Tendencies in the Development of Laws in the Republic of Latvia after the Renewal of Independence in 1990–1991

Dr. iur. **Jānis Lazdiņš**
Faculty of Law, University of Latvia
Professor at the Department of Legal Theory and History
E-mail: Janis.Lazdins@lu.lv

The article is a review of the development of laws in the Republic of Latvia after the restoration of independence in 1990–1991. The theses advanced in the article hold that Latvia, in renouncing the Soviet law, has gradually returned to the family of continental European law. Within the continental European understanding of law, a preference has been given to the experience of the family of Romano-Germanic law. This has been of a particular importance in private law. Preparing for the accession to the European Union and joining it on 1 May 2004 sped up this process. Furthermore, the author has proposed the following theses in relation to this matter:

1. Not just legal, but also psychological aspects must be taken into account when assessing the way in which a country moves from the legal system of a totalitarian state to one that is appropriate for a democratic country;
2. The rejection of Soviet law and a return to the legal community of continental Europe took longer than the restoration of Latvia's statehood as such;
3. During the transition from a planned to a market economy, the doctrine of natural law, as well as various ideas from the history of law are of importance;
4. The judicature of Latvian courts was of particular consequence in the process of renouncing the Soviet law.

Keywords: independence of a state, continuity of a state, trends in the development of law, renouncing the Soviet law, family of continental law, family of Romano-German law, *de iure* and *de facto*.

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Introduction

The gradual renouncement of the Soviet law started with the Declaration of 4 May 1990 by the Supreme Council (hereinafter – SC) of the Latvian Soviet Socialist Republic (hereinafter – Latvian SSR) "On the Restoration of Independence of the Republic of Latvia"... The Declaration envisaged a transitional period. It allowed application of such valid Soviet law, which did not collide with Article 1,[1] 2,[2] 3[3] and 6[4] of the *Satversme* [Constitution] of 15 February 1922 (hereinafter – the *Satversme*) of the Republic of Latvia (hereinafter – RL) (§ 6 of the Declaration).[5] This meant that total renouncement of the Soviet law was postponed for an indefinite period of time.

A new dividing line in the process of renouncing the Soviet law was marked by the law of the RL *Saeima* (Parliament) of 15 October 1998 "On Terminating the Application of Legal Acts of the Latvian SSR".[6] Section 1 of the law provided that all those laws of the Latvian SSR, as well as decisions by the SC of the Latvian SSR and decrees and decisions of its Presidium adopted prior to 4 May 1990 became invalid, except for:

1) *Latvijas Administratīvo pārkāpumu kodekss* [Latvian Administrative Violations Code];
2) *Latvijas Civilprocesa kodekss* [Latvian Civil Procedure Code];
3) *Latvijas Darba likumu kodekss* [Latvian Labour Law Code];
4) *Latvijas Kriminālkodekss* [Latvian Criminal Code];
5) *Latvijas Kriminālprocesa kodekss* [Latvian Criminal Procedure Code];
6) *Latvijas Sodu izpildes kodekss* [Latvian Penal Code];
7) *Latvijas Republikas Valodu likums* [Language Law of the Republic of Latvia].

Thus, it was recognised that the existence of codifications created during the Soviet period (understandably, with additions and amendments) alongside drafting and adopting new laws was useful.

Replacement of a legal system is a time-consuming process; and reforms cannot be implemented within a couple of years; moreover, change can rarely be linked to a specific date or year. Therefore, any attempt at classifying development of law will always be of a more formal than actual nature, if the date when a legal act was adopted or entered into force is chosen as a point of departure. And yet, the author in this publication proposes a tentative point of departure in the development of Latvian law after *de facto* restoration of independence in 1990–1991 the law of 15 October 1998 – "On Terminating the Application of Legal Acts of the Latvian SSR", which generally established a new treatment of the Soviet law. Therefore, apart from the first section, which analyses the change in legal thinking, the part of

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[1] 1. Latvia is an independent democratic republic.

[2] 2. The sovereign power of the State of Latvia is vested in the people of Latvia.

[3] 3. The territory of the State of Latvia, within the borders established by international agreements, consists of Vidzeme, Latgale, Kurzeme and Zemgale.

