifications are mandatory pre-requisites, defined in law, that the elector must meet to acquire the right to vote or to be elected. The purpose of qualifications is to deny legally the electoral rights to a certain part of inhabitants. The European Court of Human Rights also has concluded that the electoral rights are not absolute and may be restricted. However, it must be verified whether the restrictions do not limit this right to the extent that its core is affected and it is deprived of effectiveness, whether these requirements had been set to reach a legitimate aim and whether the measures used are not disproportional. These requirements may not hinder "free expression of the people's opinion in choosing the legislative power."[1106]

The right of every citizen to participate in the work of the state and local governments, as provided for in law, serves as the safeguard for the existence of the democratic order and is aimed at ensuring the legitimacy of the democratic state order.[1107] The concept "general

1104 Judgement by the Constitutional Court of the Republic of Latvia of 23 September 2002 in Case No.2002-08-01.

1105 Рейснеръ М.А. Государственное право. [Б.м., б.и., б.г.], с.66.

1106 Judgement by the Constitutional Court of the Republic of Latvia of 23 September 2002 in Case No.2002-08-01.

1107 Judgement by the Constitutional Court of the Republic of Latvia of 30 August 2000 in Case No.2000-03-01, Para 1 of the Findings.

elections" envisages that each person has the right to vote and to be elected; however, this right may be and even must be restricted.[1108] Restrictions on the electoral rights should be socially necessary. Such restrictions that comply with the principles of a state governed by the rule of law may be recognised as being socially necessary. These restrictions must be assessed in the framework of the particular historical system; however, deficiencies in the development of democracy per se are not the grounds for departing from the principles of a state governed by the rule of law. Unfounded restrictions on human rights weaken democracy instead of reinforcing it. In democratic society, restrictions on human rights are socially necessary only if public interests were significantly infringed upon in the absence of such restrictions.[1109]

It has been noted with respect to electoral rights that their function differs from the one of human rights. The first aims to ensure democratic participation of the people in public administration and legitimize state institutions, whereas the second strives to protect individual freedoms from the state's intervention, as well as to guarantee certain material or non-material benefits. Hence, the electoral rights is an instrument given to an individual to let him influence the national politics, whereas human rights is a legal "shield" that protects an individual against the state's interference into their freedoms and, in some cases, also a legal reason to demand from the state certain benefits for oneself. Hence, the electoral rights are never considered as being human rights (substantial, fundamental) but rather as political rights belonging to the institutional domain of the constitutional order.[1110]

Elections must be not only general but also equal, which, on the one hand, means equal opportunities, i.e., the state institutions treat

1108 Judgement by the Constitutional Court of the Republic of Latvia of 23 September 2002 in Case No.2002-08-01.

1109 Separate opinion by Justices of the Constitutional Court of the Republic of Latvia Aivars Endziņš, Juris Jelāgins and Anita Ušacka in Case No.2000-03-01.

1110 Judge Egils Levits Separate Opinion in the Case of the European Court of Human Rights "Ždanoka v. Latvia."

all lists of candidates neutrally, but, on the other hand, equal rights and obligations of all citizens who enjoy full rights of citizenship as the voters. The votes of all electors should have equal weight, and one elector may not have the right to cast more votes because of education, number of children, social status or any other circumstances.[1111]

The principle of free elections must be mentioned as another important principle, which, essentially, are the foundations of democracy, although may not be directly defined like that. Free elections mean that no one, neither from the public or private side, may exert pressure on those with the right to vote to force them to cast their vote for a certain course or to hinder casting votes of certain content. For the democracy to be able to function, the possibility for the totality of citizens to express their will, according to their free choice, regarding the persons who should be entrusted with representing their interests in the parliament is an absolute precondition.[1112] The mandatory obligation to vote, established in law, is not contrary to principle of free elections because the elector has been offered all possibilities, including casting of an empty ballot paper, although mandatory elections falsify the people's representation, masks, without resolving it, the problem of electors' passivity, because the latter, being legally forced to vote, become easy victims of demagogues.[1113]

Election must be held by secret ballot, otherwise it can be contested whether the manifestation of the people's will is genuine. Everyone must be able to cast their vote so that no one could verify what choice the particular voter has made, so that no harm would be inflicted upon them for casting their vote. To phrase it differently, everyone, in casting their vote, should be able to express freely their true political conviction. Moreover, the state should have the possibility to ascertain that both these principles have been abided by. It is

1111 Judgement by the Constitutional Court of the Republic of Latvia of 23 September 2002 in Case No.2002-08-01.

1112 Judgement by Administrative District Court of 22 March 2005 in Case No.A42241405 (A2414-05/13), Para 22.

1113 Конституционное право зарубежных стран. Лейбо Ю.И., Баглай М.В., Энтин Л.М. (ред.) Москва: Норма- Инфа М, 2003, с.197.

very cumbersome in the case of individual electronic voting outside the polling station.

The directness of elections, in turn, must guarantee that the citizen has the final say.[1114] Direct parliamentary election is a general principle in electing a single-chamber parliament, and ensures direct legitimisation of the parliament by the people, without any mediators who would only distort the expression of the people's will. It may be different in the case of upper house elections, which may be formed indirectly by electing special electors who, then, elect the respective chamber.[1115]

In a state with a republican form of government, regularity of elections is an important feature of elections, otherwise it would cease to be a republic. Distinction is made between regular and an extraordinary election. The first one is held in accordance with the specially defined terms of mandate of the parliament or its chamber, or only a part thereof. Pre-term extraordinary elections are announced if the parliament or its chamber has been dissolved or had dissolved itself, moreover, it is not always the head of state who dissolves the parliament or its chamber. Alongside pre-term extraordinary election of the parliament or its chamber, by-elections are held if a deputy's office has become vacant.

2. Electoral systems. The electoral principles are restricted also by selecting and implementing a certain electoral system. The system of proportional elections is based on the idea of proportional representation of political forces. A political party (list of candidates) acquires as many mandates of deputies that are proportional to the number or electors who have voted for this party (list). Approximately the same number of electors' votes are needed for electing each deputy to the parliament. In difference to the majority electoral system, the proportional electoral system guarantees that also those political forces with

1114 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 152.lpp.

1115 Конституционное право зарубежных стран, Лейбо Ю.И., Баглай М.В., Энтин Л.М. (ред.) Москва: Норма-Инфа М, 2003, с.191-192.

small support by the electors enter the parliament.[1116] Both systems outline the difference between electoral voting and decisive voting. The decisive voting is appropriate for appointing officials but is not appropriate in parliamentary elections, where delegation takes place. The majority system ignores this aspect.

The proportional electoral system also has several shortcomings, i.e., the parliament becomes fragmented along party lines in numerous groups and smaller groups, which may hinder formation of a government with decision making powers. This is exactly the reason why the proportional electoral system is restricted by a threshold of certain percentage because the purpose of elections is not only implementation of the political will of electors as individuals and, thus, creating the people's representation but also forming a parliament as a state institution capable of functioning. Moreover, the proportional electoral system envisages voting for parties, ousting the elections of personalities.[1117]

The Constitutional Court has held that the setting of the electoral threshold is justified by the need to form a parliament that would be able to function in a concerted way, performing its functions, defined in the *Satversme*. The number of political parties represented in the *Saeima* should be such that would allow in the state a functional and stable Cabinet, which would enjoy the confidence of the *Saeima* majority. In this case, the Constitutional Court concluded that the electoral threshold did not violate the principle of equal elections, enshrined in the *Satversme*, however, the Court also noted that "when determining the electoral threshold, the legislator has to take into consideration that it cannot be too high. The situation when the elections discontinue being democratic shall not arise as the result of the electoral threshold. Only such threshold is permissible which is necessary to reach the objectives." The Court held that changing this threshold shortly before elections was inadmissible and its increase

1116 Judgement by the Constitutional Court of the Republic of Latvia of 23 September 2002 in Case No.2002-08-01.

1117 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 154.-156.lpp.

must be substantiated.[1118] Kārlis Vanags wrote in a commentary on the *Satversme*: "In several most recent constitutions, transition from the proportional electoral system to the majority election is seen; however, searching for a better electoral system in the constitutional law will not cease for quite some time. The issue of which electoral system should be given preference is a matter of political determination and does not depend upon the understanding of democracy."[1119]

The essence of the majority electoral system is that the candidate or a list of candidates who has acquired the largest number of votes in the particular constituency wins. This might be called also the system for the majority because all other votes, apart from those cast for the winner, are not taken into account. The majority system can be divided into the majority systems of the absolute and the relative majority.

These two systems differ as to the number of votes a candidate must gain to win. In the system of relative majority, only majority is required, whereas in the system of absolute majority – no more than half. However, sometimes also the majority system of qualified majority is encountered, where, in order to win, the candidate must collect more than half of votes, e.g., two thirds or three fifths.

Neither the majority nor the proportional electoral system is perfect, therefore, the mixed electoral system has been implemented in many places. For example, 71 single-mandate constituencies have been established in Lithuania, taking into consideration population and the administrative territorial division. Apart from single-mandate constituencies, also one multi-mandate constituency has been formed, where all citizens of Lithuania with the right to vote may vote. 70 Members of the Seimas are elected from the multi-mandate constituency and 71 – from the single-mandate constituencies. Thus, electors vote for those candidates who stand for election in the region where they reside (or resided, if they have moved abroad) and also for

1118 Judgement by the Constitutional Court of the Republic of Latvia of 23 September 2002 in Case No.2002-08-01.

1119 Vanags K. Latvijas valsts satversme. [B.v.]: L.Rumaka apgads Valka, 1948, 19.lpp.

those candidates who stand for election in the multi-mandate constituency comprising the entire state.[1120] Each elector has two votes, which they may cast independently one from the other, and yet – for different candidates, because the same person may not stand for election both from a multi-mandate constituency and the single-mandate constituency.

Germany has a similar order, albeit it differs. Each elector has two votes that they may cast independently one from the other. The first is cast when voting for a candidate in the constituency of single-mandate majority electoral system, whereas the other one is cast for the lists of lands (proportional electoral system with the threshold of five per cent). 328 deputies are elected from single-mandate constituencies, but the other half – in accordance with the proportional electoral system; however, the number of deputies is always more than 656 (328+338). This can be explained by the particularities of the electoral system. "Later, those deputies who have won one seat of a deputy for their party in a constituency in the majority elections are added to the total number of deputies that each party has acquired. The remaining seats that the party is entitled to then are filled from the lists of lands, in the sequence envisaged in them. In majority elections, the seats won in constituencies remain with a party even if they exceed the number that the party is entitled to according to general proportion. The total number of Bundestag seats increases by such "overhang mandates" for this period of legislature."[1121]

3. Problem of the term of the parliamentary mandate. The term of the parliament's, as the central institution of the state power, is of particular importance to ensure stable performance of the state's functions. On the one hand, the parliament is the people's reflection and the way to renew the reflection in this mirror regularly is elections. The more compatible with the actual balance of power the parliament is the greater the legitimacy that it enjoys, being able to

1120 Norgaard O., Johannsen L. The Baltic States After Independence. 2nd ed. Cheltenham: Edward Elgar publishing Ltd., 1999, p.67.

1121 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 156. – 157.lpp.

feel changes in the people's mood and act accordingly. Shortening the term of legislature, even looking from this perspective, would allow the electors, even without envisaging the imperative mandate, to give direct instructions and punish (by not electing) for violating these. Essentially, with very short periods of legislature, the institute of the people's representation would turn into a slave of the people's constantly changing will. However, most probably, decreasing the term of the parliamentary mandate from four years to one would lead to a parliament that is unable to function, an unstable government, continuous elections and, finally, loss of belief in democracy. Therefore the parliament should not only be the embodiment of the people's will but should also ensure stability in order to remain the embodiment of the people's will.

The US House of Representatives is elected biannually, and an opinion has been presented in legal literature that the deputies, as it were, receive instructions from electors and, within two years, electors may assess at the ballot boxes and during the pre-election campaign what has been achieved. The two-year term of the US House of Representatives is not a deficiency of their state order because it is important for the House of Representatives to be directly dependent upon the people and gain their support. Frequent elections of representatives are said to be the only way to ensure this dependence and support. Following the practice of various countries and states, a term of two years was set. Not the entire legislative power but only part of it is transferred to the House of Representatives for implementation. The House of Representatives will be supervised by the people, by re-electing the representatives every two years, as well as by special legislative committees. Thus, the House of Representatives is subject to double control and, additionally, it is restricted also by other branches of power.[1122] Within the constitutional system of the USA, such pre-election term of the parliament is possible because the President is indirectly elected by the people and the Senate, as a considerable

1122 Madison J. The Federalist No.52. In: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.401-406.

stabilising factor, also is involved in the exercise of the legislative power. In the absence of such appropriate counterweight or, to put it more correctly, other elements that would ensure the stability of power, a short term of mandate for a one-chamber parliament is destructive. However, in setting a longer term of mandate for the US House of Representatives, the principle of separation of powers would be undermined because the upper house would lose dynamism and the direct and regular connection with the people. Thus, both houses would be engaged in stalling that would paralyse the entire life of the state. Hence, in those states, where a one-chamber parliament is the pillar of the state order, it should be the guarantee for stability. Hence, the mandate of four years is an appropriate term.

4.Mechanism for dissolving the parliament. It is customary held that the "timely dissolution of the parliament, following obvious excesses of the majority, seems to be a very healing remedy, even the best to restore healthy circulation of blood."[1123] Dissolution of the parliament is a complex legal institute, which consists of the election of the parliament for a definite term, which is denoted as the period of legislature, and the constitutional right of an institution of state power to dissolve or recall the parliament before its mandate has expired. If the parliament is not elected for a definite term of legislature, as it was, initially, in the monarchies of estates' representation, legal dissolution of the parliament is non-existent.[1124]

Dissolution of a parliament is "admissible and necessary if there are grounds to believe that the wishes of the legislative assembly do not coincide with the people's wishes."[1125] This thesis conceals the theoretical necessity to dissolve the parliament because the parliament, as an institution of the state power directly legitimised by the people, adopts decisions on behalf of the people, it is assumed that

1123 фон Бисмарк О. Воспоминания и мемуары. Т.1. Москва: Харвест, 2001, с.338.

1124 Dišlers K. Saeimas atlaišana pirms leģislatūras perioda beigām. Tieslietu Ministrijas Vēstnesis, 1927, Nr.5, 146. – 147.lpp.

1125 Дайси А.В. Основы государственнаго права Англіи. Москва: Типографія Т-ва И.Д. Сытина, 1907, с.434.

its views on political processes are aligned with the people's interests.[1126] However, if doubts occur whether the parliament's actions are, indeed, aligned with the people's will or if the public opinion has changed considerably, there should be a constitutional possibility to ascertain whether the politics implemented by the parliament complies with the people's will and, if necessary, to elect a new parliament, suspending the actions of the parliament that has lost the people's confidence. This requirement is completely self-evident as a necessary pre-condition for functional implementation of the people's sovereignty within the respective state order.

Charles-Louis de Montesquieu's theoretical concept of separation of powers totally dismissed the right to dissolve the parliament, i.e., if the head of state could dissolve the parliament then the legislator, to a certain extent, would become dependent on the executive power. Three independent state powers, constantly in conflict with each other, are constructed in his vision of the ideal state, and in practice it is manifested as subjecting the weakest powers to the strongest un destruction of the constitutional order. The disintegration of the French Constitution of 1791 and the establishment of the Covent's dictatorship clearly demanded review of Charles-Louis de Montesquieu's theory. It has been done in the Constitution of the USA, by introducing the system of checks and balances, whereas in Europe, Benjamin Constant developed the theory regarding the power of the head of state, which is above the legislative, executive and judicial powers as independent power, ensuring unity of the state power. The neutral power of the head of state must be granted functions in the areas of competence of all three branches of state power, including the right to dissolve the parliament.[1127]

In Great Britain, a stable parliamentary regime has been retained thanks to the government's right to dissolve the House of Commons if the government were to consider the actions by the House

1126 Dišlers K. Latvijas Republikas prezidenta politiskā atbildība. Tieslietu Ministrijas Vēstnesis, 1922, Nr.2, 59.lpp.

1127 Pleps J. Kādā veidā var atlaist Saeimu. Jurista Vārds, 2003.gada 9.decembris, Nr.44(302).

of Commons as being incompatible with the national interests and the public opinion. In the period from 1801 to 1910, none of 29 parliaments operated for the entire period of seven years set for the legislature. Whereas in 1911, the period of legislature for the House of Commons was shortened to five years.[1128] Formally, the right to dissolve the parliament is vested in the British monarch, however, during more than a hundred years, no monarch has dared to dissolve the parliament on their own initiative because the constitutional custom binds the monarch by the duty to listen to the Prime Minister's recommendations.[1129] In Great Britain, the Prime Minister's right to demand extraordinary elections serves as the means for resolving crisis when a new mandate is needed from the electors for making complicated political decisions or as a certain informal advantage for the parliamentary majority to choose the time of elections that is advantageous for it. For example, in order to implement the Brexit referendum, already two extraordinary elections have been needed. In the USA, where strict separation of the state power is implemented, the idea of dissolving the parliament has been rejected – if the President were able to dissolve the Congress it, to a certain extent, would become dependent on the executive power.

Kārlis Dišlers differentiates between three main types of dissolution of the parliament.[1130] In some countries, this right is granted to the head of state, which nowadays is a very common, one might even say – the prevailing type of dissolution. At the same time, the conditions, upon the onset of which the head of set may exercise this right, may differ. It is rather difficult to find unrestricted right of the head of state to dissolve the parliament at any time because, mostly, various preconditions or requirements are included in constitutions, determining when the head of state may exercise the right to dissolve

1128 Akmentiņš R. Latvijas Satversmes reforma. Jurists, 1934, Nr.5(56), 142.sl.

1129 Grīnbergs O., Cielava V. Lielbritānijas valststiesību pamati. Rīga: Pētera Stučkas Latvijas Valsts Universitāte, 1979, 11.lpp.

1130 Dišlers K. Saeimas atlaišana pirms leģislaturas perioda beigām. Tieslietu Ministrijas Vēstnesis, 1927, Nr.5, 150. – 154.lpp.

the parliament. A widespread restriction on the president's right is the condition that the parliament may not be dissolved a second time for a certain period after the parliament has convened if it already had been dissolved, or a prohibition to dissolve the parliament at the time of war or during an emergency situation, likewise, such powers are not granted to an acting president. A trend is also seen in the new constitutions to envisage casuistically those cases where the president has the right to dissolve the parliament.[1131] However, such restrictions decrease the possibilities for resolving political crisis by extraordinary elections or create the need to subject politically the dissolution of the parliament to the letter of the constitution or even to violate it. This causes great political tension in conditions that already are complicated and might require involvement of the constitutional court if it needs to verify whether the extraordinary elections have been announced constitutionally. For example, the Federal Constitutional Court of Germany has had to become involved in the process of extraordinary elections several times.[1132] In this respect, the transition from the relatively free right of the head of state to dissolve the parliament to the right that is totally restricted in the constitution by directly envisaged cases when it is possible might not reach the required aim in resolving political crises.[1133] If the right of the head of state to dissolve the parliament is bound by the requirement of countersignature then, actually, the government is the one who makes the decision on dissolving the parliament. States where the right to dissolve the parliament is vested in the people, i.e., the totality of citizens with electoral rights, can be mentioned as the second type of dissolution of the parliament. To implement this type, a certain part of the people should have the right to demand dissolution of the

1131 Pleps J. Satversmes 48.pants. In: Latvijas Republikas Satversmes komentāri. III nodaļa. Valsts prezidents. IV nodaļa. Ministru kabinets. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2017, 345. – 347.lpp.

1132 Kommers D.P. The Federal Constitutional Court: Guardian of German Democracy. The Annals of the American Academy of Political and Social Sciences, 603, 2006, pp.111 – 128.

1133 Compare: Valsts prezidenta Valda Zatlera 2011.gada 16.marta raksta Nr.46 IV sadaļa. https://www.president.lv/storage/items/PDF/iniciativa-satversmes-grozijumiem.pdf

parliament and the respective decision must be made in a referendum. Presently, this type is not too widespread, however, is encountered in some federal lands of Germany. Amendments to the *Satversme* introduced such mechanism for dissolving the *Saeima* in Article 14 of the *Satversme*, giving the possibility to at least one tenth of electors to demand a referendum regarding dissolution of the *Saeima*.[1134] The third type, which was a novelty in Kārlis Dišlers' time, has become established today. The parliament's right to make the decision on dissolving itself before its mandate has expired is envisaged in the states of this type. For example, Article 58 of the Lithuanian Constitution of 1992 provides that "pre-term elections to the Seimas may be held on the decision of the Seimas adopted by not less than a 3/5 [three-fifths] majority vote of the Members of the Seimas." It is possible to distinguish also the fourth basic type, which began evolving at the beginning of the last century. In some countries, the constitution includes a norm that defines the conditions, upon the onset of which the parliament is considered as having been dissolved automatically, hence, the function of dissolving is performed by a constitutional norm. For example, Article 32 of the Estonian Constitution of 1920 provided: "If the people reject a law passed by the State Assembly or accept a law rejected by the Assembly new elections of the State Assembly will be proclaimed, these elections to take place not later than seventy-five days after the plebiscite." Usually, several types of dissolution of the parliament are combined in the constitutional order of the state, providing for alternative possibilities to dissolve the parliament, also, peculiar regulations are developed by combining features of some types. A combination like this is also the regulation on the dissolution of the *Saeima* set out in the *Satversme*, characterised by Kārlis Dišlers

1134 Nikuļceva I., Litvins G. Satversmes 14.pants. In: Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2020, 32. – 240.lpp.

as such that "has not been simply copied from a model but has been developed rather independently."[1135]

The parliament cannot be dissolved in a legislative procedure; this act is entirely different content-wise. Dissolution of the *Saeima* is a creative and not a legislative act. Thus, "it is not enough, how the act is named in its title. If we permit it, then it would be possible to annul our *Satversme* almost entirely and issue through a referendum administrative or jurisdictive acts, calling them laws." For example, in the summer of 1927, an association started collecting signatures in support of the draft law "Law on Recalling the Second *Saeima* of the Republic of Latvia", which envisaged dissolution of the second *Saeima* of the Republic of Latvia, which had been elected in October 1925. At the time, it was argued that such a proposal was incompatible with the *Satversme* and had to be considered as being anti-constitutional. The term of the *Saeima*'s mandate cannot be shortened by initiating and adopting an ordinary law.[1136]

5. Dissolving the *Saeima*. In the Latvian constitutional law, Article 48 of the *Satversme* has been applied only once. Prior to Valdis Zatlers' decision to initiate dissolution of the *Saeima*, the procedure for dissolving the *Saeima* set out in the *Satversme* was considered to be ineffective and in need of significant alterations. Article 48 of the *Satversme* divides the right to dissolve the *Saeima* between the President and the totality of citizens. The first sentence of Article 48 of the *Satversme* provides "The President shall be entitled to propose the dissolution of the *Saeima*." Pursuant with the second part of this article, in turn, following such a proposal by the President, a national referendum must be held., i.e., the decision on dissolving the *Saeima* is made by the totality of citizens. This construction allows leaving out of the *Satversme* casuistic enumeration of cases when it would be possible to dissolve the *Saeima* because it is decided by the people.

1135 Dišlers K. Saeimas atlaišana pirms leģislatūras perioda beigām. Tieslietu Ministrijas Vēstnesis, 1927, Nr.5, 145.lpp. See more: Valsts prezidenta Konstitucionālo tiesību komisijas 2008.gada 30.aprīļa viedoklis "Par Saeimas priekšlaicīgu vēlēšanu mehānisma pilnveidošanu."

1136 Dišlers K. Nekonstitucionāls ierosinājums. Jaunākās Ziņas, 1927.gada 17.jūnijs.

During Valdis Zatlers' presidency, clear confrontation with the parliamentary majority could be discerned.[1137] First of all, already on 14 January 2009, Valdis Zatlers advanced a number of political requirements to the *Saeima* and the Cabinet, imposing the obligation to fulfil them by 31 March 2009. Valdis Zatlers committed himself to dissolve the 9th *Saeima* if that would not be dome. Such political intervention by the President was an unprecedent claim for a greater role of the President within the Latvian constitutional order. The President defined clear tasks, the resolution of which until then had been an issue in the competence of the *Saeima* and the Cabinet. In demanding specific measures, Valdis Zatlers also clearly formulated the possible consequences - dissolution of the *Saeima* and, probably, extraordinary elections. Although several politicians criticised harshly the President's ultimatum, pointing out that the President may not give specific tasks to the *Saeima* and set deadlines for performing them,[1138] in general, the *Saeima* and the Cabinet complied with the requirements expressed in the ultimatum. In his address on 31 March 2009, in assessing what the *Saeima* and the Cabinet had done, Valdis Zatlers admitted that the dissolution of the *Saeima* would not be proposed; however, this issue would remain on the President's agenda. On 28 May 2011, when less than a month was left before the expiry of the President's mandate, the President exercised the powers envisaged in Article 48 of the *Satversme* for the first time in the period of the *Satversme*'s validity and initiated dissolution of the *Saeima*. Valdis Zatlers provided substantiation for the proposal to dissolve the *Saeima* in his speech, pointing to several decisions by the *Saeima* that had caused this decision. The dissolution of the *Saeima* gained great support in society. On 23 July 2011, 650 518 citizens voted for the dissolution of the *Saeima*, with only 37 829 citizens being against it.

1137 See more: Balodis R., Pleps J. Financial Crisis and the Constitution in Latvia. In: Constitutions in the Global Financial Crisis. A Comparative Analysis. Ed. by Xenophon Contiades. Farnham and Burlington: Ashgate, 2013, pp.129-131.

1138 Egle I., Jemberga S. Daudze: prezidents Saeimai var tikai ierosināt. Diena, 2009.gada 14.janvāris.

Pursuant to Article 49 of the *Satversme*, if the *Saeima* has been dissolved or recalled, the mandate of the Members of the *Saeima* continue to be in effect until the newly elected *Saeima* convenes; however, the former *Saeima* may only hold sittings if the President convenes such. The President determines the agenda for such sittings. Since this was the first dissolution of the *Saeima* in the constitutional practice, the procedure set out in article 49 of the *Satversme* had to be applied for the first time. Andris Bērziņš, who assumed the President's duties after Valdis Zatlers' term of mandate expired, had to apply it.[1139]

To make it clear how the *Saeima*'s work would be organised until the new *Saeima* was convened, the President published the procedure in which he would convene the sittings of the *Saeima*. The President's Chancery announced that no issue would be put on the agenda for the *Saeima*'s sitting mechanically but only after assessment, requesting of additional information, consultations and meetings. This was the procedure intended for ensuring the President's control over the issues to be put on the *Saeima*'s agenda. The President's Chancery also noted that, depending on the number of issues, the sittings of the *Saeima* would not be convened every week. In urgent cases, the *Saeima*'s sittings could be convened also at another time, in particular, assessing the Prime Minister's request, if such were submitted. The President's Chancery also advanced several substantive pre-requisites for examining a matter at the *Saeima*'s sitting, the agenda of which was set by the President. It was noted that each draft law submitted for review would need an annotation, even if, pursuant to law, such was not mandatory in the particular situation. Likewise, if the decision impacted the state budget, the Minister's for Finance opinion was needed. The President's Chancery also undertook to pay special attention to those draft laws against which the Ministry of Justice or the *Saeima* Legal Bureau had valid objections. The President's Chancery

1139 See more: Drēģeris M., Pastars E., Pleps J. Satversmes 49.pants. In: Latvijas Republikas Satversmes komentāri. III nodaļa. Valsts prezidents. IV nodaļa. Ministru kabinets. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2017, 363. – 375.lpp.

also underscored that as regards matters pertaining to amending the *Satversme*, citizenship issues and the Rules of Procedure of the *Saeima*, before putting them on the agenda, the President would hear the opinion of the Constitutional Law Commission.[1140] In the situation where the *Saeima* had been dissolved, the President assumed also responsibility for political stability. For example, the President decided to not put on the agenda of the *Saeima*'s sitting the issue of expressing non-confidence in the Minister for Justice, leaving this matter in the competence of the Prime Minister and electors. Organisation of the *Saeima*'s work following the dissolution showed that "in protecting the constitutional values, the most essential role is played by the President who, during this period, in difference to the period when the *Saeima* is totally legitimate and independent, has real instruments to act contrary to the opinion of the *Saeima*'s majority with the *Saeima*'s majority having no counterweight to it."[1141]

Dissolution of the *Saeima* and Article 48 of the *Satversme* caused extensive discussions among the experts of constitutional law regarding this procedure.[1142] However, the practice of applying Article 48 of the *Satversme* was significantly enriched during the presidency of Valdis Zatlers, allowing to make some conclusions.[1143] Firstly, the President is the only subject who can decide on dissolving the *Saeima*. Some inhabitants may request the President to dissolve the *Saeima*, likewise, political parties and parliamentary groups of the *Saeima* may propose this to the President; however, none of these proposals is legally binding. The President must assess the situation themselves and decide on the need to initiate dissolution of the *Saeima*. Secondly, the right, envisaged in the first sentence of Article 48 of the

1140 Par Saeimas darba kārtību - līdz jaunas Saeimas ievēlēšanai, Latvijas Vēstnesis, 2011.gada 28.jūlijs, Nr.117(4515).

1141 Pastars E, Konstitucionālo vērtību aizsardzība Saeimas atlaišanas gadījuma, Jurista Vārds, 2011. gada 8.novembris, Nr.45(692).

1142 Saeimas atlaišana: Satversme un neskaidrie jautājumi. Vērtē un komentē tiesību eksperti. Jurista Vārds, 2011.gada 7.jūnijs, Nr.23(670).

1143 See more: Pleps J. The Application of Article 48 of the Constitution of Latvia. In: Rozważania nad problemami współczesnych społeczeństw demokratycznych. Płock: Szkoła Wyższa im. Pawła Włodkowica w Płocku, 2010, s.205-217.

Satversme is the last resort in the powers that the *Satversme* grants to the President, by which the President not so much suspends the parliament as attempts to influence its work to take the direction they want. Before exercising the right envisaged in the first sentence of Article 48 of the *Satversme*, the President may instruct the *Saeima* to take certain political measures and link the failure to do so to the proposal on dissolution of the *Saeima*. This means that the proposal to dissolve the *Saeima* might not be an unexpected decision by the President, announced publicly only after it has been adopted, but the outcome of a prolonged dialogue between the President and the *Saeima*, without reaching agreement and with the *Saeima* failing to meet the President's political requirements. Such political dialogue with the *Saeima* reveals to society the causes of the conflict between the President and the *Saeima*, as well as allows the totality of citizens to decide ,which body of the state power it supports in this conflict. Undoubtedly, such practice allows the President to influence the *Saeima*'s work more effectively and get his political aims implemented, even without proposing dissolution of the *Saeima*. However, the question whether this method complies with the *Satversme* remains open for discussions because the *Satversme* provides for parliamentarism with the *Saeima* as the central institution of state power. A politically active President who uses the right envisaged in the first sentence of Article 48 of the *Satversme* to "blackmail" the *Saeima* has not been embedded in the system of the *Satversme*. Thirdly, since the decision enters into force at the moment of signing and, as of that moment, the *Saeima* may not exercise its powers to dismiss the President, the President must make public for society their decision on the probable proposal to dissolve the *Saeima* in due time and also must provide substantiation for their actions (it is not mandatory to include it in the text of the decision).

Valdis Zatlers' actions while holding the President's office show that these reasons were made known to society in due time. The dialogue between the *Saeima* and the President does not occur secretly, behind the scenes but by informing society rather broadly about these

negotiations and the opinions of both parties. Fourthly, the President, in their right to propose dissolution of the *Saeima*, is not restricted by any conditions. Theoretically, the President may "exercise his right freely and independently, which gives him the possibility to speak freely and objectively in such conceivable instances when a dispute has arisen between the *Saeima* and the government regarding an important matter."[1144] In such cases, the President must take into account also the public opinion, which might impact the outcome of the referendum on dissolving the *Saeima*. Likewise, the President may exercise their right to propose dissolution of the *Saeima* throughout the term of their mandate, i.e., they are not bound by the obligation to refrain from proposing dissolution of the *Saeima* for a certain period before or after elections of the *Saeima* or the President. Also, the President is not obliged to stay in their office and wait for the outcomes of the referendum regarding their proposal.

The practice of applying Article 48 of the *Satversme* proves that this article is an effective mechanism in the mechanism of separation of powers set out in the *Satversme*. Article 50 of the *Satversme* is of particular significance in the mechanism for dissolving the *Saeima*. This norm functions as an effective filter in the President's decision-making, an additional test for ascertaining, whether dissolution of the *Saeima* is needed in the national interests of Latvia or it merely serves personal ambitions. Such a provision functions better than a requirement of countersignature or consent by any other institution of the state power. Likewise, it allows for flexible regulation, avoiding in the constitutional provisions a casuistic description of cases when the President may dissolve the *Saeima*. Generally, the mechanism for dissolving the *Saeima* ensures effective division of powers between the *Saeima* and the President, compatible with a parliamentary republic. "The President will undertake to dissolve the *Saeima* only if he, apart from being convinced that he is politically in the right, will also have the conviction that the *Saeima* no longer expresses the will

1144 Dišlers K. Saeimas atlaišana pirms leģislaturas perioda beigām. Tieslietu Ministrijas Vēstnesis, 1927, Nr.5, 156.lpp.

of the people and, in resolving the conflict, will take his side."[1145] Is it even possible to develop as simple and, at the same time, well-considered and open to currently unknown circumstances mechanism for dissolving the *Saeima* as the one currently set out in the *Satversme*.

VI. Legal status of deputies

1. Special status of the people's representatives. In performing their duties, the people's representatives enjoy privileges, traditional for all states. These privileges follow from the special nature of the parliamentary functions. If the executive or the judicial power could intervene in the legislative process, than the freedom to create law, the legislator's independence and objectivity would come under the pressure of an alien will. This, in turn, would mean destruction of the system of separation of powers and striving for the supremacy of law. To prevent influence over the parliament, special privileges are granted, which apply to the parliament itself as a whole and to its individual members. The parliament as a whole has the right to elect the presidium, the right to verify the legality of its members' mandates, as well as to establish internal parliamentary rules and procedure for reviewing matters.[1146] In defending the people's representatives as whole, separate guarantees must be granted to each individual member of this group.

Constitutionally, the deputy has been recognised as the people's representative and is the legitimate promulgator of the people's will at the national constitutional institution – the parliament, and their status has been defined in the basic law of the state.[1147] In a democratic republic, performing the deputy's obligations is the main task of

1145 Dišlers K. Latvijas Valsts prezidenta kompetence. Tieslietu Ministrijas Vēstnesis, 1922, Nr.3, 121.lpp.

1146 Рейснеръ М.А. Государственное право. [Б.м., б.и., б.г.], с.207.

1147 Judgement by the Constitutional Court of the Republic of Latvia of 22 February 2002 in Case No.2001-06-03, Para 12 of the Findings.

the people's representative, in the performance of which they may not be bound by any restrictions, e.g., the deputy's right to participate in the parliament's sittings and voting cannot be denied but may be restricted to ensure that the parliament is functional.[1148] In totalitarian states, however, a deputy is not a professional parliamentarian. The deputy's obligations is only side occupation, alongside a permanent job. The deputy's obligations are performed as a public duty, which almost always decreases the personal interest of the people's representative. Being the people's deputy is great honour; however, certain remuneration is needed for honest performance of duties.

Political parties have an enormous role in the selection of deputies. In proportional elections, the people do not vote for individuals but for a certain ideology and political party who has proposed this candidate, who represents its worldview. In many countries the deputy's oath is an important moment in acquiring the deputy's mandate. The need to give the oath is included also in the *Satversme* because the legislator had wished "the person who has been elected deputy to take their duties very seriously."[1149] In order to perform the obligations of the people's representative, certain privileges must be granted to the people's representative. Usually, a member of the parliament is personally inviolable and they may not be made criminally or otherwise legally liable and detained without the parliament's consent.

2. Deputy's immunity. The privileges of individual members of the parliament include the freedom to express one's opinion or freedom of speech of the deputy, for exercising of which in good faith the deputy cannot be liable, and the deputy's right to inviolability, which precludes prosecution or detention of a deputy without the parliament's consent.[1150] A deputy's unaccountability and

1148 Judgement by the Constitutional Court of the Republic of Latvia of 23 December 2019 in Case No. 2019-08-01, Para 14.

1149 Gailīte D. Kā, stiprinot valodu, saglabāt Satversmes tradīciju. Latvijas Vēstnesis, 2002. 20.marts, Nr.44(2619).

1150 Рейснеръ М.А. Государственное право. [Б.м., б.и., б.г.], с.208.

inviolability is a guarantee to ensure that the representative, chosen by the people, would be able to perform their duties defined in the constitution.. Kārlis Dišlers called the deputy's immunity as a special right, including two main aspects: a deputy's unaccountability and a deputy's inviolability.[1151] An essential guarantee is included in Article 31 of the *Satversme*, which gives the right to a Member of the *Saeima* to refuse to disclose information about their communication with other persons in the capacity of the people's representative and the facts and information acquired through it.[1152] The institute of a deputy's inviolability[1153] (e.g., prohibition to restrict a deputy's liberty, make criminally liable without the consent of the *Saeima*), in the period of its historical development, not always had been clearly differentiated from the second most important element of a deputy's immunity - unaccountability (for example, prohibition to hold a Member of the *Saeima* liable for thoughts expressed while performing the duties of office), and its history goes hand in hand with the history of the parliament. Nowadays, a deputy's inviolability has been retained as a historical tradition from the times when monarchs persecuted people's representatives and which is of little importance in circumstances of a democratic state governed by the rule of law. The people are entitled to demand that a deputy should be an impeccable citizen, and a deputy should be accountable, without any restrictions, for their actions that are not directly linked to performing the duties of the people's representative.[1154] The aim of a deputy's inviolability is to ensure correct and unhindered functioning of the parliament and to protect a member of the parliament against unfounded and politically motivated allegations by the executive power against them. The

1151 Dišlers K. Permanenta likumdošanas iestāde un deputātu imunitāte. Tieslietu Ministrijas Vēstnesis, 1922, Nr.1, 10. – 14.lpp.

1152 Dišlers K. Deputātu tiesība atteikties no liecības došanas. Tieslietu Ministrijas Vēstnesis, 1923, Nr.8, 49. - 56.lpp.

1153 See more: Kaņeps A. Deputātu neaizskaramības institūts. Jurista Vārds, 2006. gada 25. jūlijs, Nr. 29 (432); Kaņeps A. Deputātu neaizskaramība: vai Satversmē nepieciešami grozījumi. Jurista Vārds, 2006. gada 26. septembris, Nr. 38(441).

1154 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 128.lpp.; Pastars E., Kaņeps A. Ciktāl deputātam būt imūnam? Diena, 2004.gada 9.janvāris.

aim of a deputy's unaccountability, in turn, is to create for the deputy as favourable conditions as possible for expressing one's free will, uninfluenced by any external factors, when acting in the people's interests. However, this principle of unaccountability in constitutions is not absolute and is reasonably restricted.[1155]

The institute of a deputy's immunity developed and became consolidated in England, in the age of struggles for liberty, and its historical roots go back to the age of estate monarchy when the king often needed the participation of estate representatives. To ensure that representatives of estates from distant places, embarking on a dangerous journey, would convene for the meeting in full numbers, kings granted them special protection, e.g., guaranteeing in this period freedom from being made liable or being detained, protection against private complaints, claiming of debts, etc. In the course of its development, the parliament ceased to be the assembly of only estates' representatives and started claiming part of the monarch's power, the parliament opposed the monarch. Thus, a deputy's immunity transformed from being protection against other persons, gifted by the king, into protection of the deputy against the king himself or any other force outside the parliament, initially as unaccountability, later also as inviolability. The institute of a deputy's inviolability acquired the form that is characteristic of it today at the end of XVIII century, at the time of the French Revolution, because sufficient guarantees of personal freedom were absent, whereas the arbitrariness of the administration was omnipotent, which created the need to ensure that the National Assembly could fulfil its tasks unhindered.

The Constitutional Court finds that the law policy purpose of the institute of immunity of a *Saeima* Member is to ensure the deputy's freedom in making decisions in the *Saeima* and protecting the *Saeima*'s ability to function, inter alia, by protecting the *Saeima* deputies against inadmissible external influence. This impact, which could be exerted also by other branches of power, might hinder deputy in the

1155 Pastars E., Kaņeps A. Ciktāl deputātam būt imūnam? Diena, 2004.gada 9.janvāris.

performance of their duties. "In deciding on consenting to commencement of criminal procedure against a Member, the *Saeima* verifies, whether the criminal prosecution is not linked to the Member's political activities and whether this criminal prosecution will not jeopardise the *Saeima*'s ability to operate. The *Saeima*'s right to decide on the consent to commencing criminal prosecution against a *Saeima* Member is a manifestation of the *Saeima*'s–as a constitutional state body –autonomy."[1156]

The Latvian Senate has noted that a deputy's immunity is an exception to the general equality principle: "Article 82 of the *Satversme* provides that all citizens are equal before the law and court. Thus, in the legal life, the same norms have been set for all citizens in the state. This means that, from the legal perspective, all citizens have the same liability. Equal and similar is citizens' liability for such actions, which have the features of offences described in the dispositive parts of penal norms. Exceptions to the principle of equality (égalité), included in Article 82 of the *Satversme*, exist only insofar they have been directly envisaged in law, and they cannot be presumed. Articles 28, 29 and 30 of the *Satversme* should be placed in the category of such exceptions, of which the first one, as a norm of substantive nature, excludes the liability of the people's representatives for actions envisages in some penal laws and, thus, recognises that such actions, if committed by a deputy while performing their official duties, are not be regarded as a criminal offence; whereas the latter two articles are procedurally significant: they protect a deputy against various administrative and criminal procedural repressive measures, allowing such repressive measures and persecution only with the *Saeima*'s consent."[1157] A Member of the *Saeima*, in difference to a Member of the European Parliament in Member States of the European Union (moreover, the scope of immunity may differ in their own

1156 Judgement by the Constitutional Court of the Republic of Latvia of 23 December 2019 in Case No.2019-08-01, Para 9.

1157 Latvijas Senāta Apvienotās sapulces 1928.gada 18.maija spriedums Nr.7. In: Latvijas Senāta spriedumi (1918-1940). 1.sējums. Senāta Apvienotās sapulces spriedumi. Rīga: Latvijas Republikas Augstākā tiesa, Senatora Augusta Lēbera fonds, 1997, 177. – 178.lpp.

and another Member State)[1158], does not enjoy a deputy's immunity abroad or enjoys it only in accordance with the status that would be granted to a holder of a diplomatic passport. The need for the *Saeima*'s consent to impose administrative sanctions on a Member of the *Saeima* was excluded by the amendments to Article 30 of the *Satversme* in 2016. However, the *Satversme* still contains sufficiently broad guarantees for a deputy's inviolability. The first sentence of Article 29 of the *Satversme* provides that the *Saeima*'s consent is needed to arrest a Member of the *Saeima* or to search their premises, or to restrict their personal liberty in any other way. As regards restricting a *Saeima* Member's personal liberty in other ways, for some time there had been uncertainties in the practice of applying the *Satversme*. It is important to underscore that "in taking certain measures against a Member of the *Saeima*, it must always be assessed, whether this measure does not restrict their personal liberty."[1159] The meaning and purpose of Article 29 of the *Satversme* should be taken into account in this assessment – control over the restrictions on a deputy's personal liberty to ensure unhindered parliamentary work.[1160] In the context of Article 29 of the *Satversme*, most probably also the inviolability of the documents and correspondence of a Member of the *Saeima* should be examined as an expression of a deputy's personal liberty. The same would apply to the deputy's communication in e-mails and social networks, as well as phone conversations. Access to the respective information, by restricting a deputy's liberty, would be correctly constitutionally possible only in the procedure set out in Article 29 of the *Satversme*. In particular, taking into account that a Member of the *Saeima* needs communication, acquiring of information, collecting and soring it explicitly for performing their official duties as

1158 The Challenge of Parliamentary Immunities. An Overview. http://www.europarLeuropa.eu/pdf/oppd/Page_1/ Parliamentary_immunities_final_web_EN.pdf

1159 Meikališa Ā., Strada-Rozenberga K., Bebers K. Satversmes 29. un 30. pants. In: Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2020, 499.lpp.

1160 Ibid.

the people's representative, and even more so – for unhindered and full-fledged parliamentary work.

Different scope of a deputy's unaccountability and inviolability has been set in various countries. Some countries have only the institute of a deputy's unaccountability (the Netherlands). As regards inviolability of deputies, in various countries the moments when the protection begins and ends may differ, as well as the period of validity, e.g. it applies or does not apply to offences committed prior to election (Poland), starts with the moment of elections (Australia) or the moment when the mandate is obtained, continues also after the loss of mandate (India), as well as does not apply to the period between the sessions (Czechia). Inviolability may be applied also only against detention while on the way to the parliament or in the parliament (Norway), apply predominantly to civil cases (arrest in a civil case) or mainly to the area of criminal law, inter alia, with gradation in accordance with the severity of the offence or the restriction (Finland). There are countries where a deputy's inviolability is ensured by procedural means, i.e., the Supreme Court rules on the deputies' offences (Columbia) or by demanding that while a deputy is searched the President of the Parliament should be present (Belgium). A deputy's inviolability may be revoked. This is usually done by the parliament itself but exceptions are possible, e.g., a special court (Chile), in some cases – the presidium, a special commission (in Germany, but in a special written procedure, asking whether anyone objects) or even the President of the Parliament (Zambia). In some states only an official of the supreme judicial power may request lifting the immunity (Spain). Usually, a deputy may not refuse immunity (Poland is an exception, a deputy has this right). If a deputy has been arrested and the parliament has consented to it, usually, the deputy does not participate in the parliamentary work during this period, albeit there are exceptions, e.g., Greece. Deputies' immunity, formed in the tradition of the French law, allows the parliament also to object against certain actions with respect to a deputy, e.g., prohibit arrest (France). The requirement of a qualified majority vote may be set for it (Belgium).

VII. Organisation of the parliament

1. Principle of parliamentary autonomy. For the parliament to be able to perform its duties of the body representing the people, granted to it in the constitution, sufficient discretion of the parliament and its independence from other bodies of the state power must be constitutionally guaranteed to it.[1161]

In the Latvian constitutional theory, the Constitutional Court has characterised the necessary scope of discretion as the principle of parliamentary autonomy.[1162] Initially, though, in specifying the general legal principle of a democratic state governed by the rule of law, the Constitutional Court used the designation "parliamentary sovereignty",[1163] which has developed historically within the constitutional system of the United Kingdom and has certain content.[1164] Parliamentary sovereignty is one of the principles of the United Kingdom's constitutional order, which determines the source of the sovereign power and its bearer in the United Kingdom.[1165] It should be taken into account that the Parliament in the United Kingdom consist of three legislative bodies – the King or the Queen, the House of Lords and the House of Representatives, a totality, known by the designation "the King or the Queen regnant in the Parliament."[1166]

1161 Levits E. Demokrātiska valsts iekārta, brīvas vēlēšanas un parlamentārā demokrātija. Struktūra, loģika un priekšnosacījumi. In: Parlamentārā izmeklēšana Latvijas Republikā. 1. Parlaments. Parlamentārā kontrole. Prof. R.Baloža zinātniskā redakcijā. Rīga: Latvijas Vēstnesis, 2016, 39.lpp.

