Continuity of the Judicial Power in the Republic of Latvia. Preconditions and Necessity

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The article is dedicated to issues of the genesis and continuity of judicial power in the Republic of Latvia. On 18 November 1918, the State of Latvia was proclaimed as a democratic republic. Pursuant to the theory of separation of state power, the judicial power became one of the powers of the independent Latvian State. The author of this publication proposes the thesis that in examining the problems of the continuity of a democratic and judicial state the aspect of the continuity of the judicial power should not be ignored. Without analysing the aspect of the continuity of the judicial power, the assessment of the implementation of the state continuity would be incomplete.

Keywords: judicial system, judicial reforms, courts, continuity of state, legal principles.

Content

Introduction

Customary law as a measure against unacceptable or dangerous actions taken by some persons against other persons existed in societies already before they were organised as states (family, kin, community and other associations). Laws and other regulatory enactments adopted by societies that are organised as states perform the same function and therefore may not turn into their opposite – injustice, i.e., serve for reaching unlawful aims.[1] Strangely enough, until now the history of mankind

[1] *Kelsen, H.* Reine Rechtslehre. Studienausgabe der 1. Auflage 1934. Herausgegeben von Matthias Jestaedt. Tübingen: Mohr Siebeck, 2008, ISBN 978-3-16-149703-2, S. 128.

has often been a proof to the contrary. However, this should not cause surprise. For example, Immanuel Kant (1724–1804), with good reason, considered man to be only a reasonable animal (*vernünftiges Thier/Tier*).[2] Human being, as a creation endowed with reason, strives for certain security. Security as a value in human relationships is inconceivable in the absence of a certain order. "The key to happiness" was found, as it were, in legislation, that would restrict individuals' arbitrariness in the common interests of all in the name of liberty. And yet, some nuances of human nature are admirable. People happen to intentionally breach the laws that they themselves have adopted. Regretfully, the beastly selfish origins of man always lure him into making exceptions with regard to himself, when it brings advantage.[3] The human nature, essentially, has not changed in society that is organised as a state either.

Professor Hans Kelsen (1881–1973) writes that "[s]tate is legal order".[4] For the purpose of ensuring order certain obligations and rights have been established for the state. The author holds that Georg Wilhelm Friedrich Hegel (1770–1831) has attempted to form the most comprehensive understanding of the phenomenon of the state. Hegel saw in the state "[..] the reality of the moral",[5] "[..] the reality of a concrete freedom",[6] "[..] an absolute power on Earth",[7] "[..] the path of God in the world",[8] etc. Hegel held that the state, as the true God, was "[..] reasonable in itself".[9] The state, exercising governance as a reasonable being, acquires an apparent personality. Therefore in legal science the state is defined as a legal person.

The state represents common interests, not the separate interests of a person. Historically, however, those in power have often placed their personal interests above legality, welfare of the people or even have dared to personify themselves as the state. The phrase attributed to the "Sun" King Louis XIV (1638–1715) "The State, it is I" (*L'état, c'est moi*)[10] has become world famous. Legally, "The State, it is I" unequivocally points to the implementation of the principle of indivisibility of the state power in the state governance. The principle of indivisibility of the state power symbolizes not only the monarchies of the Enlightenment age, but any despotic regime, irrespectively of the times. It is different in a democratic state, which is organised on legal foundations. The governance of such a state is organised on the basis of the principle of separation of powers with the aim of realising common interests, instead of the selfish interests of one person or a group of persons.

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2 *Volker, G.* Immanuel Kant. Vernunft und Leben. Stuttgart: Philipp Reclam jun., 2002, ISBN 3-15-018235-2, S. 307–309.

3 *Kant, I.* Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht. In: Kant's gesammelte Schriften. Herausgegeben von der Königlich Preußischen Akademie der Wissenschaften. Band VIII. Erste Abtheilung: Werke. Achter Band. Kant's Werke. Band VIII. Abhandlungen nach 1781. Berlin, Leipzig: Walter de Gruyter & Co, 1923, S. 23.

4 "Der Staat ist eine Rechtsordnung". In: *Kelsen, H.* Reine Rechtslehre ..., S. 127.

5 "[..] die Wirklichkeit der sittlichen Idee". In: *Hegel, G. W. Fr.* Grundlinien der Philosophie des Rechts oder Naturrecht und Staatswissenschaft im Grundrisse. Mit einem Vorwort von Eduard Gans. Vierte Auflage der Jubiläumsausgabe. Stuttgart-Bad Cannstatt, Friedrich Frommann Verlag (Günther Holzboog), 1964, [Bd. 7], § 257.

6 "[..] die Wirklichkeit der konkreten Freiheit". In: *Hegel, G. W. Fr.* Grundlinien der Philosophie des Rechts ..., § 260.

7 "[..] absolute Macht auf Erden". In: *Hegel, G. W. Fr.* Grundlinien der Philosophie des Rechts ..., § 331.

8 "[..] der Gang Gottes in der Welt". In: *Hegel, G. W. Fr.* Grundlinien der Philosophie des Rechts ..., § 258.

9 "[..] an und für sich Vernünftige". In: *Hegel, G. W. Fr.* Grundlinien der Philosophie des Rechts ..., § 258.

10 *Schultz, U.* Versailles. Die Sonne Frankreichs. München: Verlag C. H. Beck, 2002, ISBN 3 406 48726 2, S. 93.

Since the 18th century, the theory of the separation of state power has been built upon the foundations of the theory of separation of power developed by Charles-Louis de Montesquieu (1689–1755). It is well known that Montesquieu differentiates between three powers of the state:

1) legislative power;
2) executive power;
3) judicial power.[11]

Thus, the judicial power is one among those who realize the state power. When examining the issues of continuity of a democratic state, which is founded upon the rule of law, the aspect of the continuity of judicial power therefore may not be left outside the scope of research. Otherwise, the analysis of the state continuity without examination of the issue of the judicial power would be incomplete.

The article is dedicated to the analysis of the genesis and continuity of the judicial power in the Republic of Latvia. The author advances a thesis on the implementation of the continuity of judicial power in the Latvia State despite the occupation that lasted for 50 years.

1. Aspects in the constitution of the judicial power of the Latvian state

On 5 December 1919, the People's Council adopted "Law on Retaining the Former Laws of Russia Valid in Latvia". Article 1 of the Law provided:

> "*All former laws of Russia, which existed within the borders of Latvia until 24 October 1917, temporarily shall be regarded as valid after 18 November 1918, insofar these are not to be replaced by new laws and are not contradictory to the order of the State of Latvia and the Platform of the People's Council.*"[12]

Thus, the Republic of Latvia had recognised itself as the successor in law of the former Russia, establishing a number of exceptions:

1) former laws of Russia were not repealed or replaced by laws of the Latvian State;
2) former laws of Russia were not contradictory to the interests of the Latvian state; i.e., a democratic state order and the Political Platform of the People's Council;[13, 14]

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[11] See, for example: *Kleinheyer, G., Schröder, J.* Deutsche und Europäische Juristen aus neun Jahrhunderten. Eine biographische Einführung in die Geschichte der Rechtswissenschaft. 5., neu bearbeitete und erweiterte Auflage. Heidelberg: C. F. Müller Verlag, 2008, ISBN 978-3-8252-0578-2, S. 306–307.