[4] 6. The *Saeima* [parliament] shall be elected in general, equal and direct elections, and by secret ballot based on proportional representation.

[5] *Deklarācija Par Latvijas Republikas neatkarības atjaunošanu* [Declaration of the Restoration of Independence of the Republic of Latvia]: Law of the Supreme Council of the Republic of Latvia, at: *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs*, 1990, Nr. 20.

[6] *Par Latvijas PSR normatīvo aktu piemērošanas izbeigšanu* [On Terminating the Application of Legal Acts of the Latvian SSR]: Law of the Republic of Latvia. Available at http://likumi.lv/doc.php?id=50429 [last viewed 02.06.2015].

exposition will be structured in two additional parts – until the law of 15 October 1998 was adopted and after it.

With the current publication, the author aims not only to examine the issues in the transformation of Latvian law, but also to initiate a discussion on the understanding of the law of other countries that influenced the evolution of Latvia's legal system and which was significant in reinstating or drafting anew the most important laws after the adoption of 4 May 1990 Declaration "On the Restoration of Independence of the Republic of Latvia".

The publication, in manifold ways, has been prepared in accordance with the requirements of the scientific method of the sociology of law. The article comprises the assessment provided by the members of committees on reinstating or drafting the most significant laws and/or by scholars regarding the need to reinstate the particular legal act and/or problems in drafting it.

The author is genuinely grateful for assistance in writing this publication to the full member of the Latvian Academy of Sciences, professor, *Dr. habil. iur.* Kalvis Torgāns, prof. *Dr. habil. iur.* Uldis Krastiņš, prof. *Dr. iur.* Valentija Liholaja, prof. *Dr. iur.* Ilma Čepāne, prof. *Dr. iur.* Ārija Meikališa, prof. *Dr. iur.* Sanita Osipova, prof. Kristīne Strada-Rozenberga, prof. *Dr. iur.* Jānis Rozenfelds, prof. *Dr. oec.* Kārlis Ketners, prof. *Dr. iur.* Ringolds Balodis, prof. *Dr. iur.* Jautrīte Briede, associate prof. *Dr. iur.* Kaspars Balodis, assist. prof. *Dr. iur.* Aivars Lošmanis, assist. prof. *Dr. iur.* Daina Ose, assist. prof. *Dr. iur.* Erlens Kalniņš, former President of the Constitutional Court of RL Gunārs Kūtris, President of the RL Constitutional Court LR Aldis Laviņš and Agra Reigase.

1. Change in Legal Thinking

Renouncing the Soviet law *per se,* in point of fact, could not change and initially did not change the understanding of law in Latvia. Transformation of legal thinking in Latvia proceeded gradually, simultaneously with integration into the European Union. In was of a particular importance in this process to understand not only the "letter" of law / a bill of law, but also the "spirit" of law /a bill of law. Thus, for example, situations occurred, when sources of law that complied with all requirements of a democratic society were construed from the standpoint of the Soviet law. This is vividly described by Egils Levits, the judge of the European Court of Human Rights, and later – of the Court of Justice of the European Union Court:

> *"At present the greatest problems in Latvia are not encountered on the level of legislation, but rather on the level of applying legal norms. With the legislation that is currently in force of Latvia – using Western methodology in applying it – in the majority of cases sufficiently satisfactory results could be achieved"*[7] and
>
> *"[c]ivil servants experience great difficulties in applying abstractly worded legal norms, in understanding their meaning and abiding by the principles of administrative law of a judicial state – the principle of proportionality, the principle of legal certainty, and others. Human rights considerations, effectively, are not integrated into the legal practice of governance"*.[8]

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[7] *Levits, E.* Latvijas tiesību sistēmas attīstības iezīmes uz XXI gadsimta sliekšņa, at: *Latvijas tiesību vēsture (1914–2000).* Prof. *Dr. iur.* D. A. Lēbera redakcijā. Rīga: LU žurnāla "Latvijas Vēsture" fonds, 2000, 502. lpp.

[8] Ibid., 505. lpp.