1162 Judgement by the Constitutional Court of the Republic of Latvia of 23 December 2019 in Case No. 2019-08-01, Para 9 and Para 14.

1163 Judgement by the Constitutional Court of the Republic of Latvia of 13 July 1998 in Case No.03-04(98), Para 3 of the Findings.

1164 See more: Goldsworthy J. Parliamentary Sovereignty. Contemporary Debates. Cambridge: Cambridge University Press, 2010.

1165 See more: Leyland P. The Constitution of the United Kingdom: a Contextual Analysis. Oxford and Portland: Hart Publishing, 2012, pp. 47 – 50.

1166 Dicey A.V. Introduction to the Study of the Law of the Constitution. Third Edition. London: Macmillan and Co, 1889, p.37; Bagehot W. The English Constitution. Second Edition. London: Little, Brown and Company, 1873, p.42. See also: Dišlers K. Anglijas konstitucionālās tiesības un politiskā teorija. Lekcijas. Rīga: Latvijas Universitāte, 1930.

Parliamentary sovereignty means that the parliament is the source and bearer of sovereignty in the respective constitutional order. Thus, the parliament is granted unlimited right to legislate, i.e., only the parliament may adopt or repeal any law on any matter, and no other person or institution has the right to repeal or review the laws adopted by the parliament.[1167] In those constitutional orders that have taken over the idea of parliamentary sovereignty, the right of the judicial power to review the compatibility of laws, adopted by the parliament, with the constitution is recognised unwillingly, also, constitutional courts as separate bodies of the state power have not been established.[1168] Parliamentary sovereignty, actually, means concentration of all power within the parliament, turning it into the central and dominant body of the state power.

Alongside the right to develop its own rules of procedure, the Constitutional Court of Latvia has referred also to other elements of the principle of parliamentary sovereignty, i.e., "the *Saeima* itself decides on several matters pertaining to its Members: it verifies the mandate of its Members [..], consents to criminal prosecution against a Member of the *Saeima* [..], decides on matters specified in Article 29 of the *Saeima*."[1169] This detailed description explains that, initially, the Constitutional Court has used the concept of parliamentary privilege, well-known in the constitutional order of the United Kingdom [1170], naming it inaccurately as the principle of parliamentary sovereignty. Parliamentary privilege is a set of separate norms, which ensured proper functioning of the Parliament, its both Houses and

1167 Dicey A.V. Introduction to the Study of the Law of the Constitution. Third Edition. London: Macmillan and Co, 1889, pp.38 – 67.

1168 See more: Kokott J., Kaspar M. Ensuring Constitutional Efficacy. In: The Oxford Handbook of Comparative Constitutional Law. Edited by Michel Rosenfeld and András Sajó. Oxford: Oxford University Press, 2012, pp. 797 – 799.

1169 Judgement of the Constitutional Court of the Republic of Latvia of 22 February 2002 in Case No.2001-06-03, Para 5 of the Findings.

1170 Leyland P. The Constitution of the United Kingdom: a Contextual Analysis. Oxford and Portland: Hart Publishing, 2012, pp.119 – 120. See also: Bradley A.W., Pinelli C. Parliamentarism. In: The Oxford Handbook of Comparative Constitutional Law. Edited by Michel Rosenfeld and András Sajó. Oxford: Oxford University Press, 2012, pp.660 – 661.

individual Members of the Parliament and excluded the possibility for the monarch to interfere into the Parliament's work.[1171]

In the context of comparative constitutional law, parliamentary privilege has been extensively taken over by other countries and introduced in their regulation on the parliament's activities and has become the main elements in the principle of parliamentary autonomy.[1172]

The principle of parliamentary autonomy is recognised as one of the main basic principles in organising the parliament's work.[1173] Parliamentary autonomy emphasizes and highlights the parliament's independence and it not being subject to other bodies of the state power, as well as the possibility to define organisation of its work and internal procedure.[1174] The principle of parliamentary autonomy aims to ensure the necessary pre-conditions for successful operation of the parliament and unhindered fulfilment of its constitutional obligations.[1175] Therefore, even in cases where some privileges are granted to members of the parliament, their purpose is to ensure the autonomy and unhindered operation of the parliament in general.[1176] However, it has been validly concluded in the Latvian legal science that the *Saeima* has been granted very broad rights to autonomy, which even exceed the autonomy of parliaments in other states.[1177]

1171 See more: Erskine May's treatise on the law, privileges, proceedings and usage of Parliament. 25th edition, 2019. https://erskinemay.parliament.uk/

1172 Levits E. Demokrātiskā valsts iekārta, brīvas vēlēšanas un parlamentārā demokrātija. In: Parlamentārā izmeklēšana Latvijas Republikā. 1. Parlaments. Parlamentārā kontrole. Prof. R.Baloža zinātniskā redakcijā. Rīga: Latvijas Vēstnesis, 2016, 39.lpp.

1173 See more: Buitenweg K. The European Parliament's quest for representative autonomy: An internal perspective. The Hague: Eleven International Publishing, 2016, pp. 62 – 70.

1174 Kelsen H. General Theory of Law and State. New Brunswick and London: Transaction Publishers, 2006, p.290. See more: Beetham D. Parliament and Democracy in the Twenty–First Century. A guide to good practice. Geneva: Inter-Parliamentary Union, 2006, pp. 117 – 119.

1175 Bradley A.W., Pinelli C. Parliamentarism. In: The Oxford Handbook of Comparative Constitutional Law. Edited by Michel Rosenfeld and András Sajó. Oxford: Oxford University Press, 2012, pp.660 – 661.

1176 See more: Cielēns F. Latvijas Republikas Satversmes noteikumi par deputātu imunitāti. Tieslietu Ministrijas Vēstnesis, 1929, Nr.4, 88. - 92.lpp.

1177 Levits E. Demokrātiska valsts iekārta, brīvas vēlēšanas un parlamentārā demokrātija. Struktūra, loģika un priekšnosacījumi. In: Parlamentārā izmeklēšana Latvijas Republikā. 1. Parlaments. Parlamentārā kontrole. Prof. R.Baloža zinātniskā redakcijā. Rīga: Latvijas Vēstnesis, 2016, 39.lpp.

A large part of the norms included in Chapter II of the *Satversme* "The *Saeima*" is aimed directly at ensuring parliamentary autonomy.[1178]

2. Regulatory acts. Due to the breadth of the parliamentary work, it is impossible to enumerate in the national constitution all matters that the parliament has the right to decide on, as well as the basic principles of the procedure for exercising the parliamentary rights. Usually, the constitution, in defining the basic principles, authorises the parliament or the separate chambers of multi-chamber parliament to develop regulation on its own activities. It is possible that the direct authorisation is not set out in the constitution but it follows from the meaning of the principle of parliamentary autonomy. The right to define the procedure for organising its work and reviewing matters is one of the oldest parliamentary privileges vis-à-vis the monarch who convenes the sessions of the parliament.[1179] It ensures that no other body may interfere into the parliament's internal matters because only the parliament itself may define how its work is organised by separate rules of procedure or by developing traditions (precedents).[1180]

The procedure of parliamentary work is regulated by the rules of procedure of parliamentary chambers, which include extremely wide range of issues, including the procedure for appointing officials and detailed regulation of the legislative procedure. The most important functions of the parliament may be enumerated in constitutions; however, it is impossible to envisage the procedure for reviewing all matters. To ensure proper parliamentary autonomy, historically, the rules on the parliamentary work are not drafted as a law but as an internal normative act – rules of procedure.[1181] Thus, the parliament itself (or its separate chamber) decides autonomously on its internal

1178 See more: Pleps J. Saeima kā Latvijas valsts parlaments. In: Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2020, 23. – 25.lpp.

1179 Lazersons M. Saeimas kārtības ruļļa juridiskais raksturs. Tieslietu Ministrijas Vēstnesis, 1929, Nr.3/4, 82.lpp.

1180 Sajó A. Limiting Government: An Introduction to Constitutionalism. Budapest: Central European University Press, 1999, pp. 134 – 135

1181 Lazersons M. Saeimas kārtības ruļļa juridiskais raksturs. Tieslietu Ministrijas Vēstnesis, 1929, Nr.3/4, 82.lpp.

organisation of work, i.e., the involvement of other bodies of the state power in this process is not necessary and , likewise, other bodies of the state power cannot assess the expedience and necessity of such regulation.[1182] If a parliament consisted of several chambers then each chamber had the right to issue its own rules of procedure and neither the head of state nor the other chamber could influence these rules of procedure.[1183] Historically, also the rights of the judicial power to review the legality of a parliament's or its chamber's rules of procedure were restricted.[1184]

A parliament's rules of procedure can be linked to the constitution in different ways, i.e., both by simply reiterating the provisions made in the constitution, the content thereof and by providing interpretation of the principles set out in the constitution that apply to the structure and functioning of the parliament, as well as by including rules that regulate legal institutes pursuant to the system of power established by the constitution and by introducing the legal institutes defined in the constitution. The *Satversme* does not include authorisation for the Cabinet to draft a special act for regulating its internal functioning; hover, such acts have been adopted both in the form of a law and regulations. Functioning of each institution requires clear regulation on certain procedures. If a constitution defines a function then per se it requires regulation in a normative act on how this function is to be performed.

In each state, taking into account its traditions and particularities of the state order, the parliament develops regulation on its functioning. It cannot be asserted that the rules of procedure is only the chamber's internal matter. They regulate the functioning of the most important institution in the state that issues laws and adopts

1182 Sajó A. Limiting Government: An Introduction to Constitutionalism. Budapest: Central European University Press, 1999, pp. 135. See also: Sinkevičius V. Lietuvos parlamento teisė. Vilnius: Mykolo Romerio Universitetas, 2013, p.152. – 155.

1183 Dišlers K. Latvijas valsts varas orgāni un viņu funkcijas. Rīga: Tieslietu Ministrijas Vēstneša izdevums, 1925, 65.lpp.

1184 Sajó A. Limiting Government: An Introduction to Constitutionalism. Budapest: Central European University Press, 1999, pp. 135 – 136

other decisions of national importance. Not merely the fact of issuing such an act but also the procedure, in which it is done, is important. Anti-constitutionality of the procedure for issuing an act can be the grounds for recognising the act itself as being void. Due to actions by institutions enshrined in the rules of procedure derogations from the normal functioning of the state order may happen, for example, due to "guillotine" used in the English House of Commons, actually, the unelected House of Lords turns into the legislator.

It is essential to examine what the legal status of parliamentary rules of procedure is. The rules of procedure may be a united document or include several written documents, or parallelly consist of written norms and customs. Although the existence of customs in parallel to a written document cannot be excluded in any parliament, the written rules of procedure may have the form of internal regulatory enactments or laws. Constitutions may define directly the status of the rules of procedure, e.g., Article 76 of the Lithuanian Constitution, or remain silent about the status of the rules of procedure. In the latter case, both the force of law is possible if they are adopted as a law and the nature of an internal regulatory enactment. Basically, the rules of procedure of a one-chamber parliament is an internal regulatory enactment but, due to its special status, they have been given the force of law to bind other institutions of the state power by the internal procedure of the parliament. In the case of a two-chamber parliament, usually, the parliament's rules of procedure is an internal regulatory enactment.

In Latvia, Article 21 of the *Satversme* provides that the *Saeima* must establish its rules of procedure to provide for its internal operations and order. The principle of parliamentary autonomy is reflected in this constitutional provision, i.e., the *Saeima* itself defines the procedure for organising its work.[1185] The aim of the Rules of Procedure is to establish such procedure of the *Saeima*'s work that, in implementing the majority's will, at the same time guarantees also the mi-

1185 Judgement by the Constitutional Court of the Republic of Latvia of 13 July 1998 in case No.03-04(98), Para 2 of the Findings.

nority rights and ensures effectiveness of the *Saeima*'s work.[1186] Issues related to organisation of the parliament's work and, in particular, the procedure for adopting laws is a matter of constitutional law. Usually, these issues are partly regulated in the national constitution; however, usually the regulation on the parliamentary work, included in the constitution, is fragmented and unsystematic.[1187] Kārlis Dišlers has noted that the status of the Rules of the Procedure of the *Saeima* as a law had become consolidated in practice and, thus, the Rules of Procedure of the *Saeima* is said to be an organic law, which develops further the legal principles of the *Satversme*.[1188] The Latvian constitutional tradition of adopting the Rules of Procedure of the *Saeima* as a separate law in legislative process is quite unique. Mostly, parliaments, following old parliamentary traditions, continue adopting rules of procedure as internal regulatory legal acts. Thus, usually, involvement of the head of state in the promulgation of the rules of procedure is not needed – it is done by the president of the parliament.[1189]

The status of the Rules of Procedure of the *Saeima* as a formal law (external regulatory legal act) allows including in it "such legal norms that must be respected also beyond the walls of the *Saeima*."[1190] Thus, it is admissible to include in the Rules of Procedure of the *Saeima* not only norms that regulate internal procedures of the *Saeima* but also such that define the participation of other bodies of the state power or inhabitants in the *Saeima*'s work.[1191] Adoption of the Rules of Procedure of the *Saeima* in the legislative procedure means that

1186 Judgement by the Constitutional Court of the Republic of Latvia of 23 December 2019 in Case No.2019-18-01, Para 14.

1187 Еллинекъ Г. Конституции, ихъ изменения и преобразованія. Санктпетербург: Издание Юридическаго книжнаго склада "Право', 1907, с.16.

1188 Dišlers K. Likumu ierosināšana pēc Latvijas Republikas Satversmes un pēc Saeimas kārtības ruļļa. Tieslietu Ministrijas Vēstnesis, 1923, Nr.3/4, 150.lpp.

1189 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 123.lpp. See also: Sinkevičius V. Lietuvos parlamento teisė. Vilnius: Mykolo Romerio Universitetas, 2013, p.152. – 155.

1190 Kviesis A. Saeimas kārtības rullis. Jurists, 1929, Nr.4(11), 97.sl.

1191 See more: Dišlers K. Likumu ierosināšana pēc Latvijas Republikas Satversmes un pēc Saeimas kārtības ruļļa. Tieslietu Ministrijas Vēstnesis, 1923, Nr.3/4, 150. - 151.lpp.

the *Saeima* adopts them not only for itself but also for the successive *Saeima*s.[1192]

The Rules of Procedure should not be understood as only one separate law, adopted by the *Saeima*, having this title. The Constitutional Court has concluded: "The Rules of Procedure do not provide exhaustive regulation on all situations. In some cases, the procedure for the *Saeima*'s work has been defined in other laws and the *Saeima*'s decisions. [..] It is not contrary to Article 21 of the *Satversme* because the concept "rules of procedure", included in this Article, must be interpreted more broadly, i.e., as a set of such norms that regulate the parliament's work."[1193] A significant elements of the Rules of Procedure is also the practice of its application, parliamentary customs and various decisions by the Presidium of the *Saeima* and the Council of Parliamentary Groups on matters related to organisation of the *Saeima*'s work.[1194]

The first sentence of Article 21 of the *Satversme* has also been interpreted to mean that only the *Saeima* itself could propose amendments to the Rules of Procedure of the *Saeima* and that no other body of the state power could become involved in the procedure of amending the Rules of Procedure of the *Saeima*. For example, President Andris Bērziņš referred to "the existing constitutional tradition that the *Saeima* itself proposes and decides on amendments to the Rules of Procedure of the *Saeima*."[1195] This would mean that only the *Saeima* itself, i.e., Members or the Committees of the *Saeima* may propose

1192 Jelāgins J. Tiesību pamatavoti. In: Jelāgins J. Latvija ceļā uz tiesiskumu. Rakstu krājums. Rīga: Tiesu Namu Aģentūra, 2020, 106.lpp.

1193 Judgement by the Constitutional Court of the Republic of Latvia of 13 July 1998 in Case No.03-04(98), Para 3 of the Findings.

1194 See more: Kusiņš G. Parlamentārās tradīcijas Latvijā. Jurista Vārds, 2012.gada 25.decembris, Nr.52, 18. – 21.lpp.; Danovskis E. Saeimas kārtības ruļļa nozīme likumdošanā. In: Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana. Rīga: Latvijas Vēstnesis, 2019, 315. – 322.lpp.; Pleps J. Satversmes 21.pants. In: Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2020, 356. – 358.lpp.

1195 Valsts prezidenta Andra Bērziņa 2013.gada 16.septembra raksts Nr.354, 7.lpp. https://www.president.lv/storage/items/PDF/iniciativa20130916.pdf

amendments to the Rules of Procedure of the *Saeima* by submitting a respective draft law.[1196]

However, application of Article 21 of the *Satversme* needs a more detailed assessment.[1197] It clearly follows from the first sentence of Article 21 of the *Satversme* that the adoption of the Rules of Procedure of the *Saeima* falls within the *Saeima*'s exclusive competence. Deciding on the issues related to the Rules of Procedure of the *Saeima* has been taken out of the competence of the totality of Latvia's citizens as the second legislator; only the *Saeima* may adopt rules of procedure for itself.

If the President must promulgate the Rules of Procedure of the *Saeima* as a law then the President also has the possibility, envisaged in Article 71 of the *Satversme*, to request reconsideration of the respective law.[1198] A restriction on the rights envisaged in Article 71 of the *Satversme* is set out in Article 75 of the *Satversme*, which does not exclude the Rules of Procedure of the *Saeima* from the possibility to be returned for reconsideration. Likewise, the President may submit their own proposals for amendments to the Rules of Procedure of the *Saeima* in the procedure set out in Article 95 of the Rules of Procedure of the *Saeima*.[1199].

Procedures in the *Saeima* are not defined solely by the Rules of Procedure of the *Saeima*: "[In Article 21 of the *Saeima*] included concept "rules of procedure" must be interpreted broader, i.e. as a totality of such provisions that regulate the parliament's work. [..] The Rules of Procedure do not prohibit reviewing cases, not envisaged by the Rules of Procedure. In the same way, the Rules of Procedure do not

1196 Danovskis E. Saeimas kārtības ruļļa nozīme likumdošanā. In: Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana. Rīga: Latvijas Vēstnesis, 2019, 318.lpp.

1197 See more: Pleps J. Satversmes 21.pants. In: Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2020, 360. – 361.lpp.

1198 Compare: Sinkevičius V. Lietuvos parlamento teisė. Vilnius: Mykolo Romerio Universitetas, 2013, p.153.

1199 See: Valsts prezidenta Raimonda Vējoņa 2017.gada 18.augusta vēstule Nr.389. https://www.president.lv/storage/items/PDF/2017/Saeimai%20par%20Rulli18082017.pdf; Valsts prezidenta Raimonda Vējoņa 2019.gada 4.februāra vēstule Nr.36. https://www.president.lv/storage/kcfinder/files/VP_040219_Nr.36.pdf

forbid reviewing cases in compliance with the parliamentary traditions if they are not at variance with the Rules of Procedure. However, one of the basic principles of the parliamentary action demands to clearly understand the essence of the procedure of reviewing cases. If there are no established traditions, then the *Saeima*, before it starts reviewing the particular case, shall establish the procedure of the review."[1200]

3. Parliamentary legislatures. An issue of principal importance in the organisation of the parliament's work is the continuity of legislatures. The mandate of Members of the Estonian parliament, the State Assembly, starts form the day when the election results are announced when, simultaneously, the mandate of Members of the previous convocation of the State Assembly expires. Thus, in the model chosen by Estonia, there is a certain interruption in the parliamentary work since the deputies who have obtained mandates do not convene for the first session on the next day. In Latvia, the previous *Saeima* loses its mandate when the newly elected *Saeima* convenes for its first sitting. Thus, the state is never without the leading institution of state power and, as Kārlis Dišlers noted, "parliaments, one might say, stand hand in hand in an uninterrupted line; the parliament, although regularly renewed in a new composition, has become a permanent institution in the real life of the state, no longer merely in theory."[1201]

4. Presidium and other institutions. The parliament is not solely an abstract institute of the state power, involved in exercising the legislative power. Each institution of state power has its own personnel, and, in the parliament, the representatives, elected or appointed by the people or by another constitutional institution, are to be considered as being such. However, the parliamentary work would be inconceivable with only a certain number of deputies. To implement their aims, deputies structure themselves in respective interest groups, laws are not adopted and drafted at one joint sitting. The

1200 Judgement by the Constitutional Court of the Republic of Latvia of 13 July 1998 in Case No.03-04(98), Para 3 of the Findings .

1201 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 119.lpp.

parliamentary sitting must be organised to ensure that it works effectively. Effective parliamentary work is possible by creating smaller structures within the parliament's framework. Usually, constitutions do not comprise rules on the functioning and establishment of other structures, leaving it to the legislator.

The *Satversme* refers to the Presidium of the *Saeima*; however, it does not have the status of an independent constitutional institution and its rights and obligations are to be derived from the status and mandate of the *Saeima*i. The Presidium performs such strictly defined organisational functions as convening sessions, regular and extraordinary sittings and ensures continuous functioning of the parliament in between its sessions and sittings. Alongside the functions set out in the *Satversme*, the Presidium has the right to determine the functioning and internal procedures of the *Saeima* insofar the Rules of Procedure or another law authorises the Presidium to do so.[1202] As an institution, the Presidium does not have extensive political competence.

Although deputies are irrevocable and, in the majority of states, parties cannot achieve their exclusion from the political path of the parliament, deputies do not work on their own in the parliament. Following elections, deputies that have been elected from the parties' lists unite in parliamentary groups, which are the basic cells of parliamentary work, struggling and achieving compromises, thus, implementing consistently the functions of the parliament and interests of their electors. Existence of parliamentary groups allows organising the parliamentary work much more effectively and, instead of never ending squabbles and debates, certain discipline and clarity is introduced in the parliament. Factions are given certain rights in organisation of the parliamentary work. The practical work of drafting legal acts and exercising parliamentary control, in turn, takes place in the parliamentary committees, which may be standing committees, legislative committees, and committees set up for a special purpose.

1202 Judgement by the Constitutional Court of the Republic of Latvia of 22 February 2002 in Case No.2001-06-03, Para 1.2. of the Findings.

At the same time, extensive restrictions on uniting in parliamentary groups, upon changing affiliation with a party, or even annulment of the mandate in the case of changing the parliamentary group might not be compatible with Article 14 of the *Satversme*.

Article 190 of the Rules of Procedure of the *Saeima* of the Republic of Latvia provides that the Presidium, parliamentary groups and political blocks form the Council of Parliamentary Groups, which specifies and coordinates the activities and strategies of parliamentary groups and political blocs within the *Saeima* and its committees and, together with the Presidium of the *Saeima* , settles matters which have not been clarified by the Rules of Procedure of the *Saeima* and the decisions of the *Saeima*. The opinions of the Council of Parliamentary Groups are advisory by their nature and are not binding upon the parliamentary groups or political blocks.

5. Coalition Cooperation Council. The Coalition Council is not a formal legal institution of the parliament or of the government. It is a format of political cooperation allowing the party representatives to meet and coordinate opinions. E. Levits has underscored that "to coordinate this cooperation, logically, an informal forum is needed where this coordination could be finalised on the highest level. [..] It is necessary to fulfil this function of the highest-level coordination so that the ruling majority could implement its politics effectively."[1203] In the absence of such a possibility, there would be discussions, clandestine meetings, where, in any case, decisions that would be politically binding for the ruling parties would be made, later implemented in the *Saeima* and the government without unnecessary discussions. A study commissioned by the State Chancellery found: Although the Coalition Cooperation Council's role is additional consultations and coordination of actions, often the most resourceful politicians turn it into a format, through which new issues are proceeded with faster, which might lead to unnecessary urgency, placing a matter on the

1203 Levits E. Demokrātiska valsts iekārta, brīvs vēlēšanas un parlamentārā demokrātija. Struktūra, loģika un priekšnosacījumi. In: Parlamentārā izmeklēšana Latvijas Republikā. 1. Parlaments. Parlamentārā kontrole. Prof. R.Baloža zinātniskā redakcijā. Rīga: Latvijas Vēstnesis, 2016, 46.lpp.

agenda of the Cabinet's sitting scheduled for the next day. Usually, not only politicians but also the highest ranking civil servants participate in the sittings of the Coalition Cooperation Council, with the civil servants skilfully arguing for their opinion. However, this practice is debatable because the politicians themselves should be able to justify their opinion in discussions with their colleagues-politicians. The Coalition Cooperation Council should not be a matter for the civil servants, it is a place where the politicians either reach or do not reach agreements. Likewise, it has been recognised that the Coalition Coordination Council's role has increased significantly, in view of the fact that the government's sittings are open, which is incompatible with the practice of European states. Admittedly, the format of the coalition coordination council is not characteristic only of Latvia. In the majority of European states, apart from the sittings of the Cabinet and committees, coalition partners engage in negotiations. Only members of the government participate in the coalition council, e.g., in Denmark of Finland. In other countries, e.g., in Latvia, also members of the collation partners who are not governmental ministers participate in the collation council. In Austria, meetings of the coalition set the agenda for the government's sitting. In Germany, for example, the coalition council is intended for coordinating the coalition partners' work in the government and the parliament. Depending upon agreement, the sittings of the collation council are convened regularly or according to need. Usually, representative of the government, parliamentary groups and political parties forming the government are members of the council. Secretaries of state do not participate in the collation council's meetings and minutes are not taken. The Chancellery communicates the conclusions made by the council to the responsible ministers.[1204]

6. Parliamentary work in digital platform. Neither the *Satversme* nor the Rules of Procedure of the *Saeima* regulate expressis verbis

1204 Ziņojums par valdības centru Latvijā, tā stiprināšanu un īstenoto cilvēkresursu. politiku. 2015.gads. https://www.mk.gov.lv/sites/default/files/editor/valdcentrs-lv_zinojums_latviski_gala.pdf. E.Pastars, a co-author of this book, participated in preparing the study.

adoption of the *Saeima*'s decisions in digital platform, without the deputies being present in Riga. The proceedings of the *Saeima*'s sitting is a matter of the *Saeima*'s internal operations and procedure. Some (most significant) elements in the regulation on this matter are included in the text of the *Satversme*. Whereas detailed regulation on the proceedings of the *Saeima*'s sittings, pursuant to the principle of parliamentary autonomy, is a matter to be regulated by the Rules of Procedure of the *Saeima*. Article 21 of the *Satversme* provides that the *Saeima* develops its own Rules of Procedure to regulate its internal operations and procedure. This provision of the *Satversme* defines one of the manifestations of the principle of parliamentary autonomy within the Latvian legal system.[1205] In this context, it is important that "The *Saeima* itself, and no one else, sets the agenda."[1206] Hence, the proceeding of the *Saeima*'s sittings is a matter for the *Saeima* itself to decide on and, with respect to which, it has been granted broad discretion. Only the *Satversme* and the general legal principles restrict the *Saeima*'s discretion.[1207] One of the basic principles of parliamentary work demands that, before examining such matters, the procedure in which they will be examined, would be explained. In the absence of established customs, the *Saeima*, before it begins discussing the respective matter, must define the procedure for it.[1208]

During the period of Covid-19 pandemic, the *Saeima*, as one of the first parliaments in the world, moved to remote organisation of the parliamentary work, by introducing for this purpose the special

1205 Judgement by the Constitutional Court of the Republic of Latvia of 23 December 2019 in Case No. 2019-08-01, Para 14.

1206 Ibid.

1207 Judgement by the Constitutional Court of the Republic of Latvia of 6 March 2019 in Case No.2018-11-01, Para 18.

1208 Judgement by the Constitutional Court of the Republic of Latvia of 13 July 1998 in Case No.03-04(98), Para 3 of the Findings.

e-*Saeima* platform.[1209] Although the use of e-*Saeima* [1210] caused concerns regarding certain risks to constitutionality, the Constitutional Court recognised it as being compatible with the *Satversme*.[1211] The Constitutional Court concluded: "The holding of remote *Saeima*'s sittings is an extraordinary solution, which allows continuing uninterrupted parliamentary work also in conditions where, due to epidemiological safety and the restrictions imposed because of it, deputies cannot meet in person. It is important that a mechanism has been created in the state that allows continuous parliamentary work, in the course of which a constitutional body, legitimized by the people, decides on the most essential matters."[1212] The Constitutional Court found that e-*Saeima* had been introduced in due procedure, Members of the *Saeima* had been duly informed about its functioning, moreover, this platform ensured the possibility for the *Saeima* to work and the transparency of this work, as well as the possibility for each deputy of the *Saeima* to exercise their rights, granted to them by the *Satversme* and the Rules of Procedure of the *Saeima* had been ensured.[1213] Pursuant to the interpretation of Article 21 of the *Satversme*, provided by the Constitutional Court, the *Saeima* may use e-*Saeima* for holding its sittings if sufficiently clear regulation on the procedure and terms of its use has been set, upon starting to use it, and if deputies of the *Saeima* had been given the possibility to discuss the need for using e-*Saeima* and make a law policy decision on continuing work on e-*Saeima*.[1214]

1209 Rodiņa A., Lībiņa-Egnere I. E-Saeima, one of the first parliaments in the world ready to work in fully remote mode. In: The impact of the health crisis on the functioning of Parliaments of Europe. https://www.robert-schuman.eu/en/doc/ouvrages/FRS_Parliament.pdf, pp.70 – 80.

1210 See more: Lībiņa-Egnere I. Par e-Saeimas jauno platformu un tās priekšrocībām. Jurista Vārds, 2020.gada 9.jūnijs, Nr. 23 (1133).

1211 Judgement by the Constitutional Court of the Republic of Latvia of 12 March 2021 in Case No.2020-37-01, Para 24.2.

1212 Ibid, Para 24.2.4.

1213 Ibid, Para 24.2.

1214 See also: Saeimas Juridiskā biroja viedoklis par Saeimas attālinātajām sēdēm. Jurista Vārds, 2020. gada 16.jūnijs, Nr.24/25(1134/1135); Pleps J. Par Satversmes 15.pantu un e-Saeimu. Jurista Vārds, 2020.gada 16.jūnijs, Nr.24/25(1134/1135).

Article 15 of the *Saeima* defines the venue for holding the *Saeima*'s sittings. This article comprises the basic principle that, usually, the *Saeima* holds its sittings in Riga. Likewise, Article 15 of the *Satversme* allows an exception to the general rule, allowing the *Saeima* to convene elsewhere. The possibility to convene the *Saeima*'s sitting elsewhere is linked to several conditions defined in Article 15 of the *Satversme*. First of all, "extraordinary circumstances" must have set in. Secondly, the existence of such circumstances is specially highlighted by the word "only." Thirdly, these circumstances objectively are such that make it extremely difficult or impossible, or even exclude the possibility of holding the *Saeima*'s sitting in Riga. At the time when the *Satversme* was drafted, as a possible alternative to the word "extraordinary" also the word "unavoidable" was discussed."[1215] The choice of this formulation for Article 15 of the *Satversme* proves that in such conditions that are beyond the free will of the *Saeima* or the Presidium of the *Saeima*, convening the *Saeima*'s sittings outside Riga is admissible. Namely, to hold the *Saeima*'s sitting outside Riga, such objective circumstances must be present that significantly hinder, make it impossible or would even exclude the possibility of holding the *Saeima*'s sitting in Riga. *Satversme* leaves specifying the respective general clause in the competence of those applying it, the *Saeima* itself and, in particular, the Presidium of the *Saeima*, in deciding on convening the *Saeima*'s sitting, assess the situation and establish that the conditions, referred to in Article 15 of the *Saeima*, have set in, permitting to hold the *Saeima*'s sitting elsewhere.[1216] It needs to be noted that Article 15 does not link "extraordinary circumstances" to the special legal regimes envisaged in the *Satversme* – the state of war or exception, or an emergency situation, foreseen in the law "On Emergency Situation or State of Exception."[1217] Hence, in each particular case, establishing the existence of extraordinary circumstances and deciding on holding the *Saeima*'s sitting elsewhere

1215 See Satversmes komisijas 1.apakškomisijas 1921.gada 15.februāra sēdes protokola Nr.12 2.lpp.

1216 See more: Kalniņš E. Tiesību tālākveidošana (IV). Likums un Tiesības, 2001, Nr.9, 274. – 277.lpp.

1217 Compare, see wording of Article 82 of the Satversme .

falls within the competence of the *Saeima* and, in particular, its Presidium, in deciding on convening the *Saeima*'s sitting.

When extraordinary circumstances set in, the possibilities of holding the *Saeima* sittings elsewhere are determined by the technologies available for this purpose, the safety and convenience of their use, as well as the parliament's law policy readiness to use such technologies. It follows from the logics of the *Satversme* that functional *Saeima*, able to perform swiftly all functions granted to it by the *Satversme* is constantly needed within the legal system. Interruption or delay in the *Saeima*'s work may cause significant hindrances, in particular, in extraordinary circumstances where the *Saeima*'s capacity to function becomes of principle importance. In particular, taking into account that the Cabinet no longer has the right to issue regulations with the force of law, and the *Saeima*'s ability to exercise the right to legislate swiftly and effectively is critically important.[1218] If, in such circumstances, e-*Saeima* can be used to ensure swift and effective work of the *Saeima*, it should be done. It should be taken into account that the *Satversme* is contemporary and open to the possibilities provided by technological development. Hence, upon establishing that extraordinary circumstances have set it, pursuant to Article 15 of the *Satversme*, the *Saeima* has the right to hold a sitting on e-*Saeima* if the Presidium convenes such a sitting. This possibility, envisaged in Article 15 of the *Satversme*, still remains only as an exception that should be used only when there is an objective necessity for it. In interpreting Article 15 of the *Satversme*, the Constitutional Court examined e-*Saeima* not as a venue for the *Saeima*'s sitting but as a type of sitting, underscoring that "Article 15 defines the place where the *Saeima*'s sitting is held and not the way, in which it is held."[1219]

It would be important to use cautious and limited interpretation of Article 15 of the *Satversme*, i.e., remote work of the *Saeima* is admissible as an exception and not as the normalcy. The possibility of

1218 See more: Levits E. Satversme ārkārtas apstākļos. Jurista Vārds, 2020.gada 5.maijs, Nr.18(1128)..

1219 Judgement by the Constitutional Court of the Republic of Latvia of 12 March 2021 in Case No.2020-37-01, Para 24.2.1.

the *Saeima*'s remote work, using for it appropriate technological solutions, is admissible only within the framework of the possibility provided for in the *Satversme* "only in extraordinary circumstances [the *Saeima*] may convene elsewhere", without affecting and re-interpreting the general rule that "the *Saeima* shall hold its sittings in Riga."

The *Satversme* still should retain the general principle that in normal conditions, when the extraordinary circumstances, referred to in Article 15 of the *Satversme* ,have not set it, the *Saeima*'s sittings are held in the traditional procedure. Pursuant to the principles of parliamentarism, a parliamentary sitting provides for a face-to-face form, creating the opportunity for direct and unmediated discussion and interaction between the people's representatives in person (also for informal communication and looking for compromises behind the scenes).[1220] Therefore it is important that this possibility, envisaged in Article 15 of the *Satversme*, would remain as an exception, to be used only in cases where there is an objective need for it.[1221]

VIII. Parliamentary control function

Alongside the parliamentary function of legislating and budgeting, the third most important function is control over public administration.[1222] The parliament oversees the executive power, which usually is formed or supported by the coalition of parties represented in the parliament. The most important mechanism for controlling the executive power is the approval of the budget and deciding on matters related to the state's revenue and expenditure. Although, currently, the budget function is considered to be entirely independent, it has

1220 See more: Schmitt C. Constitutional Theory. Durham and London: Duke University Press, 2008, pp.328 – 342.

1221 Pleps J. Par Satversmes 15.pantu un e-Saeimu. Jurista Vārds, 2020.gada 16.jūnijs, Nr.24/25(1134/1135).

1222 See more: Pleps J., Kuzņecovs A. Parlamentārā kontrole Latvijas valsts iekārtā. In: Parlamentārā izmeklēšana Latvijas Republikā. 1. Parlaments. Parlamentārā kontrole. Prof. R.Baloža zinātniskā redakcijā. Rīga: Latvijas Vēstnesis, 2016, 53. – 78.lpp.

not lost its significance in controlling the executive power because, usually, the parliament's refusal to approve of the budget means the fall of the government. Therefore, approval of the budget is an important parliamentary function because, by retaining the free right to decide on the people's purse, the legislator also retains control over the executive power.[1223]

Origins of the control function are found in the efforts of the people's early representations to follow the monarch's actions in governing the state. Thus, in German lands, complaints by the estates' representatives to the ruling prince about the activities of local rulers were found. Nowadays, the importance of the parliamentary control function increases, with the consolidation of the government's power and with it concentrating in its hands the work of legislation and budgeting. The right to parliamentary control is justified by the parliament's place within the system of separation of power: if the parliament participates in legislation it cannot not supervise the enforcement of law.[1224] However, control over the government and the right to dismiss it if the government's politics does not comply with the opinion of the parliamentary majority, nowadays, is closely linked to the set of constitutional tools at the government's disposal for controlling the parliament.

The parliament's relations with the government are not characterised by a higher standing institution's treatment of an institution subordinated to it, these relations are that of equals and are based on the principles of parliamentarism.[1225] The *Saeima* may impose only such tasks upon the Cabinet that are not contrary to law. The *Saeima* may not include in independent motions items of normative nature or such items that are contrary to law. Likewise, the acts, adopted in the form of an independent motion, which formulate the *Saeima*'s

1223 Madison J. The Federalist No.51. In: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.394-400.

1224 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.264.

1225 Šīmanis P. Latvijas Satversmes astoņi gadi. In: Šīmanis P. Eiropas problēma. Rīga: Vaga, 1999, 35.lpp.

attitude may not be aimed at creating, amending, establishing or terminating rights, or at imposing obligations.[1226]

Several forms of control over the government are known in the constitutional practice, i.e., discussions of the government policy guidelines (also reports by ministers), discussions and approval of the budget and the report on its implementations, questions and requests (interpellations) from the parliamentarians, controlling activities by the standing committees, establishing of special inquiry committees, establishing of special non-parliamentary institutions and approval of officials who control the activities of the executive power constantly, as well as expressing non-confidence in individual ministers or the entire Cabinet.[1227]

The government's and ministers' reports and accounts of their work, parliamentary debates, impeachment, control over the delegated right to legislate and ratification of the concluded international treaties are also mentioned as manifestations of parliamentary control.[1228] However, these types of control are possible only in a democratic political regime. The control conducted by the parliament may be of political (expressing non-confidence in the government) and of legal (activities of inquiry committees) nature. In presidential states, the absence of the executive power's right to dissolve the parliament makes the control more effective, whereas in parliamentary systems, the parliament's extensive right to control is neutralised by the possibility to dismiss the parliament itself.[1229] The control over the government is based on the assumption of the government being accountable to the parliament, which requires the government's obligation to act in compliance with the will of the parliamentary majority and collective resignation of the government if its actions fail to gain the

1226 Judgement by the Constitutional Court of the Republic of Latvia of 1 October 1999 in Case No.03-05(99), Para 1, 3 and 4 of the Findings.

1227 Конституционное право зарубежных стран, Лейбо Ю.И., Баглай М.В., Энтин Л.М. (ред.) Москва: Норма - Инфа М, 2003, с.252.

1228 Чиркин В.Е. Конституционное право зарубежных стран. Москва: Юристъ, 2000, с.272-276.

1229 Мишин А.А. Государственное право зарубежных стран. Москва: Белые альвы, 1996, с.186.

parliamentary majority's support. In practice, the government's resignation can be achieved only if the parliamentary coalition, which supports the government, is splitting. Until the coalition ensures the majority in the parliament, it is not the parliament that controls the government but the government controls the parliament.[1230] Kārlis Dišlers also has noted that "the parliament may overthrow the government but, until it takes this step, its obligation is to support the government in implementing the programmes (the government's declaration), which the Cabinet, upon entering office, has announced to the parliament and the parliament, in expressing confidence in the parliament, has approved", and a parliamentary Cabinet "acts in close interconnection with the parliamentary majority and, usually, being comprised by the most able officials of the parliamentary majority, in a certain sense takes the leading role also in the activities of the parliament itself."[1231]

The *Satversme* has granted to the *Saeima* the right to legislate and to budget but it does not have the right to interfere into the matters of public administration. Such right is granted neither by the authorisation to appoint inquiry committees nor the precepts pertaining to emergency situation.[1232] The *Saeima*i only has the right to conduct general control of administrative work if the government's actions have given cause for such control. This control is realised as questions, requests and activities of inquiry committees.[1233] The possibility to asks questions is frequently used in the parliamentary practice. They serve not so much to control the government but rather to clarify issues that deputies are interested in and to criticise the government. Usually, questions must pertain to facts and may not contain allegations. The government or the particular minister is obliged to

1230 Grīnbergs O., Cielava V. Lielbritānijas valststiesību pamati. Rīga: Pētera Stučkas Latvijas Valsts Universitāte, 1979, 21.lpp.

1231 Dišlers K. ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 184. – 185.lpp.

1232 Šīmanis P Latvijas Satversmes astoņi gadi. In: Šīmanis P. Eiropas problēma. Rīga: Vaga, 1999, 34.lpp.

1233 Dišlers K. Latvijas valsts varas orgāni un viņu funkcijas. Rīga: Tieslietu Ministrijas Vēstneša izdevums, 1925, 82.lpp.

provide answers to these questions; however, they do not entail far-reaching consequences. The asking of questions is restricted by defining the required number of deputies for submitting them, the areas of governance that cannot be examined in this procedure, as well as the procedure for responding. A request or interpellation is a much more powerful measure.[1234] It means requesting the government or an individual minister to provide explanations on a matter of the parliamentarians' interest. The submission of interpellation may lead to the expression of non-confidence in the Cabinet or the particular minister because the parliament has the right to discuss the answer provided by the minister and assess it immediately. If the parliament admits in its vote that the it is not satisfied with the response provided by the government or the minister, two models are possible. It has automatically expressed no-confidence in the government or the minister or the deputies have the right to submit, in a simplified procedure, a draft decision on expressing no-confidence. Inquisitory committee, in turn, is the institution through which the parliament exercises the right granted to it to examine the executive power's actions. Inquisitory committees are of great importance in the life of the state and society because the parliament's right to control the executive power is manifested in them to the utmost degree.[1235] Inquisitory committee is a parliamentary institution, and the parliament may use the outcomes of its work only for adopting parliamentary acts.[1236] Moreover, inquiry committees cannot replace the operations by law enforcement institutions and they do not have absolute right to request any information by not complying the procedure set out in other laws.

Parliamentary control is implemented also by the *Saeima* committees in the procedure set out in Article 25 of the *Satversme*. They have

1234 See more: Medina L., Gailīte I. Satversmes 27.pants. In: Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2020, 430. - 447.lpp.

1235 See more: Balodis R. Saeimas parlamentārā izmeklēšana. In: Parlamentārā izmeklēšana Latvijas Republikā. 1. Parlaments. Parlamentārā kontrole. Prof. R.Baloža zinātniskā redakcijā. Rīga: Latvijas Vēstnesis, 2016, 99. – 133.lpp.

1236 Judgement by the Constitutional Court of the Republic of Latvia of 1 October 1999 in Case No. 03-05(99), Para 2 of the Findings .

the right to request the needed information from other institutions in writing ("of individual Ministers or local government authorities information and explanations necessary for the work of the committees") and orally ("to invite to their sittings representatives from the relevant ministries or local government authorities to furnish explanations"). Committees of the *Saeima* may request information from all those institutions with respect to which the parliamentary control over the executive power is exerted or some aspects of their work are affected by a draft law in legislative procedure, as well as the *Saeima*'s , as the totality of the people's representatives, control over the use of public resources is conducted (Article 5 of the *Satversme*). First of all, these are all those existing institutions for conducting the operations of the executive power, irrespectively of their legal form (ministries, institutions subordinated to the Cabinet, derived public law legal persons, state and local government capital companies). This right of the *Saeima* committees means the obligation of other institutions to provide such information and explanations and to cooperate with the committee of the *Saeima* in good faith to facilitate its work.

Likewise, the *Saeima* as the legislator has the obligation to exert parliamentary control over application of laws and its compliance with the legislator's initial plan. "The legislator has to ensure ex officio after coming into force of a legal norm that it is effective enough when applied. Should it be established that a legal norm fails to function when applied, then it is necessary to improve it. The Constitutional Court has reiterated that, after expiry of a certain term, the legislator is committed to re-consider whether a particular legal regulatory framework is still effective, appropriate and necessary and whether it should be improved."[1237] The parliament does not have the right to repeal or amend court rulings, which would be contrary to the principle of separation of powers, however, the parliament can confirm a finding made in judicature by including it into a law or invite to review the respective position of a court by introducing the required

1237 Judgement by the Constitutional Court of the Republic of Latvia of 6 June 2012 in Case No. 2011-21-01, Para 9.

amendments to law. Thus, the existence of the parliamentary control by the judicature's findings or the judges law in a parliamentary state governed by the rule of law may be established.[1238]

1238 Sniedzīte G. Tiesnešu tiesības. Jēdziens un nozīme Latvijas tiesību avotu doktrīnā. Rīga: Latvijas Vēstnesis, 2013, 256. – 257.lpp.

Chapter 7

LEGISLATIVE PROCESS

I. Law and Legislation

1. Legislation. "Legislation is the activities by the supreme institutions of state power in issuing laws",[1239] whereas "the legislative process are special procedural arrangements, in the course of which the supreme institution of state power, i.e., the parliament, or the people themselves achieve that a prepared draft law becomes a law, a regulatory enactment that takes the main place in the system of regulatory enactments".[1240] Elsewhere, it is stated that the term "legislation" should be understood not only as the legislative process but as the entire regulatory basis (normative regulation), constituted by the legal norms, adopted in the course of creating laws (such precepts that have been adopted as the result of exercising the right to legislate, irrespectively of who exercises this right) and legal norms issued in the course of implementing laws (secondary legislation) (acts issued in the procedure of administration, which fill the segments that have been developed or have been defined in exercising the right to legislate).[1241] The delegated legislation, in turn, is the right to delegate issuing of laws or another act with the force of law.[1242]

1239 Krastiņš I. Likumdošana. In: Juridisko terminu vārdnīca. Rīga: Nordik, 1998, 140.lpp.

1240 Mikainis Z. Likumdošanas process. In: Juridisko terminu vārdnīca. Rīga: Nordik, 1998, 140.lpp.

1241 Levits E. Normatīvo tiesību aktu demokrātiskā leģitimācija un deleģētā likumdošana: teorētiskie aspekti. Likums un Tiesības, 2002, Nr.9(37), 261.lpp.

1242 Pastars E. Kas ir deleģētā likumdošana. Jurista Vārds, 2003. 14.janvāris, Nr.2(260).

Article 64 of the *Satversme* provides that the right to legislate is vested in the *Saeima* and the people, the totality of Latvia's citizens with the right to vote. Legislation is adoption of laws, i.e., the right to regulate a certain matter by law.[1243] The right to issue regulatory legal acts is broader since the *Satversme* allows for the right of democratically legitimised institutions to issue external regulatory legal enactments, on the basis of special authorisation by the legislator, established in law. These are, e.g., the Cabinet Regulations, binding regulations by the local government councils and, in some cases, also regulations issued by an autonomous public law subject (e.g., regulations issued by the Bank of Latvia or the Financial and Capital Market Commission).[1244] However, such regulations are issued in the procedure of administration and should be regarded as actions by the executive power and not exercising the right to legislate.[1245]

The *Satversme* provides that there are two legislators in Latvia who are entitled to exercising the right to legislate – the *Saeima* and the totality of Latvia's citizens. The outcome of the legislative procedure, in turn, is a formal law, adopted by the *Saeima* or the totality of Latvia's citizens. The *Satversme* also provides that the legislative process, in which the *Saeima* and the totality of citizens exercise their right, is based on the same principles, however, the procedures differ, following from the specificity of the construction of each legislator. The Constitutional Court has noted: "The voters, exercising the right of legislative initiative, participate in the legislative process and not only enjoy the legislator's right established in the *Satversme*, but also assume the obligations set for the legislator. [..] Consequently, not only the legislator, which exercises the legislative right permanently, i.e., the *Saeima*, but also the legislator, who exercises the legislative

1243 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2005 in Case No. 2005-12-0103, Para 12.