[12] Likums par agrāko Krievijas likumu spēkā atstāšanu Latvijā [Law on Retaining the Former Laws of Russia Valid in Latvia] (05.12.1919). *Likumu un valdības rīkojumu krājums*, 31 December 1919. Notebook 13, doc. No. 154.

[13] Latvijas Tautas Padomes politiskā platforma (17.11.1918). LNA LVVA [Latvian National History Archives]. 1307. f. [fund], 1. apr. [description], 327. l. [case], pp. 27–29 or *Pagaidu Valdības Vēstnesis*, 14 December 1918. No. 1.

[14] *Lazdiņš, J.* Tiesu varas pēctecība kā viens no valsts kontinuitātes pamatiem [Continuity of the Judicial Power as One of the Foundations for the State Continuity]. In: The 5th International Scientific Conference of the University of Latvia Dedicated to the 95th Anniversary of the Faculty of Law of the University of Latvia. Jurisprudence and Culture: Past Lessons and Future Challenges. Riga 10–11 November, 2014. Riga: University of Latvia Press, 2014, ISBN 978-9984-45-892-2, p. 635.

3) the Soviet law cannot be considered as the source of law of the Republic of Latvia. On 24–25 October 1917, according to the old style calendar, Lenin[15] and other Bolsheviks came into power in the Republic of Russia[16]. That is why "Law on Retaining the Former Laws of Russia Valid in Latvia" provided in an imperative form that those former laws of Russia, which had been adopted prior to 24 October according to the old style, temporarily remained in force.

In former Russia, on 20 November 1864 Court By-laws that complied with modern requirements were adopted[17] ([Ustav] Uchrezhdenija sudebnyh ustanovlenij[18]). The aim of Court By-laws was to separate the administrative, police and the judicial powers.[19] Not only equality before law, but also reinforcing respect for law became an inseparable part of the reform.[20] In the future, the judicial power had to be the guarding of legality.[21] However, it would be too early to speak about an independent judicial power in accordance with the requirements of the theory of separation of powers.[22] The state governance continued to be based upon the principle of monarchy. In Latgale, Court By-laws entered into force simultaneously with other provinces of Russia. Court By-laws were applied to the Baltic Provinces as of 9 July 1889.[23] Thus, Court By-laws had entered into force in all lands inhabited

[15] Vladimir Ilyich Ulyanov (*Vladimir Il'ich Ul'janov*), alias Lenin (*Lenin*), 1870–1924. The founder and chairman of the Russian Social Democratic (bolshevik) party. The first head of the government of the Russian Soviet Federative Socialist Republic.

[16] On 1 September 1917, the Empire of Russia was proclaimed a republic.

[17] In Latvian also called "Tiesu ustavs" (Rules on Courts).

[18] Uchrezhdenija sudebnyh" ustanovlenij [On Establishment of Court By-laws]. In: Polnyj svod" zakonov" Rossijskoj Imperii [Complete Collection of Laws of the Russian Empire]. Vse 16 tomov" so vsemi otnosjashhimisja k" nim" Prodolzhenijami i s" dopolnitel'nymi uzakonenijami po 1 Nojabrja 1910 goda. V" 2-h" knigah". Pod" redakciej A. A. Dobrovol'skago, Ober"-Prokurora Sudebnago Departamenta Pravitel'stvujushhago Senata. Sostavil' A. L. Saatchian". Kniga [Book] 2. Tomy [Vol.] IX–XVI. S.-Peterburg": Izdanie Juridicheskago Knizhnago Magazina I. I. Zubkova pod" firmoju "Zakonovedenie". Kommissioner" gosudarstvennoj tipografii, 1911, t. [Vol.] XVI, ch. [part] 1, pp. 3869–3967.

[19] *Golovachev, A.* Desjat' let" reform" [Ten years of reforms], 1861–1871. Izdanie "Vestnika Evropy". Sanktpeterburg": V" tipografii F. S. Sushhinskago, 1872, pp. 304–305.

[20] *Dzhanshiev, G.* Osnovy sudebnoj reformy (k" 25-ti letiju novago suda) [Fundamentals of judicial reform (to the 25th anniversary of the new court)]. Istoriko-juridicheskie jetjudy [Historical and legal etudes]. Moskva: Tipografii M. P. Shhepkina, 1891, p. 3.

[21] *Lazdiņš, J.* Krievijas impērijas 1864. gada Tiesu reforma un tās nozīme Baltijas guberņās un vēlāk Latvijā [The Court Reform of the Russian Empire in 1864 and its Significance in the Baltic Provinces and Later in Latvia]. In: Tiesību efektīvas piemērošanas problemātika. Latvijas Universitātes 72. zinātniskās konferences rakstu krājums. [B.v.]: LU Akadēmiskais apgāds, 2014, ISBN 978-9984-45-855-7, pp. 59–60.

[22] *Lazdiņš, J.* Die Justizreform vom Jahr 1889 und ihre Bedeutung für die Baltischen Provinzen Russlands und (später) Lettland. In: *Schäfer, Frank L., Schubert, W.* (*Hrsg./eds.*). Justiz und Justizverfassung. Siebter Rechtshistorikertag im Ostseeraum, 3–5 Mai 2012 Schleswig-Holstein. Frankfurt am Main: Peter Lang GmbH, PL Academic Reserch, 2013, ISSN 1615-0344-29OX, ISBN 978-3-631-63912-2 (Print). E-ISBN 978-3-653-03624-4 (E-Book). DOI 10.3726/978-3-653-03624-4, S. 91–102.

[23] See:

1. O primenenii k" gubernijam" Lifljandskoj, Jestljandskoj i Kurljandskoj Sudebnyh" ustavov" 20 nojabrja 1864 goda i o preobrazovanii mestnyh" kret'janskih" uchrezhdenij [On Application of Court By-laws of 20 November 1864 to Livland, Estland and Courland Provinces and on Reforming Local Peasant Institutions]. In: Polnoe sobranie zakonov" Rossijskoj imperii [Complete Collection of Laws of the Russian Empire] (1881–1913), t. [Vol.] IX, No. 6187. Available: *http://www.nlr.ru/e-res/law_r/search.php?regim=4&page=411&part=1540* [last viewed 20.02.2016].
2. I. O preobrazovanii sudebnoj chasti v" Pribaltijskih" gubernijah" i II. O preobrazovanii krest'janskih" prisutsvennyh" mest" Pribaltijskih" gubernij [I. On Changing/Transforming the System of Courts in the Baltic Provinces and II. On Changing/ Transforming Peasant Institutions]

by Latvians. As opposed to Latgale, juries were not introduced in the Baltic Provinces.

On 6 December 1918, the People's Council adopted "Provisional Regulations on the Courts of Latvia and the Procedure of Litigation".[24] Professor Vladimirs Bukovskis (1867–1937) has called the Provisional Regulations, due to their importance, "the basic law on Latvian judicial institutions".[25] The author, upholding V. Bukovskis' opinion, will also hereinafter refer to "Provisional Regulations on the Courts of Latvia and the Procedure of Litigation" as "Basic Law on Courts".