Professor Sanita Osipova recalls the following:

> *"Department of Legal Theory and History at the Faculty of Law, University of Latvia, headed by professor Edgars Meļķisis (1929–2009), played an important role in replacing the socialist legal doctrine with the understanding of law, typical of continental Europe. Now it is hard to comprehend all the work that professor Meļķisis initiated and completed in the 1990s to embody the understanding of the continental European Law in Latvia. The experience of continental Europe was adopted in close cooperation with German colleagues. The cooperation with the Faculty of Law of Münster University, the Federal Republic of Germany, deserves a special notice, from the German side it was [at the time] managed by the rector, professor Wilfried Schlüter."*[9]

To renounce Soviet legacy in legal science, the first step was taken upon the initiate of professor E. Meļķisis, and it was "[..] liberating the history of law from the perspective of Marxist-Leninist ideology. Professor Meļķisis dealt with this problem in the true spirit of German historical school [with the slogan] "*Zurück zu den Quellen!*"[10]."[11]

A working group was established to reach this aim, comprising, apart from professor Edgars Meļķisis, also prof. Sanita Osipova, prof. Romāns Apsītis, prof. Valdis Blūzma and the author of this article. Until 2006 the working group had identified and commented upon historical sources of law that were in force until the 18th century. The sources of law with commentaries have been included in two collective monographs:

1) "*Latvijas tiesību avoti. Teksti un komentāri. 1. sējums. Seno paražu un Livonijas tiesību avoti 10. gs. – 16. gs.*"[12] [Sources of Latvian Law. Texts and Commentaries. Volume 1. Ancient Common Law and Livonian Law];
2) "*Latvijas tiesību avoti. Teksti un komentāri. 2. sējums. Poļu un zviedru laiku tiesību avoti (1561–1795)*"[13] [Sources of Latvian Law. Texts and Commentaries. Volume 2. Sources of Law of the Polish and Swedish Times (1561–1795)].

The second step was "[..] creating a new theory of law, appropriate for a state of continental Europe, changing the understanding of the sources of law, introducing other sources of law alongside provisions of law, but, most importantly, developing understanding of general principles of law and their place in the hierarchy of legal norms. Professor Meļķisis, understanding that revision of the subject of sources of law was not sufficient, alongside creating new awareness of sources of law, engaged in developing the subject of the method of applying legal norms, introducing at the

[9] Interview with Professor Sanita Osipova. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

[10] *Coing, H.* Europäische Privatrecht (1800 bis 1914). 19. Jahrhundert. München: C. H. Beck'sche Verlagbuchhandlung, Bd. II. 1989, S. 41–53; *Schlosser, H.* Grudzüge der Neueren Privatrechtsgeschichte. Rechtsentwicklungen im europäischen Kontext. 9. Auflage. Heidenberg: C. F. Müller, 2001, S. 142–171; *Doherty, M.* Jurisprudence: the Philosophy of Law. Revision Workbook. Third edition. Holborn College: Old Bailey Press, 2004, 2006 (reprinted), pp. 129–132 and other.

[11] Interview with Professor Sanita Osipova. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

[12] *Lazdiņš, J., Blūzma, V., Osipova, S.* Latvijas tiesību avoti. Teksti un komentāri. 1. sējums. Seno paražu un Livonijas tiesību avoti 10. gs.–16. gs. Prof. E. Meļķiša redakcijā. Rīga: LU žurnāla "Latvijas vēsture" fonds, 1998.

[13] *Apsītis, R., Blūzma, V., Lazdiņš, J.* Latvijas tiesību avoti. Teksti un komentāri. 2. sējums. Poļu un zviedru laiku tiesību avoti (1561–1795). *Dr. hist.* V. Blūzmas redakcijā. Rīga: Juridiskā koledža, 2006.