1244 Caics A., Levits E. Ievads Latvijas Republikas Satversmes V nodaļas komentāriem. In: Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019, 9. – 10.lpp.

1245 Judgement by the Constitutional Court of the Republic of Latvia of 9 October 2007 in Case No.2007-04-03, Para 14.

right on separate occasions, i.e., the people, are obliged to comply with the norms of higher legal force and respect the constitutional values enshrined in them. [..] None of the constitutional institutions, also people, in exercising the rights granted to it, has the right to violate the *Satversme*."[1246] The Constitutional Court has provided also the definition of the legislative process: "The process of legislation is a special procedural order, according to which the *Saeima* or the people achieve that a draft law elaborated in advance becomes a law, i.e. a normative enactment that occupies a certain place in the system of normative enactments."[1247]

Egils Levits wrote that the term "legislation" was conceptually capacious and significant as to is content. Hence, whenever it is used, it should be examined in the particular context.[1248] At the same time, the wish to narrow down this concept and apply it only to the process, in the framework of which a formal law is adopted, has been underscored.[1249] Legislative process is special procedural arrangements, i.e., order, in which the activities (legislation) must take place, in interaction between all those institutions who are or who could be involved in law creation, in order to recognise that the law had been adopted in due procedure. A draft law turns into a law only by passing through all stages of legislation.[1250]

2. Law. A law is a legal norm, which is adopted by the supreme authority of the state in the area of legislation (the legislator) in constitutionally defined procedure. The formal and substantive aspects of a law follow from this definition. The substantive nature of

1246 Decision by the Constitutional Court of the Republic of Latvia of 19 December 2012 on Terminating Legal Proceedings in Case No.2012-03-01, Para 18.3.

1247 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2008 in Case No.2008-09-0106, Para 6.1.

1248 Levits E. Normatīvo tiesību aktu demokrātiska leģitimācija un deleģēta likumdošana: teorētiskie pamati. Likums un Tiesības, 2002, Nr.9, 261.lpp.

1249 Caics A., Levits E. Ievads Latvijas Republikas Satversmes V nodaļas komentāriem. In: Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019, 9.lpp.

1250 Judgement by the Constitutional Court of the Republic of Latvia of 19 May 2009 in Case No.2008-40-01, Para 9.

a law is reflected in the wording "legal norm". It is a general norm that regulates certain social relations in accordance with the idea of these relations (the nature of things and respective foundations of the natural law). The substantive nature of a law has two features - it is a general percept on conduct, which covers numerous unspecified cases, as well as creates compatibility of real life cases with certain objective sources of law. Whereas the formal nature of a law, which differentiates it from other legal norms, is manifested in the fact that a law is adopted by the supreme legislative authority in the state and it is adopted in a special procedural order.[1251]

Only an act of the parliament or the people themselves that has been adopted in accordance with constitutional precepts in a special legislative procedure and comprises the most important norms of general nature can be considered as being a law.[1252] A law cannot create rights; it can only recognise and establish the rights created by society. Substantially, a law entails supremacy, to which everyone to whom the law applies must obey. If individuals unite in political associations, laws must become the supreme regulators on individuals' relations.[1253] This requirement follows form the rule of law or the principle of a state governed by the rule of law. "One of the oldest findings in legal thought is that the law must be abided by even if it does not comply perfectly with the requirements of justice. For the sake of legal security, a person must comply also with such laws that they themselves consider to be unjust. While a legal norm is in force, it must be complied with or objections must be raised against it in the procedure set out in law. As recognised in legal literature, the positive (written) law must be respected to guarantee legal security and functioning of the legal system. A person may not simply disregard a legal norm and announce later that had considered it to be unlawful.

1251 Михайловский И.В. Очерки философии права. Т.1. In: Марченко М.Н. Теория государства и права. Москва: Зерцало-М, 2001, с.370.

1252 Энтин Л.М. Разделение властей: опыт современных государств. Москва: Юридическая литература, 1995, с.81.

1253 Hamilton A. The Federalist No.33. In: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.235-240.

Negative and derogatory attitude towards law or legal nihilism diminishes a democratic state's ability to function."[1254]

In different times, different explanations have been provided for the binding force or law. The historical school of law held that the law was the manifestation of the people's spirit and general conviction, from which it gained its binding force.[1255] Legal positivists, in turn, held that the binding force of law was derived from its public recognition. The formal theory of law, however, advanced the thesis that a law was the expression of the will of the state power; this power is an omnipotent creator of law and does not recognise any power as being above it, it is sufficiently mighty to force the people obey the legal norms.[1256] Jean-Jacques Rousseau advanced the thesis that law was binding because it was the expression of the people's general will, this thesis was reiterated by Article 6 of the French Declaration of the Rights of the Man and the Citizen of 1789. It follows thereof that a law acquires the force of law if the collective wants it and law is what the collective wants. In this context, Leon Duguit precisely quoted: "Isn't parliamentary democracy, in fact, only the divine right of magic state power, which has moved from kings to parties, which express the so-called sovereignty of the people. A law, issued by our parliament, is surrounded by even greater reverential respect than the most unrestricted monarchs in the olden days. One might even say that the contemporary legislation enslaves more than the previous loyalty."[1257] The idea of law was cherished by the French Revolution since it replaced the old arbitrariness but the law inherited the monarch's commanding power.

The generality of law was replaced by the practical trend to restrict the functioning of law. During the period of the French Third

1254 Judgement by the Department of Administrative Cases of the Supreme Court's Senate of 30 March 2004 in Case No.SKA-5 , Para 15.

1255 Krastiņš I. Tiesību doktrīnas. Rīga: LU, 1998, 15.-20.lpp.

1256 Михайловский И.В. Очерки философии права. Т.1. In: Марченко М.Н. Теория государства и права. Москва: Зерцало-М, 2001, с.374.

1257 Дюги Л. Обшество, личность и государство. In: Марченко М.Н. Теория государства и права. Москва: Зерцало-М, 2001, с.376.

Republic, the government's right to refrain from application of law was recognised, it was approved by both chambers of the parliament, whereas certain mandate, which traditionally was considered as being the legislator's competence, was acquired by courts. On the basis of these theses, Sergey Kotlyarevsky foresaw already in 1915 the twilight of legalism because the realm of laws retreated before the realm of public opinion. This allowed asserting that law, in general, was very limited in its nature. Already at the beginning of the last century, frozen norms no longer could ensure free development of society because society's development demanded much more flexible legal norms that could be applied more broadly. Laws were transformed not only by courts and jurisprudence because the precepts of law are never able to keep up with the fast pace of life. In the course of its application, the text of a law is always adjusted to the needs of life because the inclination to avoid strict legalism is characteristic of administration. One can see every day that society changes laws but it can be seen nowhere that laws would change society.[1258]

Leon Petrażycki has divided the laws adopted by the bearers of legislative power into the basic (constitutional) and ordinary laws. Basic laws define the foundations of the state order and are adopted in special, qualified procedure. It would be more correct, as noted by Leon Petrażycki, to speak, instead of qualified procedure of adoption, about the existence of respective precepts that regulate the adoption or amendment of these acts, thus, encumbering changes to them and ensuring to them appropriate stability and constancy.[1259] The constitution defines qualified procedure of adoption and higher legal force than that of an ordinary law for a constitutional law.[1260] Juris Jelāgins has noted: "Separation of the constitutional power or constitutional legislation from the legislative power is substantiated by the principle

1258 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.96-97.

1259 Ducmanis K. Leo Petražicka Tiesību un valsts teorija sakarā ar mācību par morāli (uz emocionālās psiholoģijas pamatiem). Rīga: Augusta Golta apgādībā, 1931, 212. – 213.lpp.

1260 Jelāgins J. Tiesību pamatavoti. In: Jelāgins J. Latvija ceļā uz tiesiskumu. Rakstu krājums. Rīga: Tiesu Namu Aģentūra, 2020, 94. – 99.lpp.

of the constitution's superiority. It means that the constitution is a special law, which cannot be repealed or amended in the ordinary legislative process. Usually, special procedure is established for amending the constitution."[1261]

II. Principle of good legislation

Historically, legislation and creation of legal norms have been deemed to be the manifestation of the sovereign's political will, which is not restricted by frameworks of law, and it has been considered that the task of law is to recognise the newly created legal norms rather than define the framework for their creation.[1262] In the French theory of constitutional law, this position was determined by Jean-Jacques Rousseau's theory of social contract.[1263] Whereas in the theory of constitutional law of the United Kingdom, it was derived from the principle of parliamentary sovereignty.[1264] However, gradually, the conviction became consolidated in the theory of law that the creation of legal norms, just like the application of legal norms, was a juridical process, the development of which were determined and limited by the legal system, i.e., its general legal principles were applicable not only to the application of legal norms but also to the creation of legal norms.[1265] The development of legisprudence as a sub-branch of the theory of law at the second half of XX century was particularly

1261 Separate Opinion of Justice of the Constitutional Court of the Republic of Latvia Juris Jelāgins of 21 April 2009 in Case No.2008-35-01.

1262 See more: Duguit L. Law in the Modern State. New York: B.W. Huebsch, 1922, pp. 68–94.

1263 Ruso Ž.Ž. Par sabiedrisko līgumu jeb politisko tiesību principi. Rīga: Zvaigzne ABC, 2013, 45.–60. lpp.

1264 See more: Dicey A.V. Introduction to the Study of the Law of the Constitution. 8th edition. London: Macmillan, 1915, pp. 3–25.

1265 See, for example: Bentham J. Principles of Legislation. In: Bentham J. Theory of Legislation. London: Trübner & Co, 1894, pp. 1–88.

important in this respect.[1266] Legisprudence specifies the restrictions that exist within the legal system on the legislator in the creation of legal norms, as well as offers possible procedural improvements for adopting legal norms of higher quality.[1267] This creates the possibility for parties applying legal norms (in particular, constitutional courts) to verify whether the legal norms had been created duly and whether, within it, the legislator has complied with the general legal principles that existing in the legal system.[1268] Development of legisprudence has facilitated specification of the principle of good legislation in democratic states governed by the rule of law. [1269] It could be recognised that the process of adopting laws is a juridical action, whereas determining the content of law – political action.[1270]

The principle of good legislation is a general legal principle, existing within the Latvian legal system that defines requirements, binding upon the legislator, in the creation of legal norms.[1271] The Constitutional Court has noted that the principle of good legislation is to be derived from the principle of a state governed by the rule of law.[1272] The idea that the principle of good legislation existed within the

1266 See more: Šulmane D. Leģisprudence – jēdziens un problemātika tiesību sociologa skatījumā. In: Daugavpils Universitātes starptautiskās zinātniskās konferences "Valsts un tiesību aktuālās problēmas" referātu izdevums. Daugavpils: Daugavpils Universitātes Akadēmiskais apgāds "Saule", 2011, 35.–39. lpp.

1267 See more: Wintgens L.J. (Ed.) Legisprudence: a New Theoretical Approach to Legislation. Oxford – Portland: Hart Publishing, 2002; Wintgens L.J., Oliver-Lalana A.D. (Eds.) The Rationality and Justification of Legislation. Springer International Publishing Switzerland, 2013.

1268 See more: Meßerschmidt K., Oliver-Lalana A.D. (eds.) Rational Lawmaking under Review. Legisprudences According to the German Constitutional Court. Springer International Publishing Switzerland, 2016.

1269 See more: Prokop K. The Principle of Proper Legislation in the Republic of Poland. In: The Quality of Legal Acts and its Importance in the Contemporary Legal Space. Rīga: University of Latvia Press, 2012, pp. 367–375.

1270 Levits E. Normatīvo tiesību aktu demokrātiskā leģitimācija un deleģētā likumdošana: teorētiskie aspekti. Likums un Tiesības, 2002, Nr.9(37), 262.lpp.

1271 See more: Pleps J. The Principle of Good Legislation. In: The Quality of Legal Acts and its Importance in Contemporary Legal Space. Rīga: University of Latvia Press, 2012, pp. 16–26.

1272 Judgement by the Constitutional Court of the Republic of Latvia of 6 March 2019 in Case No.2018-11-01, Para 18.1.

Latvian legal system was defined at the beginning of the century.[1273] In the practice of law, this idea has been consistently upheld by the President's institute because, in many cases, exercising the President's right of veto was caused by disregard for exactly the requirements of good legislation.[1274] Actually, the very first veto by the President during the period of the *Satversme*'s validity, which was exercised by President Jānis Čakste, is linked to the requirement for the legislator to ensure quality of the adopted law.[1275] Whereas President Andris Bērziņš was the first to specify the principle of good legislation in his writ on veto.[1276] The separate opinion by Justice of the Constitutional Court Daiga Rezevska, which ushered in the reversal in the Constitutional Court's case law, is important for the understanding of the principle of good legislation.[1277]

The Constitutional Court has noted that "the legislator should ensure such legislative process that facilitates trust in the state and law, i.e., instils conviction that the chosen solution is just."[1278] The Constitutional Court has also underscored that "the legislative process [not only] should comply with the formal requirements set out in regulatory enactments [but] also must facilitate persons' trust in the state and law."[1279] The Constitutional Court's position is determined by the principle of a rational legislator and the principle of the unity of legal system, existing within the Latvian legal system.[1280]

1273 Ziemele I. Par valsts un sabiedrības interesēm atbilstošu likumu. Jurista Vārds, 2000. 10. oktobris, Nr. 30 (183).

1274 For example: Valsts prezidenta Raimonda Vējoņa 2015. gada 7. novembra raksts Nr. 284, https://www.president.lv/storage/art_description/file/23550/20151107-vestule.PDF

1275 Latvijas Republikas Saeimas II sesijas 1.sēdes 1923.gada 10.aprīlī stenogramma.

1276 Valsts prezidenta Andra Bērziņa 2013.gada 1.februāra raksts Nr.1. https://www.president.lv/storage/art_description/file/20391/20130202-aizsargjoslas.pdf, 3.lpp.

1277 Separate Opinion by Justice of the Constitutional Court of the Republic of Latvia Daiga Rezevska of 2 November 2017 in Case No. 2016-14-01.

1278 Judgement by the Constitutional Court of the Republic of Latvia of 12 April 2018 in Case No.2017-17-01, Para 21.3.

1279 Ibid.

1280 Judgement by the Constitutional Court of the Republic of Latvia of 22 December 2017 in Case No.2017-08-01, Para 13.1.

The Constitutional Court has justified the need for good legislation by the aim of ensuring justice. In its judgement, the Constitutional Court has underscored, in particular, that "the main aim of laws is to ensure justice."[1281] This means that "in a democratic state governed by the rule of law, a law, adopted in due procedure, first and foremost, is such a law that is aimed at reaching justice as the ultimate purpose of the legal system."[1282]

For the legislator to be able to demand society to obey the laws adopted by it, it should create in the legislative process the conviction that the law had been adopted honestly, transparently and respectfully. "Legislation [..] is not a formal process, in which only compliance with certain procedures should be taken care of. This process should be aimed at reaching justice, increasing trust in the State of Latvia and law. [..] in a democratic state governed by the rule of law, the principle of justice restricts the legislator's discretion in adopting a law".[1283] The aim of law creation in general and of its separate procedures is to promote the inhabitants' trust in Latvia and law.[1284] In examining whether legal norms had been adopted in due procedure, the Constitutional Court must verify whether the legislator's actions "[do not] diminish the sovereign's trust in the State (of Latvia) and law" and whether the legislative process has "promoted trust in Latvia and law."[1285]

In case No. 2018-11-01, the Constitutional Court has specified the principle of good legislation, underscoring, in particular, that "these requirements constitute the content of the principle of good legislation that is derived from the principle of a state governed by the rule

1281 Judgement by the Constitutional Court of the Republic of Latvia of 12 April 2018 in Case No.2017-17-01, Para 21.3.

1282 Separate Opinion by Justice of the Constitutional Court Daiga Rezevska of 2 November 2017 in Case No. 2016-14-01, Para 5.

1283 Ibid.

1284 Valsts prezidenta Raimonda Vējoņa 2018. gada 9. novembra raksts Nr. 417, 5. lpp., https://www.president.lv/storage/kcfinder/files/darba_likuma_grozijumi_virsstundas2018nov.pdf. See also: Latvijas Republikas 13. Saeimas rudens sesijas 1. sēdes 2018. gada 6. novembrī stenogrammu.

1285 Separate Opinion by Justice of the Constitutional Court Daiga Rezevska of 2 November 2017 in Case No. 2016-14-01, Para 5.

of law. These are the main, however, not the only elements in specifying the principle of good legislation." [1286]

In specifying the principle of good legislation, the Constitutional Court consolidated the following elements, which already had been identified in the Latvian legal system: "It follows from the Constitutional Court's judicature that the general legal principles, procedural pre-conditions and requirements regulated in the *Satversme* and the Rules of Procedure of the *Saeima*, also those applying to the course of adopting draft laws related to the state budget, must be complied with in the legislative process. The legislator must examine the compliance of legal norms envisaged in the draft law with legal norms of higher legal force, inter alia, the *Satversme*, laws of international and European Union law, and must align the legal norms envisaged in the draft law with the legal norms already existing within the legal system in compliance with the principle of a rational legislator [..]. Likewise, the Constitutional Court has concluded that, in the course of adopting a legal norm, the legislator must examine the arguments regarding the alleged incompatibility with this norm with the Constitutional Court's judicature on the respective matter [..]. Generally, the legislator reviews a draft law openly at the sittings of the *Saeima* and the *Saeima* committees, including the possibility of debate and ensuring that the deputies can exercise their right to speak and to vote. Likewise, where necessary, explanatory research must be used to duly justify the intended legal regulation. The discussions on proposals, actually, ensured the possibility to examine whether alternatives to the intended legal regulation exist [..]. Pursuant to the Introduction to the *Satversme*, the state's activities, inter alia, the legislative process should be oriented towards sustainable development. I.e., the legislative process should be aimed at developing sustainable legal regulation. Thus, in the creation of legal norms, the legislator, in particular, in cases where fundamental rights are restricted, must rely, if necessary, on the social impact assessment study for the planned legal regulation and must consider the measures required for introducing

1286 Judgement by the Constitutional Court of the Republic of Latvia of 6 March 2019 in Case No.2018-11-01, Para 18.1.

and enforcing this legal regulation [..]. Moreover, the legislator must consider the risk estimates presented by specialists of the sectors and must take timely risk prevention measures [..]. In a democratic state governed by the rule of law, the legislator also has the obligation to inform timely and duly and, as far possible, directly or indirectly, involve society in the legislative process and consult with stakeholders [..]."[1287] In addition to this" compliance with the European Union law that reinforces democracy also falls within the scope of the principle of good legislation, thus facilitating adoption of sustainable legal regulation."[1288] This means that "the principle of good legislation also means that the *Saeima*, in adopting new legal norms, must review the compatibility of these norms with the European Union law that has entered into effect but has not become applicable yet."[1289]

Requirements of the principle of good legislation apply to all issuers of external regulatory acts within the Latvian legal system and the procedures, in which external regulatory enactments are adopted. In the Latvian legal system, the process of drafting and adopting every legal norm must be discussed in compliance with the principle of good legislation.[1290] The principle of good legislation marks the end of "political legislative process"[1291] within the Latvian legal system. "In Latvia, [historically], the legislative process has been pronouncedly political, whereas the needs and understanding of human development of the 21st century would require streaming into the legislative process more expertise, more scientific findings."[1292] Actually, as

1287 Judgement by the Constitutional Court of the Republic of Latvia of 6 March 2019 in Case No.2018-11-01, Para 18.1.

1288 Ibid.,Para 18.4.1..

1289 Ibid. , Para 18.4.2..

1290 See more: Rezevska D. Legislation in Latvia. In: Legislation in Europe A Country by Country Guide. Edited by Ulrich Karpen & Helen Xanthaki. Oxford and London: Hart Publishing, 2021, pp.283 – 297; Viļuma I. Likumdošanas kvalitātes pilnveides risinājumi Latvijā. Jurista Vārds, 2016.gada 11.oktobris, Nr.41(944).

1291 Compare: Krūzkopa S. Satversme ir pamats Latvijas ilgtspējai un katra iedzīvotāja attīstībai. LV portālam: Ineta Ziemele, Satversmes tiesas priekšsēdētāja. https://lvportals.lv/tiesas/302530-satversme-ir-pamats-latvijas-ilgtspejai-un-katra-iedzivotaja-attistibai-2019

1292 Ibid.

Ineta Ziemele has worded it, the Constitutional Court has recognised everyone's right to a good and qualitative law.[1293]

III. Legislative process

1. Stages in the legislative process. The most essential and significant function of the parliament as the bearer of the legislative power is adoption of generally binding precepts in the framework of a special procedure. The principle that no law may be adopted without the parliament's consent operates already since the times of constitutional monarchy. However, regulations with the force of law, issued by the Cabinet, is a certain violation of this principle, unless the parliament is given the right to repeal this act.[1294] The procedure for adopting a law is contrary to the process, in which unwritten legal norms originate. An unwritten legal norm emerges in complying with the actual model of conduct for a long period of time, whereas a norm of the law appears first and then it is actually complied with. For such a law to become valid, procedure for creating a law must be established.[1295] A law should be adopted in due procedure and, in verifying the compliance of a legal norm with the *Satversme*, the procedure, in which the norm was established, also must be verified.[1296] Hence, one of the most important pre-conditions for the validity of a law is compliance with the constitutional procedure for its adoption and this includes also abiding by the principle of good legislation. The legislator may not allow derogations from the legislative process that would allow contesting whether this law had been adopted constitutionally.

1293 Compare: Tieša runa: "Satversmes tiesa atceļ algu publiskošanu. Ko iegūstam, ko zaudējam?" https://ltv.lsm.lv/lv/raksts/13.03.2019-tiesa-runa-satversmes-tiesa-atcel-algu-publiskosanu.-ko-iegustam.id153851/

1294 Рейснеръ М.А. Государственное право. [б.м., б.и., б.г.], с.206.

1295 Михайловский И.В. Очерки философии права. Т.1. In: Марченко М.Н. Теория государства и права. Москва: Зерцало-М, 2001, с.420.

1296 Judgement by the Constitutional Court of the Republic of Latvia of 21 November 2005 in Case No.2005-03-0306, Para 10.4.

Compliance with the procedural norms that regulate the legislative procedure is an important pre-requisite for the law's validity. At the same time, the law must comply also with the substantive norms with higher legal force and legal principles. If a legal norm is contrary to or incompatible with the norms of the constitution or norms of higher legal force then meticulous compliance with the procedure for adopting such norms will not eliminate substantive deficiencies of the law.

Joseph Mikhailovsky has divided the legislative procedure into two stages: elaboration of the content of the future law and granting the force of law to this act. In the first stage, the legislative initiative and discussions on the draft law are singled out, whereas the second one comprises adoption, promulgation, proclamation of the law and granting the force of law to it.[1297] Leon Petrażycki singles out five stages of the legislative procedure: initiation of a law, discussions of the draft law, adoption of the law, promulgation and proclamation or publication of the law,[1298] but Evgenii Troubetzkoy recognises only four stages in the legislative process, dismissing promulgation as a special stage of the legislative process.[1299]

Opinions on the stages in the legislative process differ also in the Latvian legal science. Kārlis Dišlers and Ilgvars Krastiņš have advanced four basic stages: legislative initiative (initiation of a law), discussions of the draft law (elaborating the text of the law), adoption of the draft law and proclamation (publication) of the law,[1300] defining the legislative initiative as the right to prepare and submit a draft law to the *Saeima* for discussions. Gunārs Kusiņš, however, sees the stage of the legislative initiative differently. Firstly, preparing and submitting of the draft law are singled out as independent stages in the process.

1297 Михайловский И.В. Очерки философии права. Т.1. In: Марченко М.Н. Теория государства и права. Москва: Зерцало-М, 2001, с.420.

1298 Ducmanis K. Leo Petražicka Tiesību un valsts teorija sakarā ar mācību par morāli (uz emocionālās psiholoģijas pamatiem). Rīga: Augusta Golta apgādībā, 1931, 213. – 214.lpp.

1299 Трубецкой Е.Л. Энциклопедия права. In: Марченко М.Н. Теория государства и права. Москва: Зерцало-М, 2001, с.432.

1300 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 133.lpp.; Krastiņš I. Tiesību teorijas pamatjēdzieni. Rīga: Latvijas Universitāte, 1998, 20.lpp.

Secondly, the stage of preparing the draft law is divided into several sub-stages: initiative, analysis of the initiative, drafting the initial text of the law, discussions in the initial stage, assessment of analysis and proposals received, and final editing of the draft.[1301] The offered division of the legislative process emphasizes derogation from the idea that the legislative work goes on in the *Saeima* and that the legislative initiative is only a formal step. Evgenii Troubetzkoy has outlined a similar division, indicating that there are two formal sides to the official discussions of the draft law. During the government's discussion (initial discussion), the draft law is examined by governmental institutions, which draw up and prepare this draft, whereas the final discussion is the legislative discussion, in the course of which the parliament adopts the respective law.[1302] The Constitutional Court, in turn, has noted with respect to the stages in the legislative process that the legislative process could be divided as follows: legislative initiative, discussions on the draft law, adoption of the law, and publication of the law.[1303]

2. Legislative initiative. The legislative process starts with the legislative initiative. Every law originates not because of the legislator's whim but because it is determined by particular needs of life. Certain needs of life, the necessity to regulate some relations and to influence these are the motivation and the aim for a law, its teleological justification, ratio legis.[1304] Nowadays, the government has become the main subject of legislative initiative because the government is the one who submits the majority of draft laws to the parliament. Experts and appropriate materials for elaborating the required draft laws can be found in the departments subordinated to the government,

1301 Kusiņš G. Dažas tiesību jaunrades problēmas Latvijā. Administratīvā un Krimināla Justīcija, 1998, Nr.3(4), 20. – 23.lpp.

1302 Трубецкой Е.Л. Энциклопедия права. In: Марченко М.Н. Теория государства и права. Москва: Зерцало-М, 2001, с.435.

1303 Judgement by the Constitutional Court of the Republic of Latvia of 19 May 2009 in Case No.2008-40-01, Para 9.

1304 Михайловский И.В. Очерки философии права. Т.1. In: Марченко М.Н. Теория государства и права. Москва: Зерцало-М, 2001, с.420.

therefore sometimes even the parliament, in adopting a decision in principle on issuing a law, entrusts elaboration of the respective draft law to the government.[1305]

Technically, legislative initiative is understood as submitting a proposal on issuing, amending or repealing a law.[1306] Kārlis Dišlers has differentiated between the legislative initiative in the public sense and initiation of laws in the legal sense. The legislative initiative in the public sense is to be understood as the freedom of an individual citizen or a group of persons to initiate at an assembly, in the press, in petitions to be submitted to the parliament, an issue regarding amending an existing law or adopting a new law. However, this, indeed, is the case of only the right to initiative because the legislator is not obliged to review this matter.[1307] Whereas the legal right to legislative initiative should be understood as the right to turn to legislative institutions with a proposal on adopting a certain law; moreover, the legislative institution may not ignore this proposal, it must review it. In the course of this process, the legislative institution may dismiss this proposal but only after discussion. The right to legislative initiative is the right that "makes the legislative apparatus work".[1308]

The legal meaning of legislative initiative may be manifested in two ways: either by submitting to the parliament an elaborated draft law or by submitting to the parliament only a proposal regarding the need to adopt a certain law. In such a case, the initiator may indicate only the main principles of the desirable law but the parliament, abiding by these indications, must ensure adoption of such a law .[1309] The number of legislative subjects differs in each state, depending upon the degree of citizens' political freedom, development of each

1305 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 190.lpp.

1306 Ducmanis K. Leo Petražicka Tiesību un valsts teorija sakarā ar mācību par morāli (uz emocionālās psiholoģijas pamatiem). Rīga: Augusta Golta apgādībā, 1931,213.lpp.

1307 Dišlers K. Likumu ierosināšana pēc Latvijas Republikas Satversmes un pēc Saeimas kārtība ruļļa. Tieslietu Ministrijas Vēstnesis, 1923, Nr.3/4, 146.lpp.

1308 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 106.lpp.

1309 Dišlers K. Likumu ierosināšana pēc Latvijas Republikas Satversmes un pēc Saeimas kārtība ruļļa. Tieslietu Ministrijas Vēstnesis, 1923, Nr.3/4, 147.lpp.

state and the culture of its order. With respect to Latvia, the Constitutional Court has noted that legislative initiative is understood as submitting to the *Saeima* a proposal on issuing, amending or repealing a law, whereas only those subjects who have been granted this right by the *Satversme* may submit such a proposal.[1310] The *Satversme* grants the right to submit a draft law to the President, the Cabinet, the committees of the *Saeima*, no less than five deputies, and no less than one tenth of electors. A mandatory requirement is to present these drafts in the forms of a draft law, inter alia, annexing an annotation to the law, i.e., a document that is not a formal retelling of the law but reveals the aims, analyses alternatives, which the author of the draft law has considered, as well as provides interpretation of complex issues examined in the draft law, keeping in mind that a qualitative annotation may not substitute the requirement for a qualitative draft law. However, deficiencies in the annotation does not automatically cause incompatibility of the draft law's content with the *Satversme*.[1311] Although such an annotation was not required during the inter-war period, a constitutional tradition had evolved, i.e., a mandatory requirement to annex reasoning to a draft law, prepared by the government.[1312] The need to annex an annotation indirectly encourages the submitter, as underscored by Gunārs Kusiņš, "to conduct analysis of the projected consequences and submit this additional information to the *Saeima*, which, thus, will be able to adopt a better-reasoned decision."[1313] The Constitutional Court has concluded that an annotation to the draft law is one of the sources providing information on the need for the legal act, its application and impact on various areas. The justification included in the annotation allows society to gain insight into the considerations, on which

1310 Judgement by the Constitutional Court of the Republic of Latvia of 19 May 2009 in Case No.2008-40-01, Para 9.

1311 Judgement by the Constitutional Court of the Republic of Latvia of 12 February 2020 in Case No.2019-05-01, Para 19.1.2.

1312 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A. Gulbis, 1930, 134.lpp.

1313 Kusiņš G. Normatīvo aktu jaunrade. In: Mūsdienu tiesību teorijas atziņas. Meļķisis E. (red.) Rīga: Tiesu namu aģentūra, 126.lpp.

the adoption of the legal norm has been based.[1314] In case No. 2009-11-01, the Constitutional Court provided very critical analysis of the annotation to the draft law, by which the contested norm had been included into the law. The Court found several issues, which had been identified as problems in the annotation; however, no solutions had been provided to them, likewise, significant restrictions that had not been assessed were envisaged. At the same time, it should be taken into account that the annotation is only the opinion of the draft law's author, until now it is not being updated in-between the readings and it does not replace the need to provide reasoning for amendments to the draft law that occur in-between the readings.[1315] A proposal has been made in the Latvian legal system that, in the course of legislative process, annotations should be updated in accordance with changes to the draft law made during readings and that, following the adoption of the law, a final report (explanatory writ) on the law should be prepared, which could facilitate better application of the law and would provide the legislator's own explanation on the adopted law.[1316] President Raimonds Vējonis has proposed including into the Rules of Procedure of the *Saeima* a mandatory obligation to annex an annotation to each submitted draft law, as well as substantiation for each proposal submitted for the second and third reading. Likewise, a proposal has been made to establish the legislator's obligation to prepare a report on the adopted law after its adoption.[1317] Although these proposals have not been formalised in the Rules of Procedure of the *Saeima*, a parliamentary tradition of annexing an annotation to

1314 Judgement by the Constitutional Court of the Republic of Latvia of 212 February 2020 in Case No.2019-05-01, Para 19.1.2.

1315 See more: Kusiņš G. Likumdevēja gribas izteikšanas un noskaidrošanas problēmas. Augstākās tiesas biļetens, 2014, Nr.9, 24. – 26.lpp.

1316 Medina L. Likumprojekta anotācijas nozīme pamattiesību ierobežojumu noteikšanā. Jurista Vārds, 2016.gada 11.oktobris, Nr.41(944); Jaunzeme K. Likumdošanas procesa pilnveidošanas iespējas. In: Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019, 360. – 363.lpp.

1317 Valsts prezidenta Raimonda Vējoņa 2017.gada 18.augusta vēstule Nr.389. https://www.president.lv/storage/items/PDF/2017/Saeimai%20par%20Rulli18082017.pdf; Valsts prezidenta Raimonda Vējoņa 2019.gada 4.februāra vēstule Nr.36. https://www.president.lv/storage/kcfinder/files/VP_040219_Nr.36.pdf

the submitted draft laws, even if the Rules of Procedure of the *Saeima* do not require it, as well as providing written substantiation for the submitted proposals has consolidation in the parliamentary tradition. The principle of reasoning is one of the general legal principles within the Latvian legal system, and its binding also upon the legislator in the context of good legislation.

In Latvia, the President is the only one who has not only the right to submit a draft law but also to initiate a law. However, this opinion is not unequivocal because different interpretations of Article 47 of the *Satversme* are found in legal science. In 1922, Kārlis Dišlers interpreted this norm as the President's right to submit to the *Saeima* an elaborated draft law, which it would have to consider,[1318] however, in 1930, this article was analysed as a broad norm, comprising both the President's right to submit a draft law and the right to initiate adoption of a certain law. Kārlis Dišlers has noted that "this sufficiently broad formula comprises all ways of proposing a law; and one must say that for the President, who does not have at his disposal the necessary apparatus for detailed elaboration of a draft law, perhaps, it is easier to submit general proposals to the *Saeima*, which the *Saeima* can transfer to the respective committee for elaborating the draft law".[1319] The Rules of Procedure of the *Saeima*, including the right granted to the President by Article 47 of the *Satversme*, provided that the President has the right to submit proposals regarding initiation of a law, and it is not required to submit it as draft law. However, it has been recognised in practice that sometimes it is more advantageous to submit a completed draft law in accordance with Article 65 of the *Satversme*, as the procedure for reviewing it might ensure faster progression of the draft law because legislative proposals, submitted in the procedure of Article 47 of the *Satversme*, are nor examined at the

1318 Dišlers K. Latvijas Valsts prezidenta kompetence. Tieslietu Ministrijas Vēstnesis, 1922, Nr.3, 110. – 112.lpp.

1319 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 161.lpp.

Saeima's sitting before the responsible committee has supported them and has elaborated in the form of a legal norm.[1320]

The Rules of Procedure of the *Saeima* envisage also a collective submission as a citizens' tool for participating the *Saeima*'s work. At least 10 000 citizens of Latvia who, on the date of filing the submission, have reached the age of 16 may submit a collective submission to the *Saeima*, which must contain a request and a brief justification of the request. By this, citizens may draw the legislator's attention to relevant issues in the life of society that require a solution. A collective submission may not comprise a request, which is clearly unacceptable in a democratic society or is plainly offensive; a collective submission may not undermine values that respect human dignity, freedom, democracy, equality, the rule of law and human rights, including the rights of minorities. The *Saeima* has the obligation to review the collective submission, also by hearing the submitters of it, and the *Saeima* may decide on further actions.[1321] Since electronic collection of signatures is allowed for a collective submission the platform "Mana balss" [My Voice] has become an effective tool for implementing it.[1322]

Article 65 and Article 78 of the *Satversme* grant the right to legislate also to one tenth of electors. In specifying this procedure, the electors' right to submit draft laws may not be made formal and the balance between the majority's interests and the minority's rights, required in a democratic order, must be ensured.[1323] Formal restrictions, set out in Article 73 of the *Satversme*, are applicable also to this legislative initiative. As noted by the Constitutional Court, "electors' right to legislative initiative cannot be applied to draft laws, which, in accordance with Article 73 of the *Satversme*, cannot be put for a

1320 Pastars E. Parlaments kā sadarbības partneris: skatījums no Satversmes tiesas, Valsts prezidenta institūcijas un izpildvaras puses. Jurista Vārds, 2012.gada 25.decembris, Nr.52(751).

1321 See more: Kolektīvie iesniegumi. https://mandati.saeima.lv/kolekt%C4%ABvie-iesniegumi

1322 See: Mana balss. https://manabalss.lv/

1323 Judgement by the Constitutional Court of the Republic of Latvia of 12 February 2014 in Case No.2013-05-01, Para 16 and Para19.3.

referendum."[1324] The Latvian Constitutional Assembly, in deciding on the wording of Article 78 of the *Satversme*, underscored that it should be possible to implement the electors' legislative initiative not only theoretically but also practically. Hence, the draft law, submitted by electors, must be fully elaborated. The Central Election Commission and the President control whether the submitted draft amendments to the *Satversme* or the draft law are fully elaborated.[1325] A fully elaborated draft law, first and foremost, means that "the submitted draft law should be fully elaborated to the extent that it should be clearly visible from it which existing laws or articles of laws are being repealed or amended, as well as the possible and clearly comprehensible content of the amendments or the new articles".[1326] Likewise, the draft law cannot envisage deciding on such matters that cannot be regulated by law at all, as well as are incompatible with the norms, principles and values included in the *Satversme* and Latvia's international commitments.[1327] For the draft amendments to the *Satversme*, prepared by a group of citizens, to be considered as being "fully elaborated", as to its content, they may not be contrary to those rules of the *Satversme*, which they do not propose to amend, or the core of the *Satversme*, or international commitments[1328], as well as the doctrine of the state continuity of Latvia, promulgated in the Preamble to the Declaration of 4 May 1990.[1329]

If a draft law is fully elaborated, the President submits it to the *Saeima*. If the *Saeima* adopts a law, in which the content of the

1324 Judgement by the Constitutional Court of the Republic of Latvia of 12 February 2014 in Case No.2013-05-01, Para 14.4.

1325 Decision by the Constitutional Court of the Republic of Latvia of 19 December 2012 on Terminating Legal Proceedings in Case No.2012-03-01, Para 21.

1326 Dišlers K. Vai Centrālajai vēlēšanu komisijai ir tiesība pārbaudīt iesniegtos likumprojektus. Jurists, 1928, Nr.5, 133. – 136.sl.

1327 Decision by the Constitutional Court of the Republic of Latvia of 19 December 2012 on Terminating Legal Proceedings in Case No.2012-03-01, Para 18.

1328 Judgement by the Department of Administrative Cases of the Supreme Court of the Republic of Latvia of 28 March 2014 in Case SA-3/2014.

1329 Decision by the Department of Administrative Cases of the Senate of the Supreme Court of the Republic of Latvia of 11 February 2013 in Case SA-1/2013.

submitted draft law has been changed, or dismisses the draft law submitted by electors, a referendum must be held, i.e., the totality of citizens as the legislator and not the sovereign has the possibility to decide itself on adopting the draft law submitted by electors. The aim of this regulation is to ensure that the totality of citizens does not act unlawfully or erroneously, inter alia, influenced by populism, because it only takes the legislator's role and the role when it decides on establishing the state or electing the parliament. The bar for such a legislator is not set lower than for the parliament, and the possibility that the Constitutional Court might recognise its decisions as being incompatible with the *Satversme* is not excluded. Therefore it is important, in the case provided for in Article 78 of the *Satversme*, to eliminate, already in the stage of legislative initiative, possible contradictions, i.e., issues that the parliament, in the case of an ordinary law, could remedy in the several readings of the legislative process. Since Article 78 of the *Satversme* demands a fully elaborated draft law that could be submitted to the *Saeima* for review, the initiators of such a draft law must ensure the quality of the respective draft law that would permit collection of signatures.[1330]

3. Discussion of the draft law. After a draft law has been submitted to the parliament, discussion of it is held. The principle of good legislation requires qualitative discussion of the draft law. Firstly, assessing the compliance of legal norms, included in the draft law, with legal norms of higher legal force. Secondly, if necessary, legal regulation must be duly substantiated by explanatory research. Thirdly, the legislator must also consider the risk estimates, presented by the specialists of the sectors, and must introduce timely risk prevention measures.[1331]

Usually, a draft law is discussed in two ways - informally and in the official institutions of state power, who have been granted the

1330 See more: Briede J. Satversmes 78.pants. In: Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019, 284. – 293.lpp.

1331 Judgement by the Constitutional Court of the Republic of Latvia of 6 March 2019 in Case No.2018-11-01, Para 18.1.

powers to discuss draft laws before they are adopted. The public discussion of a draft law allows each inhabitant of the state to express orally or in writing in the press their opinion about the draft law and propose amendments to it. The granting of this right to the state's inhabitants depends on each state's form of governance. The public discussion of new draft laws is invaluable support for legislation as it allows noticing all features of the proposed law, identify all wishes and needs, which the legislator should take into account, and to eliminate possible obstacles to enforcement of the law. Extensive discussion of a draft law renders draft laws and legislation itself comprehensive and more flexible. Whereas in the states with no civil society and freedom of speech and the press, regulatory enactments are isolated from the real life and express only the wishes of the ruling elite.[1332] The right to official discussion of the draft law, in turn, is vested in persons and institutions to whom this right had been granted by laws.

In a contemporary democratic state, usually, the legislative power is vested in a parliament, elected by all people. Hence, the legal discussion of a draft law proceeds in the parliament, in the parliamentary procedure. This means reviewing the draft law and preparing its final wording, which is done in a complex, multi-stage procedure.[1333] This is the largest stage of the legislative process, which includes parliamentary work in sittings and parliamentary committees. Both these forms of activities in the discussion of a draft law interact, although legally binding decisions are adopted by the parliament but the commissions only summarise the submitted amendments. Constitutional laws determine the way and the procedure for discussing draft laws, thus ensuring that the decisions by the people's representation are carefully weighed and considered. Article 1 of the *Satversme* requires ensuring the principle of effective participation, i.e., the law's impact on its addressees and their opinion must be assessed, to the extent

1332 Трубецкой Е.Л. Энциклопедия права. In: Марченко М.Н. Теория государства и права. Москва: Зерцало-М, 2001, с.434.

1333 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2008 in Case No.2008-09-0106, Para 6.3.

possible, in the legislative process and the process of developing policy prior to it.[1334]

The main focus of the Rules of Procedure of the *Saeima* is placed on the process of legislation. Only accurate compliance with the procedure allows adopting a law in due procedure, whereas derogations from the procedure allow contesting the validity of such a law. However, a decision like that must be justified because minor procedural infringements are not sufficient grounds for assuming that the adopted act lacks the force of law: "However, not every violation of the parliamentary procedure can serve as the reason for considering it an act without a legal force. To declare an act null and void because of violation of parliamentary procedure, one should have well-founded doubt, that – in case - if the procedure were observed, the *Saeima* would have adopted a different resolution."[1335]

Traditionally, a draft law is examined in three readings, although, nowadays, derogations from the classical scheme appear. For example, in Latvia, the draft laws that ratify international treaties, the draft budget law and draft laws that have been recognised as being urgent are adopted in two readings. The Constitutional Court has also ruled that recognising a law as being urgent or setting a short term for submitting proposals between the readings were admissible.[1336] In Estonia, the State Assembly, in the process of legislation, in general examines draft laws in two readings, whereas the third reading is admissible if it is requested by the initiator of the law, the responsible committee or if the State Assembly decides on the need for a third reading. In times of peace, budgetary laws must be examined in three readings; however, in the case of war, the State Assembly would have the right to adopt the budget law in one reading. There is an opinion that comprehensive and meticulous discussion and examination of

1334 Judgement by the Constitutional Court of the Republic of Latvia of 13 May 2005 in Case No. 2004-18-0106, Para 7.

1335 Judgement by the Constitutional Court of the Republic of Latvia of 13 July 1998 in Case No.03-04 (98), Para 3 of the Findings.

1336 Judgement by the Constitutional Court of the Republic of Latvia of 26 November 2009 in Case No. 2009-08-01, Para 17.1.

draft laws in a two-chamber parliament ensured quality of laws - "that would guarantee greater stability in legislation: the laws would be better drafted and unnecessary laws would not be adopted".[1337] The legislative process in a two-chamber parliament, in which the upper house retains sufficient powers and influence in the legislative process, is more complicated and requires collaboration between both chambers, as well as consensus in adopting a law. However, it should be taken into account that, in general, at present the role of upper houses in the legislative procedure is diminished.

4. Transferring a draft law to committees. Only the President, the Cabinet, the committees of the *Saeima* and at least five deputies submit the draft laws elaborated by them directly to the *Saeima*. A draft law that is supported by one tenth of electors must be submitted to the President, who is obliged by the *Satversme* to submit such a draft law to the *Saeima* after verifying that the compliance of this draft law with the requirement set in Article 78 of the *Satversme* that the draft law must be fully elaborated has been assessed. As regards draft laws, received in the procedure of legislative initiative, the Presidium of the *Saeima* prepares a report to the *Saeima*, adding to it its own opinion regarding further proceedings with the draft law. The Presidium does not decide on the draft law as to its content, although, in exceptional cases, it is permitted to not transfer further the submitted document, recognising that it is not a draft law or that the wrong subject of law has submitted it, for example, the Cabinet may not submit amendments to the Rules of Procedure of the *Saeima*. At its sitting, the *Saeima* decides, whether the draft law should be transferred to committees or should be dismissed. The decision on transferring the draft law to committees means that the majority of the *Saeima* has consented to examining the submit draft law on its merits. If the majority of the *Saeima* dismisses in this reading the draft law submitted by one tenth of electors then it must be put for a referendum in the procedure set out in law. Upon deciding to transfer the draft law to committees,

1337 Latvijas Republikas IV Saeimas VII sesijas 1933.gada 7.novembra 6.sēdes stenogramma.

the *Saeima* appoints the responsible committee, which prepares the draft law for readings. The Rules of Procedure of the inter-war *Saeima* allowed debates when deciding on transferring a draft law to committees. To a certain extent, this procedure duplicated the successive first reading because the debaters generally analysed the submitted draft law, deviating from the issue of the desirability of such a draft law. To ensure that in this state only the issue of the need to continue examining the draft law would be discussed, debates on this matter were limited by amendments to the Rules of Procedure of the *Saeima*, i.e., by providing that, before the vote, only two deputies could be given the floor: one speaking for, the other – against the proposal, and allocating no more than five minutes to each speaker. This procedure makers the *Saeima*'s work more effective and prevents the opposition form paralysing it by debates on the content of the draft law. This tactics of the opposition's parliamentary rivalry, when it does not have a sufficient number of votes to impact significantly the course of the draft law but it delays the process by unending debates, paralysing the parliamentary work, is called obstruction.[1338]

5. Examination of a draft law in committees. The most important stage of the legislative procedure is examination of the draft law in committees and preparing it for the next reading. The division of competences between the committees is not strict, in the political process, both the names of the committees can be changed and a draft law, that traditionally would be under the jurisdiction of one committee, can be transferred to another. All of it is within the *Saeima*'s discretion.[1339] The committees examine the respective draft law after each reading, summarises amendments introduced to the draft law and the proposals submitted for the next reading. In difference to the *Saeima*'s sittings, enormous qualitative work is done at the committees' sittings. The pre-condition for the quality of laws is the abilities of

1338 For example, see.: Obama B. The Audacity of Hope. Thoughts on Reclaiming the American Dream. Edinburgh/ London/ New York/ Melbourne: Canongate, 2006, pp.80 – 84

1339 Judgement by the Constitutional Court of the Republic of Latvia of 3 December 2020 in Case No.2020-16-01, Para 23.4.

the committees' composition and the work invested to proceed with the draft law in the *Saeima*. The Rules of Procedure of the *Saeima* provides that no draft law may be put on the agenda and examined at the *Saeima*'s sitting before it has been examined by the responsible committee, understanding by it that a committee's opinion is required on each proposal, but not necessarily a procedural decision on submitting this draft for examination at the *Saeima*'s sitting. In the stage of preparing a draft law, committees have been granted special powers. The committees, to whom the *Saeima* has transferred the respective draft law, may even elaborate their own alternative draft law for reviewing in the first reading. It is often used in those cases when the *Satversme* is amended. Pursuant to Article 76 of the *Satversme*, such amendments must be examined in three readings, and, accordingly, proposals for the second and the third reading may be submitted only with respect to those articles of the *Satversme*, the amendments to which had been supported in the first reading (by expressing the articles in a new wording or by deleting them).[1340] Therefore, often, several draft laws, transferred to the committees, regarding amendments to the *Satversme* already for the first reading are joined in one alternative draft law, which is meticulously elaborated by the Legal Committee of the *Saeima*. If "the committee submits an alternative draft then it is transferred further to committees together with those drafts that already have been submitted to the Presidium of the *Saeima*. That speeds up examination of the draft law".[1341] If draft laws regarding amendments to one law have been transferred to the committee then the committee may merge these draft laws, submitting for examination in the first reading one alternative draft law or include the draft law, submitted later, in the draft law submitted previously as a proposal for the second or third reading. A draft law also may be added to another draft law as a proposal for the second or

1340 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2008 in Case No. 2008-09-0106, Para 6.5.