"Basic Law on Courts" established the foundations of the system of courts of Latvia as a sovereign state. In accordance with Basic Law on Courts amendments and/or additions were introduced to Court By-laws.[26] During the debates about Basic Law on Courts the People's Council focused, in particular, upon the issue of language.[27] Only 18 days after proclamation of the state. The People's Council adopted a historic decision in connection with the judicial power in the Republic of Latvia. Article 10 of Basic Law on Courts provided:

> "*The language of business transactions at courts and court institutions shall be the official language – the Latvian language*".

Outside cities, the parish courts continued their work,[28] "but not as a court of classes, their competence shall include all citizens living in the parish".[29] Prior to that, the parish courts, in fact, there were typical courts of the peasant class. Hearing of criminal cases was excluded from the competence of parish courts. It was taken over by the magistrate's courts. The supreme county courts as the appellate instance of parish courts were liquidated. Magistrate's courts were defined as the instance for judicial review / appellate instance for the rulings by the parish courts. The magistrate, in hearing cases in appellate procedure, in turn, had to invite two presidents of the parish courts from its court precinct as lay judges.[30] Even though this marked a trend of restricting the jurisdiction of parish courts as "historical monument" of class society, until Latvia's occupation (1940) they were not abolished. Functioning of parish courts was discontinued in Latvia after *de facto* restoration of independence on 1 January 2007.[31]

Criminal cases as well as civil cases, which were not subject / did not fell into the jurisdiction of parish courts and county courts, were reviewed by the magistrate

(1881–1913). In: Polnoe sobranie zakonov" Rossijskoj imperii [Complete Collection of Laws of the Russian Empire], t. [Vol.] IX, No. 6188. Available: *http://www.nlr.ru/e-res/law_r/search.php?regim=4&page=411&part=1540* [last viewed 20.02.2016].

[24] Pagaidu nolikums par Latvijas tiesām un tiesāšanas kārtību [Provisional Regulations on the Courts of Latvia and the Procedure of Litigation] (06.12.1918). *Latwijas Pagaidu Waldibas Likumu un Rihkojumu Krahjums*, 15 July 1919. Doc. No. 1.

[25] *Bukovskis, V.* Administratīvās tiesas reforma [Reform of the Administrative Court]. *Tieslietu Ministrijas Vēstnesis*, 1925. No. 7–9, p. 833.

[26] *Lazdiņš, J.* Tiesu varas pēctecība ..., p. 635.

[27] Latwijas Tautas Padome [stenogrammas] [The People's Council of Latvia [transcripts]]. Rigā: Satwersmes Sapulces izdevums, 1920, part 1, pp. 59, 61–63.

[28] Tiesu pamatlikums [Basic Law on Courts], Art. 3.

[29] Latwijas Tautas Padome ..., p. 59.

[30] Tiesu pamatlikums [Basic Law on Courts], Art. 4.

[31] See: Bāriņtiesu likums [Law on Orphans' Courts] (22.06.2006). Pārejas noteikumi [Transitional provisions], Art. 1. Available: *http://likumi.lv/doc.php?id=139369* [last viewed 04.01.2016].

(two variants of spelling in Latvian: *miera tiesnesis*[32] / *miertiesnesis*[33]). The county courts were defined as the appellate instance for judgements by magistrate's courts as the court of first instance.[34]

The county courts (two variants of spelling in Latvian: *apgabala tiesas*[35] / *apgabaltiesas*[36]), in contrast to the period of former Russia, functioned not only as the court of first instance, but also in the appellate procedure (so-called mixed jurisdiction). The cases that did not fall within the jurisdiction of magistrate's court were adjudicated in the first instance,[37] and complaints about the rulings by magistrate were reviewed in appellate procedure.[38]

The Court Chamber kept its previous jurisdiction – defined in Court By-laws. It was the court of second instance or the appellate court for rulings by the county courts.[39]

The Senate was established as the supreme court in Latvia. "The Latvian Senate in Riga shall be the cassation instance in all cases, it shall adjudicate cases in a collegiate composition and shall be divided into civil, criminal and administrative departments with chairmen elected in joint sitting".[40] The Senate symbolised the judicial power of Latvia as a sovereign state. Before the Republic of Latvia was proclaimed, throughout the territory of Latvia the court cassation and supervisory instance was former Ruling Senate of Russia in St. Petersburg / Petrograd, but with coming into force of Basic Law on Courts, the Latvian Senate in Riga assumed these functions. Drafting authoritative rulings became the task of the Senate as the supreme court.[41]

Latvia was proclaimed as a democratic republic.[42] In accordance with the principle of a democratic state, Basic Law on Courts provided for the involvement of the people in the administration of justice. Article 5 of Basic Law on Courts provided that "[c]riminal cases, which pursuant to the law are subject to the jury, the County Court shall adjudicate with the presence of sworn lay judges from among the members of self-governance of the respective court precinct." This provision of the law was not met. The requirement to select jurors from among the civil servants of the self-government and not from among the totality of all citizens was not acceptable.[43]

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[32] See orthography of Basic Law on Courts.

[33] See orthography of "Tiesu iekārta [The Structure of Courts]. Tieslietu ministrijas kodifikācijas nodaļas 1936. gada izdevums. Rīga".

[34] Tiesu pamatlikums [Basic Law on Courts], Art. 5.

[35] See orthography of Basic Law on Court.

[36] See orthography of The Structure of Courts.

[37] Basic Law on Court provided that parish courts had jurisdiction over civil cases with the value up to 300 roubles (Art. 3). The magistrates, in their turn, reviewed cases that did not fall within the jurisdiction of parish courts and did not exceed the value of 1500 roubles (Art. 4–5).

[38] Tiesu pamatlikums [Basic Law on Courts], Art. 5.

[39] Ibid., Art. 6.

[40] Ibid., Art. 7.

[41] See: *Loebers*. Tiesu iekārtas likumu 259.[1] pants [Article 259[1] of the Law on the Structure of Courts]. *Tieslietu Ministrijas Vēstnesis*, 1921. No. 1–3, pp. 21–28; *Mincs, P.* Vēl par 259.[1] pantu [More on Article 259[1]]. *Tieslietu Ministrijas Vēstnesis*, 1921. No. 4–6, pp. 108–112; *Disterlo*. Latvijas Senāta būtība un raksturs [Administrative Justice, in particular in Scandinavian Countries]. *Tieslietu Ministrijas Vēstnesis*, 1921. No. 4–6, pp. 116–120. [etc.].

[42] Latvijas pilsoņiem [To the Citizens of Latvia!]! (18.11.1918). *Pagaidu Valdības Vēstnesis*, 14 December 1918. No. 1.

[43] Tiesu darbinieku sapulce [Meeting of Court Employees]. *Tieslietu Ministrijas Vēstnesis*, 1920. No. 2/3, p. 105.