Faculty of Law, University of Latvia, a new study course Study of Legal Method,[14] attracting new faculty members [*currently prof. Daiga Rezevska, former Justice of the Constitutional Court Juris Jelagins, Judge of the Supreme Court Aigars Strupišs, and others*], who wrote their theses on the theory and method of law, [or] wrote and published literature on these issues".[15]

To embody the new insight into the theory of law in legal practice, "professor Meļķisis initiated and participated in the training of judges and civil servants, and in publishing legal norms and case law in clear and accessible way."[16]

Thus, for example, on 25 June 1998 the Constitutional Court of the Republic of Latvia, in making its judgement, made a reference to professor E.Meļķisis' opinion as being authoritative with regard to interpretation of legal norms:

> *"The most comprehensive reflection of it in recent Latvian legal literature is found in the brochure by the Head of Department of Theory of Law and Political Science, University of Latvia Faculty of Law, professor Edgars Meļķisis "Methods for Interpreting Legal Norms." This brochure was published in 1996. [..] As prof. Meļķisis notes, all activities for interpreting a norm in one way or another, to a lesser or greater extent are linked to the aforementioned objectives and corresponding stages of interpretation. This provides the grounds for differentiating between four approaches – grammatical, systemic, teleological and historical."*[17]

It was far from easy to embody the new findings of the theory of law in legal culture, in particular, such that would create understanding of the methods for interpreting legal norms, development of law, as well as the concepts of "the spirit of a bill of law, "the spirit of law", etc. Initially, as all novelties, it caused certain scepticism, particularly among practicing lawyers.

2. Development of Law from 4 May 1990 to 15 October 1998

Restoration of the state and constitutional law. As already described in the introductory part, with the adoption of the 4 May 1990 Declaration "On the Restoration of Independence of the Republic of Latvia" Latvia gradually started renouncing the Soviet law. At the beginning, the major benefit was that the Constitution of the USSR and other federal legal acts no longer were directly applicable in Latvia. This marked gradual breaking off the legal ties with the former Soviet Union.

Due to a number of considerations, immediate renouncing of the Soviet law was impossible. E. Levits writes, as follows:

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[14] See also:
1. *Vispārīgās tiesību teorijas un valsts zinātnes atziņas*. E. Meļķiša zin. red. Rīga: Latvijas Universitāte, 1997.
2. *Meļķisis, E.* Kontinentālās Eiropas tiesību loks Rietumu tiesībzinātnieku skatījumā, *at: Tiesību spogulis I.* S. Osipovas zin. red. Rīga: BA Turība, 1999, 39.–48. lpp.
3. *Meļķisis, E.* Tiesību normu iztulkošana. Rīga: LU, 1999.
4. *Mūsdienu tiesību teorijas atziņas*. E. Meļķiša zin. red. Rīga: TNA, 1999.
5. *Juridiskās metodes pamati*. E. Meļķiša zin. red. Rīga: LU, 2003 and other.

[15] Interview with Professor Sanita Osipova. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

[16] Ibid.

[17] Ibid.

> *"It was impossible to create a totally new system of legislation and replace all legal employees in a short period of time. Likewise, the three theoretical* alternative *solutions would have created a chaos, hard to accept: revoking all Soviet law, taking over all Latvian law that was in force on 17 June 1940 (at the moment of occupation) or taking over a legal system of another country as a whole."*[18]

The situation was made even more complicated by the fact that at the moment of occupation, on 17 June 1940, Latvia no longer was a democratic sate (on 15 May 1934 anti-constitutional *coup d'état* was instigated. The principle of authoritarianism was established in public administration). Whereas taking over the law of another democratic state, as it happened in Eastern Germany on 3 October 1990, when the law of German Federal Republic came into force there and civil servants, judges, prosecutors, etc. were set on missions from West Germany to Eastern Germany, was impossible, since Latvia did not have resources like that at its disposal. "Therefore Latvia, without extensive discussions, rather self-evidently chose the path of reforming law. All *other post-socialist states* have also taken the same road."[19]

On 19–21 August 1991 *coup d'état*, the so-called August coup, failed in the USSR. The aim of this coup was to stop disintegration of the Soviet Union into independent republics and prevent signing of a new Union Treaty.[20] Contrary to the instigators' hopes to keep the Soviet state and the supremacy of the USSR law, the August coup did not stop the collapse of the USSR, but, on the contrary, sped it up. Norman Davies provides a very apt description of this situation:

> *"Nothing characterizes the collapse of the system better than the fate met by Soviet cosmonaut Sergei Krikalev, who was launched into space in May 1991. At the end of the year he continued to circle the orbit of the Earth, since a decision on his return had not been taken. The man had gone into space from the Soviet Union, which was still a super power, but returned to a world where the Soviet Union no longer existed. It turned out that his flight control team at Baikonur had ended up in independent Republic of Kazakhstan."*[21]

Before the August coup, the legal status of the state in many ways was still regulated by the 1978 Constitution of Latvian SSR and other sources of Soviet law, to the extent allowed by the 4 May 1990 Declaration "On the Restoration of Independence of the Republic of Latvia". After the constitutional law of 21 August 1991 "On the Statehood of the Republic of Latvia"[22] entered into force, the transitional period in restoring "the state power of the Republic in Latvia *de facto*", referred to in Para 5 of the 4 May 1990 Declaration "On the Restoration of Independence of the Republic of Latvia" ended and the constitution of the Soviet period lost its relevance. Section 1 of the constitutional law "On the Statehood of the Republic of Latvia" provides that

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[18] *Levits, E.* Latvijas tiesību sistēmas ..., 486. lpp.

[19] Ibid., 486., 487. lpp.

[20] *Deivis, N.* Eiropas vēsture. [N.p.]: Jumava, 2009, 1145. lpp.

[21] The quote has been translated from the Latvian language edition. See: *Deivis, N.* Eiropas vēsture ..., 1146. lpp.

[22] *Konstitucionālais likums, Par Latvijas Republikas valstisko statusu* [Constitutional law, On the Statehood of the Republic of Latvia]: Law of the Supreme Council of the Republic of Latvia. Available at http://likumi.lv/doc.php?id=69512 [last viewed 28.05.2015].

> *"[..] Latvia is an independent, democratic republic wherein the sovereign power of the State of Latvia belongs to the people of Latvia and the statehood thereof is determined by the 15 February 1992 Constitution of the Republic of Latvia."*

This concluded the discussion on the usefulness of drafting a new constitution, as envisaged in Para 7 of the 4 May 1990 Declaration "On Restoration of the Independence of the Republic of Latvia". To avoid creating a legal chaos, provisional procedure allowed application of Soviet legal acts, which were not incompatible with the 4 May Declaration and the constitutional law, referred to above.[23]

Alongside the restoration of independence, another feature that became typical of this period was regaining political and civic rights, as required by democratic society – freedom of speech, press, religion, association, assembly, movement, etc.[24] To guarantee these rights, on 10 December 1991 the constitutional law of SC of RL "Rights and Duties of People and Citizens"[25] was adopted. "It comprised a catalogue of human rights appropriate for a democratic and judicial state. In compliance with Article 1 of the *Satversme*, it ranked higher than ordinary laws".[26] Likewise, a number of special laws were adopted to ensure fundamental freedoms.[27]

The *Saeima* election held on 5–6 June 1993 was the first democratic election after an interruption of 62 years. Already on 6 July the *Saeima* reinstated the *Satversme* of RL in full, on 7 July the President of the State was elected, on 15 July – the 1 April 1925 law "On the Structure of the Cabinet of Ministers" was restored (with amendments), and on 28 October – the law of 2 August 1923 "On the State Audit Office". Thus, the operation of all four constitutional bodies referred to in the RL *Satversme* was restored.[28]

In the period until the summer of 1995 the institutional system of governance was also reformed. "As a result, the structure of public administration, inherited from the Soviet system, was almost completely abolished. The new structures of public administration were established by orienting towards a model democratic, subject to law, effective and rational governance."[29]

Property reform and entrepreneurship. Even though it was impossible to renounce the Soviet law as whole and the so-called reform path had to be taken, the legal relationship of property had to be changed urgently. Claude Henri de Rouvroy,

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[23] *Jundzis, T.* Tiesību sistēmas reforma valsts atjaunošanā, at: *Latvijas tiesību vēsture* (1914–2000). Prof. *Dr. iur.* D. A. Lēbera redakcijā. Rīga: LU žurnāla "Latvijas Vēsture" fonds, 2000, 457.–463. lpp.