1341 Endziņš A. Jauna Saeimas kartība - pēc 72 gadiem. Latvijas Vēstnesis, 1994.gada 18.augusts, Nr.96(227).

third reading, without formally including one draft law into the other. Due to considerations of political expedience, sometimes each respective draft law is transferred for examination as a separate draft law.

The responsible committee may also dismiss the draft law; however, the draft laws submitted by the Cabinet or one tenth of electors, even if dismissed by the responsible committee, must be examined at the *Saeima*'s sitting. A draft law, which has not been submitted by the Cabinet and which has not been submitted in the procedure set out in Article 78 of the *Satversme*, is considered to be dismissed by the responsible committee if, within ten days from the date when the opinion by the responsible committee had become available to the deputies and had been sent to the President, the submitter does not request in writing the President or the *Saeima* to examine this draft law at the *Saeima*'s sitting. The dismissed draft law can be submitted for repeated examination in the same session only if the draft law has been signed by at least 51 deputies or if amendments have been introduced to it. If the responsible committee recognises that the draft law submitted by the Cabinet should be revised then, upon the committee's proposal, the *Saeima* may return it to the Cabinet, setting the term, in which the revised draft law should be submitted to the *Saeima*.

One of the most important tasks of the responsible committee is summarising and examination of the submitted proposals on amending the text of the draft law. In Latvia, the following have the right to submit proposals regarding amendments to a draft law: the President, the committee of the *Saeima*, a parliamentary group or a political block, an individual deputy, all members of the Cabinet – the Prime Minister, the Vice-prime Minister, a Minister, as well as the Parliamentary Secretary of a ministry if authorised by the Minister. Such right has been granted also the Legal Bureau of the *Saeima* if the Bureau's proposals pertain to the legislative technique and codification, as well as to the Ombudsman. Proposals must be submitted in writing to the responsible committee or the Chancery of the *Saeima*, which immediately forwards them to the responsible committee.

Proposals dismissed in the second reading may not be submitted for examination in the third reading. If draft amendments to a certain law are submitted, it means opening the entire law. Proposals regarding the entire regulation of the law may be submitted for the second and the third reading, the resolution of which were not at all proposed in the initial draft law.

Submitting new conceptual proposals only for the third reading is not formally prohibited and should not be prohibited mechanically.[1342] President Raimonds Vējonis has proposed limiting submissions of proposals for the third reading, allowing deciding on only such proposals that are related to the draft law under examination or the proposals already discussed during the second reading.[1343] It was done with the aim of improving the quality of laws and support the transparency of the legislative process. The third reading, usually, would be an opportunity to arrange the draft law and polish the text, as well as to eliminate possible contradictions.[1344] According to the parliamentary tradition, the committees of the *Saeima* usually show self-restrain and do not facilitate dealing with conceptual issues in the third reading without special reason. Proper discussion of the submitted proposals in the third reading is an essential task of the responsible committee. Artūrs Kučs has validly underscored that, in such cases, the legislator should ensure the possibility to "familiarise oneself with the content of this proposal, assess its compatibility with the Latvian legal system, inter alia, Latvia's international commitments, and discuss the existence of alternative solutions."[1345] Submitting of a conceptual proposal for the third reading per se is

1342 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2008 in Case No.2008-09-0106, Para 6.5.

1343 Valsts prezidenta Raimonda Vējoņa 2017.gada 18.augusta vēstule Nr.389. https://www.president.lv/storage/items/PDF/2017/Saeimai%20par%20Rulli18082017.pdf; Valsts prezidenta Raimonda Vējoņa 2019.gada 4.februāra vēstule Nr.36. https://www.president.lv/storage/kcfinder/files/VP_040219_Nr.36.pdf

1344 Jaunzeme K. Trešie lasījumi likumdošanas procesā. Jurista Vārds, 2016.gada 11.oktobris, Nr.41(944).

1345 Separate opinion by Justice of the Constitutional Court of the Republic of Latvia Artūrs Kučs of 25 June 2020 in Case No.2019-12-01, Para 3.

not unlawful; however, due to a violation of the principle of good legislation it can happen that this proposal is not duly discussed and examined in the *Saeima*. "Submission of proposals before the third reading of a draft law in the *Saeima* may mean limits on time and discussions. Therefore, it would be appropriate to use such a procedure to examine proposals that had been discussed previously or are of technical nature, which do not require in-depth impact assessment. However, in those cases where the regulation, included in the proposal, restricts fundamental rights, the legislator must ensure that the deputies of the *Saeima* and stakeholders have sufficient time for familiarising themselves with the content of the proposal, for assessing and discussing its impact on fundamental rights, included in the *Satversme*, inter alia, availability of alternative measures, less restrictive on fundamental rights."[1346] Likewise, the responsible committee must assess how substantial the respective proposal is for being supported in the third reading, or whether it should proceeded with in another procedure so that proposals could be submitted with respect to the new proposals in the subsequent reading. It is also important whether the responsible committee has agreed on a concept in the second reading and has agreed to further elaborate it in the third reading. Proposals aimed at complying with legal norms of higher legal force should be examined in the third reading without any restrictions.

6. Readings of a draft law. The Rules of Procedure of the *Saeima* define the first reading as general debates regarding the principles of the draft, whereas the successive readings - reading the draft law section by section, examining specific proposals. No draft law may be examined in the first reading if the deputies had not been ensured the possibility to receive the respective draft law, the responsible committee's opinion on it and the annotation to the draft law at least seven days prior to it, as well as if the draft law envisages additional budgetary expenditure or changes in revenue and the opinion by the Minister for Finance has not been annexed to it. The first provision

1346 Separate opinion by Justice of the Constitutional Court of the Republic of Latvia Artūrs Kučs of 25 June 2020 in Case No.2019-12-01, Para 3.

does not apply to an extraordinary session or sitting of the *Saeima*, urgent laws, as well as examination of a draft law in the first reading if the *Saeima* has decided on it, the second provision, in turn, is not applicable to draft laws submitted by the Cabinet, as well as to cases, where the Minister for Finance has not provided their opinion within the set term. The Presidium of the *Saeima* has a rather technical role because, usually, the Presidium may not choose, for example, to not put on the agenda a draft law prepared by a committee. However, this is more of a tradition, and derogations from it are possible. For example, during the emergency situation of 2020, the Presidium of the *Saeima* assessed carefully the priority of draft laws for including them in the agenda of the *Saeima*'s sitting. Whereas in the case of extraordinary sittings, the Presidium's mandate to assess inclusion in the agenda is broader. The year of 2020 also saw derogation from the long-standing practice that the Presidium of the *Saeima* put on the agenda of the *Saeima*'s sitting a draft law that had be examined by the committee of the *Saeima*, but the committee had decided to not transfer it for examination of the *Saeima*, which, until now, had been considered as being important vote, which often was used for blocking a draft law politically.[1347]

When a draft law is examined in the first reading, the rapporteur, elected by the responsible committee, reports. After examining the draft law, the responsible committee elects the rapporteur from among its members. Following the rapporteur's report, the debate on the principles of draft law are opened. When the debate is closed, the *Saeima* decides on adopting the draft law in the first ruling. If the draft law is adopted in the first reading, the *Saeima* decides on the term for submitting proposals. The *Saeima* may also make a special decision on how the proposals for the particular draft law must be presented, which is characteristic of reviewing a draft budget law. The Constitutional Court has concluded that the legislator must ensure such process for elaborating regulatory enactments that would

1347 Latvijas Republikas 13.Saeimas rudens sesijas divdesmit otrās sēdes 2019.gada 19.decembrī stenogramma.

provide sufficient time for submitting and assessing proposals and alternative proposals since the discussion of proposals allows assessing whether alternative to the regulation exists. This term should be such to let the deputies to draw up the respective proposals.[1348]

The second reading is the main stage of the legislative procedure when the draft law is read section by section, examining the submitted proposals or the responsible committee wording its proposals. It is important to ensure that the proposals are discussed and that stakeholders can express their opinions on them. The Constitutional Court, in deciding on the compliance of the regulation with the *Satversme*, may see the quality of discussions as an important pre-condition. These discussions must include both the analysis of the Constitutional Court's judgements, if such have been delivered on the matter dealt with in the draft law, as well as own analysis if anyone of the involved expresses valid doubts regarding the constitutionality of the proposed draft law.[1349] Quite often, the deputies do not want to discuss the proposals but ask stakeholders to reach an agreement and come with an aligned proposal. This approach is incompatible with the principle of good legislation because the legislator itself must assess proposals and these discussions must be recorded in minutes. This does not exclude the stakeholder's cooperation and preparations between the committee's sitting; however, it is often unproductive if, in the case of different opinions, the committee has not agreed on a certain course. When discussions become extensive the *Saeima*'s committees sometimes set up working groups or sub-committees to prepare the issue better.

The proposals of the responsible committee, as well as the proposals submitted to the responsible committee within the set term are examined in the second reading. The Rules of Procedure of the *Saeima* do not impose the obligation to include in the transcript of the

1348 Judgement by the Constitutional Court of the Republic of Latvia of 19 October 2017 in Case No.2016-14-01, Para 25.2.

1349 Judgement by the Constitutional Court of the Republic of Latvia of 12 April 2018 in Case No. 2017-17-01, Para 22.1. and subsequent paragraphs.

Saeima's sitting the legal justification for adopting each legal norm and summary of the need for it. Section 94 of the Rules of Procedure of the *Saeima* provides that a draft law is prepared for the second reading by the responsible committee, which provides opinions on the submitted proposals and, if necessary, adding its own proposals. The term for submitting proposals has not been set for the responsible committee because proposals can be formulated at the committee's sitting, while debating the submitted proposals and the draft law in general (for example, upon establishing that a certain issue should be regulated). It is the responsible committee that ensures that the draft law is fully prepared for examination at the *Saeima*'s sitting.[1350] At the beginning of the second reading, the rapporteur reports on the responsible committee's work and on each proposal separately. In this reading, debates are permitted only with respect to specific proposals. Also the voting is held on each proposal, except for cases where the deputies do not object to not voting and are unanimous, revoke a proposal that has not been supported by the committee, recognise it as such that cannot be put for voting or decide to vote on it in parts. It should be taken into account that a proposal that has been recalled in the committee can no longer be recalled at the *Saeima*'s sitting without the committee's consent. A proposal that has received the majority of votes of the deputies present is deemed to be accepted. After all proposals have been examined, voting in the second reading on the draft law as a whole is held, except for the cases where the rapporteur, on behalf of the committee, requests suspending examination of the draft law and to return it to the committee if, for example, contradictory proposals have been voted for (in particular, if the *Saeima* decides to vote on previously submitted proposals in parts, defining what a part is). After the draft law is adopted, the *Saeima* transfers the draft law to the responsible committee for preparing it for the third reading, setting the term for submitting proposals.

1350 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2008 in Case No.2008-09-0106, Para 6.4.

In the third reading, the draft law is examined at the *Saeima*'s sitting like in the second reading, expect for the particularity that the proposals for the third reading should not substantively amend a draft law approved in the second reading. In preparing a draft law for the third reading, linguists and experts of the Legal Bureau of the *Saeima* are involved. This requirement has been introduced to "prevent possible "clumsiness" in expressions, as well contradictions between the existing and future laws. It is necessary to avoid the draft law getting stuck due to cardinal contradictions found at the very last moment".[1351] These experts are involved also in earlier stages of the process; however, the third reading is the last moment to do it. The corrections by these experts are integrated into the text of the draft law in various ways, namely, the corrections by the Legal Bureau, which sometimes are quite conceptual, are voted on as on proposals, whereas the corrections by linguists are introduced after the draft has been examined at the committee and during the *Saeima*'s sitting, as well as after the *Saeima*'s sitting. Sometimes, substantial corrections by linguists later are presented as the committee's proposals or by providing special informative text on it in the draft law's table. In general, it is not typical in the global practice to vote on the proposals by the legal service; these, usually, are technical and the most substantial legal corrections are made by the lawyers employed by the committee. If an obvious technical mistake is found in a law that has been adopted by the *Saeima*, it is remedied by the Legal Bureau of the *Saeima* before the law is transferred to the President for proclamation, or the Chancery of the *Saeima*, upon the request by the President's Chancery, replaces the page of the draft law transferred for proclamation. In the inter-war period, the Rules of Procedure of the *Saeima* provided for establishing a separate editorial committee that examined the adopted law and introduced the necessary technical and linguistic corrections into it. Pursuant to the Rules of Procedure,

1351 Endziņš A. Jauna Saeimas kartība - pēc 72 gadiem. Latvijas Vēstnesis, 1994.gada 18.augusts, Nr.96(227).

the editorial committee reported on its work at the *Saeima*'s sitting, giving the opportunity to the *Saeima* to vote on these corrections.

A draft law is considered as having been adopted and, thus, becomes a law if it has been discussed in three readings and, in the vote on it as a whole, has gained the absolute majority vote of the deputies present. If the *Saeima* does not adopt a law in the third reading it is returned to the responsible committee, the committee, in turn, has re right to re-submit this draft law for the third reading in accordance with the provisions of the Rules of Procedure of the *Saeima*. A member of the Presidium of the *Saeima* forwards the adopted laws to the President for proclamation with a special address and adding at the end of the text the year and the date when the law was adopted, noting it as follows: "The law adopted in the *Saeima* on (date)." The President signs the proclamation of law, which is to be recognised as a separate type of legal acts, and indicates the date. The indicated date is an order to the official publisher on when the law should be published. Pursuant to the constitutional tradition after reinstatement of the *Satversme*, the dates of proclamation and publication of a law coincide, i.e., the date of publication is indicated as the date of proclamation. This was not aligned during the inter-war period, and at that time the date of proclamation and the date of publication of a law differed.

There are three types of draft laws that are examined in two readings; i.e., draft laws that must be adopted in urgent legislative procedure, the draft budget law, as well as a draft law that provides for ratification of an international treaty. In order to not examine the package of draft state budget laws in three readings, it is usually recognised as being urgent and is examined together with the draft state budget law. The *Saeima* may also decrease the scope of the package of the state budget laws but cannot expand it, contrary to what has been stated in the Cabinet's accompanying letter upon submitting the state budget law (indicating the draft laws submitted in the package or referring to those draft laws, which the *Saeima* already has submitted to committees and which should be added to the package). The process of

elaborating the state budget should be viewed as special authorisation of the Cabinet because the Constitutional Court has underscored the prerogatives of the Cabinet, as the sole drafter of the state budget, vis-à-vis the *Saeima* as the body approving of the budget, highlighting the Cabinet's competence to decide freely on the priorities in financing the state's tasks to ensure the executive powers' possibilities to perform the state's task.[1352]

7. Adoption and promulgation of a law. Support for the law in its final wording means adoption of the law. In a republic, a draft law becomes a law when it has been adopted by the parliament in the final wording, whereas the head of state promulgates it, making it known to all inhabitants. The opinion prevails in monarchies that the monarch has the right to sanction (the right to approve of a draft law). This theory is based on the assumption that the supreme legislative power is vested in the monarch (e.g., in Great Britain, the parliament consists of the lower house, the upper house and the monarch), who formally adopts the final law. Paul Laband considered that the parliament only determined the content of a law, whereas the monarch, by his sanction, gave it the force of law. Such condition makes the parliament and the monarch equals in their status.[1353] In absolute monarchies, sanctioning of a draft law not only turned it into a law but also gave the monarch the right to introduce into this project such modifications as they wished. For example, in Russia, the Emperor could change freely the content of the draft law submitted to him.[1354] The president of a republic, in turn, usually is not a part of the parliament but only implements a constitutional precept by promulgating a law, adopted by the parliament. The president does not have the right to sanction as they do not have the right to absolute veto and cannot not promulgate a law. The president only has the right of veto, which

1352 Judgement by the Constitutional Court of the Republic of Latvia of 29 October 2020 in Case No.2019-29-01, Para 21.1. and 21.3.

1353 Dišlers K. Valsts prezidenta suspensīvais veto un pilsoņu kopuma absolūtais veto LR Satversmē. Tieslietu Ministrijas Vēstnesis, 1929, Nr.1/2, 2.lpp.

1354 Трубецкой Е.Л. Энциклопедия права. In: Марченко М.Н. Теория государства и права. Москва: Зерцало-М, 2001, с.438.

can be exercised within a certain period of time. If the right of veto is not exercised within this period it automatically means that the president will promulgate such a law. The monarch's sanction on the draft law was his discretionary power, in the framework of which he could decide freely on granting or not granting the force of law to an act, adopted by the parliament. A president of the republic usually does not have this right. Adoption of laws is the exclusive competence of legislative institutions. At the same time, the constitution envisages for the head of state the right of veto and to promulgate (sign and publish) laws as an important element of the legislative process that ensures the separation of powers and safeguards against possible errors. Following promulgation, a law that has been adopted by a legislative institution acquires the binding force of a legal act of united state power.

A law is promulgated in accordance with the constitution, without manifestation of the President's free will.[1355] Promulgation of a law is an obligation imposed by the constitution. Some scholars of law consider that the head of state, by proclaiming a law, promulgates it. Promulgation is the head of state's order to publish and to enact the law signed by them.[1356] Promulgation of law means verification of its text, when the head of state establishes that the law had been adopted in the procedure set out in the constitution and that the text is authentic.[1357] If the president considers that the adoption of the law has not been constitutional or there is an obvious contradiction with the constitution, it is their obligation not to promulgate such a law but return it to the parliament for reconsidering. The presidential veto is a negative manifestation of the verification of the text, with the president refusing to proclaim such a law. For example, in 1928, Gustavs Zemgals did not proclaim amendments to criminal procedure laws for broadening the deputies' immunity. Gustavs Zemgals applied

1355 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 166.lpp.

1356 Ducmanis K. Leo Petražicka Tiesību un valsts teorija sakarā ar mācību par morāli (uz emocionālās psiholoģijas pamatiem). Rīga: Augusta Golta apgādībā, 1931, 213.-214.lpp.

1357 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 138.lpp.

veto, indicating that Article 30 and Article 76 had been violated, thus, acting as the guardian of the *Satversme*.[1358] However, confusion would arise with respect to this issue if the *Saeima* would override the President's veto because then he would have to proclaim the law that he himself had recognised as being unconstitutional. Valdis Zatlers faced such a situation when the *Saeima* ignored his veto with respect to a contradiction between an amendment to the Public Procurement Law and Article 92 of the *Satversme*. As the result of this, following proclamation of the law, the President turned to the Constitutional Court, which later recognised the contested norms as being incompatible with the *Satversme*.[1359] Likewise, the president may refuse to sign a law that they have objected to or the content of which they do not uphold in principle. This may cause a serious political conflict with the parliament and certain political instability; however, such possibility is constitutionally admissible. The president may comment on their decision publicly or agree informally to being replaced by the president of the parliament who, accordingly, proclaims the law.[1360]

The provision of the Constitution of Poland of 1997 is commendable, it allows the President, in cooperation with the Constitutional Tribunal, to control the constitutionality of laws. Before signing the law, the President of the Republic may turn to the Constitutional Tribunal, requesting it to review the constitutionality of a law. The President may not refuse to sign a law that the Constitutional Tribunal has recognised as being compatible with the constitution and may not sign a law that has been recognised by the Constitutional Tribunal as being incompatible. If only some norms of the law are deemed to be unconstitutional and the Constitutional Tribunal has not recognised these norms are being inseparably linked to the entire law, the President, after hearing the opinion of the marshal of the Sejm, signs the

1358 Bergs A. Konstitucionāls konflikts. Latvis, 1928.gada 15.jūnijs.

1359 Judgement by the Constitutional Court of the Republic of Latvia of 19 April 2010 in Case No. 2009-77-01.

1360 Compare: Havel V. The Art of Impossible. Politics as Morality in Practice. New York and Toronto: Alfred A. Knopf, 1997, p. 85 – 86.

law, excluding from it the norms that have been recognised as being incompatible with the constitution, or returns the law to the Sejm to eliminate incompatibilities. The Estonian Constitution provides for a similar mechanism, which gives the possibility to the President of the Republic to turn to the National Court before the law is promulgated and request reviewing the compatibility of the respective law with the Constitution. If the National Court recognises the law as being anti-constitutional, it loses the force of law and may not be promulgated. If the National Court recognises the law as being compatible with the Constitution, the President of the Republic is obliged to proclaim the law. The Constitutional Law Commission under the Auspices of the President has pointed to the need for similar preventive control in Latvia.[1361]

A law enters into force and becomes binding only after its publication.[1362] Either the law itself or the constitution sets the date as of which the law enters into force. As noted by the Latvian Senate: "Promulgation of a legal norm by an official body is to be set as the grounds for legal norms entering into force".[1363] The Constitutional Court has concluded that "pursuant to the principle of legality, a person has the right to be informed about these norms. Therefore, legal norms [..] should be promulgated in the procedure set out in the law [on official publications]."[1364] In the particular case "the order by the Minister for Agriculture was not published in the official newspaper "Latvijas Vēstnesis" but in "Lauku Avīze". Hence [..] , the right to be

1361 Valsts prezidenta Konstitucionālo tiesību komisijas 2011.gada 10.maija viedokļa "Par Valsts prezidenta funkcijām Latvijas parlamentārās demokrātijas sistēmas ietvaros" 217.punkts un 2012.gada 17.septembra viedokļa "Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu" 404.punkts.

1362 See more: Pumpišs A., Kursīte E., Priekulis J., Vīksna E., Ratnika S., Pudelis D., Ūdre D., Gailīte K., Apine I., Gailīte D., Zelmenis G. Oficiālā publikācija Latvijas tiesiskajā sistēmā. In: Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019, 399. – 465.lpp.

1363 Latvijas Senāta Apvienotās sapulces 1927.gada 25.februāra spriedums. In: Latvijas Senāta spriedumi (1918-1940). 1. sējums. Senāta Apvienotās sapulces spriedumi. Rīga: Latvijas Republikas Augstākā tiesa, Senatora Augusta Lēbera fonds, 1997, 152. – 153. lpp.

1364 Judgement by the Constitutional Court of the Republic of Latvia of 21 January 2002 in Case No.2001-09-01, the Findings.

informed about changes in the existing procedure for delivering sugar beet was denied."[1365] Publication of a regulatory enactment is one of the mandatory requirements for a generally binding (external) regulatory enactment to enter into force.[1366] However, the fact that a legal act had not been published anywhere or had not been proclaimed otherwise does not mean that it cannot be recognised as an external regulatory enactment because this does not change the nature of these legal norms.[1367] The fact that that a regulatory enactment had not been duly published is to be considered rather as being a substantial procedural violation. In a democratic state governed by the rule of law, normative legal acts that are unpublished and are inaccessible to persons may not cause legal consequences.[1368]

Article 69 of the *Satversme* provides that the President proclaims laws passed by the *Saeima* not earlier than the tenth day and not later than the twenty-first day after the law has been adopted. A law comes into force fourteen days after its proclamation, unless a different term has been specified in the law.[1369] The procedure for counting the term is defined by the law that regulates the course of official publications. An exception to these terms is permitted only in the case set out in Article 75 of the *Satversme*, i.e., the President must proclaim the law within three days of its receipt but the Presidium of the *Saeima* must ensure that the law that has been recognised as being urgent is forwarded to the President in such a way as to respect the President's right to decide on reconsideration of the law, as well as to decide on the date for proclaiming the law. President Andris Bērziņš once pointed out to the *Saeima* that not only the period of ten days between the adoption and entering into force of a law that has not

1365 Judgement by the Constitutional Court of the Republic of Latvia of 21 January 2002 in Case No.2001-09-01, the Findings.

1366 Judgement by the Constitutional Court of the Republic of Latvia of 11 March 1998 in Case No.04-05(97), Para 3 of the Findings.

1367 Judgement by the Constitutional Court of the Republic of Latvia of 9 July 1999 in Case No.04-03(99), Para 3 of the Findings.

1368 Akmentiņš R. Tiesību zinību teorija. Rīga: Latvijas Universitāte, 1928, 78. lpp.

1369 See more: Akmentiņš R. Likumu un rīkojumu spēkā nākšanas laiks Latvijā. Jurists, 1932, Nr.6(40), 145.-156.sl.

been recognised as being urgent in the procedure set out in Article 75 of the *Satversme* should be respected but, without special agreement, the term of 21 days should not be shortened.[1370] President Raimonds Vējonis, in turn, asked the *Saeima* to forward the adopted text of the law within the term that would respect the President's right, granted in Article 71 of the *Satversme*, to return the law for reconsideration and would provide reasonable time for getting acquainted with it and deciding on exercising the right of veto.[1371] If the President does not proclaim laws within the set terms and, thus, violates the *Satversme*, the Speaker of the *Saeima* may do it instead, publishing additionally the respective announcement.

Usually, the coming into force of sizeable and important laws is postponed for later to allow the inhabitants familiarise themselves with the content of the law. A general term is defined in the constitution, assuming that laws cannot be considered as being known to the people as of the date of their publication. It follows from the need to make these laws known in the entire state, as well as the need to record clearly and unambiguously the date when the old law is replaced by the new law. Therefore, setting a particular term, by which each inhabitant is given the possibility to familiarise themselves with the content of the law, is the best.[1372] If the law has been made known in due procedure then nobody may make the excuse of not knowing it. Since this principle is binding upon persons it imposes the obligation on the state to make the content of the law known to everyone to whom it applies. The legislator may demand obedience to the law only if it has done everything necessary so that anyone, wishing to familiarise themselves with the content of the law, could have done

1370 Valsts prezidenta Andra Bērziņa 2011.gada 26.jūlija raksts Nr.43. https://www.president.lv/storage/items/Augstskolu%20likums.pdf

1371 Valsts prezidenta Raimonda Vējoņa 2016.gada 22.decembra raksts Nr.658. https://www.president.lv/storage/items/PDF/par%20likumu%20izsludin%C4%81%C5%A1anas%20termi%C5%86iem.pdf

1372 Ducmanis K. Leo Petražicka Tiesību un valsts teorija sakarā ar mācību par morāli (uz emocionālās psiholoģijas pamatiem). Rīga: Augusta Golta apgādībā, 1931, 214.lpp.

it.[1373] Daiga Rezevska has underscored that the understanding of reasonable vacatio legis, the period between proclamation of a law and its entering into force, which would ensure to the law's addresses the possibility to familiarise themselves with it, still should be developed within the Latvian legal system.[1374] Article 69 of the *Satversme* sets out the general rule that a law, following its proclamation, enters into force on the fourteenth day. The legislator may envisage that a law enters into force both sooner and later, however, it has the obligation to abide by the minimum requirements of vacatio legis. A law may not enter into force on the day it is proclaimed but only on the day following its promulgation.[1375]

8. Ratification of international treaties. Ratification of international treaties is a peculiar function of the parliamentary legislation. Balduin von Düsterlohe wrote that, from the perspective of state law, ratification of international treaties lacked the nature of a legal act because it could be considered as the expression of the parliament's will through a law. Also during the period of Czarist Russia, the word "law" did not comprise international treaties because they had entirely different juridical nature .[1376] However, Kārlis Dišlers, opposing Balduin von Düsterlohe, has noted that the need to ratify some international treaties in the form of a legal act followed from the requirement, set out in Article 68 of the *Satversme*, for the *Saeima* to approve of international treaties that settle issues to be dealt with through legislation. If a draft law, submitted to the *Saeima*, envisages approval of an international treaty, the official text of the said treaty, as well as its translation into Latvian (if the official text of the treaty is not in Latvian) must be appended to it. After ratification, such international

1373 Трубецкой Е.Л. Энциклопедия права. In: Марченко М.Н. Теория государства и права. Москва: Зерцало-М, 2001, с.438.

1374 Separate Opinion of Justice of the Constitutional Court of the Republic of Latvia Daiga Rezevska of 2 November 2017 in Case No.2016-14-01, Para 6.

1375 See more: Akmentiņš R. Likumu un rīkojumu spēkā nākšanas laiks Latvijā. Jurists, 1932, Nr. 1, 145. – 156.sl.

1376 Disterlo B. Juridiskas piezīmes pie Latvijas Republikas Satversmes. Tieslietu Ministrijas Vēstnesis, 1923, Nr.7, 8. – 9.lpp.

treaties acquire the force of law domestically, hence, the *Saeima*, by approving such an act, adopts it, thus dealing with the respective legislative issue.[1377]

Article 68 of the *Satversme* regulates the issues pertaining to the ratification of international treaties. The Constitutional Court has recognised that this norm of the *Satversme* "envisages that all international agreements which settle matters that may be decided by the legislative process shall require ratification by the *Saeima*. The Constitutional Assembly, when including the above norm in the *Satversme*, has not conceded that the State of Latvia could avoid fulfilling its international commitments. The demand to require ratification of the international agreements by the *Saeima* was incorporated in the *Satversme* with the aim of precluding such international liabilities, which shall regulate issues under the procedure of legislature without the assent of the *Saeima*. Thus ,it can be seen that the Constitutional Assembly has been guided by the presumption that international liabilities "settle" issues and they shall be fulfilled".[1378]

Article 68 of the *Satversme* sets out the procedure, "in which the State of Latvia expresses its consent to the binding nature of a treaty signed by the executive power, i.e., the *Saeima* by approving of an international treaty by law, consents to assume, on behalf of the State of Latvia, the commitments envisaged in the respective international law and authorises the President or the Cabinet to take the necessary measures for the international treaty to enter into force. Ratification of an international treaty by the *Saeima* is a sui generis legislative act, which is necessary for the international treaty to become effective and to be applicable in the legal system of Latvia".[1379] Article 68 of the *Satversme* provides for two procedures, in which the *Saeima* decides on approving an international treaty. If an international treaty settles

1377 Dišlers K. Dažas piezīmes pie B. Disterlo raksta "Juridiskas piezīmes pie Latvijas Republikas Satversmes", Tieslietu Ministrijas Vēstnesis, 1923, Nr.9/10, 111. – 112.lpp.

1378 Judgement by the Constitutional Court of the Republic of Latvia of 7 July 2004 in Case No.2004-01-06 , Para 6 of the Findings.

1379 Judgement by the Constitutional Court of the Republic of Latvia of 29 November 2007 in Case No.2007-10-0102, Para 44.1.

matters that may be decided by the legislative process then the *Saeima* must ratify it in the procedure set out in Article 23 and Article 24 of the *Saeima* (the first part of Article 68 of the *Satversme*). Whereas if the international treaty envisages delegating part of the competencies of the state institutions to international institutions, such treaty must be ratified in the framework of constitutional procedure (the second part of Article 68 of the *Satversme*).[1380]

Article 68 of the *Satversme* defines the procedure for approving an international treaty in the understanding of the national law. As noted by Kārlis Dišlers, "the approval of an international treaty in the parliament should be differentiated from its ratification, which is usually done by the head of state (the monarch or the president of the republic) and belongs to the federative function".[1381] The aim of this procedure is, on the one hand, making the norms of international treaties binding within the national legal system and, on the other hand, authorising the President or other competent public officials to ratify the international treaty in the meaning of international law. Pursuant to Article 41 of the *Satversme*, the President executes the decisions of the *Saeima* regarding ratification of international treaties, i.e., ratifies international treaties in the meaning of international law.

The *Saeima* does not have to approve of all international treaties signed by the President, the Prime Minister or the Minister for Foreign Affairs. The Constitutional Court has noted that "the first part of Article 68 of the *Satversme* provides for the right of the *Saeima* to decide on ratification of these treaties, namely, the right to assess the compliance of the respective treaties with the national interests of Latvia and the necessity of ratification of such treaties. The *Saeima* is entitled to refuse to ratify an international treaty or to ratify an international treaty by changing its content or applicability in Latvia. However, the limits of the freedom of action of the *Saeima* in such situations are determined by the rules of international law, namely, the *Saeima* has

1380 Judgement by the Constitutional Court of the Republic of Latvia of 29 November 2007 in Case No.2007-10-0102, Para 56.3.

1381 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 139.lpp.

to make the decision by observing the rules of international law binding upon Latvia that regulate this procedure".[1382]

In its judgement, the Constitutional Court has also outlined the possible procedure when the *Saeima* pre-authorises the Cabinet to assume international commitments of certain content: "The *Satversme* does not provide that the *Saeima* is to authorize the Cabinet of Ministers to sign international treaties; however, similarly no prohibition of doing so is included in the *Satversme*. [..] the *Saeima* is entitled to authorize the Cabinet of Ministers to perform certain activities in international law in order not only to sign but also to prepare a treaty with a foreign State that in *Saeima*'s view is necessary for Latvia. [..] in the cases when the Cabinet of Ministers has planned to prepare and sign the international agreements that affect issues that are relevant for the State, a preliminary consent by the *Saeima* to such action of the Cabinet of Ministers, by authorizing the Cabinet of Ministers to elaborate and sign such law by means of a law, confers an additional legitimacy to the action of the Cabinet of Ministers and shows to the other contractor that not only the Latvian government, but also the Parliament shall accept the signed treaty and shall not object against its enactment.. [..] in the cases when the executive power has planned to decrease the State territory by means of an international treaty, the parliament can manifest its consent not only by ratifying the already signed international treaty, but also by a preliminary authorisation of the President to sign such a treaty."[1383]

9. Specificity of the legislative process if the *Saeima* is dissolved or recalled. Article 49 of the *Satversme* outlines the principle of the legislature's continuity, and it follows that, until the new *Saeima* is convened, the mandate of the deputies of the previous convocation of the *Saeima* remains valid; however, the *Saeima*'s sittings are convened and the agenda for them is set by the President. After Article 49

1382 Judgement by the Constitutional Court of the Republic of Latvia of 29 November 2007 in Case No.2007-10-0102, Para 75.3.

1383 Judgement by the Constitutional Court of the Republic of Latvia of 29 November 2007 in Case No.2007-10-0102, Para 67.1. – 67.2.

of the *Satversme* has been set in motion, the presidential act is the only grounds for the dissolved *Saeima* to convene for sittings. The President is the official who, at this moment, ensures protection for the constitutional values, and they enjoy broad discretion to decide whether to convene sittings at all and what issues should be placed on the agenda, inter alia, the right to not include in the agenda a request for a minister's resignation. To a certain extent, the President and the dissolved *Saeima* continue to be interdependent, if they wish, for example, to examine at the *Saeima*'s sitting the agenda set by the President and the issues sufficiently prepared by the *Saeima*'s committees. During the period of the *Saeima*'s dissolution, all three supreme branches of the state power should cooperate.

There is no normative regulation on exercising the President's right, set out Article 49 of the *Satversme*, to convene the *Saeima*'s sittings. This gives maximum discretion to the President. For example, would it be justified and compatible with the *Satversme* if the *Saeima* would want to regulate this procedure in the Rules of Procedure of the *Saeima*, restricting the President's discretion timely. In practice, it happened for the first time in August, September and October of 2011 when, in implementing the provisions of Article 49 of the *Satversme*, an agreement was reached between the President's Chancery, the Chancery of the *Saeima* and the State Chancellery, regarding the procedure for exercising this right, which included compliance with the previously consolidated constitutional traditions. A formula was found that the President applied the Rules of Procedure of the *Saeima* and internal instructions, insofar this was not contrary to Article 49 of the *Satversme*, for example, terms for making draft laws accessible, proceeding with draft law in committees and in-between readings, the criteria for drawing up the agenda for the *Saeima*'s sitting: During this period also Article 22, which defines the right to convene the *Saeima*'s sittings, is not operational.

Undoubtedly, Article 49 of the *Satversme* applies to convening of the *Saeima*'s sittings; however, the extent to which it applies to the agenda of the *Saeima*'s committees is not clear. Prima facie, it might

seem that the most important results of the *Saeima*'s committees are reflected in the *Saeima*'s sitting. If the convening of the *Saeima*'s sittings is controlled by the President then the work of the committees should not cause consequences for other persons. However, several committees have been granted standing authorisation causing external consequences, for example, in the case of reallocation of appropriations or approving of the national positions in negotiations in the framework of the European Union. To resolve this, the President informed that he had not objections to committees continuing working as before, remaining within the framework of the competence defined in the current laws; however, he could block the issues on the agenda of these committees at any moment.[1384]

IV. Right of veto

1. Right of veto. The right of veto means the right to bring objections or express protest with certain legal consequences. In a broader sense, the right of veto should be understood as the right of an institution of public power to raise objections at all against the decision by an institution of another power, whereas, in a narrower understanding of the right of veto - the right of a public institution to raise objections against a law adopted by the parliament. This right may be vested in a monarch, the president of a republic, the totality of citizens or another state institution.[1385] Theoretically, the right of veto serves as a legal safeguard, allowing the head of state to control the constitutionality and compatibility with the national interests of the laws adopted by the parliament, but this does not exclude abusing the right of veto. Charles-Louis de Montesquieu defended the veto by the head of state as it, allegedly, was a counterweight to the despotism of

1384 Pastars E. Konstitucionālo vērtību aizsardzība Saeimas atlaišanas gadījuma. Jurista Vārds, 2011.8.novembris, Nr.45(692); Drēģeris M. Valsts prezidenta loma Saeimas atlaišanas gadījuma. Jurista Vārds, 2012. 13.novembris, Nr.46(745).

1385 Dišlers K. Valsts prezidenta suspensīvais veto un pilsoņu kopuma absolūtais veto LR Satversmē. Tieslietu Ministrijas Vēstnesis, 1929, Nr.1/2, 1. – 2.lpp.

the chambers.[1386] Other authors, however, have expressed the opinion that the president's right of veto is incompatible with the republican state order.[1387] However, it should be noted that this right of the President becomes a significant feature of democratic republics, allowing the president to influence and balance the legislator, as well as to control the compatibility of laws adopted by the parliament with the constitution and national interests. Václav Havel has underscored that exercising the right of veto is expressing the head of state's opinion, reflecting their conviction and sense of justice.[1388]

Anita Rodiņa has underscored that the right of veto, granted to the President, might not reach its aim because the parliament has the right to override the President's objections and not amend the adopted law. In this respect, the President's right to turn to the Constitutional Court to initiate constitutional review of the adopted law is a much more effective measure of control. This right of the President is not limited in its term, and its aim is to achieve revoking of the contested norm. Moreover, the Constitutional Court's judgement is final and there is nothing that the *Saeima* can do.[1389] In a parliamentary republic, the suspensive veto is not a daily tool. The President may not impose on the parliament considerations of expediency. Rather, it is an instrument of control to remedy errors and comply with the principle of good legislation, taking into account that the text of the adopted law includes the entire legislative process, including the proposals that have been reviewed but are not reflected in the text of the law.[1390] Usually, the president uses the veto if a gross contradiction has been found in the text of the law. Gunārs Meierovics underscored that one of the President's functions was to ensure "that incorrect

1386 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.209.

1387 Cielava V. Latvijas Republikas Satversme: vēsture un mūsdienas. Cīņa, 1989.gada 1.aprīlis.

1388 Havel V. To the Castle and Back. New York: Vintage Books, 2008, p.34.

1389 Pleps J., Pastars E. Par prezidenta lomu demokrātiskā sabiedrībā. Jurista Vārds, 2002.gada 3.decembris, Nr. 24(257).

1390 Par pieņemtajiem grozījumiem likumā "Par arodbiedrībām". Valsts prezidenta Andra Bērziņa 2012. gada 27.jūnija raksts Nr.223. Latvijas Vēstnesis. 2012.gada 27.jūnijs, Nr.100.

laws are not adopted – then they must be returned and revised."[1391] In adoption of a law, the power of the parliament, elected by the people, is expressed and the President should attempt to influence the legislator's work as little as possible, by imposing by veto its will upon the parliament and hindering adoption of laws. The suspensive veto is uses also as the President's political weapon against the *Saeima*[1392] insofar it is the function of the head of state to ensure balance between the branches of power and to protect constitutional values. It should be taken into account that the President's veto can be overridden by a simple majority of votes. Since qualified majority of votes is not required for overriding the President's veto, it does not require cooperation between the parliamentary majority and minority, and also the *Saeima*'s dominant role in the legislative process is retained.[1393]

In the USA, considering the President as being the head of the executive power, exclusive measures have been granted to the executive power for protection against the parliament's despotism - the right of veto, since without it the executive power would be unprotected against the legislator. Even if the legislator does not show any interest in interfering into the competence of the executive power or decreasing the President's powers, the President may not be left "under the spell of legislator's kindness". This is why the President should have constitutional and effective means of protection – the right of veto.[1394] The opinion on the right of veto as the possibility of the executive power to protect itself against the legislator, expressed in the US doctrine of constitutional law, should not be perceived narrowly. The principle of protection applies also to the judicial power and the bearer of the supreme state power – the people. Developing the idea

1391 Dimants A. Tikai jāapzinās, ka tas ir valsts darbs. Diena, 1993.gada 3.jūlijs, Nr.132.

1392 Cielava V. Diskusija par Satversmes grozījumu nepieciešamību. Likums un Tiesības, 2000, Nr.6(10), 167.lpp.

1393 Levits E. Demokrātiskā valsts iekārta, brīvas vēlēšanas un parlamentārā demokrātija. Struktūra, loģika un priekšnosacījumi. In: Parlamentārā izmeklēšana Latvijas Republikā. 1. Parlaments. Parlamentārā kontrole. Rīga: Latvijas Vēstnesis, 2016, 42.lpp.

1394 Hamilton A. The Federalist No.73. In: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.558-565.

of the right of veto, Alexander Hamilton has underscored its great importance in limiting the adoption of poor laws. However, the prerogative to preclude the adoption of poor laws includes also the possibility to prevent the adoption of good laws. Dismissing this argument against the right of veto, Alexander Hamilton has pointed clearly to proportionality, i.e., the possibility of not adopting good laws is significantly outweighed by the possibility to prevent adoption of poor laws.[1395] For the president's veto to be compatible with the republican order of state and not to grant the right to decide to one person, thus, ignoring the principle of the majority vote and doubting the reasonableness of the legislative power, recognising the president's infallibility,[1396] instead of absolute veto, the president is granted the right of suspensive veto. By granting the absolute veto to the president, the principle of separations of powers rather than that of collaboration would be achieved, when the powers, within the framework of constitutional norms, are looking for a dialogue. By exercising the suspensive veto, the president advances their objections, which the parliament may or may not hear. A head of state with the right to absolute veto would be similar to the monarch of Great Britain who formally has the right of veto but does not exercise it. This would lead to degradation of the right of veto and it would lose its stabilising meaning.

2. Absolute veto and sanction. As mentioned above, veto may be either absolute or suspensive. In the first case, the consequences of exercising the right of veto are final. Historically, the right of veto has always been vested in the monarch, closely linked to his right to sanction laws In Great Britain, the monarch's absolute veto has not been applied since 1707, which has allowed Walter Bagehot to advance hypothetical assumption regarding the monarch's obligation to sign laws. If both chambers of the Parliament were to declare unanimously death sentence to the Kings, he could do not otherwise but to sign

1395 Hamilton A. The Federalist No.73. Gram.: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.558-565.

1396 Ibid.

this ruling.[1397] That is why the absolute veto of a law can be perceived also as the negative side of sanction, which manifests itself as the monarch denying their consent to the law adopted by the parliament. However, this is wrong because the sanction and the absolute veto are two different institutions, although the consequences of application of both, i.e., denying the sanction and applying the absolute veto, are the same, although, in the first case, passivity suffices, whereas the second one requires actions. Both rights are not concentrated in the hands of all monarchs, usually it is only the right of veto, without the right of sanction. Of course, the right to sanction a law may be linked to only the right to suspensive veto, as it was in the Constitution of France of 1791, which granted the right of suspensive veto to the King. The King could oppose adoption of a law in the course of two legislatures. Presidents of republics usually have only the right to suspensive veto without the right to sanction.[1398] In Latvia, in the case of dissolving the *Saeima*, in assessing it in interconnection with Article 49 and Article 71 of the *Satversme*, the President has the right to absolute veto, i.e., if the *Saeima*' s committees are unable to agree on complying with the President's objections, overriding of the veto cannot be put on the agenda of the *Saeima*'s sitting, Hence, thus, actually, the right of absolute veto evolves.[1399]

3. Conditional veto. Veto is regarded as being absolute if, after it has been exercised, the parliament has no further say about the respective matter. This does not mean that, after some time, the parliament could not reconsider this matter; however, this, clearly, would clash again with the exercise of veto rights. Absolute veto has been granted to the head of state in modern republics, however, usually it is only peculiar veto, to which absolute force is granted by the decision of another state institution.

1397 Grīnbergs O., Cielava V. Lielbritānijas valststiesību pamati. Rīga: Pētera Stučkas Latvijas Valsts Universitāte, 1979, 11.lpp.

1398 Dišlers K. Valsts prezidenta suspensīvais veto un pilsoņu kopuma absolūtais veto LR Satversmē. Tieslietu Ministrijas Vēstnesis, 1929, Nr.1/2, 3.lpp.

1399 Pastars E. Konstitucionālo vērtību aizsardzība Saeimas atlaišanas gadījumā. Jurista Vārds, 2011.8.novembris, Nr.45(692).

Article 72 of the *Satversme* provides for optional referendum with the nature of veto. In this case, the head of state only transfers the issue for deciding to the totality of citizens; however, the *Saeima*, by three fourths of votes can prevent implementation of this conditional veto and prevent a referendum. Kārlis Dišlers wrote that the totality of citizens, enshrined in Article 72 of the *Satversme*, has the absolute veto. The use of the suspensive and optional veto is independent, i.e., the President may exercise both the suspensive veto and this peculiar veto, bound by conditions. On 10 March 2007, Vaira Vīķe-Freiberga herself suspended publication of the law "Amendments to the National Security Law" and "Amendments to the Law "On State Security Institutions"", followed by a referendum on revoking the law.[1400] This is the first and the only instance when the President has exercised the right envisaged in Article 72 of the *Satversme* at her own discretion. On 3 August 2012, Andris Bērziņš exercised the right of suspensive veto, although he had received signatures of 38 deputies of the *Saeima* requesting suspension of publication of amendments to ta law, concluding that the application of suspensive veto might grant priority because it was aimed at completing the legislative process in the parliament before turning to the people regarding the final text of the law.[1401] Deputies of the *Saeima* did not object to this interpretation. This means that the request by one third of the deputies of the *Saeima* to suspend publishing of a law, envisaged in Article 72 of the *Satversme*, may be prevented if the President exercises the right of veto, set out in Article 71 of the *Satversme*.