The Constitutional Assembly continued reinforcing the foundations of the judicial power of a democratic state and unanimously[44] provided with the law of 11 June 1920 "Law on the Form of Introduction of Court Judgements":

> "*Court judgements shall be drawn up, pronounced and enforced on behalf of the sovereign people of Latvia*."[45]

Thus, in the inter-war period the actually autonomous legal proceedings of parish courts, magistrate's courts and general courts (county court, court chambers and the Senate) that had exited in former Russia was terminated in Latvia during the inter-war period. It was replaced by a united court system. Basic Law on Courts also introduced a tradition that the legislator was the one that finally appointed judges to their office.[46]

"Law on Administrative Courts", adopted by the Constitutional Assembly on 4 March 1921, played a significant role in creating the judicial power in compliance with the requirements of a democratic state governed by the rule of law (*Rechtsstaat*).[47] Senator Kārlis Ducmanis (1881–1943) wrote in this regard:

> "[..] *the supreme manifestation in a modern state is administrative courts, the administrative justice, the basic task of which is to guarantee lawfulness in the state, by which the guarantees of subjective and objective public rights are already given, thus also the guarantees that citizens and the bodies of state power themselves will be able to fulfil without interference their duties vis-à-vis the state, society and fellow citizens.*"[48]

Pursuant to the law, in Latvia all three instances of administrative courts were separated from state governance.[49] In this respect, V. Bukovskis sees significant similarities between the Latvian administrative courts and the English courts.[50] The idea that the executive, police and judicial powers should be separated was accepted in Europe already in the 19th century. The judicial reform, referred to above, which was initiated in former Russia on 20 November 1864, was aimed at it. In the neighbouring country, which was the closest to the Baltics – Prussia (Germany) – in 1870s, within the framework of the so-called Bismarck[51]-Gneist[52] reforms, independent administrative judges were entrusted with the review of legality in cases where the rights or lawful interests of private persons were infringed upon.[53] Actually, genuine justice was only the Higher Administrative Court (*Oberverwaltungsgericht*) or the Supreme Administrative Court. In lower instances,

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[44] Latwijas Satwersmes Sapulces stenogrammas [Transcripts of the Constitutional Assembly of Latvia]. I. sesijas [session] 9. sēde [meeting], 11 June 1920, notebook 2, p. 113.

[45] Likumu par tiesu spriedumu ievada formu [Law on the Form of Introduction of Court Judgements] (11.06.1920). *Likumu un waldibas rihkojumu krahjums*, 31 August 1920. No. 4, doc. No. 186.

[46] Tiesu pamatlikums [Basic Law on Courts], Art. 9.

[47] Likums par administratīvām tiesām [Law on Administrative Courts] (04.03.1921). *Likumu un valdības rīkojumu krājums,* 3 April 1921. Notebook No. 7, doc. No. 59 or *Valdības Vēstnesis,* 21 March 1921. No. 64.

[48] *Ducmanis, K.* Administratīvā justice, īpaši Skandinavijas valstīs [Administrative Justice, in particular in Scandinavian Countries]. *Tieslietu Ministrijas Vēstnesis*, 1939, p. 1129.

[49] Likums par administratīvām tiesām, Art. 6.

[50] *Bukovskis, V.* Administratīvās tiesas ..., p. 828. See also: *Strautiņš, P.* Mūsu administratīvā justīcija [Our Administrative Justice]. *Tieslietu Ministrijas Vēstnesis*, 1939, p. 212.

[51] Otto von Bismarck (1815–1898) – a conservative Prussian statesman / Chancellor (Reichskanzler) of the German Empire.

[52] Rudolf von Gneist (1816–1895) was a Prussian lawyer and politician.

[53] *Kleinheyer, G., Schröder, J.* Deutsche und Europäische Juristen ..., S. 165.

the review of administrative complaints was entrusted to public representatives that were jointly appointed and elected by county and regional administrations.[54] Senator J. Kalacs analysed the works by professor Rudolf von Gneist (1816–1895) on the procedure for hearing complaints of administrative nature and concluded:

> "[..] *the highest instance should be a true administrative court, but the duties of lower courts can be performed by the administrative institutions themselves, in particular, if impartial persons are seconded to their composition*."[55]

With the consolidation of parliamentary democracy, the need for administrative courts became more pronounced. The review of infringements inflicted upon the rights or legal interests of private persons caused by governance of the state implemented by the political power and the adopted administrative acts or actual actions related to it could not be left only at the discretion of the state or municipal institutions.[56] The requirement to have a neutral arbiter in such cases became self-evident. Thus, the existence of administrative courts was required by the spirit of times. "Jurisprudence means being in the know of divine and human matters",[57] the skill to follow the just one, understanding of the legal and illegal. However," [a] state governed by the rule of law is not the state of lawyers".[58] The mission of lawyers in a state governed by the rule of law is only to help their fellow citizens to establish the objective truth pursuant to law.

Already in the inter-war Latvia, the review of administrative cases formally was based upon objective examination.[59] The court was allowed, upon its own initiative, to take the necessary measures for establishing the facts of the case, to collect respective evidence, to request from any person documents for fair adjudication of the case, etc.[60] In fact, "[i]f the court encounters any deficiencies in the procedure of adjudication, then it must adapt to [..] the rules of the civil procedure law".[61] Thus, in the inter-war period the adversarial principle entered the hearing of administrative cases in Latvia,[62] with those restrictions that followed from the obligation of unbiased investigation. V. Bukovskis' opinion that the admissibility of adversarial principle in examining cases of administrative nature was contrary to the interests of a state governed by the rule of law must be upheld. "This fight, where the strong

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[54] *Korkunov, N. M.* Russkoe gosudarstvennoe pravo [The Russian State Law]. Tom" II. Chast' osobennaja [Vol. II. Special Part]. 6-e izd. [edition]. S.-Peterburg: Tip. M. M. Stasjulevicha, 1909, p. 503.

[55] *Kalacs, J.* Pārdomas par administratīvo tiesu [Reflections on the Administrative Court]. *Tieslietu Ministrijas Vēstnesis*, 1937, p. 315.

[56] *Gneist, R.* Der Rechtsstaat. Berlin: Verlag von Julius Springer, 1872, S. 166–168. Available: *https://archive.org/stream/derrechtsstaat00gnei#page/166/mode/2up* [last viewed 24.02.2016].

[57] *Gneist, R.* Der Rechtsstaat und die Verwaltungsgerichte in Deutschland ..., S. 331–332.

[58] "Der Rechtsstaat ist nicht Juristenstaat". See: *Gneist, R.* Der Rechtsstaat und die Verwaltungsgerichte in Deutschland. Zweite ungearbeitete und erweiterte Auflage. Berlin: Verlag von Julius Springer, 1879, S. 330. Available: *https://archive.org/stream/derrechtsstaatu00unkngoog#page/n347/mode/2up* [last viewed 26.02.2016].

[59] See: Likums par administratīvām tiesām, Art. 37., 38., 40. On the principle of objective investigation in the modern sense, see in: Administratīvais process tiesā. Autoru kolektīvs *Dr. iur.* J. Briedes vispārējā zinātniskā redakcijā [Administrative Procedure in Court. Group of authors, general scientific editor *Dr. iur.* J. Briede]. Rīga: Latvijas Vēstnesis, 2008, pp. 260–261.

[60] Likums par administratīvām tiesām, Art. 37–38.

[61] Ibid., Art. 74.