[24] *Jundzis, T.* Neatkarīgas valsts aparāta veidošana un tiesību reformas, at: *Latvijas valsts atjaunošana (1986–1993)*. Rīga: LU žurnāla "Latvijas Vēsture" fonds, LZA Baltijas stratēģisko pētījumu centrs, 1998, 239.–257. lpp.

[25] Konstitucionālais likums, Par cilvēku un pilsoņu tiesībām un pienākumiem [Constitutional law, Rights and Duties of People and Citizens]: Law of the Supreme Council of the Republic of Latvia, at: *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs,* 1992, Nr. 4/5.

[26] Levits, E. Latvijas tiesību sistēmas ... – 489., 490. lpp.

[27] See, for example:

1. *Par reliģiskām organizācijām* [On Religious Organisations]: Law of the Supreme Council of the Republic of Latvia, at: *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs,* 1990, Nr. 40, (not effective). In force: *Reliģisko organizāciju likums* [Law on Religious Organizations]: Law of the Republic of Latvia. Available at http://likumi.lv/doc.php?id=36874 [last viewed 01.06.2015].
2. *Par sabiedriskajām organizācijām un to apvienībām* [On Public Organisations and Associations Thereof]: Law of the Supreme Council of the Republic of Latvia, at: *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs,* 1993, Nr. 1/2 and other.

[28] *Levits, E.* Latvijas tiesību sistēmas ..., 493., 494. lpp.

[29] Ibid.

known also as *Graf von Saint-Simon* (1760–1825),[30] has aptly written about the importance of the issue of property:

> *"[..] the law that establishes the form of [state] power and governance does not hold that importance and impact upon the welfare of a nation as the law that establishes property [property relations] and regulates its use."*[31]

Thus, unless the property law were changed, the transition from a planned economy to a market economy and from a governance model of a totalitarian state to a democratically organised system of public administration would have been unlikely. This process was made easier by the aim to restore historical justice, which was ignored during the years of Soviet occupation/ annexation.

The communist regime unlawfully nationalised property owned by the citizens of the occupied/ annexed state. The process of privatisation (denationalisation) was also facilitated by the necessity to harmonise property law with the EU requirements.[32] Therefore, the state had the following tasks:

1) denationalisation of property, i.e., restitution of property rights to the previous owners, whom the Soviet power had divested of their property;
2) transferring state property to local governments, so that local governments would be able to implement functions imposed upon them;
3) privatisation of state and local government property to renounce the commandeering administrative planned economy realised by the Soviet state and ensure transition to the goods-money relationships of a free market economy.[33]

Several important principles were integrated into reform laws to ensure fair restitution of property rights. The provision that the processes of denationalisation and privatisation with regard to the same properties does not happen simultaneously became one of the most important, to avoid infringing upon the rights of former owners or their heirs.[34] The beginning of reforms in property relationships was marked by the 13 June 1990 decisions of SC of RL "On Agrarian Reform of the Republic of Latvia"",[35] which was followed by a series of special laws.[36]

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30 *Hattenhauer, H.* Europäische Rechtsgeschichte. Heidelberg: C. F. Müller Juristischer Verlag, 1992, S. 574.

31 Cited in: *Istorija politicheskih i pravovyh uchenij*. Uchebnik dlja vuzov. Pod obshhej redakciej akademika RAN, doktora juridicheskih nauk, professora V. S. Nersesjanca. Izdanie tret'e, stereotipnoe, 2003, s. 490.

32 See: *Grūtups, A.* Tiesu prakse un komentāri. Rīga: Mans īpašums, 1994; *Grūtups, A., Krastiņš, E.* Īpašuma reforma Latvijā. Rīga: Mans īpašums, 1995.

33 *Lazdiņš, J.* Zemes īpašuma nacionalizācijas un denacionalizācijas pieredze Latvijā (19.–21. gs.), at: *Likums un Tiesības,* 2005, 7. sēj., Nr. 6 (70), 175. lpp.