Nowadays, the President exercises their suspensive veto quite actively because the decision to exercise the right of veto falls within the president's discretional powers. However, as regards the institute enshrined in Article 72 of the *Satversme*, there seems to be no obstacles for the President to transfer actively the law, adopted by the

1400 Juristi analizē Valsts prezidentes rīcību un Satversmes 81.pantu. Jurista Vārds, 2007.gada 20.marts, Nr.12 (465).

1401 Valsts prezidenta Andra Bērziņa 2012.gada 3.augusta raksts Nr.281. https://www.president.lv/storage/items/PDF/20120803.pdf

Saeima, to the totality of citizens on their own discretion, not only on the basis of a proposal by at least one third of deputies. Moreover, in exercising the right referred to in Article 72 of the *Satversme* on their own discretion or on the basis of a proposal by at least one third of deputies, the President must comply with Article 73 of the *Satversme*. In this regard, there are two important considerations to be taken into account. Firstly, the President my request the *Saeima* to divide the law before applying Article 72 in order to comply with the provisions of Article 73 of the *Satversme*. After amendments to the law are divided, a new decision is made on proclaiming the law or suspending its publication. Secondly, Article 73 of the *Satversme* must be interpreted broadly, prohibiting to organise a referendum that would violate Latvia's international commitments, including those vis-à-vis the European Union.[1402]

The Constitutional Court has provided interpretation that reinforces constitutionally the President's right, established in Article 71 of the *Satversme*, and defines, in addition to it, the framework for applying Section 115 of the Rules of Procedure of the *Saeima*. The Constitutional Court has restricted the *Saeima*'s possibilities to avoid assessing the President's objections. Namely, "if the President has expressed objections against legal regulation, the *Saeima* may not try to avoid assessing the constitutionality of this legal regulation and its compliance with the internal coherence of the legal system by including the respective regulation in another draft law".[1403]

In assessing the President's objections, the *Saeima* must discuss them properly and provide sufficient justification as to why the *Saeima* has not revised the adopted law. The Constitutional Court has underscored: "The *Saeima* is obliged to examine all objections expressed by the President. Moreover, pursuant to the principle of good legislation, this assessment should be such that would allow

1402 Valsts prezidenta Andra Bērziņa 2012.gada 3.augusta raksts Nr.281. https://www.president.lv/storage/items/PDF/20120803.pdf; Decision by the Constitutional Court of the Republic of Latvia of 19 December 2012 on Terminating Legal Proceedings in Case No.2012-03-01, Para 18.3.

1403 Judgement by the Constitutional Court of the Republic of Latvia of 6 March 2019 in Case No.2018-11-01, Para 18.3.1.

establishing the considerations as to why the objections expressed by the President have been dismissed".[1404] As regards the dismissal of objections, the Constitutional Court's statement should be taken into account: "[..] the mere fact that the legislator has discussed legal regulation, perhaps even repeatedly, does not mean that the legislator, indeed, has examined the compliance of the restriction on fundamental rights, included in this legal regulation, with the constitution".[1405]

The Constitutional Court has examined the President's right of veto, set out in Article 71 of the *Satversme*, in the context of ensuring quality of legislation. The Constitutional Court has concluded: "The task of the President, in becoming involved in a stage of decision making process of other constitutional bodies of the state, is to give, by their actions, impetus for improving this decision. I.e., the President's right to return a law for reconsideration is intended, inter alia, for improving the juridical quality (legality) of the law [..] The purpose of the institute of reconsidering a law is to facilitate the internal coherence of the legal system."[1406]

The Constitutional Court has examined the President's right of veto also in the context of the President as the guardian of the *Satversme* within the Latvian legal system. The Constitutional Court has noted previously that the functions granted to the President by the *Satversme* may not be interpreted formally. The President, in fulfilling the functions defined in the *Satversme*, must use the legal remedies at their disposal to ensure compliance with the *Satversme* and general legal principles.[1407] The President's right, envisaged in Article 71 of the *Satversme*, allows verifying the compliance of laws, adopted by

1404 Judgement by the Constitutional Court of the Republic of Latvia of 6 March 2019 in Case No.2018-11-01, Para 18.3.1.

1405 Ibid., Para 18.3.2.

1406 Ibid., Para 18.3.1.

1407 Decision by the Constitutional Court of the Republic of Latvia of 19 December 2012 on Terminating Legal Proceedings in Case No.2012-03-01, Para 21.

the *Saeima*, with norms of higher legal force and Latvia's national strategic long-term interests.[1408]

4. Suspensive veto. Presidents of almost all republics have been granted the right to suspensive veto. The essence of suspensive veto is that exercising this right of the president is not final and the parliament, by abiding with certain procedure, may override this veto. To a certain extent, introduction of suspensive veto was linked to the separation of powers and consolidation of the principle of collaboration, as well as attaining greater rationality. Apart from these two considerations, there is a third one, embedded in derogation from the principles of monarchy, emphasising, instead, the idea of the people's sovereignty and the right of their representatives not only to prepare the text of a law but also to adopt it on behalf of the people. In such a case, the head of state does not have the function of sanction but the right to object. The "pocket veto" should be distinguished from the suspensive veto, it being a kind of absolute veto, however, unlawful, rather than lawful. A draft law, which the Congress has adopted during the last ten days before the end of the session, does not enter into force if the President has refused to sign it. In such a case, the law must not be mandatorily be returned to the Congress so that it could override the veto. The Supreme Court of the USA has recognised such pocket veto as being anti-constitutional.[1409]

The usefulness of suspensive veto is found in the possibility to reconsider the matter and in the fact that the suspensive veto may be also overridden, thus, avoiding one power's dictate over the other and ensuring that compromise is sought in the framework of certain procedure. In the USA, overriding of veto requires two thirds of votes of members of both chambers. Whereas in Latvia – only repeated voting, without requiring qualified majority of votes. If the President has required reconsideration of a law in the procedure of Article 71 of the

1408 Judgement by the Constitutional Court of the Republic of Latvia of 6 March 2019 in Case No.2018-11-01, Para 18.3.1.

1409 Конституционное право зарубежных стран. Лейбо Ю.И., Баглай М.В., Энтин Л.М. (ред.) Москва: Норма- Инфа М, 2003, с.229.

Satversme then the *Saeima*, at its next sitting, transfers without debates the President's reasoned objections to the responsible committee and other committees and decides on the term for submitting proposals and for reconsidering the law. The law, adopted by the *Saeima*, and not the draft law is examined, applying the rules on examination of a draft law in the third reading. However, only the President's objections and proposals related to them are to be examined. Before this procedure was established, there was no regulation on overriding the President's right of veto, which led to problems in practice. For example, to override Guntis Ulmanis' veto, the 5th *Saeima* reconsidered the law "On Local Governments" in three readings to dismiss the President's objections.[1410] The *Saeima* is allowed not to forward the law that has been returned for reconsideration for examination at the *Saeima*'s sitting, as it has sometimes happened in *Saeima*'s practice. In exercising the right to suspensive veto, the President is bound by the requirement set out in Article 71 of the *Satversme* to provide a reasoned writ not only a laconic political decision. In the course of the Presidents' activities thus far, certain practice has been introduced for exercising the presidential right of veto. Firstly, usually, the right of veto is exercised upon the request of various organisations, institutions, the deputies themselves or inhabitants. Secondly, such a request is examined at a special meeting convened by the officials of the President's Chancery. This allows clarifying more objectively all circumstances, including such that President or the officials of the President's Chancery cannot notice in the course of legislative process and assess timely due to lack of resources.[1411] Although this type of suspensive veto is not encountered in Latvia, in the practice of other states, theoretically, not total veto, applying to the totality of regulatory enactments adopted by the parliament, but the veto of choice, the item veto, is possible, which applies only to specific sections. The

1410 Endziņš A. Jaunā Saeimas kārtība – pēc 72 gadiem. Latvijas Vēstnesis, 1994.gada 18.augusts, Nr.96.

1411 Zalāna L. Valsts prezidenta tiesības nosūtīt likumu otrreizējai caurlūkošanai. Jurista Vārds, 2003. gada 27.maijs, Nr.20(278).

full veto sometimes is not used for the sole reason that the law is important and needed urgently but only one minor issue is contentious. However, the item veto is not always possible in practice because giving the possibility to the head of state to alter a law, adopted by the parliament, as they would wish to, would be unreasonable and illogical; moreover, that would undermine the law as a single document with certain interconnections between its sections.[1412]

Following the coup of 15 May 1934 in Latvia, the President formally retained the right to suspensive veto even if the functioning of the *Saeima* was suspended. Since, pursuant to the Government's Declaration of 18 May 1934, until *Satversme* was reformed, the Cabinet undertook the functions of the *Saeima*, authoritarian wording of Article 71 of the *Satversme* was included in Section 3 in the Law on the Procedure for Proclaiming Laws: "The President shall have the right, no later than on the seventh day following the receipt of a law, to request, by a reasoned writ ,the Prime Minister to reconsider the law. If the Cabinet adopts the law the second time unamended then the President shall proclaim the law." At this point, it is worth recalling that, in accordance with Section 1 of the law quoted above, the President proclaimed (and, thus, could veto) laws that applied to the order of the state, the Cabinet, courts and the State Audit Office, civil laws, penal laws, procedural laws, the budget and the right to budget, direct state taxes and fees, the government borrowing, conscription, military service, amnesty, issuance of treasury bills and agreements with foreign countries. However, in practice, Alberts Kviesis never exercised the right of veto, granted to him, wishing to avoid conflicts with Kārlis Ulmanis.

Exercising the suspensive veto historically and, probably, also in some contemporary constitutions is linked to such an archaic institute as countersignature. In the constitution of the Third Republic of France, which was created as provisional compromise between monarchists who had the majority in the National Assembly but were

1412 Zalāna L. Valsts prezidenta tiesības nosūtīt likumu otrreizējai caurlūkošanai. Jurista Vārds, 2003.gada 27.maijs, Nr.20 (278).

unable to agree who to invite to the throne, the president of the republic was envisaged as an acting monarch. He was granted extremely broad powers, which, however, were meaningless in practice because the principle of countersignature was enshrined. It is well known that the government is the most active subject in initiating legislation and it also tries to achieve adoption of the submitted laws. It is doubtful whether the president would find "a welcoming ear" in the government regarding his request to countersign his act for exercising the suspensive veto with respect to a law advanced by the government. Kārlis Dišlers, quoting Léon Duguit, presented several theoretical concepts that could have been possible in the Third Republic of France. If the parliament adopted a law contrary to the government's position, the Cabinet would have to leave; the suspensive veto is also impossible because there is nobody to countersign a president's act. Léon Duguit advanced the idea that the president could ask the ministers to remain in their offices and, thus, also obtain the required countersignature on the act on veto.[1413]

V. Urgent legislative procedure

The thesis that the parliament cannot and should not regulate by law all real life needs is closely related to the cumbersome nature of the parliamentary legislative procedure, the need to examine in full the content and meaning of each law. Constitutions resolve the parliament's inability to adopt the entire required regulation in the form of a law by grating the right to other institutions of state power to regulate an issue by their own regulatory enactments or by providing for issuing acts of delegated legislations. The problem caused by the cumbersome parliamentary legislation may be resolved also by the institute of delegated legislation; however, for various reasons, this institute may not be appropriate for a state governed by the rule of law.

1413 Dišlers K. Valsts prezidenta suspensīvais veto un pilsoņu kopuma absolūtais veto LR Satversme. Tieslietu Ministrijas Vēstnesis, 1929, Nr.1/2, 6.lpp.

Issuance of an act of delegated legislation is linked to a period when the parliament does not function, i.e., in-between sessions or when the parliament is unable to convene due to objective reasons. Moreover, the parliament is not particularly keen to decrease its significance in legislation, and the people, as the sovereign, have the right to exercise their power through legislation, with the parliament's mediation. Compromise can be discerned exactly in the introduction of the institute of urgent legislation, which may be consolidated in the constitution, exist as a constitutional tradition or otherwise. Consolidation in the constitution of the institute of urgent legislation, which can be implemented only by the parliament, is necessary because, as to its nature, urgent legislation can be applied in special cases and this procedure envisages restricting the opposition's right, denying the right to suspend the publication of a law for two months if it is requested by at least one third of Members of the *Saeima*, as well as, probably, deny to other institutions of state power any possibility to impact the coming into force of the law, i.e., the President may not exercise the right of veto. In this procedure, the text of the law is elaborated sufficiently quickly, leaving no time for considering some contentious issues, submitting proposals and additions, which, clearly, can leave an impact on everyone.

The constitution provides the preconditions that must be met to allow implementing the institute of urgency in life. Most frequently, such precondition is the qualified majority of votes and the consequences of acts adopted in this procedure, i.e., the time when they enter into force and whether the President's right of veto applies to them. Constitutions leave the provision of more detailed regulation for the legislator, to include it in the parliamentary rules of procedure; however, the parliament may not derogate in its rules of procedure from the basic principles, defined in the constitution.

Two types of urgency exist in the Latvian legal system – the urgency of a law (Article 75 of the *Satversme*) and the urgency of a draft law, which is determined by the parliamentary tradition and

the Rules of Procedure of the *Saeima*.[1414] The procedure of examining draft laws, regulated in *Satversme* and the Rules of Procedure of the *Saeima*, is the same; however, the preconditions for initiation and the consequences of adoption differ, although the institute is chosen randomly. Upon obtaining two thirds of votes of the Members present, the institute, enshrined in the *Satversme* (Article 75 of the *Satversme*), is applied, but the simple majority of votes leads to application of the institute of a draft law's urgency, consolidated in the Rules of Procedure of the *Saeima*. In the case of an urgent law, the President may not exercise their right of veto, the holding of an optional referendum is prohibited and the President proclaims the law no later than on the third day after receiving it; in the case of an urgent draft law, the urgency enshrined in the Rules of Procedure of the *Saeima* does not create any external consequences; it only allows abridging the internal procedures in the *Saeima*.[1415] In Latvia, the relations between the Rules of Procedure and the *Satversme* with respect to regulating urgent legislation should be transferred to the matter of significance of customs and precedents in legislation because a derogation from the *Satversme* occurred on 6 March 1923, when the Act on Amnesty was adopted and the Rules of Procedure of the Constitutional Assembly were applied. Since then, all Rules of Procedure of the *Saeima* have implemented this peculiar institution, directly or indirectly, in parallel to the *Satversme*'s regulation and have applied the first in adopting almost one third of all laws.

In Latvia, the *Saeima* adopts the decision on urgency before the draft law is supported in the first reading, upon a proposal by the *Saeima*'s committee or 10 Members of the *Saeima*. The Cabinet or the President may only ask to consider the possibility of recognising the draft law as urgent but they have not been given the formal right to request the parliamentary vote on urgency. For the *Saeima*'s committee to request recognising a draft law as being urgent, the committee

1414 Pastars E., Pleps J., Turks U., Zumbergs M. Steidzamības institūti likumdošanas procesā Latvijā. Likums un Tiesības, 2002, Nr.3(31), 74., 82.lpp.

1415 Ibid, 73. – 82.lpp.

has to decide on it before supporting the draft law in the first reading by a simple majority vote of the Members present. A draft law, which has been recognised as being urgent at the *Saeima*'s sitting, may be examined in both readings without setting the term for submitting proposals, if nobody who has the right to submit proposals in accordance with Section 95 of the Rules of Procedure of the *Saeima* objects to it. In practice, usually only Members of the *Saeima* exercise this right. Later, it is possible to request revoking of urgency by submitting a respective draft decision.

Urgency of a law restricts the possibilities for the *Saeima*'s minority and the President to delay the coming into force of the law. Therefore, it should be applied only in special cases because it excludes later possibilities to influence the content of the law. Likewise, it requires sufficiently strong consensus in the *Saeima* regarding both the nature and the need of the draft law, as well as on the specific wording even before the draft law is examined in the first reading.[1416] Aivars Endziņš has proposed setting a formal requirement to provide reasoning for the urgency so that it would be available in writing to Members of the *Saeima* before the respective sitting of the *Saeima*.[1417] President Egils Levits, in turn, has called upon the *Saeima* to respect the rights of other state bodies and to not exclude, by using the urgency of a law, the President from the legislative process: "Within the framework of the budgetary procedure, Article 75 of the *Satversme* should be applied only for its purpose and meaning, i.e., only if the matter, indeed, is urgent. Formal and mechanical exclusion of the President form the budgetary process, denying him the right to assess the adopted laws, which provide for important reforms, and, if necessary, object against them, is not the best practice and a vector

1416 Tralmaka I. Satversmes 75.pants. In: Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019, 190.lpp.

1417 Gulbe E. Kā vērtēt prezidenta ierosinājumus likumu kvalitātes uzlabošanā? https://lvportals.lv/viedokli/282005-ka-vertet-prezidenta-ierosinajumus-likumu-kvalitates-uzlabosana-2016

for the development of a dialogue between the constitutional bodies is needed."[1418]

Article 73 of the Italian Constitution determines accelerated procedure for examining draft laws if they have been declared as being urgent. In such a case, both the examination and adoption of a draft law is done by committees, unless the government or one tenth of Members of the Parliament demand the opposite. Actually, these committees are autonomous legislators and the Chambers' control over them is rather nominal. Article 73 of the Italian Constitution is typical of many countries and it provides that the president proclaims laws within a month following their adoption; however, if the chambers have declared the law as being urgent then it is declared within the term set in this law.

VI. Delegated legislation

In a simplified way, the institute of delegated legislation could be characterised as follows: "in special situations, the institution of legislative power, on the basis of constitutional norms, delegates, transfers part of its functions to other institutions of the state power" when it does not perform its function itself.[1419] The meaning of the institute of delegated legislation is transferring to someone else the right to issue laws (substantially, even if not formally), i.e., by defining the need for and scope of regulation by the state. The institute of delegated legislation(чрезвычайно-указное право, in German- Notverordnungsrecht) was enshrined in Article 87 of the basic law of the Russian Empire of 1906 (from which the former Article 81 of the *Satversme* was taken over). Nowadays, it is more appropriate to call this institute delegated legislation (делегированное законотворчество) because it is no longer implemented by the head of state with extensive powers who

1418 Valsts prezidenta Egila Levita 2020.gada 11.decembra paziņojuma Nr.17 "Par valsts budžeta likumu paketi 2021.gadam" II sadaļu.

1419 Mikainis Z. Deleģētā likumdošana. In: Juridisko terminu vārdnīca. Rīga: Nordik, 1998, 57.lpp.

issues decrees with force similar to law. An opinion was widespread at the time and still is that such institute does not fit in an ordinary state order because it undermines the principle of supremacy of law and that amendment or adoption of a law requires consent by an institution of the people's representation. Delegated legislation envisages a different approach, i.e., the parliament usually gives or denies its consent post factum, when the new order is already functional and may not be remedied. The supremacy of law presumes constant and appropriate functioning of the parliament as an institution of state power. This institute is constitutional as to its form and absolute as to its nature.[1420]

Practice reveals that actions by the executive power are not limited to only enacting laws. The executive power implements very diverse governance of the state, which, in many states, has led to the introduction of the institute of delegated legislation. Usually, the legislative process is quite lengthy and complicated, but the government's work is characterised by efficiency, which, in certain periods, is a good means for filling "gaps" and for timely adoption of necessary decisions.[1421] Therefore, the government is granted the right to adopt regulatory enactments with the force of law; however, this right can be granted only in certain procedure and, in exercising it, precepts must be complied with. The institute of delegated legislation is derogation from the principle of separation of powers; however, this does not mean that this derogation undermines it. Kārlis Dišlers has noted that the right, once granted to the Cabinet, to issue regulations with the force of law in between the *Saeima*'s sessions is unusual right, which can be explained by the special conditions of the transitional period.[1422]

The popularity of the institute of delegated legislation stems from the actual political circumstances in the functioning of constitutional

1420 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.305-307.

1421 Троицкий В.С., Морозова Л.А. Делегированное законотворчество. Государство и Право, 1997, №4, с.91.

1422 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 192.lpp.

orders: "[..] since the beginning of the century, all parliaments of the Commonwealth of Nations are faced with increasing difficulties in issuing laws required by a contemporary state. [..] Parliaments understand that they have neither the time nor the technical knowledge for that and that they can do no more than only define the general principles of legislation and politics. In fact, the spread of delegated legislation from the beginning of the century is determined not so much by these technical considerations as by the politics of imperialism. The government's legislation, unhindered by the parliamentary procedure, provided the opportunity for the monopolistic bourgeoisie to implement such policy that suited its interests the best in conditions of general crisis of capitalism."[1423]

Paul Laband and Georg Jellinek defended the theory of delegation, according to which the government's right to issue regulations with the force of law was based on the authorisation given by the parliament to the government to issue provisional laws. If the constitution does not contain the provision that, in certain cases, the government has the right to issue regulations with the force of law then the government does not have this right and a legislative institution may not grant this right by an ordinary law because that would be contrary to the constitution. A legislator may, however, issue a general law on a matter and entrust the use and specification of it to the government. In such a case, the governmental acts would be intra legem rather than contra legem. Adhémar Esmein has underscored that juridical delegation of the legislator's power is impossible because everywhere, where the constitution is issued on behalf of sovereign people, it must be recognised that the force of the constitution is higher than that of laws. In states, where the legislative power is invited to speak on all matters, constitutional, as well as non-constitutional, such authorisation is admissible. The mandate of separate powers is defined in the constitution to prevent confusion of the functions of power outside the constitution. If the constitution provides for delegation of

1423 Grīnbergs O., Cielava V. Lielbritānijas valststiesību pamati. Rīga: Pētera Stučkas Latvijas Valsts Universitāte, 1979, 25.lpp.

power then the principles of the people's sovereignty and separation of powers are not violated.[1424]

These circumstances could be sufficient grounds for prohibiting any delegated legislation. However, this institute, in various forms, exists in many states. The problem in the correct understanding of it is the need to interpret this institute as narrowly as possible. The executive power and the legislator must follow very strictly the precepts of the respective norms and the general clauses, included in the norms, should be interpreted as narrowly as possible. Using the institute of delegated legislation in political struggles is inadmissible because the ability of precepts of the state power, adopted in the procedure of delegated legislation, to remain in force in the course of regular legislation depends directly on the relations between the issuer of provisional acts and the legislative institution. In the global practice, not only the general authorisation, in which the need for delegated legislation is determined not by the government's discretion, in compliance with the respective norms, is encountered but also a task given by the parliament to the government to regulate a certain issue, by issuing regulations with the force of law. However, also the possibility of such special authorisation should be set out in the constitution, where the right to delegate to the government adoption of certain laws is placed in the legislator's discretion.[1425]

The status of acts issued in the procedure of delegated legislation is important because they are laws as to their effect but not yet – as to their form. Therefore, almost in all states that have the institute of delegated legislation, a procedure for granting a form to them has been set out. Article 86 of the Spanish Constitution grants the right to the government, in extraordinary and urgent cases, to issue provisional legal acts, decrees in the form of law, however, these provisional laws must be immediately submitted to the lower house for discussion and vote. If the lower house has not been convened at this time it must be

1424 Mucenieks P. Valdības tiesības izdot noteikumus ar likuma spēku. Tieslietu Ministrijas Vēstnesis, 1924, Nr.11, 468.lpp.

1425 Ibid, 470.lpp.

done within 30 days after promulgation of the provisional law. The rules of procedure of the lower house provides for abridged procedure for approving of such provisional laws.[1426] In the case of special authorisation, the legislator has defined the subject to be regulated by regulations with the force of law and the time for issuing them, therefore, it is not necessary to submit these acts to the parliament. The Constitution of Poland of 1935 included both general and special regulation. The President had the right to issue independently regulatory enactments with the force of law - presidential decrees when the Sejm and the Senate were dissolved or a national need for it arose. A possibility was envisaged that the President could be authorised by an ordinary law (special authorisation) to issue decrees in a certain area.

Article 81 of the *Satversme*, which was in force until 31 May 2007, envisaged the general authorisation to the Cabinet to issue regulations with the force of law, from which the government's right to use this norm in-between the *Saeima*'s sessions, irrespectively of the *Saeima*'s will, in the case of an urgent need, followed.[1427] The totality of such objective circumstances that, if not prevented through legislation, can cause adverse legal, economic or social consequences is regarded as being an urgent need,[1428] i.e., urgent actions by the *Saeima* are needed but, objectively, cannot take place. However, it has been admitted in the practice of applying Article 81 of the *Satversme*: "Unfortunately, it has not been clearly defined what should be understood as an urgent need."[1429] Both in the inter-war period and after reinstatement of the *Satversme* this necessity to define the urgent need has been

1426 Троицкий В.С., Морозова Л.А. Делегированное законотворчество. Государство и Право, 1997, №4, с.93.

1427 See more: Jelāgins J. Tiesību pamatavoti. In: Jelāgins J. Latvija ceļā uz tiesiskumu. Rakstu krājums. Rīga: Tiesu Namu Aģentūra, 2020, 107. – 110.lpp.

1428 Muižnieks J. Par Satversmes 81.pantu un tā izmantošanu. Latvijas Vēstnesis, 1995. 14.decembris, Nr.194(477).

1429 Lēbers (Loeber) D.A., Bišers I. Ministru kabinets. Rīga: Tiesiskās informācijas centrs, 1998, 146.lpp.

ignored.[1430] In practice, the following opinion prevailed: If the Cabinet wishes to issue such regulations then this urgent need has set in.[1431] In view of the trends in the constitutional practice, Kārlis Dišlers recognised already in the inter-war period that the regulations with the force of law were not issued on the basis of Article 81 of the *Satversme* but on the basis of a conventional norm, which, content-wise, was identical with Article 81 of the *Satversme* but without the need to comply with the provision "if an urgent need demands it". "The government, by frequently issuing regulations with the force of law in the procedure set out in Article 81 of the *Satversme* even without "the urgent need" defined in this article, has considerably expanded its right to provisional legislation".[1432] Whereas the Constitutional Court underscored in its judgement that the requirement "if an urgent need demands it" had to be taken into account when issuing regulation with the force of law and this provision had concrete content that could be clarified with the help of legal methods.[1433] The Constitutional Court has noted that the purpose of Article 81 of the *Satversme* was not to create an independent implementor of the right to legislate, alongside the subjects defined in Article 64 of the *Satversme* ,but to appoint a substitute for the legislator that would be able to respond swiftly and effectively in emergency situations. That would ensure that the necessary decisions are taken through legislation also in such circumstances where the possibility of the *Saeima* and the totality of Latvia's citizens to exercise their right to legislate has been delayed or significantly hindered. However, there is a serious risk of upsetting the balance between the powers in favour of the executive power.[1434]

1430 See more: Griķis J. Ministru kabineta likumdošanas darbība Latvijas praksē. Tieslietu Ministrijas Vēstnesis, 1924, Nr.8, 325. – 334.lpp.; Nr.9, 379. – 389.lpp.

1431 Muižnieks J. Par Satversmes 81.pantu un tā izmantošanu. Latvijas Vēstnesis, 1995. 13.decembris, Nr.193(476).

1432 Dišlers K. Konvencionālas normas valststiesību novadā. Tieslietu Ministrijas Vēstnesis, 1933, Nr.11/12, 252.-253.lpp.

1433 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2005 in Case No.2005-12-0103, Para 17.

1434 Ibid., Para 12.

Article 81 of the *Satversme* also defined the substantial limits to the regulations with the force of law; however, this enumeration was not exhaustive (material to be evaluated).[1435] The Constitutional Court has noted: "Article 81 of the *Satversme* does not enumerate all matters, on which the Cabinet has no right to decide in the procedure set out in this article, because, in some cases, the *Satversme* itself excludes the Cabinet's right to exercise a certain legislative right of the *Saeima*. [..] Laws, for the adoption of which the *Satversme* has especially authorised the *Saeima* and the totality of Latvian citizens, may not be amended in the procedure of Article 81 of the *Satversme*."[1436] In its first judgement, the Constitutional Court broadened the prohibition to amend the laws adopted by the incumbent *Saeima*, providing that the laws adopted by the incumbent *Saeima* had to be understood not only as the proclaimed wording of the laws adopted by the *Saeima* but also all proposals dismissed by the legislator and amendments to the text of the law, although these changes were no longer reflected in the final version of the law.[1437] Kārlis Dišlers wrote that the *Saeima* could revoke the Cabinet's regulation with a force of law by a simple decision or examine it in legislative procedure and then amend or dismiss it. These acts turn into genuine laws only after they have been adopted by the *Saeima* and published as laws, therefore these acts are merely administrative orders.[1438] Probably, Kārlis Dišlers' opinion on classifying these acts as administrative orders cannot be upheld because, admittedly, they cannot be amendment by an administrative act. If these acts were administrative orders then it would be possible to amendment them by an administrative order. Rather they should be regarded as regulations with law-like force.

1435 Ērmiņš A. Satversmes 81.panta piemērošanas prakse. Jurista Vārds, 2008. 5.februāris, Nr.5(509); 2008. 12.februāns,

1436 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2005 in Case No.2005-12-0103, Para 13.2.

1437 Judgement by the Constitutional Court of the Republic of Latvia of 7 May 1997 in Case No. 04-01(97), Para 1 of the Findings.

1438 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 192.lpp.

Article 81 was excluded from the *Satversme* due to considerations of political expedience and legal clarity because it was complicated to explain an urgent need and it was always difficult to find general objective criteria that the government had followed and to clarify whether it was allowed to amend the particular legal norm because of various restrictions defined in the article itself and the Constitutional Court's case law. The exclusion of this article was hasty because proposals regarding narrowing the functioning of this legal norm in specific circumstances when the *Saeima* would be delayed in fulfilling its duties were not supported.[1439] In the future, Article 81 of the *Satversme* should be restored, leaving it for situations of crisis, without enumerating special exceptions and including the President's and the *Saeima*'s active control over the content of the issued acts.[1440] Covid-19 pandemic has confirmed the need for such regulation in the state order of Latvia to ensure to the Cabinet the possibility to issue regulations with the force of law in extraordinary circumstances when the *Saeima* is delayed in its functioning.[1441]

1439 Ērmiņš A. Deleģētas likumdošanas institūta attīstība Latvija. Jurista Vārds, 2007. 2.oktobris, Nr.40(493).Nr.6(510).

1440 See more: Satversmes dzīvotspēja un efektivitāte ārkārtas situācijas laikā. Tieslietu un politikas lietpratēji atbild uz "Jurista Vārda" jautājumiem. Jurista Vārds, 2020.gada 5.maijs, Nr.18(1128).

1441 Levits E. Satversme ārkārtas apstākļos. Jurista Vārds, 2020.gada 5.maijs, Nr.18(1128).

Chapter 8

EXECUTIVE POWER

I. Expressing confidence and no confidence in the government

Although different models exist for expressing confidence or no confidence in the government, in general, the common principles and prevailing approaches can be singled out. In pronouncedly presidential republics, the government is accountable to the president as the head of executive power; however, this does not exclude, in principle, the parliament's involvement in the confirmation of the prime minister or ministers. The parliament's involvement may be manifested as a formal act of confirmation, it is the possibility, in special circumstances, to object to and block a candidate for the position of a minister or a high-ranking official of the executive power. In semi-presidential and parliamentary systems, the parliament's involvement is an inseparable part of confirming the government; however, also these models may differ. For example, in Germany, the parliament does not vote for the candidates for the ministers' offices but only for the Federal Chancellor who, later, appoints the government's ministers together with the Federal President. In Latvia, however, the *Saeima* itself votes for all candidates for the offices of ministers. Predominantly, the president proposes the candidate for the prime minister's office; however, the scope of presidential discretion and the political tradition of this process differ. Pursuant to the constitutional traditions of a state, the prime minister may be nominated also by the winning

majority in the parliament, without formal involvement of the president. Constitutions often comprise rules on the accountability of the parliament or the president if the formation of the government has not been successful, which would mean pre-term parliamentary elections or the transfer of the presidential powers in the formation of a government to the parliamentary majority.

The situation is much more complicated with respect to expressing no confidence in the government or its individual ministers. In republics with pronounced presidential powers, it is possible that the president also may express no confidence in the prime minister or any of the ministers without the parliament's consent. In republics with more pronounced parliamentary dominance, only the parliament itself or the prime minister, with respect to the ministers invited by them, have this right. To ensure stability of the political system, constitutions or parliamentary rules of procedure set out various restrictive provision on expressing no confidence, e.g., waiting time between submitting the draft law and voting in the parliament, the possibility for the prime minister to initiate parliamentary elections or the rule that the prime minister may be replaced by appointing a new prime minister immediately, without an interim stage between expressing no confidence and confirming of a new government. Quite often, the possibility to express no confidence in the government or a minister is likened to reviewing interpellation in the parliament when no confidence can be expressed without the waiting period, as is the case in Latvia. Expression of no confidence in the prime minister always means expression of no confidence in the government in general. Expression of no confidence in an individual minister is not permitted in all countries but, where it is permitted, the expression of such no confidence does not automatically mean the downfall of the entire government. The global practice includes also the possibility to request repeated expression of confidence in the government, which may be necessary before adopting decisive decisions or in complicated parliamentary situations to ensure the progression of a certain draft law, when the prime minister links the vote on this draft law

with confidence or no confidence in the government and its politics in general.

Article 56 of the *Satversme* of the Republic of Latvia provides that the President invites the candidate for the Prime Minister's office, by issuing a respective order. Such formal act can be issued also after the previous Cabinet has resigned or no confidence in it has been expressed. Such an act may not have formal requirements but there may be informal political agreements, e.g., regarding the candidates for the ministers' offices or the direction of the government's policy. In certain cases, the President may recall the nomination before the *Saeima* votes on the government.[1442] In forming the Cabinet following the election of the 13th *Saeima*, President Raimonds Vējonis used the possibility to invite a person twice to form the Cabinet and to recall this invitation twice, until, finally, the third invited candidate for the Prime Minister's office Krišjānis Kariņš was able to form the government.[1443] Following the election of the 6th *Saeima*, when the Cabinet could not be formed smoothly, constitutional folklore developed; i.e., that it was possible to propose dissolution of the *Saeima* if the *Saeima* had rejected three times the Cabinet formed by the candidate for the Prime Minister's office, invited by the President. This can be linked to the fact that President Guntis Ulmanis already had prepared an order on dissolving the *Saeima* if the Cabinet formed by Andris Šķēle had not received the confidence of the *Saeima*'s majority.[1444] It is noted in a commentary on the *Satversme* that "neither the *Satversme*, nor any other laws instruct the President on who should be invited to become the Prime Minister, nor establish any restrictions, thus,

1442 Valsts prezidenta Konstitucionālo tiesību komisijas 2011.gada 10.maija viedokļa "Par Valsts prezidenta funkcijām Latvijas parlamentārās demokrātijas sistēmas ietvaros" 108.atsauce, kā arī Ministru kabineta iekārtas likuma 13.panta ceturtā daļa.

1443 Valsts prezidenta Raimonda Vējoņa 2018.gada 7.novembra rīkojums Nr.1 "Par Ministru kabinetu", 2018.gada 15.novembra rīkojums Nr.2 "Par Valsts prezidenta 2018.gada 7.novembra rīkojuma Nr.1 "Par Ministru kabinetu" atzīšanu par spēkā neesošu", 2018.gada 26.novembra rīkojums Nr.3 "Par Ministru kabinetu", 2018.gada 10.decembra rīkojums Nr.4 "Par Valsts prezidenta 2018.gada 26.novembra rīkojuma Nr.3 "Par Ministru kabinetu" atzīšanu par spēkā neesošu" un 2019.gada 8.janvāra rīkojums Nr.1 "Par Ministru kabinets".

1444 Valsts prezidenta Konstitucionālo tiesību komisijas 2008.gada 30.aprīļa viedokļa "Par Saeimas priekšlaicīgu vēlēšanu mehānisma pilnveidošanu" 63.punkts.

formally they have the right to invite any person to become the Prime Minister".[1445] However, the President is not totally free in this choice, as the parliamentary majority of political parties must be reckoned with. Article 59 of the *Satversme* sets the limits to the President's discretion, providing that the Cabinet must be supported by the *Saeima*'s majority. Hence, to a large extent, the role granted to the President is symbolical because they can invite to form the Cabinet only a person who is supported by the political parties that constitute the majority in the *Saeima*. Within a parliamentary system, the prime minister is chosen by the political parties and not by the president of the state. This, however, does not exclude the possibility for the president to create well-considered political combinations for reaching aims of national importance, at the same time being aware that they bear political responsibility for such decisions. Paul Schiemann described in 1930 the procedure of forming the Cabinet - "following the resignation of the previous government, the President entrusts formation of a new government to the leader of the largest faction. Moreover, this, actually, means formation of a coalition. In case of failure, this task is given to the leaders of all factions, in the sequence of their numerical composition [..] If any representative of these factions succeeds in getting the majority vote for the governing collation, then, within this majority, a Prime Minister is proposed and the ministerial portfolios are allocated immediately. After that, the authorised person goes to the President and gives him the name of the person proposed for the Prime Minister's office", whereas the President is granted a peculiar right of veto - not to consent to the candidate for the Prime Minister's office, offered by the parties."[1446]

The candidate for the Prime Minister's office, in consultations with the representatives of political parties, prepares a draft decision

1445 Lēbers (Loeber) D.A., Bišers I. Ministru kabinets. Komentārs Latvijas Republikas Satversmes IVnodaļai "Ministru kabinets". Rīga: Tiesiskās informācijas centrs, 1998, 51.lpp.

1446 Šīmanis P. Latvijas satversmes astoņi gadi. In: Šīmanis P Eiropas problēma. Rīga: Vaga, 1999, 28.-29.lpp. Skat. plašāk: Cielēns F. Laikmetu maiņā. Atmiņas un atziņas. 3.grāmata. Stokholma: Memento, 1998, 91.-212. lpp.; Cielēns F. Laikmetu maiņā. Atmiņas un atziņas. 4.grāmata. Stokholma: Memento, 1999, 5.-120. lpp.

on expressing confidence in the government and the government's declaration. Representatives of ministries are involved in the drafting of the government's declaration because the declaration will be binding upon governmental departments in planning their work. In preparing the declaration, there is no obligation to continue the previous politics, it may be turned into an totally opposite direction, from which the obligation to change also other development planning documents follows. The draft decision on expressing confidence in the government and the government's declaration are submitted to the President and the *Saeima*, the *Saeima*, however, votes only on the draft decision and not on the declaration (contrary to Lithuanian, where the emphasis is placed on the government's programme). A draft decision may be put for voting if the candidates for the offices of all ministers, defined in law, are indicated (a different person for each office), except one, for which the Prime Minister may assume responsibility. The *Saeima* votes for the entire draft decision and may not vote on individual ministers. Likewise, the *Saeima* may not appoint a minister without the Prime Minister's consent (proposal). The Cabinet enters office as of the moment when the *Saeima* adopts its decision; the actions following are related to transferring of departments on the basis of the Prime Minister's order and information provided by the secretary of state. During the inter-war period, departments were transferred on the basis of an order, countersigned by the President; however, after reinstatement of the *Satversme*, this constitutional tradition was not continued.

The President has no powers with respect to expressing no confidence in the Cabinet; this is solely the parliament's prerogative. The President's announcements on no longer having confidence in the Prime Minister are not constitutionally binding. The *Saeima* may express also no confidence in an individual minister, and if non-confidence is expressed they must leave their office immediately. This does not apply to cases when no confidence in the Prime Minister has been expressed or a minister has been dismissed by the Prime Minister. If no confidence in the Prime Minister has been expressed

then the entire government resigns; however, if a minister has been dismissed by the Prime Minister they can agree on an acceptable moment for leaving the office. It should be taken into account that the Cabinet, in the entire period of its operation, should have at least half of the ministers to be able to make decisions. Absence of more than half of ministers does not mean automatic fall of the government but an obligation for the Prime Minister and the *Saeima*'s majority to act. The Prime Minister has the right to request the *Saeima* to express confidence repeatedly[1447] in the form of a separate draft decision or by linking the confidence in the government with a matter to be put for the *Saeima*'s vote, e.g., a draft law, appointment of an official or a proposal. If confidence is not expressed repeatedly this automatically means that no confidence has been expressed, and a separate decision on expressing no confidence is not needed. The Cabinet Structure Law, both in its wording of 1925 and 2008, provides for two specific cases of change in government. Firstly, automatic expression of no confidence in the government by rejecting the draft state budget. Secondly, by providing the possibility for the *Saeima*, to appoint temporarily acting Prime Minister and acting ministers, without the President's knowledge, for example, the state secretaries of ministries. Such mechanism should be used only in extraordinary situations.[1448]

In the Republic of Estonia, the President of the Republic must appoint the candidate for the Prime Minister's office, who is entrusted with forming the new cabinet, within 14 days following the government's resignation. With 14 days following the invitation, the candidate for the Prime Minister's office must report to the State Assembly on the guidelines for forming the government, following which, the State Assembly, without debate, in an open votes, adopts the decision to authorise the candidate for the Prime Minister's office to form the government. If the candidate for the Prime Minister's office has been

1447 Judgement by the Constitutional Court of the Republic of Latvia of 13 July 1998 in Case No.03-04(98).

1448 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 188.lpp. See more: Pleps J. Satversmes iztulkošana. Rīga: Latvijas Vēstnesis, 2012, 84.-86.lpp.

supported by the State Assembly, they must submit to the President the composition of the government within seven days. As of this date, the President must appoint this Cabinet to offices within seven days. If the President also shows initiative in the formation of government, it does not mean appointing ministers of the President's liking but facilitation of political compromise between political factions.[1449] If the State Assembly does not support the candidate for the Prime Minister's office, proposed by the President, or if the government is not formed due to other reasons, the President has the right to nominate another candidate for the Prime Minister's office within seven days. If the President does not propose another candidate for the Prime Minister's office within seven days or if this candidate is unable to form the government, then the right to invite the Prime Minister is transferred from the President to the State Assembly but, if it is unable to submit to the President the composition of the new government within 14 days from this moment, the President announces extraordinary election of the State Assembly. Members of the government may commence performing duties of office only after giving the oath. Changes to the government may be introduced by the President of Republic by a presidential decree, on the basis of the Prime Minister's proposal. If the State Assembly has expressed no confidence in a member of the government then the President, upon receiving the declaration by the President of the State Assembly, must dismiss the minister.

In the Republic of Lithuania, the Prime Minister is appointed and dismissed by the President of the Republic with the Seimas' consent. After the President has announced the candidate for the Prime Minister's office, the Seimas gives the possibility to the President to nominate the candidate for the Prime Minister's office at the next sitting of the *Saeimas*. No later than within five working days after the candidate has been nominated, the Seimas must hold its sitting to decide on the respective candidate. The President retains the right to recall the nominated candidate at any time. After receiving an affirmative

1449 Арановский К.В. Государственное право зарубежных стран. Москва: Инфра-М, 2000, с.165-166.

decision, the President appoints the candidate for the Prime Minister's office into the office and the newly appointed Prime Minister starts formation of the government. The Prime Minister nominates candidates for the positions of ministers and the President of the Republic appoints them to offices. The government's ministers must be approved within a rather short period of time because the Prime Minister, within 15 days after being confirmed in office, must submit to the *Saeimas* the composition of the new government and action programme, formed by the Prime Minister and approved by the President. All ministers of the new government must participate in the procedure for approving the government's programme. The Seimas must examine the government's programme at its sitting within 15 days after its submission. If the Seimas does not approve of the government's programme by a reasoned decision and returns it to the government for improvements then the government's programme must be submitted for reconsideration. The government receives the authorisation for its actions with the approval of its programme by the Seimas. The programme is approved by the majority vote of deputies of the Seimas who are present. If the Seimas dismisses the programme of the newly formed government twice then the government must resign. If more than half of the government's members are replaced, it must gain the Seima's confidence repeatedly, otherwise the government must resign. This is linked to the fact that, in Lithuania, the Seimas does not confirm into office each minister who replaces a dismissed minister; the ministers, upon the Prime Minister's proposal, are appointed to and dismissed from the office by the President of the Republic. The government is generally accountable to the Seimas, therefore, until more than half of the government's members have not been replaced, the replacement of individual ministers is not important. At that point, the Seimas gains constitutional grounds for verifying whether the government's programme is still valid and is being implemented. If the ministry of an approved minister changes, it is not considered as being a replacement of a government's member. The government must resign if the Seimas has not approved of the governmental

programme for two successive times, if the Seimas, by the majority vote of all its Members, in secret ballot has expressed no confidence in the government or the Prime Minister, if the Prime Minister has resigned or died, after the new Seimas has convened for its first sitting, if, following the replacement of half of the government's members or elections of the President of the Republic it has not received the Seima's confidence repeatedly.

One of the most significant conditions for the government's stability is a stable parliamentary majority, on the confidence of which the government may rely in implementing its constitutional powers. To reach this aim, Germany has abandoned parliamentary formation of the government as a collegial institution, replacing it by electing the Federal Chancellor in the Bundestag. This system decreases the Bundestag's general influence on the Cabinet. The Bundestag may express no confidence only in the Chancellor but cannot deny its confidence to individual ministers of the federal government.[1450] However, this does not mean that the ministers are not politically accountable for their actions because the parliamentary majority, in the framework of cooperation between the Bundestag and the government, has plenty of opportunities to achieve resignation of an undesirable minister.[1451] The Federal Chancellor, upon the proposal by the Federal President, is elected without debate by the new convocation of the Bundestag. Usually, the Federal President proposes a candidate who is supported by the Bundestag's majority. To become elected, the Chancellor needs an absolute majority of votes by the Bundestag's members, i.e., the chancellor's majority. If the candidate proposed by the Federal President does not obtain this majority in the Bundestag then the next election round is held. If even then the Federal Chancellor is not elected with the chancellor's majority, a new round of election must be held immediately, where it is enough to have the majority of votes for

1450 Hesselberger D. Das Grundgesetz, Kommentar für die Politische Bildung: Bundeszentrale für Politische Bildung. Bonn: Hermann Luchterhand Verlag, 1990, S.239.

1451 Хессе К. Основы конституционного права ФРГ. Москва: Юридическая литература, 1981, с.301.

electing the Federal Chancellor. At this moment, the Federal President must choose between the election of a minority chancellor and dissolving the Bundestag. Dissolving the Bundestag as an alternative to the election of a minority chancellor is the last resort if it is absolutely clear that the formation of a functional government is impossible. The main task for the President is to establish whether a government, headed by a minority chancellor, would be able to function.[1452] Following the election of the Federal Chancellor, the Federal President appoints them in office. Following this act, the second stage in the formation of government begins when the Federal President, upon the proposal by the Federal Chancellor, appoints the Federal Ministers.

In practice, both stages in the formation of government merge because, when political parties agree on the Federal Chancellor, usually also an agreement on the Federal Ministers is reached, although, constitutionally, this two-tier system of government formation is still retained.