[62] *Bukovskis, V.* Administratīvās tiesas ..., p. 832; *Zilberts, Fr.* Pie jautājuma par administratīvo sodīšanu un administratīvām tiesām [On the Issue of Administrative Sanctions and Administrative Courts]. *Tieslietu Ministrijas Vēstnesis*, 1937, pp. 150–151.

power of state takes a stand against an ordinary citizen, waits to see, what the plaintiff is able to prove, is very unequal."[63]

The wording included in Law on Administrative Courts that "[a]dministrative courts shall not examine the expedience of a decision or an order"[64] was criticised the most. This meant that the administrative judges had the right to review only the lawfulness (legality) of administrative acts or lawfulness (legality) of negligence / delay in a case. Pursuant to the letter of the law, not only the Senate, but also the administrative courts of all instances had thereby turned into cassation courts. Without delving into the considerations on expediency, the cases, obviously, were reviewed faster. However, "[..] what is the sense of a speedy trial, if justice is not achieved; better a slow, but good trial than a fast and bad one."[65]

Notwithstanding the deficiencies in the activities of the judicial power identified in the discussions, democratic judicial power that was compatible with a state governed by the rule of law was introduced in Latvia in the inter-war period. The *Satversme* [Constitution] of the Republic of Latvia (hereinafter – the *Satversme*),[66] adopted on 15 February 1922, became the guarantor of an independent judicial power; this basic law, with amendments and additions, continues to be in force.[67] Thus, in examining the issues related to the continuity of judicial power in Latvia the constitutional dimension should be seen as being of decisive importance.

2. Constitutional dimension

The fundamental rights of the judicial power are included in Chapter VI of the *Satversme* – "Courts".[68] When the draft *Satversme* was discussed at the Constitutional Assembly, the majority of articles related the judicial power was adopted without major disputes or even unanimously.

Provisions that "[a]ll citizens shall be equal before law and court",[69] "[j]ustice may be administered only by those bodies that have been granted this right by law and only in the procedure established by law"[70] and "[j]udges shall be independent and subject only to law"[71] were adopted unanimously.[72] It was not the case with regard to setting the term of judges' mandate. The section included in the draft *Satversme* on appointing judges to office for life – "[judges] shall be appointed by the Saeima, and they shall be irremovable" – was severely criticised by the members of the parliament representing the leftist parties.

Andrējs Petrevics, on behalf of bakers – social democrats, urged the Constitutional Assembly to resign from the idea of including the principle of the irremovability of judges into the *Satversme*. A. Petrevics, however, allowed that the judges of county and higher courts could be appointed for life. In difference to this

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63 *Bukovskis, V.* Administratīvās tiesas ..., p. 832.

64 See: Likums par administratīvām tiesām, Art. 4. Part 2. See too: *Kalacs, J.* Pārdomas ..., p. 320.

65 *Bukovskis, V.* Administratīvās tiesas ..., p. 831.

66 Latvijas Republikas Satversme [The *Satversme* [Constitution] of the Republic of Latvia] (15.02.1922). *Likumu un valdības rīkojumu krājums*, 7 August 1922. Notebook, doc. No. 113.

67 Latvijas Republikas Satversme. Available: *http://likumi.lv/doc.php?id=57980* [last viewed 06.01.2016].

68 See Article 82–86 of the *Satversme*.

69 Article 82 of the *Satversme*, in the numbering of *Satversme* of 15 February 1922.

70 The first sentence in Article 86 of the *Satversme*, in the numbering of *Satversme* of 15 February 1922.

71 Article 83 of the *Satversme*, in the numbering of *Satversme* of 15 February 1922.

72 Latwijas Satwersmes Sapulzes stenogramas [Transcripts of the Constitutional Assembly of Latvia]. 20. burtn. [notebook] IV. sesijas [session] 20. sēde [meeting] 9 November 1921. Rigā: Satversmes Sapulzes isdewums. Krahjumā pee A. Gulbja, 1921, p. 1875.

"[..] the people should elect those judges that stand closest to them – magistrates [..], for example, for a term of 5 to 6 years".[73] Social democrat Kārlis Dzelzītis, in his turn, called for limiting the term of office of all judges to six years. He held that appointment of judges for life was incompatible with the principle of a democratic state – "[..] the general principle of democracy is elected courts".[74] There was a certain reasoning behind this. The election of judges into office for life, in fact, excludes the possibility to get rid of incompetent or otherwise useless justices.[75] Continuing the presentation of the views held by leftist parties, K. Dzelzītis concludes – good judges will nevertheless be re-elected and shall stay in their office for life.[76] Jānis Purgals, a representative of the Christian National Union, provided substantiated counter-arguments to this:

> "*We need an independent court. That is why we must introduce such procedure for appointing the judges that would guarantee this independence. [..] We know very well from Russia's legislation what the independence of the elected magistrates was like. In those few cities and counties in Russia, where magistrates were elected, it could be observed that the magistrates were always dependent upon that group of voters, which elected them*".[77]

At the final, third reading of the draft law social democrats Fēlikss Cielēns and A. Petrevics repeatedly submitted amendments regarding electing judges into office for a set term – six years. The proposal was rejected with 49 voting "for", 45 – "against", and with 8 "abstaining" (53 votes in total).[78] Thus, the appointment of judges into office for life or for a term defined in law was decided by a majority vote of four in favour of electing judges to office for life. Luckily, the representatives of leftist parties remained a minority.[79] Consequently, strong foundations for the independence of the judicial power were laid in the *Satversme*.

Article 85 of the *Satversme* in the wording of 1922 provided that "On the basis of a special law, juries shall exist in Latvia." In the second reading of the draft *Satversme* no political power opposed this article or this wording of the article. Article 85 was adopted unanimously.[80] During the third reading of the article, the usefulness of juries was no longer discussed. It is surprising that with this unanimous support for juries, in the end, juries were not established in Latvia. There were a number of political and practical reasons for that.

In 1925, the draft law on juries was completed. The draft law did not gain the support of the *Saeima*. This can be explained by several considerations. Firstly, there were significant similarities between the draft law and the model of juries in former

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[73] Latwijas Satwersmes Sapulzes stenogramas [Transcripts of the Constitutional Assembly of Latvia]. 20. burtn. [notebook] IV. sesijas [session] 20. sēde [meeting] 9 November 1921. Rigā: Satversmes Sapulzes isdewums. Krahjumā pee A. Gulbja, 1921, p. 1875.

[74] Ibid., 1921, p. 1876.

[75] Ibid., 1921.

[76] Latwijas Satwersmes Sapulzes stenogramas [Transcripts of the Constitutional Assembly of Latvia]. 4. burtn. [notebook] V. sesija [session] 14. sēde [meeting] 15 February 1922, p. 461.

[77] Latwijas Satwersmes Sapulzes stenogrammas ..., 1921, pp. 1876–1877.

[78] Latwijas Satwersmes Sapulzes stenogramas ..., 1922, pp. 462–463.

[79] Latwijas Satwersmes Sapulzes stenogrammas ..., 1921, pp. 1877–1879; Latwijas Satwersmes Sapulzes stenogrammas ..., 1922, pp. 461–463; *Osipova, S.* Genezis sudebnoj sistemy v Latvijskoj Respublike posle osnovanija gosudarstva (1918–1940) [The Genesis of the System of Courts in the Republic of Latvia Following the Establishment of the State (1918–1940)]. Mirovoj Sud'ja, 2014, No. 1, p. 6.

[80] See: Latwijas Satwersmes Sapulzes stenogrammas ..., 1921, p. 1879.