The policy implemented by the Federal Chancellor may cause dissatisfaction in the Bundestag's majority, which is manifested as expression of no confidence in the Federal Chancellor. By expressing no confidence, the Bundestag's majority acknowledges that it no longer wants to defend or, at least, tolerate the current government's programme.[1453] Within a parliamentary system, the vote of no confidence is a classical means for replacing a government. In Germany, however, to achieve the downfall of the government, it is not enough to express no confidence in the Federal Chancellor or the politics implemented by them. The Bundestag is required to act constructively and elect a new Federal Chancellor simultaneously with expressing no confidence. In practice, the procedure of no confidence vote was implemented in 1982 when the leading coalition, supporting Helmut Schmidt's government, split. With the coalition partner reaching an

1452 Шлайх К. Федеральный президент. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.2. Москва: Институт государства и права РАН, 1994, с.225.

1453 Hesselberger D. Das Grundgesetz, Kommentar für die Politische Bildung: Bundeszentrale für Politische Bildung. Bonn: Hermann Luchterhand Verlag, 1990, S.239.

agreement with the Christian Democrats, the Social Democrats became the minority, and Helmut Kohl, a Christian Democrat, became the Federal Chancellor in the procedure of expressing no confidence.[1454] The Bundestag may elect the Federal Chancellor in the procedure of constructive vote of no confidence only with the chancellor's majority, i.e., by gaining the absolute majority vote of all members of the Bundestag. If the Bundestag's deputies initiate a resolution on no confidence then the name of the new Chancellor must be indicated in it and, essentially, the vote of no confidence in the former Chancellor is also a vote of confidence in the new Federal Chancellor. After the resolution is submitted, debates are held in the Bundestag, followed by waiting time of 48 hours. A vote is then taken, after which a number of solutions are possible. If a new Federal Chancellor is elected by the chancellor's majority then the government is replaced; however, if the new candidate for the Federal Chancellor's office is rejected by the chancellor's majority then the former Federal Chancellor remains in office, having been supported by the absolute majority of the Bundestag, and the former government continues its work. If confidence in the new Federal Chancellor is not expressed by the chancellor's majority but by the majority vote of the deputies present, which is not the chancellor's majority, then a paradoxical situation occurs – a new Chancellor has not been elected yet but the Bundestag, actually, has expressed no confidence in the government. The procedure of a constructive vote of no confidence has not been implemented but the old government turns into a minority government. In such circumstances, it is very important for the incumbent Federal Chancellor to gain a new chancellor's majority or at least ensure, in some cases, parliamentary support for their policy. In such circumstances, the Federal Chancellor acquires the right to request the Bundestag to express confidence in them by the chancellor's majority.

In Germany in 1972, in the course of expressing no confidence, Willy Brandt's government stayed only with the majority of a couple

1454 Маклаков В.В. Конституция Германии. In: Конституции зарубежных стран. Москва: БЕК, 1996, с.149.

of voices. In a minority government situation, Willy Brandt requested the Bundestag to express confidence in him repeatedly. Following the request of the Federal Chancellor, part of his supporters denied confidence in Willy Brandt and, thus, Willy Brandt achieved that his request was not granted by the chancellor's majority and showed that his government no longer enjoyed the confidence of the Bundestag's majority.[1455] The right granted to the Chancellor to propose the vote of confidence increases the stability of the parliamentary majority and allows the Chancellor to request the support of the Bundestag's majority. However, Article 68 of the basic law provides for a case when the Federal Chancellor's request receives a negative vote, i.e., the Bundestag denies the Federal Chancellor its confidence. In such circumstances, the Federal Chancellor acquires the right to act in order to consolidate their status, by using the mechanism included in Article 68 or Article 81 of the basic law. If the Federal Chancellor's proposal regarding expressing confidence in them does not gain the consent of the majority of the Bundestag's members, the Federal President may, upon the Federal Chancellor's proposal, dissolve the Bundestag within 21 days. The Bundestag has the right to prevent its dissolution by electing a new Federal Chancellor by the chancellor's majority. However, if this does not happen, the Federal President is not obliged to implement mandatorily the Federal Chancellor's proposal: if the President believes that dissolution of the Bundestag is not necessary then the Federal President may refuse to implement the Federal Chancellor's request.[1456] However, in 1972, upon Willy Brandt's request, the Federal President dissolved the Bundestag and Willy Brandt's coalition consolidated its position in the new elections.

Thus, within parliamentary systems, ensuring the government's stability turns into one of the most significant aims of the constitutional system. A destructive vote of no confidence can overthrow

1455 Маклаков В.В. Конституция Германии. Gram.: Конституции зарубежных стран. Москва: БЕК, 1996, с.149.

1456 Hesselberger D. Das Grundgesetz, Kommentar für die Politische Bildung: Bundeszentrale für Politische Bildung. Bonn: Hermann Luchterhand Verlag, 1990, S.240.

the government with a united, negatively disposed parliamentary majority, which, at the same time, is unable to create the majority to support the next government and leaves the state governmentless. Nowadays, it is common to regard the constructive vote of no confidence as the main grounds for the stability of the federal government in Germany. Konrad Hesse has underscored that the conditions and methods of the parliamentary system of government are underappreciated if the constructive vote of no confidence is regarded as significant progress in ensuring stable governmental relations. The vote, however, excludes overthrowing of government by a majority, which is not yet ready to create governmental majority, but minority governments are made politically incapable.[1457] A stable government is the outcome of a united and stable parliamentary majority in parliamentary democracy, and its existence depends on the level of the people's political maturity, the degree of development of political parties and electoral system. In the absence of strong political parties in the state and if the parliament is fragmented into small groups of deputies, then the constructive vote on no confidence will guarantee a stable government but it will no longer be a parliamentary system. In such conditions, artificial restrictions on the possibilities for expressing no confidence leads to the dominance of the executive power, creating constitutional possibility for the government to ignore the parliament's will.

II. System of executive power and organisation of public administration in Latvia

1. Division of competence between constitutional bodies. The *Satversme* divides exhaustively the state's competence between the bodies of the state power (totality of citizens, the *Saeima*, the President, the Cabinet, the State Audit Office, the Constitutional Court

1457 Хессе К. Основы конституционного права ФРГ. Москва: Юридическая литература, 1981, с.299-300.

and courts), which implement the legal capacity of the Republic of Latvia as the original legal person, institutions established by them (institutions of direct administration and support bodies), which are to be considered as the extension of the capacity of the state's bodies, as well public law legal persons, established on the basis of laws or a law, with each of them having its own body exercising its capacity. There cannot be competence of the state that has not been allocated to a body of the state power. The *Satversme* mainly transfers the function of the executive power into the Cabinet's competence. Performing the functions of the executive power is the Cabinet's main task, moreover, the task is so enormous that the Cabinet may establish institutions of administration and delegate to them part of its competence, retaining control and accountability for the fulfilment of the delegated tasks with the help of subordination mechanism.[1458] The Constitutional Court has concluded that the legislator's will, in adopting Article 58 of the *Satversme*, had been to unite the entire system of administration, without dividing its institutions according to degrees and levels of subordination.[1459]

2. Unity and hierarchy of the executive power. Section 6 of the State Administration Structure Law sets out the principle of the unity of state administration. Pursuant to Section 6 of this law, the state administration is organised in a single hierarchical system. No institution or official of administration may be outside this system. The principle of the unity of state administration is needed to ensure the Cabinet's control over the fulfilment of all functions of the executive power. Pursuant to the *Satversme*, the Cabinet is the bearer of the constitutional executive power in the Republic of Latvia.[1460] Thus, the executive power's function has been transferred into the Cabinet's competence, although some actions by the executive power, with the

1458 Levits E. Valsts un valsts pārvaldes juridiskā struktūra. Jaunā Pārvalde, 2002, Nr.1(31), 2-8.lpp.

1459 Judgement by the Constitutional Court of the Republic of Latvia of 9 July 1999 in Case No.04-03(99), Para 2 of the Findings.

1460 Judgement by the Constitutional Court of the Republic of Latvia of 16 October 2006 in Case No.2006-05-01, Para 15.3.

purpose of ensuring the separation of powers, may be granted to other constitutional institutions. It can be concluded that those actions of the executive power, which have not been transferred to other constitutional institutions, fall within the Cabinet's competence and it is responsible for the performance thereof.[1461]

Performing the functions of the executive power is such an enormous task that the Cabinet is unable to cope with it. Therefore, the *Satversme* provides that the Cabinet may establish institutions of public administration to delegate to them part of its competence, using the mechanism of subordination to retain control and accountability for the performance of the delegated tasks.[1462] Institutions of public administration perform the administrative functions of the executive power (public administration), which together with the political functions of the executive power, performed by the Cabinet, constitute the Cabinet's competence in the area of executive power, transferred to it by the *Satversme*. For the Cabinet to be able to assume political responsibility for implementing the entire competence in the area of executive power, transferred to it, subordination of public administration to the Cabinet is required, i.e., the Cabinet should have at its disposal such legal mechanisms that would ensure appropriate functioning of institutions of public administration.[1463] To implement these fundamental principles, Article 58 of the *Satversme* provides that the administrative institutions of the state are under the Cabinet's authority. The unity of public administration and subordination to the Cabinet follows, to a large extent, from the principle of parliamentarism, included in the *Satversme*. Historically, the emergence of parliamentarism meant a restriction on the monarch's power and the parliament's political control over the executive power. To exert this control effectively, the government's political responsibility for the entire executive power was required. This, in turn, automatically

1461 Judgement by the Constitutional Court of the Republic of Latvia of 16 October 2006 in Case No.2006-05-01, Para 10.4.

1462 Levits E. Valsts un valsts pārvaldes juridiskā struktūra. Jaunā Pārvalde, 2002, Nr.1(31), 2-8.lpp.

1463 Judgement by the Constitutional Court of the Republic of Latvia of 16 October 2006 in Case No.2006-05-01, Para 11.

meant subordination of the institutions of public administration to the government, so that the government would have access to legal mechanisms for implementing the politics of the parliamentary majority.[1464] Hence, a Cabinet that is accountable to the parliament is the sole active supreme body of the executive power, through which the unity of the executive power in the state is established."[1465]

Pursuant to the procedure set out in law, the hierarchy of public administration is based upon two main legal instruments, i.e., subordination and supervision, alongside which such auxiliary instruments may exist as the supervision in service, disciplinary power, accounts and reports, the right to perform internal examination, the right to devolution. To right to give direct orders and the right to issue instructions, guidelines, as well as the parliamentary right to information and control.[1466] The main tasks for which the hierarchy is established are ensuring the legitimacy of administration, simplicity of governance and, most importantly, complying with the principle of legality. Abiding with this principle throughout the entire public administration ensures effective control by the court and self-control of the administration. Hence, the chain of legitimisation is ensured "elector - parliament - government - administration". In the case of subordination, the higher standing institution has the right to both give instructions to the lower institution and to review and revoke or amend the decisions by the lower institution; however, in the framework of direct administration, supervision is also possible. In the case of supervision, the higher standing institution has the right to verify post factum and revoke or amend a decision of a lower institution at least in the case if it is unlawful, or in the case of unlawful failure to act, to issue an order to make a decision. However, this is the minimal form of supervision because the content of supervision may be

1464 Mucenieks P. Ministru atbildības institūts vēsturiskās attīstības gaitā. Tieslietu Ministrijas Vēstnesis, 1922, Nr.5, 216.-228.lpp.

1465 Dišlers K. Dažas piezīmes pie Latvijas Republikas Satversmes projekta (tieša likumdošana un valsts prezidents). Tieslietu Ministrijas Vēstnesis, 1921, Nr.4/6, 147.lpp.

1466 Levits E. Valsts pārvaldes iekārtas likuma koncepcija. Latvijas Vēstnesis, 2002. 26.jūnijs, Nr.95(2670).

expanded, brining it closer to the content of subordination, i.e., providing also for the right to appoint of dismiss the head or other employees of the lower institution.[1467] A possibility cannot be excluded that an institution may be simultaneously subordinated and supervised, which is possible if the institution at the same time performs an autonomous competence and acts as the executive institution of the higher institution, i.e., institutions of public administration, if it is envisaged in laws or Cabinet regulations, may authorise local governments to fulfil some functions of the institutions of public administration, determining the procedure for performing these functions and supervising the performance thereof.[1468]

In a democratic state governed by the rule of law, power is divided to reach the aims of the separation of powers, which, in turn, allows derogations from formal implementation of the principle of separation of powers.[1469] The state power, which is implemented with the mediation of state institutions, is divided depending on the competence of each institution. It is not always the case that the competence of institutions fully belongs to only one branch of the state power, and the competence of an institution to participate in performing the functions of another power may be envisaged, alongside fulfilling the functions of one power. Division of the state power on the institutional level does not exclude transferring a function of one branch of power to institutions belong to another branch of the state power.[1470]

Article 55 of the *Satversme* provides that the Cabinet is composed of the Prime Minister and Ministers invited by the Prime Minister. Thus, the Cabinet obtains its practical form, which applies directly to implementation of subordination in public administration. Subordination to the Cabinet is manifested in subordination to those who

1467 Levits E. Valsts pārvaldes iekārtas likuma koncepcija. Latvijas Vēstnesis, 2002. 26.jūnijs, Nr.95(2670).

1468 Ibid.

1469 Judgement by the Constitutional Court of the Republic of Latvia of 16 October 2006 in Case No.2006-05-01, Para 10.

1470 Ibid., Para 14.

make up the Cabinet. In Latvia, ministries are organised in accordance with a real system, in which a certain area of public administration (sector) is within the supervision of each ministry on the national scale. A system of this kind developed in Europe after the French Revolution.[1471] The number of ministries and their names are included in the Cabinet Structure Law.[1472] Whereas the regulation of the ministry, indicating its main functions and tasks, structure, institutions subordinated to it or supervised by it, is adopted by the Cabinet. A ministry is the supreme institution in the particular area of public administration, which is directly subordinated to the Minister who heads its work. In the understanding of state law, the ministry and its employees are assistants to the Minister. The Minister is politically accountable for the work of their ministry to the *Saeima*.

3. Direct and indirect administration. The State Administration Structure Law sets out the basic rules on the institutional system of public administration subordinated to the Cabinet and on the functioning of the public administration. Pursuant to the State Administration Structure Law, public administration (institutionally and functionally) is divided into direct and indirect administration. The first is such administration where all institutions belong to the original legal person of public law "the Republic of Latvia" but the second one is all those institutions that legally belong to all other legal persons of public law.

Institutions of direct administration (including ministries) are not legal persons, although at the end of 1990s many institutions were considered to be legal persons. The institution does not need the status of a legal person to regulate private law relations.[1473] It is enough that the institution acts on behalf of a legal person. The following illustrative example of this theoretical concept may be mentioned, in the case of local governments, sometimes introduction of centralised

1471 Mikainis Z. Ministrija. In: Juridisko terminu vārdnīca. Rīga: Nordik, 1998, 159.lpp.

1472 Pleps J. Vai ministru var iecelt 81.panta kārtībā. Jurista Vārds, 2003. 28.janvāris, Nr.4(262).

1473 Judgement by the Constitutional Court of the Republic of Latvia of 16 October 2006 in Case No.2006-05-01, Para 20.

accounting, in the meaning of the Labour Law, causes confusion in searching an answer to the question who the employer is – the local government or the institution. This is a rather theoretical question, with the answer to it being sufficiently simple – the employer, clearly, is the local government itself as a legal person, whereas the consequences that follow from this principle (a side job, recording of working time, decreasing the number of employees) must be defined in the law itself, regulating the specificity of employment in institutions of direct and indirect administration. The Supreme Court also confirms this understanding by recognising that if the institution is liquidated but its functions are transferred to another institution then the grounds of liquidation are not applied to the termination of legal employment relations,[1474] instead, decreasing the number of employees should be considered by conducting individual assessment and comparison, if such is at all required.

Institutions of direct administration are directly subject to a member of the Cabinet – being subordinated to or supervised by them, also if the subordination to the Cabinet in general has been defined and the responsible member of the Cabinet is chosen. Usually, subordination is implemented with the mediation of a ministry but in rare cases also another institution of direct administration is defined to implement subordination (for example, a specially established institution for the supervision of a large number of smaller institutions). An institution of direct administration represents the Republic of Latvia as the original legal person. Disputes between such institutions are impossible and inadmissible, including disputes over non-performance of contracts. An institution of direct administration is established on the basis of a regulatory enactment, a regulation, which mainly defines its competence. In difference to private law legal persons, these institutions are not required to register.

The Constitutional Court has noted that a situation where compensation for losses was paid from those resources of the state budget

1474 Judgement by the Department of Civil Cases of the Supreme Court of the Republic of Latvia of 22 June 2011 in Case SKA-980/2011.

that had been granted to an institution to ensure its operations would be inadmissible because the Republic of Latvia is responsible for the commitments of a state institution.[1475] A private person may not bring a claim against an official; a complaint is filed or a claim is brought against a public person in the person of a certain institution, which later assesses the possibility of taking subrogation action against the respective official. In assessing the possibility of bringing such subrogation claim, institutions must identify the responsible persons, determine the degree of their guilt (the head of an institution is not legally liable "for everything", inter alia, instead of other persons), as well as exclude the special exonerating circumstances, defined in law, which have been established to ensure that officials are not afraid to make decisions. Sometimes laws may define also limits of liability if it is not a case of direct intent. In the case of causing losses, primarily, a solution outside criminal procedure should be chosen. To ensure effective functioning of public administration, the fact of causing damages (i.e., 5 or 10 minimum wages) cannot be the only grounds, a person's actions, motivation, existing risks, instructions also should be assessed. Laws may provide also for the right of another institution to turn to court or in administrative procedure against the particular official.

4. Delegation and other agreements. Mutual contractual delegation of competence between institutions belonging to one public law legal person is inadmissible. A higher standing official may coordinate their actions or take over the mandate. If institutions of direct administration are subordinated to various ministers, cross-sectoral agreements are sometimes concluded to coordinate actions. However, a separate task of the administration may be delegated to a private person or another public law legal person. The State Administration Structure Law defines the procedure of delegation (e.g., issuing of administrative acts may be delegated only by an external regulatory enactment) and the cases when it is not permitted(e.g., tasks which

1475 Judgement by the Constitutional Court of the Republic of Latvia of 20 December 2006 in Case No. 2006-12-01, Para 21.

may be performed only by the institution). A delegation agreement may include also collection or receipt of financial resources. Sometimes the private person, to whom the tasks of public administration will be delegated, is already defined in the law but this approach is wrong as it would create unfounded advantages to the private person. This should be left for the executive power, inter alia, by selecting or regular reassessment. Delegation should not be confused with several other procedures. Firstly, attraction of specialists or ensuring substitute execution within the framework of an administrative case (inter alia, as outsourced service). These persons assist the institution but do perform the tasks of public administration themselves. Secondly, cooperation agreement, aimed at promoting close collaboration (e.g., by observing some process) instead of performing independently a task instead of public administration. Public administration retains responsibility for the performance of the task.[1476] Thirdly, public procurement or public private partnership. In the latter case, a delegation agreement also can be concluded. The private person who performs the delegated task of public administration does not have to be fully organised as an institution; however, several approaches typical of public administration are binding upon it, i.e., ensuring transparency of information, prevention of the conflict of interests, additional requirements for documentation, financial accounting, reporting for work, possibility to contests decisions and actions. It should be clear for society, in which cases the private person, to whom a task of public administrations has been delegated, acts in which capacity – within the sphere of private law or representing the state power.

As mentioned above, it is important to separate various agreements but, even more importantly, understand whether the actions of public administration are conducted directly (e.g., an administrative act or an administrative agreement) or within the framework of the two-tiers theory (in the first stage the decision of administration is adopted, whereas on the second – a private law transaction is made

1476 Briede J., Danovskis E., Kovaļevska A. Administratīvās tiesības. Rīga: Tiesu namu aģentūra, 2016, 136.lpp.

to fulfil it). The Supreme Court has focused extensively on this aspect in its judicature,[1477] assessing in each case, whether an administrative court or a court of general jurisdiction would have jurisdiction over the matter. It is important to note that sometimes it is hard to establish, whether an agreement plays a public or private law role, and, in such cases, the legislator would act reasonably not by determining the type of agreement but by defining the appropriate jurisdiction for dispute resolution and recovery of damages. A good example of this is the legal regulation on the operations of the EU structural funds in Latvia. It also should be kept in mind that the prescription periods for bringing a claim significantly differ for both types of agreements, and, theoretically, might lead to a dispute on whether the less protected party to the agreement was able to understand what type of agreement it was. An institution of public administration, when acting in the area of private law, should keep in mind that the State Administration Structure Law regulates such actions with the aim of limiting them to the extent possible. Likewise, in providing public services, institutions must assess whether, in fact, they are not interfering in an area that the market itself is able to regulate.

5. Autonomy. As regards indirect administration, it should be noted that the autonomy (autonomous competence) of these institutions takes the priority. Pursuant to the findings of legal science, the autonomous public law subject of self-government emerges as the result of actions by the state power, basically, it is established by law, it has the status of a legal person, it has public but its own, separate property. This subject is connected to persons, and this connections is based on belonging to the subject – the persons who constitute the said subject are organised either in accordance with the territorial criterion (local governments including) or other, non-territorial criteria, e.g., affiliation with a certain vocation, craft, science, etc.[1478] Analysis of the administration of professions shows that the status of an

1477 Judgement by the Department of Administrative Cases of the Supreme Court's Senate in Case No.SKA-365/2016

1478 Muciņš L. Publisko iestāžu klasifikācijas modelis. Likums un Tiesības, 2000, Nr.4(8), 101.-102.lpp.

autonomous self-governing public law subject has been defined for four of them, whereas the others have the status of association, therefore it can be admitted that the legislator will, definitely, continue looking for a meaningful systemic approach.

Indirect administration is comprised of derived public law legal persons and institutions established by them. The establishment of a derived public law legal person should be envisaged in law, directly or indirectly. Derived public law legal persons are created for professional, territorial or economic autonomy, for the representatives of self-employed profession, local government, universities or for management of assets in a public foundation. Moreover, their supervision may differ greatly or take another form (e.g., with respect to organisations of self-employed professions). If the mechanism of supervision, defined in the State Administration Structure Law, is applied to a derived public law legal person, it is to be implemented differently because the supervision of an institution of direct administration and a derived public law legal person differs due to its autonomous competence. As regards an autonomous self-governance public law subject, e.g., professional organisations of advocates or notaries, work in such organisations cannot be as restrictive as to significantly hinder the respective person from working effectively in their profession. The state should be aware that these self-government bodies, although being public law subjects, cannot be regulated as any other state institution. A derived public law legal person may be under the supervision of another person like that. It is advisable to define a detailed procedure of supervision in law. Usually, a derived public law legal persons has its own independent budget and property (also equity shares and stocks), inter alia, to assume liability for damages caused. However, exceptions are possible. A derived public law legal person has its decision-making body, usually, a collegial institution. There may also be several decision-making bodies with separate competences, for example, in state institutions of higher education. A derived public law legal person also may establish its own institutions. In practice, there may be various legal solutions for approving the

regulations of a derived public law legal person, i.e., this can be a law or the Cabinet regulation, as well as binding regulation of a local government, an external regulatory enactment; however, the preferred form would be approval of the regulation by the decision-making body of the derived public law legal person. A derived public law legal person may both implement autonomous competence and the transferred (delegated) competence of an institution of direct administration, simultaneously being in various relations of subordination.

6. Independent institutions. Already at the time when parliamentarism evolved and consolidated, it turned out that it was impossible to subject all institutions of public administration entirely to the government. In some cases, it was necessary to establish institutions that were not subordinated to the government and fulfilled their functions independently. Therefore, the assertion made in legal science that the functioning of a modern state required establishing some institutions, which did not fit into the classical system of separation of state power, is valid.[1479] One of the first institutions emerging in the practice of constitutionalism was the state audit office or the court of auditors. Kārlis Dišlers wrote: "The State Audit Office is not an administrative institution; it is a particular independent institutions, entrusted with a particular function, and, judging by the function of the institution under examination, we could call it an institution of control. We must get accustomed to the view that, alongside legislative, administrative and judicial institutions, also particular institutions of control exist in the countries at present."[1480] Kārlis Dišlers also noted that, initially, the state audit office had been an institution of public administration, belonging to the executive power; however, in the modern state governed by the rule of law, it has turned into an independent body of the state power with its own particular function.[1481] To record the special status of the state audit office or the court of auditors, already at the beginning of the 20th century, this

1479 Prokop K. Polish Constitutional Law. Biatystok: Temida 2, 2011, p.175.

1480 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 195.-196.lpp.

1481 Ibid, 195.lpp.

institution was often enshrined in the constitution as an independent institution.[1482] For example, Article 87 of the *Satversme* provides that the State Audit Office is an independent collegial institution. Whereas Article 92 of the Constitution of Lithuania of 1922 enshrined the obligation of the State Auditor to keep track of the national revenue and expenditure, as well as the state's property and commitments.

Following the Second World War, in Europe, similar independence was envisaged for the central banks. To prevent politicians' impact on the monetary policy and ensure stability of prices, the devastating consequences of which were clearly seen in the experience of the Great Depression, the central banks were granted an independent status. This means that the political powers of the state cannot influence the area of issuing currency, crediting and control over the banking sector. It has been recognised in theory that such mechanism allows ensuring resilience of national currency and price stability, which creates pre-conditions for the growth of national economies.[1483] The independence of central banks is such an important factor for economic stability and development that it is especially defined in the basic treaties of the European Union. Article 127 of the Treaty on the Functioning of the European Union provides that the primary aim of the European System of Central Banks is to maintain price stability. It has been recognised in legal science that the establishment of the European System of Central Banks means unprecedent delegation of the monetary sovereignty from the national to the supranational level. This, in turn, imposes an obligation upon the Member States to maintain their national banks, the independence of which is not contested.[1484] Predominantly, the independence of central banks is ensured by defining their status and functions in the national constitutions. This does not exclude that the central bank performs also some other

1482 See more: Mincs P. Valsts kontroles pārveidošana. Tieslietu Ministrijas Vēstnesis, 1920, Nr.2/3, 68. – 72.lpp.

1483 Баренбойм П.Д., Гаджиев Г.А., Лафитский В.И., Мау В.А. Конституционная экономика. Москва: Юстицинформ, 2006, с.395-397.

1484 Drēviņa K. Centrālo banku neatkarība: pašmērķis vai instruments. Jurista Vārds, 2009. 24.novembris, Nr.47(590).

functions, e.g., supervision of the financial sector. In Latvia, the *Satversme* does not define the status of the Bank of Latvia, it was established by a separate law, ensuring the independence required for its functioning. The Constitutional Court has recognised that the Bank of Latvia is an autonomous institution of public administration, which is not subordinated to the Cabinet and which fulfils its functions independently. The Bank of Latvia, as an autonomous institution of public administration, established by the *Saeima*, is to be considered as having been appropriately democratically legitimised for it to have the right to issue external regulatory enactments with the force of law, within the area of restricted competence granted to it and with respect to a limited circle of subjects of law.[1485]

In European countries, alongside the state audit office or the court of auditors, also the ombud or the commissioner for human rights is created as an independent institution. The task of this institution is to ensure protection of human rights and monitoring whether the executive power is not infringing on human rights.[1486] The task of the Ombudsman as the national mechanism for protecting human rights is to provide recommendations to the *Saeima* on improvements to the regulation in the area of human rights and to point to the shortcomings that the legislator should eliminate.[1487] It is interesting to note that, in the Baltic Region, Estonia was the first to introduce the ombud's institution, based on the Scandinavian model, during the authoritarian regime. Article 47 of the Estonian Constitution of 1938 provided for the institution of the Chancellor of Justice, whose duties comprised verifying the legality of acts issued by state institutions.[1488] In Estonia,

1485 Judgement by the Constitutional Court of the Republic of Latvia of 2 March 2016 in Case No.2015-11-03, Para 21.1. and Para 21.2.

1486 Кутрис Г. Зашита прав человека - сушественная функция Конституционного суда и Правозашитника Латвии. In: Constitutional Justice in the New Millenium. Almanac. Erevan: Njhar, 2007, pp. 74-77.

1487 Judgement by the Constitutional Court of the Republic of Latvia of 2010.gada 20.decembra sprieduma lietā Nr.2010-44-01 14.1.punkts.

1488 Jervelaids P. Justīcijas kanclera institūts Igaunijā: vēsture un mūsdienas. Likums un Tiesības, 2000, Nr.7(11), 200. – 204.lpp.

the Chancellor of Justice's competence includes also partial fulfilment of the function of constitutional review.[1489]

Hence, in a contemporary democratic state, transferring all functions of the executive power to the government and institutions of public administration subordinated to it is impossible. A separate area of public administration may be taken out of the government's competence and transferred into the competence of an independent state institution if it is found that a state institution, subordinated to the government, will not be able to ensure proper administration in this area.[1490] In such cases, the legislator usually subjects the said institution to its direct control, taking it out of the system of executive power, or creates it as an independent institution. Thus, it is possible to achieve that a certain area is regulated by a de-politicised and entirely independent institution.[1491]

Using the historical experience in consolidating the independence of the state audit office or the court of auditors and the central bank as the basis, in creating these as bodies of the state power and enshrining expressis verbis in the constitution's text their independence and functions, many countries strive to define all independent institutions in their constitutions. Latvia has chosen another approach, i.e., independence of the respective institutions is ensured through legislation, taking into account that Article 57 of the *Satversme* entrusts the legislator with determining the relations between state institutions in exercising the state power. Linards Muciņš, the chairman of the Legal Committee of the 7th *Saeima* of the Republic of Latvia, underscored in parliamentary debates the legislator's role in creating such institutions: "This has been proven by life and by the development of Europe that a series of institutions have emerged following the Second World War, which are called, concretely, autonomous institutions,

1489 De Visser M. Constitutional Review in Europe. A Comparative Analysis. Oxford and Portland: Hart Publishing, 2015, pp.21 – 22.

1490 Judgement by the Constitutional Court of the Republic of Latvia of 16 October 2006 in Case No.2006-05-01, Para 16.3.

1491 Sajó A. Limiting Government. An Introduction to Constitutionalism. Budapest: Central European University Press, 1999, pp.202-203.

which are not subject to the government; however, separate laws have been adopted with respect to them, and they implement a respective public task. And, at the same time, to ensure their independence from governments, they have been granted rather particular and broad authorisation".[1492]

The Constitutional Court also emphasised that the status of some independent institutions[1493] should be ensured through legislation, with the *Saeima* deciding on the need for such regulation. The Constitutional Court pointed out that the *Satversme* authorised the *Saeima* to establish independent institutions in those cases where it was impossible to ensure appropriate administration otherwise. Likewise, the Constitutional Court noted that, in a democratic state, releasing some institutions of public administration from subordination to the Cabinet ensured appropriate administration in those areas of administration that were related to controlling the operations of other public institutions, ensuring stability of prices, as well protection of certain freedoms and balancing of interests.[1494]

At the same time, the Constitutional Court, in its judgement, defines strict limits to the legislator's discretion. Firstly, establishment of such independent institutions, the functions of which could be implemented as effectively by an institution subordinated to the Cabinet, is inadmissible. Secondly, there are such areas of executive power where independent institutions may not be established. In a democratic republic, the parliamentary control, exercised with the mediation of a responsible government, over the armed forces and institutions of national security is of fundamental importance. Thirdly, the *Saeima*, in establishing an independent institution, must ensure appropriate democratic legitimisation of this institution and integrate in the law effective mechanisms for supervising the institution's

1492 Latvijas Republikas 7.Saeimas rudens sesijas 2002.gada 19.septembra sēdes (3.sēde) stenogramma.

1493 Briede J., Danovskis E., Kovaļevska A. Administratīvās tiesības. Rīga: Tiesu namu aģentūra, 2016, 53.lpp.

1494 Judgement by the Constitutional Court of the Republic of Latvia of 16 October 2006 in Case No.2006-05-01, Para 16.3.

operations.[1495] Without direct democratic legitimisation by the parliament, such an institution may not issue external regulatory enactments. Although the doctrine for establishing independent institutions, formulated by the Constitutional Court, is formulated correctly, the establishment of such institutions continues to be an exception to the unity of public administration and would be admissible only where it is impossible to ensure otherwise appropriate administration in the respective area of executive power. Likewise, areas where the establishment of independent institutions is inadmissible are mentioned and quality requirements set for the formation of such institutions. The legislator has accepted the Constitutional Court's position, defining its mandate in Section 2 (2) of the Cabinet Structure Law: The *Saeima* may also transfer, by law, the exercising of executive power in separate areas to other institutions that are not subordinated to the Cabinet but efficient mechanisms have been established for supervision of operations thereof in the law."

However, in practice, a trend becomes more pronounced, which could be described as fragmentation of the executive power. More frequently, institutions of public administration want to obtain the status of an independent institution, also in the areas where the formation of such institutions is not necessary, to free themselves form the government's control and to be able to act independently. In addition to that, institutions, unknown thus far, are being established in some European states, and they assume new duties. For example, Article 44 of the Constitution of Hungary provides for a special Budget Council, the task of which is to support the parliament in legislative activities and verify whether the state budget is balanced. In view of the fact that the Constitution of Hungary of 2011 grants to the Budget Council the right to assess compliance of the draft state budget with the principles of fiscal policy, formulated in the Constitution, this institution, substantively, has been granted the right of veto, limiting

1495 Judgement by the Constitutional Court of the Republic of Latvia of 16 October 2006 in Case No.2006-05-01, Para 16.3.

the discretion of the government and parliament in the process of planning the national revenue and expenditure.

Nowadays, it is becoming increasingly more difficult to define the executive power as a united and hierarchically organised system of institutions of public administration, subordinated to the constitutional bearer of the executive power. In important areas, significant for public interests, independent institutions are being established, which are not directly subject to the political will of the parliamentary majority and the government. The said institutions oversee their areas autonomously, on the basis of professional knowledge and long-term view on the development of the respective area. Such a system leaves an impact also upon implementation of the principle of democracy because it is becoming more difficult for electors, in choosing concrete political offers, to influence administration of the respective areas. Since these areas are administered autonomously from the political power of the legislator and the government, it is impossible to impact decisions made in these areas through elections. Hence, the executive power is fragmented in a contemporary democratic state, by excluding several important areas from political control and transferring them under the supervision of professional technocrats. This, probably, requires re-examination of the classical understanding of the principle of separation of powers because the government and the president as the bearers of the constitutional executive power no longer reflect the genuine decision-making mechanism.

7. Centre of government. An opposite direction to fragmentation of the executive power is the concept of the so-called centre of government, aimed at more effective performance of the executive power's tasks under its political leadership. It is an institution or institutions that provide support to the supreme institution or official of the executive power in policy coordination or to ensure the function of coordination and supervision on the national scale. Predominantly, these are structural units, inter alia, in several institutions, which are deemed to be strategically important. Usually, these are not defined in laws but may identified within the framework of executive power to

coordinate better the work on the most important issues of public administration. A special procedure for appointing the heads of these structural units, certain cooperation plans, additional competence may be defined. In Latvia, the centre of government is primarily composed of structural units and institutions subordinated to the Prime Minister, partially, of some structural units of the Ministry of Finance and the Ministry of Justice. [1496] At the same time, it should be noted that the Prime Minister's ability to coordinate the work of ministers is hampered, depending upon their personality. The Prime Minister's political guidelines to ministers, which are used by the German Chancellor, exist only partially in Latvia. The collegial institutions of the Cabinet, e.g., decision-making committees, would be useful for coordinating daily matters, or the meeting of the Secretaries of State, which would proactively decide on a number of issues important for the ministries instead of merely ensuring the technical process for aligning legal acts. Neither does the Cross-sectoral Coordination Centre have the right to suspensive veto with regard to issues announced for the Cabinet's sitting. In practice, active work by the Prime Minister's parliamentary secretary is seen as a positive factor, coordinating the work of institutions related to specific topics with particular relevance for the government; however, this depends on the personality and ability of the person holding the particular office. The creativity of ministries, by submitting proposals, in circumventing the Cabinet, in the *Saeima* could also be better coordinated in this way.

III. Accountability of Ministers

The constitution imposes on ministers joint and several liability for their actions. The institute of ministers' liability developed in the times of absolute monarchy. At the time, ministers were servants of the monarchs, fulfilled the monarch's orders, for the fulfilment of

1496 Ziņojums par valdības centru Latvijā, tā stiprināšanu un īstenoto cilvēkresursu politiku. 2015.gads. https://www.mk.gov.lv/sites/default/files/editor/valdcentrs-lv_zinojums_latviski_gala.pdf

which they were accountable to the monarch. The monarch could punish the ministers or dismiss them from the office as he wished. Sometimes, a minister even did not have the right to refuse to take the office if the monarch wished the minister to continue discharging his duties.[1497] The English parliamentarism created the ministers' legal accountability to the Parliament, i.e., in XIV century, the Parliament acquired the right to try ministers for violations in their actions. The need for such accountability of a minister followed from the monarch's un accountability.

William Blackstone has worded it as follows: "The King may do nothing unjust. Hence, if He has granted His permission to governmental acts, which are contrary to laws and interests of the state, then it must be assumed that He has been cheated by the ministers who have abused His trust."[1498] This is the beginning of the impeachment procedure. The House of Commons brough the charges but the House of Lords, performing the function of a supreme court, investigated the case and ruled on the minister's guilt and imposed punishment. Usually, the Parliament handed down harsh sentences - most often, ministers were sentenced to capital punishment because they were tried for high treason. To prevent the King from saving his ministers, the need arouse to restrict the King's right to clemency, as it happened in many constitutional monarchies of the time. In this state order, the institution of the people's representation started imposing restrictions on the monarch's previously unrestricted right to clemency, for example, providing that the monarch could not pardon the ministers sentenced for breach of service.[1499] In 1679, the Parliament passed the law providing that the King could not pardon persons sentenced in the impeachment procedure, which was finally consolidated in Act of Settlement of 1701. Hence, double liability of ministers evolved: legal

1497 Mucenieks P. Ministru atbildības institūts vēsturiskās attīstības gaitā. Tieslietu Ministrijas Vēstnesis, 1922, Nr.5, 216.lpp.

1498 Dišlers K. Demokrātiskas valsts iekārtas pamati (Ievads konstitucionālajās tiesībās). Rīga: A.Gulbis, 1931, 158.lpp.

1499 Dišlers K. Latvijas Valsts prezidenta kompetence. Tieslietu Ministrijas Vēstnesis, 1922, Nr.3, 123.lpp.

liability for the legality of their work to the Parliament and the political accountability for the expedience of their actions to the monarch.[1500] The legal liability of ministers is enshrined in the constitutions of many states (it is usually designated as criminal, legal, constitutional, etc. liability), although the *Satversme* does not provide for it. Ministers in the Republic of Poland are legally liable for their actions before the State Tribunal, hence, the procedure for trying ministers differs from the ordinary procedure, although an opinion is encountered in theory that ministers should be tried by a genuine court – a collegium of specialists who make ministers liable for a violation of laws.

Political accountability exists alongside the legal liability - assessing the expedience of the minister's actions by a decision of the people themselves (electors) or an institution of their representation. Political accountability, in difference to legal liability, imposes an obligation upon the government to be accountable not only for the legality of its actions but also for its expedience from the political vantage point, but the only punishment in the case when the political accountability sets in it is the loss of office.

The English Parliament defined such principles of political accountability already in 1678, providing that ministers were responsible for the legality of their actions, as well as their fairness, integrity and expedience.[1501] The government's accountability and its dependence upon the confidence of the parliamentary majority are traditional concepts that reflect the rights and obligations of both constitutional institutions. The parliamentary or political accountability is manifested in the duty set for the head of the government and some ministers to account for their work in settling matters of the state, the parliament, in turn, has the right to demand such accounts. Expressing confidence in the government is an act of state law, the nature of which

1500 Mucenieks P. Ministru atbildības institūts vēsturiskās attīstības gaitā. Tieslietu Ministrijas Vēstnesis, 1922, Nr.5, 217.lpp.

1501 Dišlers K. Demokrātiskas valsts iekārtas pamati (levads konstitucionālajās tiesībās). Rīga: A.Gulbis, 1931, 160. ipp.

depends upon political circumstances and personal sympathies of some deputies; however, expression of no confidence in the government is the ultimate sanction within the system of parliamentary accountability.[1502] The ministers' political accountability to the parliament is manifested in their obligation to resign if the parliament has expressed no confidence. The conclusion that follows is that only persons who enjoy the parliament's confidence can hold ministerial offices.[1503]

Political accountability started evolving in England of XVII century as the procedure of bill of attainder. If the lower house concluded that a minister's actions harmed the interests of the state but could not find sufficient evidence for trying the minister in the impeachment procedure, it adopted a separate law, recognising those actions of the minister that could be proven as being criminal. The law was granted retroactive force and the guilty minister was tried. However, a procedure like this is incompatible with the idea of a state governed by the rule of law because a criminal law was granted retroactive force.[1504] In the framework of this procedure, Minister of King Charles II Lord Strafford was sentenced to death in 1641. Bill of attainder procedure is no longer used because, although politically justifiable, it is contrary to the contemporary legal principles. It is something in-between the minister's legal and political responsibility, marking a transition from the minister's legal liability to their political accountability.[1505] Political accountability attempts to replace ministers' legal liability; however, it still has not fully happened yet, and, nowadays, both types of responsibility have remained in the constitutions of many states. However, in practice, the state or special responsibility

1502 Бадура П. Парламентская демократия. In: Государственное право Германии. Изензее Й., Кирхоф П. (ред.) Т.1. Москва: Институт государства и права РАН, 1994, с.46-47.

1503 Dišlers K. Izpildu varas evolūcija. Tieslietu Ministrijas Vēstnesis, 1921, Nr.4/6, 101.lpp.

1504 Mucenieks P. Ministru atbildības institūts vēsturiskās attīstības gaitā. Tieslietu Ministrijas Vēstnesis, 1922, Nr.5, 221.lpp.

1505 Dišlers K. Demokrātiskas valsts iekārtas pamati (Ievads konstitucionālajās tiesībās). Rīga: A.Gulbis, 1931, 160.lpp.

of ministers have been totally replaced by the ministers' political accountability, as noted by Kārlis Dišlers.[1506]

The fundamental principles of political accountability evolved in England at the beginning of XVII century. In 1625, the leader of the lower house's opposition Sir Philip formulated the parliament's protest against Minister Lord Buckingham in contemporary for of expressing no confidence. Sir Philip, allegedly, said: "It is insane to entrust the care for the security of the state to such men whose abilities are not commensurate with the important positions that they hold." Although the Parliament expressed no confidence in Buckingham, the Minister's resignation did not follow yet.[1507] In 1644, the Parliament demanded the ministers' liability not only for the legality of their actions but also their political course. The King dismissed the Parliament's demand, which caused the English Revolution.[1508] In 1696, when the formation of a government from the representatives of one political party began, the joint liability of ministers evolved, which made the parliamentary control easier. The ministerial joint liability established in full at the beginning of XVIII century, when the Prime Minister's office appeared.[1509]

The essence of political liability stems from the principle that a minister, in order to perform the office, needs the parliament's confidence and, if it is lost, the minister should resign. This principle was enshrined in the constitutions of two states already in 1791. Article 28 of the French Constitution granted the right to the Parliament to demand from the King resignation of the government that had lost the Parliament's confidence, whereas Article 7 of the Polish Constitution provided that, in case where the joint chambers with the majority of two thirds of votes demanded dismissing of a minister from the State

1506 Dišlers K. Latvijas Republikas prezidenta politiska atbildība. Tieslietu Ministrijas Vēstnesis, 1922, Nr.2, 56.lpp.

1507 Dišlers K. Anglijas parlamenta vēsture. Rīga: A.Gulbis, 1921,94.lpp.

1508 Ibid, 101.lpp.

1509 Mucenieks P. Ministru atbildības institūts vēsturiskas attīstības gaita. Tieslietu Ministrijas Vēstnesis, 1922, Nr.5, 223.lpp.

Council or dismissal from his office, the King was obliged to appoint immediately someone else to replace him. The Polish model is quite peculiar because, in parliamentary states with two-chamber systems, the ministers are usually accountable only to the lower house and implement the will of its political majority, but the upper house does not have the right to express no confidence in the government.[1510] Political accountability is manifested as the loss of office without further adverse consequences. For the political accountability to set it, neither a crime nor a violation needs to be established, disregard for the interests of the state or society is enough, and it is assessed from the political perspective. Hence, the political accountability sets in if "a person or a group of persons does not act in compliance with the political views of a superior state body, which have been assumed to be compliant with the people's interests."[1511]

The entire cabinet bears responsibility for the government's general policy and functioning of the institutions subordinated to it, at the same time, each minister is responsible for their actions that they take within the limits of their competence. Pēteris Mucenieks noted that the individual accountability of ministers should be interpreted narrowly and that in all cases pertaining to the actions by an individual minister that follow from the government's general political programme the entire cabinet should be accountable.[1512] Ministers are responsible not only for their own acts but also for the presidential acts that they have countersigned. This follows from the principle that the president is not politically accountable for their acts, at the same time, someone should bear political accountability for the presidential acts. "The countersigning or co-signing by the minister is the legal grounds for a minister's accountability because, by his signature, he turns the act of the head of state into his own act, thus, assuming the

1510 Mucenieks P. Ministru atbildības institūts vēsturiskās attīstības gaitā. Tieslietu Ministrijas Vēstnesis, 1922, Nr.5, 226.lpp.

1511 Dišlers K. Latvijas Republikas prezidenta politiska atbildība. Tieslietu Ministrijas Vēstnesis, 1922, Nr.2, 59.lpp.

1512 Mucenieks P. Ministru atbildības institūts vēsturiskās attīstības gaitā. Tieslietu Ministrijas Vēstnesis, 1922, Nr.5, 226.lpp.

entire responsibility for the consequences of the act ."[1513] In a republic, countersigning is needed not so much because the president does not bear full political accountability but because "usually, the competence of the president of a republic is broader than his accountability and, since the president's competence does not overlap with his accountability, the accountability for the president's acts should be imposed on the countersigning minister, and to this extent the role of the president of the state as an active state body must be limited."[1514]

The joint meeting of the Latvian Senate, in explaining the basic principles of the ministers' accountability in 1923, highlighted several important nuances of this accountability: "A minister is not merely "a political person", but is on the frontline, the head and the representative of his sector, the supreme civil servant of the state administration, who, within the limits of his sectors, acts on behalf of the state in all administrative acts. All dispositive acts, which come from the ministers or are signed by the ministers, apply to such administrative acts. The first to bear the responsibility for the content of such acts, also for the form and other tools demanded by the national fiscal interests, is the minister of the sector. The minister's responsibility is manifested exactly in the minister's signature. The minister turns each act that he signs into an administrative act, coming from the state and made on behalf of state. If no citizen can use as excuse not knowing the law then the supreme civil servant of the state administration, a minister can use this justification even less[..]. It is of no importance whether and how far the minister could verify the substantive or formal correctness of the act to be signed [..]. The law, definitely, takes as the point of departure the presumption that the minister has verified each act that he has signed and that it is known to him; therefore, also, the law may judge of whether a known act as coming from the state only by the external features of this act, the first among

1513 Mucenieks P. Ministru atbildības institūts vēsturiskās attīstības gaitā. Tieslietu Ministrijas Vēstnesis, 1922, Nr.5, 220.lpp.

1514 Dišlers K. Ministru kontrasignācija monarhijā un republikā. Tieslietu Ministrijas Vēstnesis, 1923, Nr.3/4, 105.lpp.

which is the signature of the competent official. Only the signature turns the act into such. If an act, issued and signed on behalf of the state, indeed, has been signed by the respective civil servant of the state, then the latter is responsible for it, on the basis of the signature (subscriptio tenet subscribentem), irrespectively of whether he had, indeed, verified the act, i.e., whether he actually had the opportunity to do this."[1515]

IV. Constitutional aspects of the state budget

1. The concept and scope of the state budget. The state budget is one of the most important manifestations of the interaction between the parliament and the government. A budget is the state's economic plan, envisaging, on the basis of valid laws, the state's revenue and expenditure for a certain period in its economy – a fiscal year.[1516] The parliament's right to approve of the draft state budget, elaborated by the government, thus, also defining the taxes and other sources of state's revenue, as well as the planned expenditure and to control implementation of the budget, is one of the oldest parliamentary privileges. Likewise, the right to decide on the state's revenue and expenditure, historically, outlined the parliament's omnipotence and the path towards restricting the absolute monarchs. Regular summary of the state's revenue and expenditure should be examined by the institution of the people's representation because the financial sacrifices demanded from the people may be established only with the consent, although indirect, of the people themselves, and for reaching those aims to which this consent has been given.[1517] The legislator, as an institution of the people's representation, has the right to decide freely

1515 No Latvijas Senāta vēstures. Ministru atbildība. (Latvijas Senāta Apvienotās sapulces spriedumi 1923. Nr.9). Likums un Tiesības, 1999, Nr.3, 85.lpp.

1516 Judgement by the Constitutional Court of the Republic of Latvia of 27 November 1998 in Case No. 01-05(98), Para 1 of the Findings.

1517 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.258.

on the people's purse, as the result of which the legislator retains control over the executive power.[1518]

The Constitutional Court has recognised that the state budget is the state's economic plan, in which, on the basis of valid law, the state's revenue and expenditure for the economic year are envisaged. It defines the resources required for performing the state's duties in such a way that in the period, for which these resources are intended, expenditure is covered by appropriate revenue. Moreover, all state institutions and agencies are linked to the state budget.[1519] It has been recognised that the Cabinet enjoys broad discretion in drawing up the draft state budget law. Article 66 of the *Satversme* defines the principle of the state budget's completeness (the entire expected state's revenue and planned expenditure are reflected in the state budget) and demands the Minister to be economical in preparing the state budget. The draft state budget law should comply, to the extent possible, with the actual economic situation in the state.[1520]

2. Drafting of the state budget. The state budget is drafted in parts in different sectors. The main task of the government is to combine and align the budgets of separate sectors, as well as to align the state's expenditure with its revenue. Since the state budget is a united document, the government is responsible for balancing the budget requests of state institutions. The state budget is the means for implementing the state's politics and solely the legislator may decide on the state budget.[1521] Keeping in mind that only the *Saeima* has been granted the right to "the final say" on fiscal matters and the obligation of parliamentary control over the Cabinet's operations, it can be

1518 Madison J. The Federalist No.51. In: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.394-400.

1519 Judgement by the Constitutional Court of the Republic of Latvia of 27 November 1998 in Case No. 01-05(98), Para 1 of the Findings.

1520 Judgement by the Constitutional Court of the Republic of Latvia of 29 October 2020 in Case No.2019-29-01, Para 21.3.

1521 Judgement by the Constitutional Court of the Republic of Latvia of 18 January 2010 in Case No.2009-11-01, Para 8.1.

concluded that the *Saeima* is responsible for the state's fiscal situation.[1522] The Constitutional Court underscored that the Cabinet had to submit the *Saeima* the state budget annually before the fiscal year began as it allowed the *Saeima* to fulfil its constitutional obligation in due time and in a well-considered and responsible way.[1523] If the *Saeima* does not object to late submission of the draft budget law then it becomes co-responsible for, probably, incomplete assessment of this draft. However, in such cases, even greater responsibility lies upon the Cabinet because it has at its disposal the entire apparatus of public administration with its knowledge and experience with respect to the estimates of state revenue and expenditure. If, in such conditions, the *Saeima* is not provided sufficient information on, for example, necessary amendments to laws in order to align them with the draft state budget law, then the Cabinet is primarily responsible for it.[1524]

The *Satversme* regulates how the constitutional institutions should settle the state's financial matters and the principles that should be complied with. Likewise, the *Satversme* determines how sustainable national growth and development should be ensured. A strict requirement follows from the *Satversme* to use the financial assets of the state reasonably, proportionally and in accordance with the financial resources at the state's disposal. The principle of the fiscal responsibility of constitutional bodies can be derived from this requirement, and this principle comprises two elements: the principle that the state budget should be balanced and the obligation to abide by fiscal discipline.[1525] Likewise, the Constitutional Court may review

1522 Amoliņa D. Piezīmes pie Latvijas Republikas Satversmes 66.panta. Jurista Vārds, 2011.16.augusts, Nr.33(680).

1523 See more: Amoliņa D. Budžeta tiesību apcirpšana. Jurista Vārds, 2011.gada 13.decembris, Nr.50(697).

1524 Judgement by the Constitutional Court of the Republic of Latvia of 3 February 2012 in Case No.2011-11-01, Para 16.2.

1525 Amoliņa D. Piezīmes pie Latvijas Republikas Satversmes 66.panta. Jurista Vārds, 2011.16.augusts, Nr.33(680).

the compliance of the state budget law with the *Satversme*, and it has been done several times in the Constitutional Court's case law.[1526]

In drafting a state budget law, the legislator has the right and also the obligation to include in the state budget law and in its accompanying package of laws matters that pertain to the particular fiscal year and are closely linked to the use of the state financial resources and not to use this procedure for introducing any other amendments.[1527] In drafting such amendments, sometimes a solution for the transitional period is offered; however, it should be kept in mind that the establishment of a transitional period could be based on considerations related to the need of establishing the stability of the state budget; however, the mere fact that the regulation is temporary as to its nature does not mean that, for example, differential treatment could be justified.[1528] The scope and content of the package of draft budget laws is a regular problem because, due to the specificity of its review, often such issues that are not at all related to the state budget for next fiscal year are included in it. President Egils Levits has underscored that "year after year, customary practice can be observed when ill-considered, legally poorly developed and debatable reforms are included in the budget package, the adoption of which is ensured by the constitutional specificity of the procedure for adopting the budget. The budget package serves as a kind of post-modern Article 81 of the *Satversme*, which allows institutions of executive power to push through, swiftly and effectively, the desired regulation through the *Saeima*."[1529]

Initially, the Constitutional Court accepted for a long time the legislator's practice of implementing reforms in urgent procedure by

1526 See more: Ķinis U., Amoliņa D. Konstitucionālā kontrole valsts finanšu jautājumos Satversmes tiesas praksē. Jurista Vārds, 2013.gada 26.februāris, Nr.8(759).

1527 Judgement by the Constitutional Court of the Republic of Latvia of 21 December 2017 in Case No.2017-03-01, Para 17.2.

1528 Judgement by the Constitutional Court of the Republic of Latvia of 15 May 2018 in Case No.2017-15-01.

1529 Valsts prezidenta Egila Levita 2020.gada 11.decembra paziņojuma Nr.17 "Par valsts budžeta likumu paketi 2021.gadam" V sadaļa.

using the package of draft budget laws.[1530] However, the Constitutional Court has found that verifying the content of the budget package is an element of good legislation and has recognised that the legislator had included the contested legal norm in the package of draft budget laws unfoundedly.[1531] The Constitutional Court has also imposed restrictions on proceeding with the package of draft budget laws. Namely, "in view of the special procedure for examining the package of draft budget laws, the *Saeima* must assess whether all draft laws of the state budget package, submitted by the Cabinet, meet the criteria set in Section 87.1 of the Rules of Procedure of the *Saeima*. If a draft law does not meet these criteria then the *Saeima* must exclude it from the package of draft budget laws."[1532] Currently, pursuant to the Constitutional Court's case law, the legislator is obliged to not include into the package of draft budget laws provisions that are not compatible with the criteria referred to in Section 87.1 of the Rules of Procedure of the *Saeima* and do not pertain to the state's financial operations in the particular fiscal year.[1533]

3. State budget revenue. The state budget revenue mainly consists of taxes, fees and paid services. Taxes are established to ensure state revenue, fees – to reach certain policy aims (e.g., to stimulate certain actions or deter from them, as well as to cover the costs of public administration) but paid services - to cover the prime costs. The state social insurance special budget, which is part of the state budget, is separated from the basic state budget. Appropriations are allocated to institutions within the framework of the state budget. Budget programmes, which are not intended for specific sectors, can be created. Likewise, a derived public person may have an independent budget.

1530 Judgement by the Constitutional Court of the Republic of Latvia of 19 December 2011 in Case No.2011-03-01, Para 18, and Judgement of 21 December 2017 in Case No.2017-03-01, Para 17.

1531 Judgement by the Constitutional Court of the Republic of Latvia of 6 March 2019 in Case No.2018-11-01, Para 18.2.

1532 Judgement by the Constitutional Court of the Republic of Latvia of 25 March 2015 in Case No.2014-11-0103, Para 18.1.

1533 Judgement by the Constitutional Court of the Republic of Latvia of 6 March 2019 in Case No.2018-11-01, Para 18.2.

An institution's own revenue does not automatically mean that the institution would have an independent budget. As regards public agencies, there are special conditions for drawing up their budget, which allows greater independence from the state budget. Sometimes the revenue from a certain fee is accrued and spent only for a particular purpose, e.g., entrepreneurship risk state duty.

In assessing introduction of taxes, the Constitutional Court has concluded that the obligation to pay taxes per se does not infringe upon a person's fundamental rights, established in the *Satversme*, and the state is able to fulfil its functions and obligations in the area of ensuring fundamental rights with the help of taxes. Taxes is established to ensure public welfare. The state enjoys great discretion in defining and implementing its taxation policy. It comprises the right to choose tax rates and the categories of persons to be taxed, as well as to define the details of the respective regulation.[1534] The obligation to pay a tax always means a restriction on the right to property. A person's obligation to pay a state fee or a local government fee must be assessed as a restriction on a person's right to property.[1535] However, regulation on taxes should be justified by valid and reasonable considerations, taking into account that each tax is a solidarity payment, supplementing the state budget by resources that finance important measures for the entire society, i.e., in this way persons assume shared responsibility for satisfying society's needs and maintaining the State of Latvia. In exercising its discretion in the area of taxation, the legislator must comply with the principles of justice, solidarity, and timeliness.[1536]

However, this does not mean that a seemingly inexpedient tax could be contested in court and declared invalid. The scope of the constitutional review is narrower with respect to the procedure for calculating the amount of taxes. The Court has recognised that two

1534 Judgement by the Constitutional Court of the Republic of Latvia of 20 May 2011 in Case No.2010-70-01.

1535 Judgement by the Constitutional Court of the Republic of Latvia of 12 February 2016 in Case No.2015-13-03, Para 15.2.

1536 Judgement by the Constitutional Court of the Republic of Latvia of 19 October 2017 in Case No.2016-14-01, Para 26.

aspects should be mainly taken into account in reviewing the constitutionality of a tax, i.e., whether the tax is not confiscatory in its nature (excessive) and whether it does not create inequality among taxpayers.[1537] The European Court of Human Rights, in assessing the solidarity tax, introduced in France, also has recognises that the matter of introducing a tax is within the state's discretion, and recognising it as being unlawful mainly depends on whether the tax does not impose an excessive financial burden upon a person.[1538] Taking into account the experience of other countries, courts are resolving the issue of equal distribution of the tax burden; i.e., the Federal Constitutional Court of Germany recognised in its judgement of 27 June 1991 a violation in unequal distribution of the tax burden between salaries and capital, demanding reasonable distribution of the tax burden.[1539] The Constitutional Court of the Republic of Latvia also found that, in determining the solidarity tax rates, the equality principle had been violated, however, no infringement was found with respect to the tax itself. Progressivity of a tax per se does not constitute a violation of the equality principle; however, it might happen that the constitution of a certain state defines a value or an approach leading to such a conclusion.[1540]

Often, reliefs are established to taxes and fees. However, it should be taken into account that a person's legitimate expectations that the tax relief will not be revoked even if the priorities in the economic policy change, are not protected to the same extent as a person's legitimate expectations in other cases, when the right to property is restricted.[1541] In defining relief, the conditions of the state aid must be

1537 Judgement by the Constitutional Court of the Republic of Latvia of 25 March 2015 in Case No. 2014-11-01013, Para 20, Judgement of 8 June 2007 in Case No. 2007-01-01, Para 24.

1538 Decision by the European Court of Human Rights of 4 January 2008 on the Refusal to Initiate Case NO. 25834/05 and 27815/05 Imbert de tremiolles v. France.

1539 BVerfG, 84 BVerfGE, No. 18, at 239.

1540 Leonard P. Martinez. To Lay and Collect Taxes: The Constitutional Case for Progressive Taxation. Yale Law & Policy Review. 1999. Volume 18. p.111 – 154.

1541 Judgement by the Constitutional Court of the Republic of Latvia of 6 December 2010 in Case No.2010-25-01.

taken into account, relief to one group of merchants in certain conditions constitutes state aid and its admissibility must be examined in accordance with one of the aims or exceptions.

Unfortunately, tax laws tend to be and are very complicated. In this area, the legislator still has a lot to do, taking into account that a tax law so complicated that a person is unable to understand it would be contrary to the constitutional provisions.[1542]

4. Adoption of the state budget. Any budget, adopted without the parliament's consent, is unlawful. In Prussia, at the beginning of constitutional monarchy, the Cabinet of Otto von Bismarck governed the state for four years without a budget that had been approved by the Landtag; however, after the Cabinet successfully implemented its foreign policy course, the Landtag accepted the general report on the budgets of these four years and granted indemnity to the Cabinet. The constitutional conflict ended with the recognition of the parliament's budgetary right. Nowadays, the tradition to draft the budget for one calendar year has established. The early German constitutions envisaged multi-annual budgets but the Constitution of the Netherlands of 1815 divided the budget into extraordinary, adopted for a year, and ordinary, to be drafted for several years. Initially, it was held that exactly these annual budgets allowed the people's representation to exert sufficiently effective control over the executive power.[1543] This is exactly the reason why the budget is binding also upon the *Saeima* itself because the *Saeima* must reckon with the budget it has adopted. In adopting a law or another decision related to expenditure not provided for in the budget, the decision must envisage resources for covering this expenditure.[1544] This can be indicated in both the annotation to the draft law and the transitional provisions of the law. The said principle is set out in the second part of Article 66 of

1542 Judgement by the Constitutional Court of the Republic of Latvia of 19 June 2010 in Case No.2010-02-01, Para 9.4.2.

1543 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.259-260.

1544 Judgement by the Constitutional Court of the Republic of Latvia of 27 November 1998 in Case No.01-05(98), Para 1 of the Findings.

the *Satversme*, which, upon Arveds Bergs' proposal, was taken over from the Prussian Constitution.[1545] However, the state budget is not static. The practice of amending the state budget once a year has been discontinued; however, this is dealt with by reallocation of appropriations with the consent of the *Saeima* or the responsible committee of the *Saeima*. Within the framework set in the law, the Cabinet does not even need the *Saeima*'s involvement in the reallocation of resources.

5. Legal nature of the budget, consequences of its rejection. The legal nature of the budget causes confusion related to the dual nature of the budget as a special act. The budget in its substantive manifestation is an act of administration but formally it is adopted as a legislative act. The formal manifestation of the budget is caused by political motives, the wish to define the parliament's priority in this important area in the life of the state. Whereas the German doctrine, within the concept of the budget as an act of administration, links the parliament's voting on the budget with the valid laws.[1546] Hence, the draft prepared by the executive power is not subject to the parliament but to the laws, adopted by the parliament, which are generally binding also upon the parliament itself. This approach is needed because the budget, adopted by the parliament, is the legal basis for the entire functioning of the public administration and binds all state institutions by the resources allocated to them for implementation of certain aims.[1547] The budget as a legislative act requires compliance with the procedure for adopting a law and is as important as any other law, although the draft budget law is examined in a procedure that differs from the one set for regular draft laws. The inadmissibility of adopting a budget without the parliament's consent follows from the formal understanding of a budget. Budget as an act of administration does not permit the government to amend the laws, adopted by the

1545 See more: Lazdiņš J., Plepa D. Satversmes 66.pants. In: Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019, 75. -76.lpp.

1546 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.258.

1547 Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A.Gulbis, 1930, 141.lpp.

parliament, in the procedure for amending the budget, denying resources that are required for enacting the law. The Constitutional Court also has pointed to the need for alignment,[1548] noting that "pursuant with the principle of a state governed by the rule of law, the laws that the *Saeima* has adopted are binding upon it." Legal norms that define concrete parts of the state budget in various laws, disregarding the meaning and purpose of the state budget law (actually, the *Saeima* "divides" the budget expenditure by other laws and "quotas" set in them) may not exist.[1549] This could be, indirectly, compared to the situation in France when the proposal was made to not grant a credit for maintaining the Representation of France in Vatican, which would have liquidated the Representation itself.[1550] The government has at its disposal a sufficient amount of legal measures to ensure, to a certain extent, management, independent from the parliament. A typical situation can be mentioned, where the parliament has allowed the Cabinet to make restricted reallocations of financial resources, to adjust financial flows, within the framework of appropriation, to assume and to continue meeting long-term commitments, create a fund of accruals or special budgets (also with ear-marked tax revenues). The parliament may also not define precisely decoded appropriations but only the frameworks, which can be quire extensive, e.g., in many countries the resources intended for defence or national security are granted as a total amount but detailed expenditures are assessed by the Cabinet or a special parliamentary committee. Likewise, the practice of granting quotas to the deputies is to be negatively assessed, when it is allowed, by proposals before the second reading, to receive financing for the projects intended by some deputies. To facilitate greater openness and transparency in deciding on financial matters,

1548 Judgement by the Constitutional Court of the Republic of Latvia of 3 February 2012 in Case No.2011-11-01, Para 16.

1549 Judgement by the Constitutional Court of the Republic of Latvia of 29 October 2020 in Case No.2019-29-01.

1550 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.258—261.

such proposals should be submitted and examined in deciding on the entire state budget, in as early a stage as possible.[1551]

Judging theoretically, the parliament's right to review and adopt the budget entails also the right to reject this budget. Sergey Kotlyarevsky did not recognise such rejection as being lawful. The act of rejecting the budget, suspends the functioning of the entire state apparatus, the parliament itself being a part of it. Only in the Middle Ages, the mighty feudal lords could freely deny the monarch resources, on which they agreed as equal parties to the agreement. Therefore, rejection of a budget is an extraordinary measure at the parliaments disposal to respond to the government's malevolence. Assessing the purposefulness of such rejection is a political matter. The rejection of a budget leads to a situation, where there is no fiscal plan for the state but the government may not implement the rejected budget. Paul Laband considered that the government had the right to implement the rejected draft law, substantiating this by a national need. Whereas Georg Jellinek held that such action was not justified and dead-end emptiness emerged in the regulation on the budgetary law.[1552] Parliamentary governments are often unable to manage economy properly because each economic activity requires long-term calculations ad care.[1553]

Rejection of a budget always means a deep legal crisis, and, within the life of a state, such action by the parliament is not desirable. From this vantage point, the regime of parliamentarism, which envisages solidarity between the people's representation and the government, prevents the ensuing conflict.[1554] The interests of expedience in the state's functioning require restricting, to a certain extent, the parliament's right to reject freely the draft state budget. A state governed by the rule of law does not permit such budgetary antinomy. The

1551 Valsts prezidenta Raimonda Vējoņa 2016.gada 9.decembra raksts Nr.637, 6.lpp. https://www.president.lv/storage/items/PDF/20161209_Valsts_prezidenta_v%C4%93stule.pdf

1552 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.262.

1553 Bergs A. Parlaments un saimniecība. Latvis, 1924. 4.janvāris.

1554 Котляревский С.А. Власть и право. Санкт-Петербург: Лань, 2001, с.263.

parliament's unrestricted right to reject the draft budget destabilises even more the ability of the parliamentary government to implement consistent economic policy. Therefore it is logical that rejection of the state budget leads not only to the Cabinet's resignation but that the *Saeima*'s obligation to form a new Cabinet sets in, with the same or another model of collation parties or a minority government. If the parliament is unable to form the government, it may be dissolved. The *Saeima*, in examining the draft state budget, may establish how successfully the Cabinet has implemented the national policy because the draft state budget not only reflects the guidelines for the state's future development but also reveals how successfully the government has implemented the decisions adopted previously. Rejection of the draft state budget cannot be without consequences, and, as the result, political accountability sets in. Usually, rejection of the draft state budget means that the submitter has lost the *Saeima*'s confidence.[1555] Analysis of the provisions set out in Section 19 of the Cabinet Structure Law, which provide that the Cabinet must be considered resigned if during voting the *Saeima* rejects the state draft budget submitted by the Cabinet in the first or second reading, allows drawing the following conclusions. Firstly, not transferring the draft state budget to the *Saeima*'s committees is not the grounds for expressing no confidence in the Cabinet because there might be technical reasons for that. Secondly, rejection of a draft law, included in the package of the state budget, is not the grounds for no confidence in the Cabinet, if adjustments that follow from this fact to the draft stage budget law can be made. Thirdly, rejection of amendments to the state budget law in the first or second reading is not the grounds for no confidence in the Cabinet. The latter conclusion follows from the textual formulation of the normative regulation and is based on the findings made in the inter-war doctrine that the rejection of amendments to the state budget is not an evidence of the government's inability to cope with

1555 Amoliņa D. Piezīmes pie Latvijas Republikas Satversmes 66.panta. Jurista Vārds, 2011.16.augusts, Nr.33(680).

regular matters of the state but only with extraordinary matters.[1556] However, from the theoretical perspective, such an opinion and normative regulation cannot be upheld because the government's proposal to amend the state budget indicates that the government is unable to implement the national politics in a way that was accepted by the parliament, and the proposal to amend the state budget shows that the task, given by the parliament, has not been fulfilled because the financial estimates had been wrong. Therefore the linking of adoption of amendments to the state budget with the government's political accountability is valid, because, substantially, the parliament, in examining this proposal, must decide whether the national politics, implemented by the government complies with the parliamentary majority's will and whether the government, being unable to implement the previously approved state budget, retains the parliament's confidence.[1557]

1556 Mucenieks P. Ministru kabineta iekārta. Tieslietu Ministrijas Vēstnesis, 1925, Nr.5/6., 777.lpp.

1557 Amoliņa D. Piezīmes pie Latvijas Republikas Satversmes 66.panta. Jurista Vārds, 2011.16.augusts, Nr.33(680).

Chapter 9

JUDICIAL POWER

I. Branch of the judicial power within the system of separation of powers

1. Need for the judicial power. The task of the judicial power is to ensure that, in the administration of justice, the national constitution, laws and other legal acts, the principle of legality would be complied with and human rights and freedoms would be respected.[1558] Independence of the judicial power is a mandatory precondition for a democratic state governed by the rule of law and one of the basic elements in the European constitutional tradition.[1559] A democratic state governed by the rule of law, separation of powers and protection of human rights are possible only in states where the independence of courts is respected and ensured. The independence of courts is the central element of any democracy – there is no democracy and protection of its values without the judicial power.[1560] An independent court ensures the protection of a person's freedom against the arbitrariness of power, as well as actual existence of a state governed by the rule of law. It is an effective guarantee against any dictatorship, willing to conceal injustice and arbitrariness behind the façade of a

1558 Judgement by the Constitutional Court of the Republic of Latvia of 18 October 2007 in Case No.2007-03-01, Para 26.

1559 Judgement by the Constitutional Court of the Republic of Latvia of 25 November 2010 in Case No.2010-06-01, Para 14.1.

1560 Barak A. The Judge in a Democracy. Princeton and Oxford: Princeton University Press, 2006, pp.76 – 77.

state government by the rule of law.[1561] "No state governed by the rule of law is conceivable without an independent court, able to defend the inhabitants of the state against administrative arbitrariness, unconstitutional laws and other acts."[1562] The resilience of a democratic state governed by the rule of law against non-democratic threats and authoritarian arbitrariness depends on the ability of the judicial power to defend a democratic state governed by the rule of law. If the judicial power succumbs to non-democratic and authoritarian pressure a democratic state governed by the rule of law may collapse. It should not be forgotten that the failure of Weimar democracy, to a large extent, was facilitated by the judicial power's scepsis towards democracy and amicability towards its opponents. [1563] If democracy could fail in Germany of Goethe, Kant and Beethoven, it can happen anywhere, and, therefore, democracy should have combat power to prevent it from ever happening again. In a democratic state governed by the rule of law, a judge's duty is to defend the constitution and democracy. The experience of the Second World War and the Holocaust legitimises the judicial power's responsibility, in young and old democracies alike, to fight for and defend democracy. Every judge in the state should be aware of their responsibility for the sustainability of democracy in their legal system and of the duty to protect the constitutional values against those who would want to abolish the democratic state order.[1564] In a democratic state, judges are usually the final stage in a long chain of decision-making, having the final say. Civic, decisive and courageous protection of the statehood is the duty of each judge because the strength of a state governed by the rule of law lies in the weakest link of the chain.[1565]

1561 Sajȯ A., Uitz R. The Constitution of Freedom. An Introduction to Legal Constitutionalism. Oxford: Oxford University Press, 2017, p.322.

1562 Meikališa Ā. Tiesu vara Latvijā. Rīga: Avots, 1997, 15.lpp.

1563 See more: Möller H. Die Weimarer Republik. Eine unvollendete Demokratie. München: Deutscher Taschenbuch Verlag, 2006.

1564 Barak A. The Judge in a Democracy. Princeton and Oxford: Princeton University Press, 2006, pp.20 – 23.

1565 Krūmiņa V. Administratīvajai justīcijai – 100. Jurista Vārds, 2021.gada 16.marts, Nr.11(1173).

The Court of Justice of the European Union has underscored that the independence of courts should be ensured not only with respect to the Court of Justice of the European Union but also to the Member States' systems of courts since, otherwise, it would be impossible to reach the aims of the Union. The Court has underscored: "The concept of independence presupposes, in particular, that the body concerned exercises its judicial functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, and that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions."[1566] The Court of Justice of the European Union has reminded that "the requirement of judicial independence forms part of the essence of the fundamental right to a fair trial, a right which is of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 the Treaty of the European Union, in particular the value of the rule of law, will be safeguarded."[1567] Similarly, also the European Court of Human Rights has emphasised that the right to a fair trial is one of the human rights that ensure the total effectiveness of the system of human rights protection in Europe. The task of the judicial power is to ensure the existence of a state governed by the rule of law and just and honest application of law.[1568]

Independence of the judicial power is one of the pillars of a state governed by the rule of law.[1569] Independent judicial power ensures that the power of men is transformed into the power of law, facilitating the accessibility of effective legal remedies against the state to

1566 Judgement by the Court of Justice of the European Union of 27 February 2018 in Case No. C—64/16 Associação Sindical dos Juízes Portugueses, Para 44.

1567 Judgement by the Court of Justice of the European Union of 25 July 2018 in Case No.C-216/18 Minister for Justice and Equality, Para 48.

1568 Spano R. "Judicial Independence – The Cornerstone of the Rule of Law". https://www.echr.coe.int/Documents/Speech_20200903_Spano_Justice_Academy_Ankara_ENG.pdf

1569 Bingham T. The Rule of Law . London: Allen Lane, pp.91 – 92.

all persons. Since nobody can administer justice for themselves, the independence of courts requires structural separation of the judicial power from other powers and professional freedom in applying legal norms.[1570] Every judge must be aware of their responsibility for the rule of law and this imposes upon them special obligations in a democratic state governed by the rule of law.[1571]

The courts' struggle for their proper place within the system of separation of powers began in England. Already in 1215, Magna Carta Libertatum included several provisions on courts and legal proceedings. By issuing, in 1679, Habeas Corpus Act, the practice was consolidated that courts could issue orders to protect inhabitants against arbitrariness of the king's administration.[1572] However, the English courts restricted the executive power and not the legislative power. The Constitution of the USA of 1787 and the following judgements by the Supreme Court of the USA for the first time established the court's control over the legislative power.[1573] Administration of justice is a specific form, in which the judicial power is manifested, by resolving disputes and conflict on the basis of valid law. Litigators may be not only natural persons or private law legal persons and state but also local government institutions, and even the state itself.[1574] The judicial power, in performing its functions, is irreplaceable for the functioning of the state apparatus. Alexis de Tocqueville wrote that the supreme aim of the judicial power was replacing the idea of violence by the idea of law, defining legal boundaries between the government and

1570 Sajȯ A., Uitz R. The Constitution of Freedom. An Introduction to Legal Constitutionalism. Oxford: Oxford University Press, 2017, p.319.

1571 Kūtris G. Jurista īpašais pienākums pret valsti. Jurista Vārds, 2010.gada 19.janvāris, Nr.3(598).

1572 Никеров Г.И. Судебная власть в правовом государстве (опыт сравнительного исследования). Государство и право, 2001, №3, с.16.

1573 Ibid., с.16-17.

1574 Алиев Ш., Магерром О. Научно-практический комментарий к конституции Азербайджанской Республики. Баку: Юридическая литература, 2000, с.555.

the force that it used.[1575] The judicial power is the means by which law influences relations that existing society.[1576]

It is customary to call the judicial power the third power; however, this does not diminish its importance and role alongside the legislative and executive powers. Alexander Hamilton held that the judicial power was weak because it lacked real mechanisms for influencing the other two powers, it was difficult for it to protect itself against the arbitrariness of the other two powers, and it could not endanger the people's freedom, until becoming independent from the other two powers.[1577] The judicial power is weak because it is not founded on a political mandate, granted by the people as the legislative power is, and it has not mechanism for coercive exercise of power, in difference to the executive power. The judicial power should not be granted the means of the legislative and executive power, as this would cause real threats for the people's freedom. The judicial power's authority is based on civilised society's respect for law and the court as an entity that interprets law professionally and applies it fairly.[1578] Gvido Zemrībo wrote : "I am categorically against calling the judicial power, as it is often done, "the third power", believing that the legislative power is the first power, the executive power – the second, and the judicial power – the third one, placing these powers not horizontally, each next to the other, but vertically, one beneath the other. It should be understood, once and for all, that these three powers supplement each other and, if necessary, check each other. Just like we cannot say what is more important in the human body – the heart, the lungs or the brain. Each organ has its own functions but

1575 де Токвиль А. Демократия в Америке. Москва: Весь мир, 2000, с.120.

1576 Алиев Ш., Магерром О. Научно-практический комментарий к конституции Азербайджанской Республики. Баку: Юридическая литература, 2000, с.556.

1577 Hamilton A. The Federalist No.78. In: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.591-600.

1578 Алиев Ш., Магерром О. Научно-практический комментарий к конституции Азербайджанской Республики. Баку: Юридическая литература, 2000, с.557.

they are unable to function without the others. The same applies to the body of a state."[1579]

The legislative power defines the rules for using force, whereas the judicial power determines its application in a particular case and the scope of its application, in compliance with the precepts laid down by the legislator. Since the judicial power may not and does not have its own coercive apparatus it can neither detain the suspect nor punish the guilty person. This is a function of the executive power – to enact the court's precepts, issued in accordance with the rules, established in law by the legislator. The executive power's actions may be not directly based on the court's precepts because life sometimes demands quick actions. However, the provision on the court as the one who administers justice remains unchanged. Therefore, the legislator defines how far the executive power may exert its police power without the court's knowledge. Charles-Louis de Montesquieu wrote that, unless the judicial power were separated from the legislative and executive power, there would be no freedom. If it were united with the legislative power then the life and freedom of citizens would be placed in the hands of arbitrariness, or the judge himself would create laws for the trial. If the judicial power were united with the executive power then the judge would get the opportunity to become the oppressor, the persecutor.[1580] Only a court has the right to administer justice and this determines the court's place among institutions of state power, as well as the judge's status. No other institution or official has the right to administer justice.[1581] In contemporary democracies, attempts are made to localise these three powers in special and independent institutions, related to the various functions of the state power that they perform. The principle of separation of powers is of particular importance for the judicial power, which has been

1579 Zemrībo G. Par tiesām, Satversmi un likumiem. Latvijas Jurists, 1993, Nr.6.

1580 Montesquieu C.L. The Spirit of Laws. https://oll.libertyfund.org/title/montesquieu-complete-works-vol-1-the-spirit-of-laws

1581 Lietuvos Respublikos Konstitucinis Teismas nutarimas 1999 m. gruodžio 21 d. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta368/content

entrusted to special institutions, independent from the legislative and executive power.

The judicial power does not act voluntarily, it is bound by and based on law; the actions of the legislator and, partially, of the government comprise an element of discretion, usually related to the justification of expedience. The difference between the administration, which enacts laws, and the court can be illustrated as follows: a court would look back at a legal situation already created, whereas administrations look into the future, performing public tasks and, thus, would create and regulate concrete legal and actual relations, within the framework of existing law and on the basis of it.[1582] A typical tasks of judicial powers is ensuring rights, and the court determines what is legal at its will. "Whereas administrations, also the "executive administration", strictly bound by law, use law "instrumentally" in performing public tasks, when it, a efficiently and purposefully as possible, on the basis of law and within the framework of it, forms and regulates legal and actual relations."[1583] The existence of judicial institutions by far does not mean the existence judicial power. The formation of an independent and autonomous judicial power required a long period, in which constitutionalism evolved and democratic forms of government became established. By its definition, the judicial power is incompatible with absolute power, totalitarian, authoritarian regimes.[1584] "A court is the last boundary of democracy, the last bastion; if it is subject to "law of phone" or if the court rulings may be disregarded with impunity then there is no constitutional order in the state, and the constitution, even if such exists, is not worth the paper, on which it has been written."[1585]

1582 Хвостов В.М. Обшая теория права. In: Хропанюк В.Н. Теория государства и права. Хрестоматия. Москва: Интерстиль, 1998, с.344.

1583 Cipeliuss R. Vispārējā mācība par valsti. Rīga: AGB, 1998, 74.lpp., 242.lpp.

1584 Лейбо Ю.И., Баглай М.В., Энтин Л.М. (ред.). Конституционное право зарубежных стран. Москва: Норма- Инфа М, 2003, с.321.

1585 Страшун Б.А. (ред.). Конституционное (государственное) право зарубежных стран. Москва: БЕК, 2000, с.644-645.

2. Principle of the independence of courts. The principle of separation of powers requires establishment of an independent court in the state so that it would act in the sovereign's interests, guaranteeing the protection of each person's freedoms and rights.[1586] In a democratic state governed by the rule of law, organisational and functional independence of the judicial power must be ensured. The organisational independence of the judicial power is ensured, first of all, by guarantees for the judge's appointment into office, for their inviolability and irrevocability. Whereas the functional independence of the judicial power is ensured by the judicial power being outside relations of subordination with any other power and by the professional liberty to make decisions and determine their content. A court is independent in determining the applicable legal norms and the content of its decision within the framework of law.[1587]

Article 92 of the *Satversme*, providing for every person's right to a fair trial, requires ensuring a fair court institutionally – an independent and objective institution of the judicial power, which examines cases in due procedure, compatible with the state governed by the rule of law.[1588] Only independent judicial power can ensure fair outcome of legal proceedings, which is the foundation of legality. Anyone, with respect to who justice is administered, is interested in ensuring judges' independence.[1589]

Article 83 of the *Satversme* provides for the respective guarantee, stating that judges are independent. "This constitutional principle means that the judge, who reviews the case, shall not be subjected to any influence. Therefore the duty not to interfere with the process of reaching the judgment refers not only to the legislator and executive

1586 Osipova S. Tiesneša finansiālā drošība varas dalīšanas principa kontekstā. In: Osipova S. Nācija, valoda, tiesiska valsts: ceļā uz rītdienu. Rakstu krājums. Rīga: Tiesu Namu Aģentūra, 2020, 432.lpp.

1587 Sniedzīte G. Tiesnešu tiesības. Jēdziens un nozīme Latvijas tiesību avotu doktrīnā. Rīga: Latvijas Vēstnesis, 2013, 235. – 238.lpp.

1588 Judgement by the Constitutional Court of the Republic of Latvia of 5 March 2002 in Case No.2001-10-01, Para 2 of the Findings.

1589 Judgement by the Constitutional Court of the Republic of Latvia of 18 January 2010 in Case No.2009-11-01, Para 7.2.

power but also to the court itself and to officials, who are connected with the realization of the judicial power."[1590] This means the requirement for the judges to be not only institutionally but also intellectually independent and objective. In this respect, de iure and de facto independence of courts needs to be highlighted. De iure independence requires guarantees for independence in the court's work, clearly and precisely set out in law. Whereas de facto independence of courts requires that these safeguards would not only be guaranteed but also ensured in practice in the daily legal reality.[1591] The *Satversme* establishes the following institutional guarantees for courts and judges: the judge being subject only to law, appointing or confirming a judge to the office by the legislator's decision, and a judge's irrevocability from office.[1592]

It is important to be aware that the independence of a court and judges is not an end in itself but is a means for ensuring and reinforcing democracy and legality, as well as a mandatory pre-condition for exercising the right to a fair trial.[1593] Human rights cannot be exercised effectively if judges are not independent. Therefore, independence of judges is important for anyone who turns to court and reckons with fairness in the administration of justice.[1594] Likewise, it should be underscored that the principle of judges' independence requires the system of courts to ensure both the general independence of a court and the judge's independence in each particular case.[1595] This is

1590 Judgement by the Constitutional Court of the Republic of Latvia of 4 February 2003 in Case No.2002-06-01, Para 2.4. of the Findings.

1591 See more: Spano R. The Rule of Law as the Lodestar of the European Convention on Human Rights: the Strasbourg Court and the Independence of Judiciary. European Law Journal, Vol.26, 2020, No.3/4, pp.1 - 17; https://onlinelibrary.wiley.com/doi/epdf/10.1111/eulj.12377

1592 Judgement by the Constitutional Court of the Republic of Latvia of 18 October 2007 in Case No.2007-03-01, Para 26.

1593 Judgement by the Constitutional Court of the Republic of Latvia of 26 October 2017 in Case No.2016-31-01, Para 19.

1594 Judgement by the Constitutional Court of the Republic of Latvia of 18 January 2010 in Case No.2009-11-01, Para 7.1.

1595 Judgement by the Constitutional Court of the Republic of Latvia of 23 November 2015 in Case No.2015-10-01, Para 17.3.

the reason why the principle of a judge's independence also requires the legislator to establish such a system of courts that would ensure both the general independence of a court and a judge's independence and objectivity in each particular case.[1596]

The Constitutional Court, in specifying the general legal principle, reflected in Article 83 of the *Satversme*, has underscored that, in a democratic state governed by the rule of law, judges' independence is essential to ensure checks and balances between the branches of state power. Judges' independence is linked to the following essential guarantees: guarantees for holding the judge's office (procedure for appointing or confirming judges, qualification required for appointment, guarantees for holding the office, conditions on promotion or transfer to another office, suspending and terminating the mandate), inviolability of a judge, financial security (guarantees of social and financial nature), a judge' s institutional (administrative) independence, and the actual independence of the judicial power from the political influence of the executive or the legislative power. All these guarantees are closely interrelated and if even one of them is restricted disproportionally, the principle of judges' independence is violated and, thus, fulfilment of the court's basic functions and ensuring of human rights and freedoms is endangered.[1597]

3. Judicial council. Judicial councils are a comparatively recent phenomenon in the development of a democratic state governed by the rule of law, which are established as constitutional institutions, formed by judges themselves, issues of judicial power have been transferred into the councils' competence. As underscored by the Venice Commission, an appropriate method for guaranteeing judicial independence is the establishment of a judicial council, which should be endowed with constitutional guarantees for its composition, powers and autonomy. The majority of the members of the judicial

1596 Judgement by the Constitutional Court of the Republic of Latvia of 16 July 2020 in Case No.2019-23-01, Para 13.

1597 Judgement by the Constitutional Court of the Republic of Latvia of 26 October 2017 in Case No.2016-31-01, Para 21.

council should be elected by the judiciary itself, whereas proper democratic legitimacy for its other members should be ensured.[1598]

The judicial council, through mechanisms of self-governance and autonomy, ensures independence of courts, implementation of principles of a state governed by the rule of law, as well as consolidation of human rights. The judicial council's competence should include matters of the career path of judges, judicial training, matters of judicial discipline and ethics, matters of administration of the court system and financial matters, as well as participation in the legislative process of draft laws pertaining to matters of the judicial power.[1599] The Constitutional Court also has underscored that the Judicial Council has been established for developing the policy and strategy of the court system, improving organisation of work within the system of courts, as well as for representing the opinion of the judicial power. The *Saeima* has the duty to examine, as meticulously as possible, proposals submitted by the Judicial Council and its opinions on draft laws that impact the functioning of the judicial power. Interaction between the legislator and the institution representing the judicial power, i.e., the Judicial Council, should be aimed at reinforcing democracy and functioning of a state governed by the rule of law, as well as a ensuring, as effectively as possible, the right to a fair trial. In introducing reforms in the judicial power, the Judicial Council and the legislator or the party drafting the law should interact during all stages of the reform.[1600]

Establishment of the Judicial Council in the Latvian legal system has been an essential element in the reform of courts; however, the request to expand the Judicial Council's functions and responsibility is even a m ore positive development, as it would allow this

1598 See more: European Commission for Democracy through Law (Venice Commission). Opinion No. 403 / 2006. Judicial Appointments. https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2007)028-e

1599 See.: European Network of Councils for the Judiciary. Distillation of ENCJ Principles, Recommendations and Guidelines. 2004 – 2017. https://pgwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/Reports/ENCJ_Distillation_Report_2004_2017.pdf

1600 Decision by the Constitutional Court of the Republic of Latvia of 28 March 2012 on Terminating Legal Proceedings in Case No.2011-10-01, Para 30.

institution to become an important institution of the state power, ensuring the independence, accountability and development of the judicial power.[1601]

II. Constitutional Jurisdiction

1. Constitutional jurisdiction in Latvia. Roberts Akmentiņš, in his lecture of 1934 on reforming the *Satversme*, underscored: "A major deficiency of our constitution is the fact that we have not provided for the possibility to examine the constitutionality of laws. In those states that do not have a two-chamber parliament the need for the constitutional review of laws, to eliminate as soon as possible contradictions between laws and the constitution, is felt most acutely."[1602] The people, by adopting the constitution directly or by indirectly sanctioning its adoption, have defined the precepts that they themselves and the institutions of state power, legitimised by them, have to follow in exercising the public power. The people expect their will to be respected not only at the time when the constitution is adopted but also afterwards. All restrictions on a branch of power, established in the constitution, are meaningless in the absence of a mechanism for repealing an act that violates such a restriction.[1603] Constitutional jurisdiction became possible when derogation from the principle of the legislator's supremacy became apparent. In monarchist states, Paul Laband writes, the constitutionality review of an officially published law is unlikely because the ruler of the state has the right to issue the law and control the enactment of its precepts.[1604] A similar

1601 Krūmiņa V. Ievads Latvijas Republikas Satversmes VI nodaļas komentāram: tiesu varas evolūcija Latvijā. In: Latvijas Republikas Satversmes komentāri. VI nodaļa. Tiesa. VII nodaļa. Valsts kontrole. Autoru kolektīvs prof. R.Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2013, 25. – 26.lpp.

1602 Akmentiņš R. Latvijas Satversmes reforma. Jurists, 1934, Nr.5(57), 134.sl.

1603 Hamilton A. The Federalist No.78. In: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.591-600.

1604 Фридштейнъ В. Къ вопросу о судебной проверке конституціонности законовъ. Законъ и судъ, 1932, №8(28), с.913.

opinion prevails also in those states that recognise the parliament's dominance. It is impossible that both chambers of the parliament, the president and even the people themselves would be wrong but one judge would be right. "After all, a judge is not the Pope of Rome, speaking ex kathedra. And even all Catholics do not believe in the Pope's infallibility!" Therefore, it would be more correct to leave resolving of complex matters, whether pertaining to politics, economy, religion and other areas, for the parliamentary majority, rather than entrust it to some persons in the judicial power.[1605]

Analysing this thesis in the context of the contemporary understanding of a state governed by the rule of law, the conclusion must be made that it does not function in practice in idealised way. The constitutional court, as "the constitution's mouth", interprets the constitution, its concepts and values sufficiently broadly, as the result of it both the people's and the parliament's discretion is restricted, the justification for it being that the general principles of law are generally binding. Interaction between the constitutional court and the legislator is a complex matter, often causing disputes on who has the final say. Therefore, some political regimes, inclined towards autocracy, do not want to submit to constitutional courts and, if do not liquidate them, then at least paralyse their actions by approving desirable judges or such that they can control.

Over time, judges' right to contest the compatibility of a law with the constitution and to not apply it has been recognised; however, granting of such right to all courts would lead to their arbitrariness. Therefore, by establishing special procedure on how courts should act when they consider that the applicable law is incompatible with the constitution, such arbitrariness is prevented. Establishment of a certain procedure or order is also introduction of the constitutional jurisdiction in a certain state. Granting of the right to courts of general jurisdiction to turn to the constitutional court if they have doubts regarding the constitutionality of a law should be considered as being a

1605 Фридштейнъ В. Къ вопросу о судебной проверке конституціонности законовъ. Законъ и судъ, 1932, №9(29), с.948.

centralised system of constitutional review. However, in states, where such a system has not been introduced, all judges have also the right to examine the matter of the compliance of a legal norm with a norm of higher legal force. In Latvia, before introduction of the institute of concrete review, such right of judges to conduct constitutionality review, as pointed out by, followed from the interpretation of Article 1 and Article 83 of the *Satversme*.[1606] In the legal reality of the inter-war period, the supreme cassation court of Latvia, i.e., the Latvian Senate, in some rulings, reserved the right to review the constitutionality of the applicable legal norms.[1607] This approach faced the resistance of the *Saeima*'s majority, which defended the right of the *Saeima* as the people's representation to decide politically on the issues related to the interpretation of the *Satversme* and constitutionality of laws.[1608] Irrespectively of the *Saeima*'s position, active law policy discussions regarding the need for the constitutional review took place in Latvia, with more and more scholars of law accepting this idea.[1609] In the course of discussing amendments to the *Satversme* in 1934, Member of the *Saeima* Helmuth Stegman submitted a proposal on establishing a separate State Court for reviewing the constitutionality of laws.[1610] However, this proposal was not supported by the *Saeima*'s majority. Since 1996, the provision on the Constitutional Court has been added to the *Satversme*, and the finding has been consolidated on the level of the *Satversme* that only the Constitutional Court may rule on the incompatibility of a law with the *Satversme*.[1611] Also after the

1606 Levits E. Cilvēktiesību piemērošanas pamatjautājumi Latvijā. In: Cilvēktiesības pasaulē un Latvijā. Ziemele I. (red.) Rīga: Izglītības soļi, 2000, 264.lpp.

1607 Pleps J. Satversmes iztulkošana. Rīga: Latvijas Vēstnesis, 2012, 119. - 122.lpp. See more: Vīksna E. Normatīvo tiesību aktu satversmības kontrole Latvijā (1918 – 1934). Jurista Vārds, 2014.gada 12.augusts, Nr.31(833).

1608 See more: Pleps J. Parlaments pret tiesu, prezidents pret parlamentu. Deputāta Jāņa Goldmaņa imunitātes lietā. Jurista Vārds, 2010.gada 6.aprīlis, Nr.14(609).

1609 Rīgas Juristu Biedrības sapulce 13.septembrī 1923.g. 5/6 Tieslietu Ministrijas Vēstnesis, 1923, Nr.5/6, 237. – 239.lpp.; Akmentiņš R. Latvijas Satversmes reforma. Jurists, Nr.5, 134. – 136.sl.