Russia.[81] Secondly, there were concerns that "[..] the draft law on juries threatened to bring into Latvian courts, which had always been outside the influence of parties or other influences, the spirit of parties and class struggle, and the hatred from the Saeima and the general public life of the time [..]".[82]

In 1933, the new "Draft Law on Juries with Explanations", elaborated by the Ministry of Justice, was published in the journal "Jurists".[83] In elaborating the draft law, the model of *Schöffengerichte* (courts of lay assessors) of Swiss cantons was used.[84, 85] The sentencing or the acquittal of a person would have to be reviewed in a composition of three state judges and four lay assessors (*Schöffen*). In the case of sentencing judgements, the majority vote would be required.

It was envisaged that the lay assessors would be chosen for each case by drawing lots.[86] The performance of lay assessor's duties would be considered to be a matter of honour.[87] The requirements set for obtaining this status were not high. Everything was reduced to a certain age limit, appropriate reputation, full capacity, not being in the guardianship of other persons, no criminal record for committing a severe crime or a crime, etc.[88] As to their rights, the lay assessors would be equalled to judges.[89]

As regards jurisdiction on cases, "[j]uries, i.e., county courts with lay assessors of juries, shall have jurisdiction on criminal offences, for which the most severe punishment envisaged by law is forced labour[90] or a penitentiary prison,[91] except the cases with regard to criminal offences envisaged in the ninth chapter of the Penal

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81 *Zilbers, Fr.* Jautājumi sakarā ar tiesu iekārtas likuma pārstrādāšanu [Issues in Relation to Redrafting the Law on the Structure of Courts]. *Tieslietu Ministrijas Vēstnesis,* 1938, pp. 129–131.

82 *Zilbers, Fr.* Jautājumi ..., p. 130.

83 Likumprojekts par zvērināto tiesām ar paskaidrojumiem [The draft law on jury trial with explanations]. *Jurists*, 1933. No. 8/9, 251.–272. sl. [column].

84 The basic principle on collegiate deicision by the state judges and the lay assesors regarding the guilt of the person on trial was borrwoed from Tessin canton of Switzerland. See: *Jakobi, P.* Latvijas zvērināto tiesu likumprojekts [Draft Law on Latvian Juries]. *Tieslietu Ministrijas Vēstnesis*, 1933. No. 3, pp. 58–59.

85 More on other sources and assessment thereof see: *Jakobi, P.* Latvijas zvērināto tiesu likumprojekts ..., pp. 58–73; *Lazdiņš, J.* Tiesu varas pēctecība ..., pp. 633–652; *Vikmanis, K.* Zvērināto tiesas Japānā [Juries in Japan]. *Tieslietu Ministrijas Vēstnesis*, 1929. No. 9/10, p. 423 (etc.).

86 Likumprojekts ..., Art. $600.^{2\text{-}4}$

87 Compensation of only *per* diem and travel costs was envisaged. See: Likumprojekts [Annex]..., Art. 46^2 point 17–18.

88 Citizens of the Republic of Latvia, aged 30–65, able to read and write in Latvian, could become lay assessors, they may not have committed crimes, no criminal prosecution against them may have been initiated, they should not be under the guardianship or social care of others, they could not be priests or monks. In accordance with the separation of powers, state and local government officials (President of the State, members of the *Saeima*, judges, police officers, etc.) could not be lay assessors. See: Likumprojekts [Annex]..., Art. 46^2 point 2 and 5.

89 Likumprojekts ..., Art. $695.^{30}$

90 According to the Penal Law of 24 April 1933 (hereinafter – the Penal Law) forced labour was envisaged for committing severe crimes. For example, for violent changing of the existing state order of Latvia, assassination of the President of the State, for committing murder (Art. 429), etc. See: Sodu likums [Penal Law] (24.04.1933.). *Likumu un Ministru kabineta noteikumu krājums*, 7 June 1933, notebook 7, doc. No. 134, Art. 3, 69, 72, 429, etc.

91 According to the Penal Law penitentiary prison was a sanction for committing a crime. For example, for intentionally making an unfair ruling of a judge or other official, for theft committed in a gang, for extortion or fraud, for vagrancy/vagabondism, for not revealing or lying about one's identity, etc. Soda likuma, Art. 147., 243., 297. etc.

Law of 1933[92]."[93] Thus, the jurisdiction envisaged for juries was quite broad. It must be added that after the Penal Law of 24 April 1933 capital punishment in times of peace did not exist.[94]

The rulings by juries would be subject only to cassation. Appellate legal proceedings would not be allowed. It was based on a number of considerations. The reasoning of the lay assessors in making the ruling would not be known; sometimes witnesses at the appellate instance no longer differentiated between their own experience and what they had heard at the legal proceedings of the first instance; there could not be qualitative difference between the lay assessors of the first and the second instance, etc.[95]

The institute of lay assessors had both supporters and opponents.

The supporters of the institute of lay assessors:

1) refuted the assumption regarding the insufficient competence of lay assessors. To understand the guilt or innocence of the person on trial "[..] logics, which any person with a common sense is endowed with, suffices";[96]
2) pointed to the possibility of avoiding the nihilism typical of lawyers-judges, because in "[..] a court, where a public element is involved, professional routine cannot take root.";[97]
3) accused professional judges of distancing themselves from human understanding of justice "[..] due to constant studies of legal acts and law";[98]
4) considered that the presence of lay assessors at courts would promote people's trust in the judicial power,[99] etc.

The opponents of the institute of lay assessors:

1) expressed concern with regard to the insufficient education of lay assessors in matters of legal proceeding, political bias, etc.[100], which could lead to arbitrariness. "Among all types of arbitrariness, the arbitrariness of court is the worst one, it kills the idea of a court at the very root, and, by striving for apparent justices, revokes even elementary justice";[101]
2) were convinced that lay assessors, in administering justice, often followed their conscience and not the law. Also, lack of lay assessors' responsibility for their work;
3) lack of state control over juries was pointed out;

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92 I.e., criminal offences committed, while being in the service of the state, autonomous companies of the state and local governments. See: Sodu likums, Art. 121–155.

93 Likumprojekts ..., Art. 246.[1]

94 See: Sodu likums, Art. 2.

95 *Jakobi, P.* Latvijas zvērināto tiesu likumprojekts ..., p. 70–71.

96 *Jakobi, P.* Par un pret zvērināto tiesām [For and Against Juries]. *Tieslietu Ministrijas Vēstnesis*, 1933. No. 4/5, p. 99.

97 Likumprojekts ..., p. 260.

98 *Kalve, L.* Zvērināto, šefenu un tīrās valsts tiesas [Juries, *Schöffen* Courts and Pure State Courts]. *Tieslietu Ministrijas Vēstnesis*, 1938, p. 666.

99 *Menders, Fr.* Zvērināto un šefenu tiesas [Juries and *Schöffen* Courts]. *Tieslietu Ministrijas Vēstnesis*, 1924. No. 1, p. 14.

100 See: Sudebnaja reforma [Tom 1]. Pod" redakciej N. V. Davydova i N. N. Poljanskago pri blizhajshem" uchastii: M. N. Gerneta, A. Je. Vormsa, N. K. Murav"eva i A. N. Parenago [Court Reform [Vol. 1] Edited by N. V. Davidov and N. N. Polyanskiy, with close involvement of M. N. Gernet, A. E. Vorms, N. K. Muravyev and A. N. Parenago]. Moskva: Ob"edinenie, 1915, pp. 316–317.