1610 See more: Rodiņa A., Spale A. Constitutional Status of the Constitutional Court of the Republic of Latvia. Конституционное Правосудие, 2012, No.4, pp.38 – 39.

1611 Endziņš A. Par tiesas pieteikumu Satversmes tiesā. Jurista Vārds, 2002. 10.septembris, Nr.18(251).

Constitutional Court's jurisdiction was expanded, it has been recognised in case law that "the courts of general jurisdiction could not distance themselves from reviewing the compatibility of the national legal norms with the *Satversme* or international agreements binding upon Latvia, i.e., legal acts of higher legal force", admitting, at the same time, that "only the Constitutional Court, upon establishing incompatibility of national legal norms with the *Satversme* or international agreements, entered into and ratified by Latvia, may recognise them as being invalid as of the date of adoption".[1612] Whereas other courts, if a procedural law provides for it directly, in case of doubts, are permitted to not apply a legal norm that is below a law, if it is fully convinced of the norm's incompatibility with legal norms of higher legal force.

The Latvian Constitutional Court has been established in accordance with Hans Helsen's or the European model of constitutional review, envisaging a separate constitutional institution for deciding on constitutional matters, centralisation of constitutional law, existence of preventive (a priori) and posterior (a posteriori) constitutional review, as well as the generally binding force of the Court's rulings (erga omnes)..[1613]

The Constitutional Court is a constitutional institution, established by an amendment to Article 85 of the *Satversme*, granting to it exclusive jurisdiction. The *Satversme* grants to the Constitutional Court the jurisdiction to review the compatibility of laws and other regulatory enactments with the *Satversme* and resolve legally constitutional disputes regarding constitutionality of legal norms. The Constitutional Court also implements the principle of the constitution's supremacy, ensuring constitutional justice and protecting the *Satversme* and the constitutional values included in it.[1614]

1612 Par likuma normas atzīšanu par spēkā neesošu no tās pieņemšanas brīža: Augstākās tiesas Senāta 2002.gada 27.marta lēmums lietā Nr.SKC-192. Jurista Vārds, 2002. 2.jūlijs, Nr.13(246).

1613 Rodiņa A., Spale A. Constitutional Status of the Constitutional Court of the Republic of Latvia. 4 Конституционное Правосудие, 2012, No.4, p.41.

1614 Judgement by the Constitutional Court of the Republic of Latvia of 18 January 2010 in Case No.2009-11-01, Para 5.

The Constitutional Court conducts constitutionality review of the actions by other constitutional institutions, facilitating reaching of the aims set for the principle of separation of powers.[1615] The Constitutional Court, in implementing its competence and supervising the actions by other constitutional institutions, participates in the dialogue of constitutional institutions, within the framework of the principle of separation of powers, aimed at strengthening Latvia's constitutional system and consolidating the principles of a democratic state governed by the rules of law.[1616]

The Constitutional Court was established by an amendment to Article 85 of the *Satversme*, which is included oi the *Satversme*'s chapter on courts. Pursuant with the *Satversme*'s system, the Constitutional Court should be considered as an institution of the judicial power, which, within the Latvian constitutional system, fulfils the function of administration of justice.[1617] Institutionally, the Constitutional Court has been established as an independent institution of the judicial power, the work of which is organised in accordance with the basic principles for organising a court's work.[1618] At the same time, functionally, the constitutionality review, conducted by the Constitutional Court, could be characterised as the function of the negative legislation, as it has been characterised by Hans Kelsen, or quasi-legislative function.[1619] The Constitutional Court influences implementation of the legislative power, by deciding on the validity

1615 Judgement by the Constitutional Court of the Republic of Latvia of 1 October 1999 in Case No.03-05(99), Para 1 of the Findings.

1616 Judgement by the Constitutional Court of the Republic of Latvia of 6 March 2019 in Case No.2018-11-01, Para 18.3.1.

1617 Judgement by the Constitutional Court of the Republic of Latvia of 20 December 2006 in Case No.2006-12-01, Para 9.2.

1618 Rodiņa A., Spale A. Constitutional Status of the Constitutional Court of the Republic of Latvia. 4 Конституционное Правосудие, 2012, No.4, pp.42 – 45.

1619 Ziemele I., Spale A., Jurcēna L. The Constitutional Court of the Republic of Latvia. In: The Max Planck Handbooks in European Public law. Volume III. Constitutional Adjudication: Institutions. Armin von Bogdandy, Peter M Huber and Christoph Grabenwarter (eds.). Oxford: Oxford University Press, 2020, 520 – 521.

of anti-constitutional norms and by engaging in a dialogue with the legislator on improvements to the legal system.

2. Understanding and origins of the constitutional jurisdiction. In construing the model of his ideal state, philosopher Plato underscored that, over time, ideal laws were degrading and no longer complied with the supreme, cosmic laws. That is why he advanced the need for "saving laws" by a special supranational means, i.e., proposed to establish the Nocturnal Council, which is "as an anchor for the entire state, it will save all that is desirable for us, because everything useful is found in it."[1620] The origins of constitutional review can be found already in the Republic of Athens where archons saw to it that the draft laws should not be contrary to the foundations of the state order.[1621] Beginnings of the constitutional review can be seen in Great Britain in at the start of XVII century. The Privy Council had the right to recognise as invalid the laws by the colonial legislatures (legislative assemblies) if they were contrary to the parliamentary laws applicable to the colonies or the general law.[1622] In France of the Middle Ages the constitutional review was conducted by corporations of courts – parliaments who refused to approve of such ordonnances that violated laws of the kingdom or by which ineffective policy was implemented. Moreover, the parliaments – sovereign institutions of supreme courts – had the right to fill "the lacunae" of the legal system by issuing universal edicts with generally binding force.[1623] These parliaments were abolished in 1790. It was provided that judges could not participate in exercising the legislative power either directly or indirectly, nor could they suspend the functioning of an act by the legislative power, sanctioned by the king.[1624]

1620 Платон. Законы. Сгат.: Платон. Законы. Москва: Мысль, 1999, с.426-437.

1621 Вильсонъ В. Государство. Москва: Издание В.М. Сабицина, 1905, с.63.

1622 Конституционное (государственное) право зарубежных стран. Страшун Б.А. (ред.) Москва: БЕК, 2000, с.95.

1623 Гримъ Д.Д. Участіе суда в правотворчестве. Законъ и судъ, 1931, №20, с.639.

1624 Фридштейнъ В. Къ вопросу о судебной проверке конституціонности законовъ. Законъ и судъ, 1932, №8(28), с.911.

The opinion that the constitutional review emerged in the USA in 1803 when the Supreme Court examined case Marbury v. Madison already has turned into a dogma. The authors of the US Constitution were well-versed in the practice of antiquity and Europe of the time, in several issues of "The Federalist", Alexander Hamilton has explored in detail and emphasised the Supreme Court's right to review the constitutionality of laws. Already in 1796, in case Hilton v. U.S., the same Supreme Court verified the compliance of a federal law with the Constitution. Before 1803, the states' courts had delivered more than 20 decisions on recognising the laws of their legislatures as being invalid.[1625] However, case Marbury v. Madison was the first, in which a law, issued by the Congress, was recognised as being inapplicable. As John Marshall, the Chief Justice of the Supreme Court of the USA, explained, courts could not recognise the supremacy of the Constitution, demanded by this document, unless, sooner or later, they would not contest the compliance of laws with it, therefore courts, actually, may repeal such a law.[1626] A pre-war publication comprised harsh criticism of the court's right to contest the constitutionality of a law, thoughts, expressed in the 81st issue of "The Federalist", were used to substantiate this opinion, i.e., that the Supreme Court's authority would be higher than that of the legislation: "The power to explain laws in accordance with the spirit of the constitution will make this institution able to grant such meaning to the law as it would like to and, moreover, its decisions will be in no way subject to revisions or corrections by the legislative corps."[1627] However, the author of the article quoted above indicates incorrectly that these thoughts had been expressed by Alexander Hamilton in the 81st issue of "The Federalist" because it is not specified that the quoted opinion is the account of the opinions expressed by Alexander Hamilton's opponents.

1625 Верховный суд США дело: Marbury v. Madison. In: Конституции зарубежных стран. Маклаков В.В. (сост.) Москва: БЕК,1996, с.47-54.

1626 Marbury v. Madison, 5U.S. (1 Cranch) 137; 2 L. Ed. 60(1803). https://www.law.cornell.edu/supremecourt/text/5/137

1627 Фридштейнъ В. Къ вопросу о судебной проверке конституціонности законовъ. Законъ и судъ, 1932, №8(28), с.911.

Alexander Hamilton responds to this criticism: "This, upon examination, will be found to be made up altogether of false reasoning upon misconceived fact.." The US Constitution does not comprise a single indication that would authorise the courts directly to interpret laws in accordance with the spirit of the Constitution, however, the Constitution should be a model in creating laws and in each case of obvious contradictions laws must "retreat" in front of the Constitution. The right of courts to verify the compliance of laws with the Constitution follows from the general teaching on the limited constitution.[1628] Judge John Marshall must have followed these statements, made in "The Federalist", in the famous case Marbury v. Madison, turning the general teaching on limited constitution into a well-known precedent.

The constitutional court is a special institution that exists as a barrier to ensure protection of the principle of constitutionality and supremacy of law in all branches of state power. The constitutional court's right to review the constitutionality of regulatory enactments is the supreme legal instrument encountered within the legal and political system. This institution has been placed outside the general system of courts and is totally independent from the other branches of power.[1629] In the European understanding, the constitutional court is not judicial power, as noted by Hans Kelsen: "This is exactly the reason why the annulment of unconstitutional acts should be entrusted to an institution that is independent from the parliament and also from any other state power, that is, to a court or the Constitutional Tribunal."[1630] The model, which was based on these principles, was consolidated in Europe after the First World War, envisaging establishment of special institutions that would verify the constitutionality of regulatory enactments. The author of the idea for the European model is Hans Kelsen, and the special constitutional court was founded

1628 Hamilton A. The Federalist No.81. Gram.: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.614-625.

1629 Harutunlan G., Mavcic A. Constitutional review and its development in the modern world (a comparative constitutional analysis). Yerevan; Ljubljana, 1999, p.29.

1630 Kelsen H. General Theory of Law and State. New Brunswick and London: Transaction Publishers, 2006, p.157.

in Austria in 1920. However, the fact that this model was consolidated also in the Constitution of Czechoslovakia before Austria cannot be ignored.[1631] This model is widespread because often, following the downfall of authoritarian or totalitarian regimes, society has not wished to see re-occurrence of gross violations on human rights and has wanted to restrict the concentration of power in the hands of the executive power, which, in many places, relies on the parliamentary majority obedient to it.

3. Models for implementing the constitutional jurisdiction. Each state, taking into consideration the specificity of its legal system and traditions, has preferred one or another model of constitutional jurisdiction. Each of these models is unique in the particular state and it is rather difficult to single out a pure model. It cannot be asserted that one model is better than the other or that one model diminishes the court's activism more; however, the conclusion can be certainly drawn that, in those constitutional courts where judges are approved without limitations to their term in office, there is a risk of having too static interpretation of the constitution for a long time. Various criteria may be used in classifying the models of constitutional jurisdiction and various results may be obtained. The authors of this work assume that two ideal models exist: the model of the USA, where all courts have the right to conduct the constitutionality review, and the European model, where the constitutionality review is conducted by a separate, independent institution. Others are either sub-types of these models or a peculiar formation, consisting of diverse elements. For example, in Japan, only the Supreme Court has the right to conduct the constitutional review, which already marks a deviation from the ideal US model. Whereas Belgium, whose model of constitutionality review should be classified as belonging to the European model, has chosen a particular path, i.e., the constitutional review for a long time had been entrusted to the Arbitration Court, which transformed into the Constitutional Court rather recently.

1631 Kühn Z. The Judiciary in Central and Eastern Europe. Mechanical Jurisprudence in Transformation? Leiden and Boston: Martinus Nijhoff Publishers, 2011, p.8, 18 – 19.

These examples point to the impossibility of a united, precise classification. Examination of the solutions chosen by Latvia's neighbouring countries reveals special differences only in Estonia. The classical European model is found in Lithuania, Poland and Russia - a politically formed special institution, which conducts the constitutional review. In Estonia, the constitutional review is performed by a chamber of the National Court, which is not even a standing chamber. The Estonian model of constitutional review is a middle way between the models of the USA and Europe. The constitutional review conducted by the Estonian National Court cannot be classified as a pure model – it is a mix of the European model and the Japanese sub-type of the US model. This is manifested in the fact that the National Court implements both the concrete and abstract review, it consists of the Judges of the National Court and is an inalienable part of the judicial power. Certain similarities can be seen also in Rumania where the courts, already since 1912, conducted the constitutional review in a limited scope, having greater similarities with the US model. Since 28 March 1923, in Rumania, only the Cassation Court, at a joint sitting of all sections, had the right to discuss the constitutionality of laws and recognise them as being incompatible with the constitution; however, only with respect to issues that had arisen in legal proceedings regarding a certain case.[1632]

Pursuant to the theory of separation of powers, in a state governed by the rule of law, the judicial power is vested only in those institutions that have been established in compliance with the constitution to check and balance other state powers. The constitutional court does not belong to the system of courts of general jurisdiction and cannot be equalled either to them or any of the powers. Compared to other courts, it has been granted an exceptional status, actually, the constitutional court is independent power, whose task is to ensure

1632 Дябло В.К. Судебная охрана конституций в буржуазных государствах и в СССР. Москва: НКЮ РСФСР, 1928, с.17, с.48-50.

compliance with the constitution in all areas.[1633] However, formally, the constitutional court belongs to the judicial power and the constitutional court should have a priority role within the hierarchy of the judicial power. This status of the constitutional court could be characterised as relative supremacy within the system of judicial power. It follows from the special tasks of the constitutional court - to ensure supremacy of the constitution and interpretation of this founding standard. The constitutional court is a sui generis court, which, within the framework of the state's organisation, is opposed to other, more traditional powers, therefore, usually it is not mentioned in the chapter of the constitutions dedicated to the system of courts.[1634] The constitutional court is part of the system of courts only in some cases where either the national constitution imposes the function of the constitutional jurisdiction upon the supreme court in the system of courts with of general jurisdiction (Estonia, Cyprus and Switzerland) or where the constitution refers to the constitutional court as one of the courts belonging to the judicial power (Belarus, Germany, Poland, the Russian Federation, Lithuania, also Latvia). In the first case, the constitutional court is structurally placed at the top of courts' hierarchy, in the second one, it takes its place alongside other institutions of the state power, including the supreme national courts.

In one of its judgements, the Constitutional Court of the Republic of Latvia has underscored that "the judicial power as a whole and the Constitutional Court as its constituent part shall insure control over both other state powers. As concerns the judicial power, the competence of the Constitutional Court "steps back" behind the competence of the court of general jurisdiction and is interpreted as narrowly as possible".[1635] However, in its judgement in another case, the Constitutional Court has admitted that "no legal norm or activity of the

1633 Хачатрян Г,М. Республика Армения. Вводная статья. In: Конституции государств - участников СНГ. Москва: Норма, 2001, с.78-79.

1634 Kūris E. Konstitucionālā tiesvedība Lietuvā: virzieni un attīstība. In: Konstitucionālās tiesas loma valsts konstitūcijā nostiprināto vērtību aizsardzībā. Rīga: Tiesu namu aģentūra, 2007, 139.-142.lpp.

1635 Judgement by the Constitutional Court of the Republic of Latvia of 22 February 2002 in Case No.2001-06-03, Para 1.2. of the Findings.

executive power shall remain out of control of the judicial power, if it endangers interests of an individual".[1636] The courts of other jurisdictions, within the limits of their competence, often are unable to control fully the legislative or executive power. Within the circle of continental law, court rulings are individual and apply only to particular persons, hence, they cannot ensure sufficient protection for human rights. Whereas judgements by the constitutional courts are an effective measure for aligning the legal system since it spares the work for other courts with respect to same legal norm.[1637] However, at the same time, pursuant to the provisions of the *Satversme* and the Constitutional Court Law, the Constitutional Court has not been granted the right to review the application of legal norms by institutions of public administration or the legality of rulings by courts of general jurisdiction. Therefore, fundamental issues related to interpretation of legal norms are decided on by the cassation instance court, which also ensures uniform application of legal norms, serving as an essential instrument in developing united judicature.[1638]

Within the branch of judicial power, the constitutional court has evolved into a singular institution, as it is in the states where the constitution regulates the constitutional court outside the system of judicial power; however, at the same time, its competence to control the legislative and executive power becomes more compatible with the principle of separation of powers and is able to ensure more complete control by the judicial power. In those states where courts conduct constitutional review, the American or the Czech (European) model has been implemented. Some authors hold that the US model is based on the classical principle of separation of powers, whereas the Czech model violates it. The functions of legislation and administration of justice are mixed in this model. "The principle of

1636 Judgement by the Constitutional Court of the Republic of Latvia of 9 July 1999 in Case No.04-03(99), Para 1 of the Findings.

1637 Endziņš A. Par tiesas pieteikumu Satversmes tiesā. Jurista Vārds, 2002. 10.septembris, Nr.18(251).

1638 Judgement by the Constitutional Court of the Republic of Latvia of 4 January 2005 in case No. 2004-16-01, Para 16.

separation of powers requires distinguishing between disputes regarding matters of desirability and expedience, as well as disputes between the branches of political power, which all are within the competence of the political power, and juridical matters, i.e., disputes regarding a person's rights, which fall within the jurisdiction of the judicial power."[1639] The court that resolves all disputes regarding the interpretation of the constitution, laws, indeed, would be the supreme political instance because, first of all, it would have to resolve doubts or contradictory opinions that stem from the peculiarities of vague formulas of compromise. Here, differentiating between legal and political matters and believing that it is possible to depoliticise a legal matter of national importance, is a murky fiction.[1640] A court cannot establish a law's compatibility with the constitution only on the basis of legal methods, such an assessment, predominantly, is a political matter. Carl Schmitt has called the relations between the parliament and the judicial power as restricting the parliament, he excludes the possibility that the judicial power could give orders to the legislator.[1641] As Alexander Hamilton put it, the court should not follow transient public moods, but it should follow the constitution, until the people have not revoked it, and should not go beyond the limits of the constitution.[1642] To these ends, minor deviations from the principle of separation of powers are admissible if they have a legitimate aim and the proportionality between the need for a constitutional court and the resulting deviations from the principle of separation of powers is complied with. Moreover "the principle of separation of powers resulting from the notion of a democratic republic shall not be perceived dogmatically and formally. It has to be in proportion with the objective of preventing centralisation of power in one institution

1639 Zīle Z.L. Visu varu Satversmes tiesai? Diena, 2002. 27.marts.

1640 Schmitt C. Constitutional Theory. Durham and London: Duke University Press, 2008, p.164.

1641 Фридштейнъ В. Къ вопросу о судебной проверке конституцюнности законовъ. Законъ и судъ, 1932, №9(29), с.946.

1642 Hamilton A. The Federalist No.78. In: Hamilton A., Jay J., Madison J. Federalist Papers: 85 Essays in Defense of the New Constitution. Sweetwater Press, 2010, pp.591-600.

or official".[1643] The constitutional court is the one that sees to it that the competence of the state, implemented by the three branches of power, would comply with the constitution and that overlapping of the powers' competences would not be contrary to the principle of separation of powers, enshrined in the constitution. However, in performing these important tasks, the constitutional court is limited in its competence, otherwise it would lose those good aims for which it has been established. The state order, professionalism of judges and the level of juridical culture defines the court's limits. "It is obvious that mutual relations exist between the constitutional justice and politics. [..] Indeed, there are still contentious opinions on what could be the object of constitutional legal proceedings and of a political decision. There is one thing that a constitutional court should not do: intentional, purposeful policy making."[1644] One of the risks, encountered by democratic states governed by the rule of law, is juridical activism when a court decides on the most important matters in the life of the state, leading to the possibility of a rule of law state changing into the judges' state. However, this risk of the judges' state is minimal and, in any case, justifiable.[1645] Likewise, it should be taken into account that a judge is the sovereign's servant, administering justice to ensure fairness. In their judgements, judges use values and legal methods, recognised within the legal system, they are bound by ethical standards and methodology for applying legal norms, and they reflect in their work the opinion on a certain legal issue prevailing in the community of lawyers.[1646]

The political contradiction between the legislator and the constitutional court may be mitigated by courts of general jurisdiction who

1643 Judgement by the Constitutional Court of the Republic of Latvia of 1 October 1999 in Case No.03-05(99), Para 1 of the Findings.

1644 Endziņš A. Tiesu sistēmas un politikas saskarsme un dinamika. Jurista Vārds, 2002. 7.maijs, Nr.9(242).

1645 Osipova S. Tiesiska valsts vai "tiesnešu valsts". In: Osipova S. Nācija, valoda, tiesiska valsts: ceļā uz rītdienu. Rakstu krājums. Rīga: Tiesu Namu Aģentūra, 2020, 313. – 322.lpp. See also: Pleps J. Satversmes iztulkošana. Rīga: Latvijas Vēstnesis, 2012, 128. – 131.lpp.

1646 Osipova S. Tiesiska valsts vai "tiesnešu valsts". In: Osipova S. Nācija, valoda, tiesiska valsts: ceļā uz rītdienu. Rakstu krājums. Rīga: Tiesu Namu Aģentūra, 2020, 322.lpp.

have been granted the right to initiate concrete review. Anita Rodiņa validly notes that "the concrete review is considered to be less politically provocative because here the legislator and the constitutional court interact indirectly - through examination of cases in courts of general jurisdiction".[1647] Thus, the active engagement of courts of general jurisdiction in this area reduces the conflict between the powers regarding the constitutionality of an act, which is examined abstractly, to the internal procedure of the judicial power, where the constitutionality is reviewed, in examining a particular case. This system has proven its effectiveness in Lithuania where the majority of judgements are based on applications by courts of general jurisdiction.

4. Competence of the constitutional court. The competence of constitutional courts differs greatly, depending on the model chosen by the state, development of the legal system and political traditions. In general, several most typical features of competence may be distinguished. The broadest of them is the abstract review, i.e., reviewing the issue of the compatibility of a legal norm abstractly, in isolation from the actual circumstances (abstrakte Normenkontrolle).[1648] Almost all constitutional courts conduct both the abstract and the concreter review; however, some states recognise only the abstract review. If the review is conducted preventively (e.g., before a law or treaty enters into force), it is, usually, the abstract control. If the review is conducted in repressive procedure (e.g., after a law has entered into force), it may be both abstract and concrete review. The preventive review is conducted before an act has entered into force, whereas the repressive review – after the act has entered into force. In the abstract review, the procedure pertains to the norm as such, without taking into consideration the actual circumstances, contrary to the concrete review (konkrete Normenkontrolle auf Richtervorlage). The concrete review is also called review through objections (par voie deexception) when the reason for initiating proceedings is found in a particular dispute in court or in the application of the disputed norm

1647 Rodiņa A. Kā pareizi saprast konkrēto kontroli. Jurista Vārds, 2002.gada 7.maijs, Nr.9(242).

1648 Zīle Z.L.Tiesu varas robežas. Likums un Tiesības, 2001, Nr.7(23), 203.lpp.

by the administrative power. Anita Rodiņa, in explaining the correct understanding of concrete review advances the thesis that, theoretically, the concrete review comprises not only applications by a court but also applications by other specialised subjects regarding cases in their competence.[1649] The abstract review is usually possible in those cases where an institution of state power turns to the constitutional court, including prosecutors, ombuds, local governments or individual persons involved in the particular dispute. However, there are two models, i.e., either all courts or only the higher court instance may turn to the constitutional court.[1650]

The constitutional complaint is a special measure for protecting constitutional rights and freedoms in the constitutional court, by which normative legal acts are contested, in some cases – also court rulings and individual administrative acts issued by certain institutions of public power, which, in the applicant's opinion, infringe upon their constitutional rights and freedoms. Functionally, the constitutional complaint both comprises an individual guarantee for the protection of a person's rights that had been infringed upon and serves to protect the constitution. By protecting the rights of the injured person, also the rights of other persons are protected, thus, reinforcing the constitution and developing the constitutional law.[1651] However, the constitutional complaint is not envisaged in all states, or it exists in a peculiar form. The constitutional complaint, by which an individual turns to the constitutional complaint regarding an infringement on their rights, should be considered as a form of concrete review. In Latvia, the constitutional complaint is an individual legal remedy, therefore, the person must substantiate convincingly that their fundamental rights have been infringed upon. Section 192 of the

1649 Rodiņa A. Kā pareizi saprast konkrēto kontroli. Jurista Vārds, 2002.gada 7.maijs, Nr.9(242).

1650 Alen A., Melchior M. The relationships between the Constitutional Courts and the other national courts, including the interference in this area of the action of the European courts. General report at Conference of European Constitutional Courts XIIth Congress. http://www.confcoconsteu.org/reports/General%20report-EN.pdf

1651 Rodiņa A. Konstitucionālās sūdzības teorija un prakse Latvijā. Rīga: Latvijas Vēstnesis, 2009, 17. – 38.lpp.

Constitutional Court Law clearly indicates that the applicant must be "a victim" of the state's actions, i.e., their fundamental rights must be infringed upon. Moreover, a constitutional complaint is a subsidiary legal remedy and, thus, can be used only after all other effective legal remedies have been exhausted. Whereas the type of complaint introduced in Bavaria is actio popularis – a mechanism allowing a person to turn against violations of constitutional rights in public interests. An infringement on a person's fundamental rights by the state's actions is not required there. It is enough that a person is convinced and wants to act. A constitutional complaint is also called "genuine" and "false", i.e., a "genuine" constitutional complaint can be used to turn against also individual legal acts, whereas "false" – only against normative legal acts.[1652]

Alongside the right to review the constitutionality of laws and other acts, also other rights have been granted to the constitutional courts. The totality of these rights does not constitute a significant part of constitutional legal proceedings; however, is sufficient enough to merit a brief overview. These specific cases that the constitutions transfer into the constitutional court's jurisdiction differ in different states. One of the main elements in this jurisdiction is resolving the disputes between constitutional institutions (Organstreit). This is one of the most sensitive issues in the jurisdiction of constitutional courts because such disputes are closely linked to daily politics. A situation where two or more constitutional institutions of the state have recognised themselves as having the right to resolve the same issue or have made decisions on the said matter (dispute of positive jurisdiction) or the institutions have recognised that they do not have the jurisdiction for resolving the said matter (dispute of negative jurisdiction) is to be considered as such a dispute. Transferring the right to resolve jurisdiction disputes to the constitutional court has been criticised, on the basis of the opinion that the constitution itself envisages certain political measures for resolving political disputes.[1653] In state orders

1652 Rodiņa A. Konstitucionālā sūdzība Latvijā. Jurista Vārds, 2000. 12.septembris, Nr.28(181).

1653 Zīle Z.L.Tiesu varas robežas. Likums un Tiesības, 2001, Nr.7(23), 206.lpp.

with pronounced dominance of one institution of state power over the other institutions (relative separation of powers, characterised by the primacy of the parliament or the head of state), indeed, jurisdiction disputes can and should be resolved by mechanisms embedded in the constitution. Quite often, these solutions will not be juridical (reviewing the compatibility of the dispute with constitutional provisions) but only political when the dispute is resolved in favour of that constitutional institution, which has been granted greater power. Granting the right to review jurisdiction disputes to the constitutional courts acquires special importance when a radical constitutional reform is implemented in the state. The constitutional court is the institution that ensures transformation of the political system in accordance with the new circumstances and participates in separating the jurisdictions of constitutional institutions. The right to resolve jurisdiction disputes is an effective measure; however, extensive use of it may lead also to adverse consequences.

In several states, the constitutional courts have been granted also the right to review the functioning of political parties. Upon establishing anti-constitutional activities of an existing party, it is excluded from the register and liquidated. Whereas in other states, the constitutional courts have been granted the right to provide, upon request by constitutional institutions, generally binding interpretation of constitutional provisions. There is an opinion that such right of the constitutional court facilitated united understanding of legal norms and also uniform case law.[1654] This right of the constitutional court is assessed differently. A constitutional court explains the constitutional provisions also when its jurisdiction does not include the right to provide such an explanation. This happens in the course of reviewing the case, in verifying the compliance of a norm with the constitution, when the court in its judgement explains not only the norms under review but also the constitutional provisions, the compliance with which is examined in the course of proceedings. In such cases, the

1654 Birkavs V. Satversme - domāšanas līmenis. Likums un Tiesības, 1999, Nr.3, 69.lpp.

explanation of the constitutional provisions, provided by the court, should be considered as being binding insofar it is necessary for reviewing the constitutionality of the contested norm. It is unlikely that an explanation, based on general understanding of the constitutional norm, without the concrete circumstances, could provide such principles that would be good enough grounds for new, specifying wording of these norms. This is a matter of formal and substantive understanding of the constitution. Formal constitution cannot be explained in isolation from the substantive constitution, and this leads to artificial creation of the substantive constitution, which hinders evolution of constitutionalism and legal system.

Constitutional courts are not merely classical courts of law but, due to their special status and credibility, may fulfil also other tasks important for the life of the state. For example, in several states, the constitutional courts review cases related to the legality of elections or assessing the head of state's capacity. For example, in the Republic of Lithuania, the Seimas has the right to turn to the Constitutional Court regarding the issue of assessing the President's state of health. The Seimas must submit an opinion by a commission of physicians, the decision on turning to the Constitutional Court, and the opinion by the commission of physicians must be approved by the majority vote of the Seimas' Members. The Constitutional Court of Lithuania reviews also violations of the election law. The Constitutional Court may be involved in assessing the legality of the impeachment procedure or amendments to the constitution, inter alia, before putting amendments to the Constitution for a referendum, the Constitutional Court's opinion on them must be obtained. This approach protects against introducing deficient legal norms into the constitution.

5. Rulings of the constitutional court.[1655] After the Constitutional Court was established in Latvia and had commenced its work, Latvian scholars of law had to understand the place of the Constitutional

1655 See more: Pleps J. Satversmes tiesas nolēmumu ietekme uz likumdošanas procesu. Jurista Vārds, 2015.gada 10.februāris, Nr.6(858).

Court's rulings in the Latvian system of sources of law and their impact on the legal system in general.

Mārtiņš Paparinskis' scientific research was of special importance in clarifying the place of the Constitutional Court's rulings within the Latvian system of sources of law. In this article Mārtiņš Paparinskis advanced and substantiated a provocative thesis that the Constitutional Court's judgement is a normative legal act, which has determined the framework of the respective discussion within the Latvian legal system.[1656]

Ginta Krūkle has analysed the place of the Constitutional Court's judgements within the Latvian system of sources of law. She has concluded that the legislator has granted to the Constitutional Court's judgement generally binding force. The interpretation of a normative legal act, provided by the Constitutional Court, as to its legal force, should be equalled to the respective normative legal at.[1657] As regards the place of the Constitutional Court's judgements within the Latvian system of the sources of law, Ginta Krūkle has proposed creating a separate group of sources of law alongside the independent and auxiliary sources of law, i.e., the mandatory sources of law, which, as to their legal effect, approximate the independent sources of law. G. Krūkle mentions the judicature of the Court of Justice of the European Union, the European Court of Human Rights and of the Constitutional Court of the Republic of Latvia, as well as judicature of other courts as the mandatory sources of law.[1658] Even if the proposal to separate judicature from other auxiliary sources of law is upheld, nevertheless, the functional differences between the Constitutional Court's rulings and the judicature of other courts should be taken in account. If it is recognised that the Constitutional Court's judgement

1656 Paparinskis M. Satversmes tiesas spriedums kā normatīvs tiesību akts. Likums un Tiesības, 5.sējums, 2003, Nr.5(45), 145. - 148.lpp. See also: Rodiņa A., Spale A. Satversmes 85.pants. In: Latvijas Republikas Satversmes komentāri. VI nodaļa. Tiesa. VII nodaļa. Valsts kontrole. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2013, 140. - 141.lpp.

1657 Sniedzīte G. Tiesnešu tiesības. Jēdziens un nozīme Latvijas tiesību doktrīnā. Rīga: Latvijas Vēstnesis, 2013, 161. - 170.lpp.

1658 Ibid, 225. - 227.lpp.

has generally binding force then the Constitutional Court's judgement should be included in the group of those sources of law that have such generally binding force, i.e., with the independent sources if law. Daiga Rezevska also has arrived at this conclusion: "The Constitutional Court's judicature should be taken out of the group of auxiliary sources and added to the group of independent sources of law."[1659] D. Rezevska also has noted: in view of the fact that Latvia is a state that belongs to the family of European law, the Constitutional Court's judicature cannot be added to the group of basic sources of law but should be placed in the group of auxiliary sources of law..[1660]

Both the judgement by the Constitutional Court and the interpretation of legal norms included in it, as well as the interpretation of legal norms included in the Constitutional Court's decision on termination legal proceedings in the case are of generally binding force.[1661] In view of the most recent findings in the theory of law, it can be recognised that, within the Latvian system of sources of law, these rulings by the Constitutional Court should be included in the group of independent sources of law.

With respect to this generally binding force of the Constitutional Court's rulings, it is customary in the legal science and the practice of law to refer to legal norms of the Constitutional Court Law, adopted by the legislator. However, it should be taken into account that such nature of the Constitutional Court's rulings does not follow from the legislator's decisions but from the function of the state power that the Constitutional Court fulfils. The generally binding force of the Constitutional Court's judgement and decision on terminating legal proceedings is a general legal principle of the Latvian legal system, which is not to be derived from some provisions of the Constitutional Court Law but from Article 85 of the *Satversme*.

1659 Rezevska D. Judikatūra kā tiesību avots: izpratne un pielietošana. Augstākās tiesas biļetens, 2010, Nr.1, 31.lpp.

1660 Ibid.

1661 Rodiņa A., Spale A. Constitutional Status of the Constitutional Court of the Republic of Latvia. 4 Конституционное Правосудие, 2012, No.4, pp.61 – 62.

The generally binding force of the Constitutional Court's judgement, the interpretation of legal norms included therein and of the interpretation of the legal norms, included in the Constitutional Courts' decision on terminating legal proceedings in the case, does not cover the instances where the Constitutional Court has made statements in a case obiter dictum or has acted ultra vires, thus, exceeding its competence, defined in the *Satversme*. Likewise, establishing such generally binding force for the interpretation of legal norms, provided by the Constitutional Court, does not exclude the possibility for the legislator or the judicial power, respecting the principle of separation of powers and other principles of a state governed by the rule of law, in some cases, to provide reasoned objections to the Constitutional Court's ruling (e.g., the legislator may amend the legal norm, the binding interpretation of which has been provided by the Constitutional Court, or a court may submit an application regarding initiating a case to the Constitutional Court to provide an opportunity for the Constitutional Court to speak again on the contentious legal issue).

6. Consequences of a constitutional court's judgement.[1662] The principle that the constitutional court's judgements are not subject to appeal and are generally binding has been recognised as indisputable, unless the model of the constitutional court or the review to be conducted in the particular case amend these principles. For example, in the case of preventive review, the court's judgement causes direct consequences only for the institutions of state power, or, the decision by the Constitutional Council of France, formally, is only recommendation, although, in the constitutional practice, these decisions have been recognised as binding.

However, when dealing with the judgement by a constitutional court, one should not read only the substantive part, the most essential part is the findings made by the court. They give directions to other courts, institutions and the legislator on how the constitutional court interprets the constitution, understands values and discerns

1662 See more: Pastars E. Satversmes tiesas sprieduma nolēmumu daļas izpratne un piemērošanas problēmas. Jurista Vārds, 2016.gada 16.februāris, Nr.7(910).

regularities. Since amendments to the Constitutional Court Law, adopted on 10 December 2009, it is sometimes considered that only the substantive part of the ruling is binding upon other persons and institutions and that the part of the findings is not legally binding upon uninvolved subjects. Following the aforementioned amendments, pursuant to Section 32 (2) of the Constitutional Court Law, the Constitutional Court's judgement and the interpretation of the respective legal norms provided therein is mandatory for all state and local government institutions (including courts) and officials, as well as natural and legal persons. Sometimes it is used as way to review the judicature of other courts (e.g., by concluding that a restriction on fundamental rights has occurred due to the interpretation made by courts and not because of the law), indirectly using an approach that is typical of the full constitutional review.

To a large extent, a court's judgement depends also on the application and the wording of the claim in it; however, the court is not strictly bound by it and may even broaden the limits of a claim.[1663] In the Constitutional Court's practice, broadening the limits of the claim is usually found in two instances, i.e., legal norms, which are closely linked to the contested norm[1664] and the non-recognition of which as void would not ensure that a private person's interests are respected and the judgement is enforced,[1665] are added for assessment, as well as the instance, where the Court establishes in the judgement a violation of fundamental rights but the norm of the *Satversme*, which reflects the respective fundamental right, is not referred to in the decision on initiating the case.[1666]

The constitutional court is vested with the responsibility to ensure that its judgements would ensure legal stability, clarity and peace

1663 Pastars E. Prasījuma robežu ievērošana Satversmes tiesā. Jurista Vārds, 2007. 31.jūlijs.

1664 Judgement by the Constitutional Court of the Republic of Latvia of 21 December 2001 in Case No. 2001-04-0103.

1665 Judgement by the Constitutional Court of the Republic of Latvia of 17 January 2008 in Case No. 2007-11-03 , Para 18.

1666 Judgement by the Republic Constitutional Court of the of Latvia of 2 November 2006 in Case Nor.2006-07-01, Para 14.

in the social reality.[1667] The Constitutional Court has also underscored that the Court should, to the extent possible, refrain from making such decisions that would hard to implement, either financially or organisationally.[1668] The Constitutional Court also has the right to regulate issues that are essential for preventing the occurrence of new infringements on the fundamental rights, defined in the *Satversme*, after the contested act has been recognised as being void.[1669]

Several approaches to the wording of the substantive part are seen in the Constitutional Court's case law, inter alia, recognising the contested norm as being void as the day of publication of the judgement, in the future (prolonging for a certain period the validity of the anti-constitutional norm) or retroactively. Rulings that set the obligation, for a certain period, to impose a norm of the *Satversme* in accordance with the content defined in the judgement or reinstate legal regulation that had been valid previously, are also characteristic.[1670]

The Constitutional Court's case law comprises also such judgements, in which the Court determines how a legal norm should be interpreted,[1671] sets certain conditions for the validity of a legal norm[1672] or even reinstates a law that had become void.[1673] This approach clearly shows that the substantive part in the Constitutional Court's judgements is not only the place where an answer to one question is provided regarding the compatibility or incompatibility with the

1667 Judgement by the Constitutional Court of the Republic of Latvia of 27 June 2013 in Case No. 2012-22-0103, Para 19.

1668 Judgement by the Constitutional Court of the Republic of Latvia of 19 March 2014in case No. 2013-13-01.

1669 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2005 in Case No. 2005-12-0103, Para 25.

1670 Spale A. Role of the Constitutional Court in Improving the Quality of Regulatory Enactments. Grām: The Quality of Legal Acts and its Importance in Contemporary Legal Space.Rīga: University of Latvia Press, 2012, p.416.

1671 Judgement by the Constitutional Court of the Republic of Latvia of 6 February 2006 in Case No.2005-17-01.

1672 Judgement by the Constitutional Court of the Republic of Latvia of 6 October 2003 in Case No.2003-08-01.

1673 Judgement by the Constitutional Court of the Republic of Latvia of 16 December 2005 in Case No.2005-12-0103.

Satversme. The question is much more complicated and a person's possibilities to assert ones rights – much broader.

Judgements delivered in the framework of concrete review may be either erga omnes or inter partes. In the first case, the force of the judgement means that the judgement is binding upon all persons and not only the ones involved in the case. In the second case, the judgement is binding only upon the involved parties. Section 32 of the Latvian Constitutional Court Law enshrines erga omnes principle, irrespectively of the type of review, in which the case has been initiated. Depending upon the moment when the judgement enters into force, i.e., whether it has or does not have retroactive force, it is possible to distinguish two types of judgements: ex tunc and ex nunc. In the first case, the judgement is granted force as of the date when the repealed act entered into force: it annuls all actions, conducted on the basis of the repealed act. In the Constitutional Court's practice, quite often a regulatory enactment is contested because it has been issued ultra vires or, in other words, the issuer had no right to issue such a regulatory enactment at all. In such a case, "it can be presumed that the anti-constitutional legal norm has never been in force because it was not adopted in due procedure and, thus, it cannot cause legal consequences", except for a case where special arguments exist in the case that have been made known to the Court, when certain derogations from this presumption could be admissible.[1674] If the Constitutional Court's judgement recognises a legal norm as void, in particular, the whole amendment to a law, the legal norm that was previously in force is not reinstated automatically, unless the Constitutional Court itself provides for it.

In this regard, there is a dilemma in the theory of constitutional law, i.e., involving the approach that an anti-constitutional act could have never been part of the legal system and considerations of legal certainty (security). In the majority of states, the constitutional court enjoys discretion in this matter. This is seen, in particular, in the case

1674 Judgement by the Constitutional Court of the Republic of Latvia of 12 December 2014 in Case Nor. 2013-21-03.

of a constitutional complaint that a person submits to resolve an issue important to them – to eliminate an infringement on fundamental rights. Often, it would be possible to resolve it without retroactive force of the judgement. Therefore, usually, the retroactive force is applied vis-à-vis the submitter of the constitutional complaint, sometimes called premium for the catcher.[1675] The following finding has been enshrined in the Constitutional Court's case law: the longer a person tolerates an infringement on their rights, the more it can be assumed that they are less interested in protecting their constitutional rights.[1676] The Constitutional Court has often highlighted this to show that those persons who have started the proceedings to protect their rights benefit from the judgement and therefore deserve to enjoy the fruit – recognising the contested norm as being void retroactively.

Sometimes the solution chosen by the Constitutional Court with respect to the date as of which the regulatory enactment becomes void or the circle of persons it applies to might seem unfair, unequal; however, the Constitutional Court is the one who assesses the most proportional solution in the particular situation, and other courts do not have the right to deviate from it, as unacceptable as it might seem. This approach is justified by legal security, as recognised also by the Supreme Court, which referred to Norbert Horn.[1677] Other courts are not authorised to "develop further" the substantive part of the Constitutional Court's judgement.

One of the consequences that emerge after the Constitutional Court's judgement is the right to request examination of a civil case, administrative case or a criminal case due to newly discovered circumstances. Examination of a case due to newly discovered circumstances is not caused by any judgement by the Constitutional Court but only by such that has definite retroactive force; moreover, if, in

1675 Study On Individual Access to Constitutional Justice. European Commission for Democracy Through Law (Venice Commission), 27 January 2011, CDL-AD(2010)039rev., p. 50. https://www.venice.coe.int/WebForms/documents/default.aspx?pdffile=CDL-AD(2010)039rev-e.

1676 Judgement by the Constitutional Court of the Republic of Latvia of 19 October 2011 in Case No. 2010-71-01.

1677 Judgement by the Supreme Court of 20 November 2014 in Case SKC-2138/2014, Para 8.2.

the judgement, it is applied to a particular person, an identifiable circle of persons or is addressed to all. A case, where the Constitutional Court has the right to deal with the issues of enforcing a previous judgement in a new case, to be initiated upon the receipt of an application, could be possible.[1678] Thus, for example, during the period of economic recession, the Constitutional Court established a detailed procedure for repaying deductions from pensions and also pointed out that the term for repaying the deductions could not exceed a certain date.[1679]

Although the issue of the enforcement or non-enforcement of the Constitutional Court's judgement cannot be assessed mechanically, it is clear that "if the Constitutional Court has recognised legal norms are being incompatible with the *Satversme*, the issuer of the norm may not adopt identical norms repeatedly", except for the cases where the deficiencies, identified in the judgement, have been eliminated.[1680] In this respect, flexible solutions are possible and broad discretion of the legislator can be discerned. Several related situations may be identified. Firstly, often, a contested norm has been recognised as being void not because its content would be inadmissible but because the procedure for its adoption has not been complied with (in particular, with respect to spatial planning),[1681] it has not been included in a regulatory enactment of the appropriate level, it has not been properly worded or a reasonable transitional period has not been set.[1682] These errors may be remedied after the judgement, wit-

1678 Spale A. Role of the Constitutional Court in Improving the Quality of Regulatory Enactments Grām: The Quality of Legal Acts and its Importance in Contemporary Legal Space.Rīga: University of Latvia Press, 2012, p.417.

1679 Judgement by the Constitutional Court of the Republic of Latvia of 2009.gada 21.decembra spriedums lietā Nr. 2009-43-01.

1680 Rodiņa A., Spale A. Satversmes 85.pants. In: Latvijas Republikas Satversmes komentāri. VI nodaļa. Tiesa. VII nodaļa. Valsts kontrole. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2013, 142.lpp.

1681 Judgement by the Constitutional Court of the Republic of Latvia of 14 April 2011 in Case No.2010-62-03

1682 Judgement by the Constitutional Court of the Republic of Latvia of 19 March2 014 in Case No.2013-13-01.

hout, substantially, abandoning the contested norms. Secondly, the contested norm has been recognised as being incompatible with the *Satversme* on its merits. In such a case, as mentioned above, the legislator would not have the right to adopt an identical legal norm. Definite changes need to be implemented or the actual circumstances need to have changed after some time.

The formulation "insofar it provides for" or "insofar it does not provide for" certain legal regulation is also used in the substantive part of the Constitutional Court's judgement. This practice gained relevance since the Constitutional Court reviews also the compatibility of the absence of regulation with the *Satversme* if the applicant is able to substantiate that the obligation to establish such regulation follows from the *Satversme* or the law.[1683]

The Supreme Court has concluded that the fact of recognising a normative legal act as being unlawful per se does not establish an individual's right to claim compensation for damages from the state. To have the grounds for granting compensation, first of all, an unfounded infringement of a person's rights and the amount of damages need to be established; however, the indemnification provided not necessarily should be financial.[1684] Latvia does not have normative regulation on compensation for damages inflicted upon a person as the result of adopting a law. Fourthly, the person must contest the law before the Constitutional Court. This, definitely, would not apply to a situation, where the person would consider the restriction on fundamental rights as being necessary but, nevertheless, such, for which the person should receive monetary compensation. This could be a significant restriction on the right to property (e.g., linked to a protection zone or a specially protected nature territory) or another "sacrifice for the benefit of society" (liability for sacrifice).[1685] In such a case,

1683 Judgement by the Constitutional Court of the Republic of Latvia of 14 March 2011 in case No.2010-51-01, Para 10 and Para 10.2.

1684 Judgement by the Department of Civil Cases of the Supreme Court of 20 November 2014 in Case SKC-2138/2014.

1685 Mahendra P. Singh. German Administrative Law. In Common Law Perspective. Berlin, Springer-Verlag, p.149 – 150.

it would not be necessary to contest the law before the Constitutional Court but the court would assess, as it has been done in case law, the need to compensate for damages.[1686] The date, of which the act, contested before the Constitutional Court, has been recognised as being void, is also important. If this date is not set as the day when the contested act was adopted but the day when the judgement enters into force then the legal relations that have become established before the date of the judgement's coming into force need not be revised.[1687]

1686 Judgement by the Riga Regional Court of 12 March 2015 on granting compensation in connection with restrictions set on the use of a land plot.

1687 Judgement by the Department of the Supreme Court's Senate of 30 March 2004 in Case No.SKC-5.


SATVERSME 100