101 Likumprojekts ..., p. 264.

4) lay assessors submitting to a judge's dictate or being influenced by the eloquence of the guilty person's representative, etc.[102]

It seems that the true reasons why lay assessors were not introduced are revealed by vice-prosecutor of Riga Regional Court L. Kalve:

> "*In our days and circumstances, it would be difficult to find persons, who could sacrifice themselves for general good without material support, since there are very few rich persons in Latvia, and not everyone among them could be a judge.*"[103]

Thus, after all, juries were not introduced in Kurzeme, Zemgale and Vidzeme. The situation was different in Latgale. Historically, juries existed in Latgale for a short period after the Republic of Latvia was proclaimed. They ceased to exist only on the basis of the law of 14 September, 1920 – "[u]ntil juries are introduced [in the whole of Latvia] Latgale Regional Court shall adjudicate all criminal cases without sworn lay assessors."[104]

On 15 May 1934, an anti-constitutional *coup d'état* was instigated in Latvia. During the period, when the principle of authoritarianism consolidated, the usefulness of juries was seldom discussed. However, some persons appealed to the leader Kārlis Ulmanis (1877–1942) to manage also the work of courts in the name of national unity. Fortunately, this did not materialize.[105] A new law regulating the judicial power was not adopted before Latvia was occupied in 1940.

4. Judicial power following *de facto* restoration of Latvia's independence

On 4 May 1990, the Supreme Soviet of the Latvian Soviet Socialist Republic restored *de facto* the existence of the Republic of Latvia by "Declaration on the Restoration of Independence of the Republic of Latvia".[106] Simultaneously with the declaration of independence, those articles of the *Satversme*, which defined the constitutional legal foundations of the State of Latvia, and which could be amended only in a referendum, regained their effect.[107] On 6 July 1993, the *Satversme* entered

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[102] *Jakobi, P.* Par un pret zvērināto tiesām ..., pp. 107–111; *Menders, Fr.* Zvērināto un šefenu tiesas ..., No. 3, pp. 147–148; *Zilbers, Fr.* Jautājumi sakarā ar tiesu iekārtas likuma pārstrādāšanu [On the Issue of Administration of Courts]. *Tieslietu Ministrijas Vēstnesis*, 1938, p. 120.

[103] *Kalve, L.* Zvērināto ..., p. 677.

[104] Likums par miertiesnešu un pagasta tiesu kompetences paplašināšanu un Latgales tiesām [Law on Expanding the Jurisdiction of Magistrates' and Parish Courts and the Courts of Latgale], Art. 3. *Likumu un valdības rikojumu krājums*, 30 September 1920. No. 8, doc. No. 208.

[105] See: *Zilberts, Fr.* Pie tiesu pārvaldes jautājuma [On the Issue of Administration of Courts]. *Tieslietu Ministrijas Vēstnesis*, 1938, pp. 361–372.

[106] Deklarācija par Latvijas Republikas neatkarības atjaunošanu [Declaration on the Restoration of Independence of the Republic of Latvia] (04.05.1990). *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs*, 17 May 1990. No. 20.

[107] Pursuant to Article 77 of the *Satversme* in the wording of 1922 four articles were to be amended through a referendum:
Article 1 – Latvia is an independent, democratic republic.
Article 2 – The sovereign power of the State of Latvia is vested in the people of Latvia.
Article 3 – The territory of the State of Latvia, within the borders established by international agreements, consists of Vidzeme, Latgale, Kurzeme and Zemgale.
Article 6 – The *Saeima* shall be elected in general, equal and direct elections, and by secret ballot based on proportional representation.

into force in full scope.[108] Chapter VI of the *Satversme* – "Courts" – regained force in an unaltered way. Thus, the continuity of basic principles in the functioning of the judicial power was ensured.

On 18 October 1990, by the decision of the Presidium of the Supreme Council of the Republic of Latvia a working group was established for drafting a law on the structure of courts.[109] The laws that regulated the structure of courts in Latvia in the inter-war period, had generally become outdated. It would have been irrational to restore them in authentic forms.[110] Gunārs Kūtris, a member of the working group for drafting the law on judicial power, recalls: "The language or the style of expression, and terminology were an obstacle, the law lacked uniformity".[111] Therefore on 15 December 1992 a new law "On Judicial Power" was adopted.[112] However, this does not mean that Latvia derogated from the tradition of the judicial power of the inter-war Latvia. Gvido Zemrībo, the Chief Justice of the Supreme Court of the Republic of Latvia and the head of the working group for drafting the law on judicial power, remembers:

> "*Our task was to restore a democratic system of courts and an independent judicial power in Latvia, by enshrining in the law the generally recognised principles of administering justice, and retain, to the extent possible, that system of courts, which existed in Latvia from 1920 to 1940.* [..] *Therefore, the working group based its work, first of all, upon "Provisional Regulations on the Courts of Latvia and the Procedure of Litigation"[Basic Law on Courts] of 6 December 1918, which laid the foundations for the judicial power of the Republic of Latvia as a democratic state governed by the rule of law.*"[113]

This "[c]ompetence of courts [..] was defined in accordance with the pre-war principle",[114] the names of the court instances were also retained – regional courts, the Court Chamber and the Senate. The Court Chamber and the Senate as court instances were included in the composition of the Supreme Court. This had a number of objectives. First of all, a supreme court with this name exists in the majority of states, and such a name of the supreme court would be self-evident not only in Latvia, but also beyond its borders.[115] Secondly, the three-instance court system defined in Basic Law on Courts – district (municipal) courts, regional courts

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108 Latvijas Republikas 5. Saeimas pirmā sēde [The First Sitting of the 5th *Saeima* [Parliament] of the Republic of Latvia]. Available: *http://www.saeima.lv/steno/st_93/060793.html* [last viewed 07.01.2016].

109 Latvijas Republikas Augstākās Padomes lēmums "Par darba grupu izveidošanu Latvijas Republikas krimināLkodeksa, krimināLprocesa kodeksa, sodu izpildes kodeksa, administratīvo pārkāpuma kodeksa projektu un Latvijas Republikas likumprojekta par tiesu iekārtu izstrādāšanai" [Decision by the Supreme Council of the Republic of Latvia On Establishing a Working Group for Elaborating the Draft Criminal Code, Draft Criminal Procedure Code, Draft Penal Code and Draft Administrative Violations Code of the Republic of Latvia and the Draft Law on the Structure of Courts of the Republic of Latvia]. Materials from the personal archive of Gvido Zemrībo.

110 *Zemrībo, G., Guļevska, L.* Darbs dara cilvēku [Working One's Way Through It]. Rīga: Jumava, 2015, ISBN 978-9934-11-818-0, ISBN 978-9934-11-839-5, p. 125.

111 An interview with Gunārs Kūtris. Materials from the personal archive of Jānis Lazdiņš.

112 Par tiesu varu [Law on Judicial Power] (15.12.1992). Available: *http://likumi.lv/doc.php?id=62847* [last viewed 12.02.2016].

113 Interview with Gvido Zemrībo. Materials from the personal archive of Jānis Lazdiņš.

114 Interview with Gunārs Kūtris. Materials from the personal archive of Jānis Lazdiņš.

115 *Zemrībo, G., Guļevska, L.* Darbs dara cilvēku ..., p. 131.

and the Supreme Court, consisting of the Court Chamber and the Senate, would be retained.[116]

As regards the name, the magistrate's courts were an exception. People had become accustomed to the name of district (municipal) courts as the name of first instance courts, therefore the working group decided to give up the name of magistrate's court as the name of first instance courts.[117] Apparently, contemporary requirements in many ways were compatible with the structure of the system of courts of the inter-war Latvia. Thus, following the restoration of independence, Latvia in many ways continues the traditions of the judicial power of the inter-war period.[118]

More than 50 years had passed since the occupation of Latvia. After World War II, a series of internationally recognised acts that guaranteed human rights and the independence of judicial power had been elaborated in the democratic world. In this respect, G. Zemrībo notes:

> "*Fundamental human rights and the principles of the independence of the judicial power were insufficiently included in the laws that regulated judicial power in the inter-war Latvia. This shortcoming had to be eliminated. Due to this, first of all, "The Universal Declaration of Human Rights", adopted by the UN on 10 December 1948, and "The European Convention for the Protection of Human Rights and Fundamental Freedoms", adopted in Rome on 4 November 1950, were used as the sources of the law "On Judicial Power". The elaboration of the principle of the independence of courts, in turn, was based on the UN Resolution of 13 December 1985, following which, "Basic Principles of the Judiciary" were adopted.* [..]
> *Within the name of the law itself – On Judicial Power – the name "power" symbolises the separation of powers in the Republic of Latvia. Existence of a democratic state governed by the rule of law is inconceivable without an independent judicial power, existing alongside the legislative and the executive power. Therefore, Section 1 of the Law underscores that in Latvia independent judicial power exists alongside the legislative and executive power.*"[119]

The wording of the law "On Judicial Power" of 1992 is linked to the latest attempt to introduce juries in Latvia. Section 37(4) of the law "On Judicial Power" provided:

> "*At the hearing of the first instance courts at regional courts, criminal cases, in which, pursuant to law, capital punishment may be applied for the committed crime, shall be heard by the judge of the regional court and 12 lay assessors.*"

A rhetorical question might be asked, why should lay assessors examine the so-called "death row" cases. At the plenary session of the Supreme Council of 3 June 1992 parliamentarian Andrejs Panteļejevs also expressed his surprise:

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[116] *Lēbers, D. A. (zin. red./ed.), Apsītis, R., Blūzma, V., Jundzis, T., Lazdiņš, J., Levits, E.* Latvijas tiesību vēsture (1914–2000) [History of Latvian Law (1914–2000)]. Rīga: LU žurnāla "Latvijas Vēsture" fonds, 2000, ISBN 9984-643-14.X, pp. 468–469.

[117] Interview with Gvido Zemrībo. Materials from the personal archive of Jānis Lazdiņš; Interview with Gunārs Kūtris. Materials from the personal archive of Jānis Lazdiņš.

[118] *Lazdiņš, J. (zin. red./ed.), Kučs, A., Pleps, J., Kusiņš, G.* Latvijas valsts tiesību avoti. Dokumenti un komentāri [Legal Sources of the Latvian State. Documents and Commentaries]. Rīga: Tiesu namu aģentūra, 2015, ISBN 978-9934-508-29-5, p. 300.

[119] Interview with Gvido Zemrībo. Materials from the personal archive of Jānis Lazdiņš.

> "[*T*]*o us it seems rather dreary to establish only one such jury – for the death sentence. Then these people would have a peculiar tinge to them, being lay assessors in proceedings that pertain to the death penalty. To a certain extent, psychologically... I think that such a jury, psychologically, would be given the image of "a death angel", because they would judge only on this.*"[120]

G. Zemribo explains, why the competence of the jury was defined so narrowly:

> "*The working group knew, how difficult it had been to introduce juries in the inter-war Latvia. To put it more precisely – failing to introduce them. Article 85 of the Satversme of the Republic of Latvia in its original wording provided for the existence of juries in Latvia. This is the only article in Latvia, which was written, was adopted, but was not implemented. Therefore I consider that even if the juries decided on applying the death penalty to the guilty person, that would have been a huge success. At the time when the law "On Judicial Power" was drafted, death penalty still existed in Latvia. Quite possibly, over time the range of cases to be examined by the lay assessors could have been expanded.*"[121]

Renouncing death penalty as a punishment at the same time meant giving up the thought of introducing juries. It is difficult to judge, whether the participation of lay assessors in hearing the cases of national importance would improve the quality of court rulings. One thing is clear, the participation of society in administration of justice would have definitely increased the prestige of the judicial power.

Without initiating discussion of public importance on the expediency of juries, on 5 June 1996 the provision on the existence of juries in Latvia was deleted from the *Satversme*. Formally, Article 85 was expressed in new wording (1), but actually a norm with a totally different content was created.[122] Article 85 of the *Satversme* that is currently in force provides for the existence of the Constitutional Court in Latvia.[123] Not denying the necessity of the Constitutional Court and its significance in developing Latvia as a *state governed by the rule of law*, the replacement of a norm with certain content by a norm with completely different content is inadmissible. For this purpose, a new article had to be added to the *Satversme*. When reading the wording of the *Satversme* that is in force, without knowledge of the history of the Latvian constitutional law, hardly anyone could imagine that pursuant to the *Satversme*, albeit formally, juries should have existed in Latvia.[124]

Summary

1. The Republic of Latvia established judicial power appropriate for a democratic and judicial state within a short period of time – almost four years – following the proclamation of the state. The *Satversme* of the Republic of Latvia adopted on

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120 Latvijas Republikas Saeima. Arhīvs. 1992. gada 3. jūnija sēdes stenogramma [The *Saeima* of the Republic of Latvia. Archive. Transcript of the Sitting of 3 June 1992]. Available: *http://saeima.lv/steno/AP_steno/1992/st_920603v.htm* [last viewed 29.01.2016].

121 Interview with Gvido Zemrībo. Materials from the personal archive of Jānis Lazdiņš.

122 *Lazdiņš, J.* Tiesu varas pēctecība ..., p. 642.

123 See: Grozījums Latvijas Republikas Satversmē [Amendment to the *Satversme* of the Republic of Latvia] (05.06.1996). Available: *http://likumi.lv/ta/id/63346-grozijums-latvijas-republikas-satversme* [last viewed 29.01.2016].

124 *Lazdiņš, J. (zin. red./ed.), Kučs, A., Pleps, J., Kusiņš, G.* Latvijas valsts tiesību avoti ..., p. 301.

15 February 1922 and the so-called Basic Law on Courts became the guarantors for the independence of the judicial power.

2. In restoring the independent judicial power pursuant to the requirements of a democratic and judicial state after *de facto* restoration of the independence of the Republic of Latvia, the foundation the legal traditions of the inter-war Latvia could be used. It turned out that a judicial power that complied with the contemporary requirements was compatible with the structure and basic principles of the Latvian inter-war system of court.
3. The fact that the tradition of the inter-war judicial power of Latvia was supplemented with human rights and principles of the independence of judicial power, recognised by the international community at the end of World War II, does not point in the least to a break in the continuity of the judicial power of the state of Latvia. Quite to the contrary – it indicates the transformational ability of the tradition of the judicial power in the family of contemporary democratic and judicial states, even after 50 years of occupation.
4. Continuity of judicial power has been ensured in the Republic of Latvia. It is an important aspect in the understanding of the continuity of the state of Latvia. Without an overview of the continuity of judicial power, an analysis of state continuity would be incomplete.

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