34 *Lazdiņš, J.* Die Geschichte der Reprivatisierung und der Privatisierung des Eigentums in Lettland im 20. Jahrhundert, *at*: Nationalismus und Rechtsgeschichte im Ostseeraum nach 1800. Beiträge vom 5. Rechtshistorikertag im Ostseeraum 3.–4. November 2008. Ditlev Tamm und Helle Vogt (Hrsg.). København: Jurist- og Økonomforbundets Forlag, 2008, S. 118.

35 *Par agrāro reformu Latvijas Republikā* [On agrarian reform of the Republic of Latvia]: Law of the Supreme Council of the Republic of Latvia, at: *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs*, 1990, Nr. 29.

36 See, for example:

1. *Par zemes reformu LR lauku apvidos* [Law On Land Reform in the Rural Areas of the Republic of Latvia]: Law of the Supreme Council of the Republic of Latvia, at: *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs,* 1990, Nr. 49;
2. *Par zemes reformu Latvijas Republikas pilsētās* [On Land Reform in the Republic of Latvian cities]: Law of the Supreme Council of the Republic of Latvia. Available: at http://www.likumi.lv/doc.php?mode=DOC&id=70467 [last viewed 28.05.2015].

Concurrently with property reform, the restoration of private persons' entrepreneurship took place. As the legal acts linked to business activities that were in force in Latvia from 1918 to 1940 had become outdated in many regards, a series of new legal acts was adopted. The 20 September 1990 law of SC RL "On Entrepreneurial Activity"[37] can be noted as "the umbrella law". Similarly to the law "On Agrarian Reform of the Republic of Latvia", also the law "On Entrepreneurial Activity" was followed by a remarkable number of special laws.[38]

Civil law. The business activities of private persons in many regards entered into inevitable contradiction with the Soviet civil law, which did not know the concept of property in the meaning of Roman civil law, the inheritance law in accordance with the tradition of the Romano-Germanic family, civil law protection of honour and dignity, etc. For the sake of national economic development, a reform of civil law had to be implemented urgently. In difference to the business law, the legal acts that regulated civil law, in the form that they had been in force until 17 June 1940, could be partially restored. It made renouncing the Soviet law in this field of law easier.

Reinstating of the 28 January 1937 Latvian Civil Law (hereinafter – the Civil Law) and the laws related to it, for example, "Land Register Law" (1937), "Law on Cheques and Bills of Exchange" (1938) in 1992 –1993[39] turned into one of the most significant events. The Civil Law in its time had been elaborated on the basis of Part III of the 12 November 1864 Private Law Codification of the Baltic Provinces[40] (hereinafter – Part III of PLCBP), taking into consideration recent trends in the continental European law.[41] Part III of PLCBP, in turn, was created in the spirit of German historical school.[42]

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3. *Par zemes lietošanu un zemes ierīcību* [On Land Use and Land Survey]: Law of the Supreme Council of the Republic of Latvia, at: *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs,* 1991, Nr. 31/32 (not effective).
4. *Par zemes privatizāciju lauku apvidos* [On Land Privatisation in Rural Areas]: Law of the Supreme Council of the Republic of Latvia, at: *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs,* 1992, Nr. 32/33/34 and other.

[37] *Par uzņēmējdarbību* [On entrepreneurship law / Business law]: Law of the Supreme Council of the Republic of Latvia, at: *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs,* 1990, Nr. 40 (not effective).

[38] See:
1. *Par akciju sabiedrībām [*On Joint Stock Companies]: Law of the Supreme Council of the Republic of Latvia, at: *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs,* 1990, Nr. 43 (not effective).
2. *Par sabiedrībām ar ierobežotu atbildību* [On Limited Liability Companies]: Law of the Supreme Council of the Republic of Latvia, at: *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs*, Nr. 9/10, 1991 (not effective).
3. *Par pašvaldību uzņēmumu* [On Municipal Enterprises]: Law of the Supreme Council of the Republic of Latvia, at: *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs,* 1991, Nr. 17/18 (not effective), and other.

[39] See more: *Lazdiņš, J.* Latvijas Republikas tiesību attīstības tendences pēc neatkarības atjaunošanas 1990.–1991. gadā, at: *Latvijas Universitātes Žurnāls*. Juridiskā zinātne, 2010, Nr. 1, 58. lpp.

[40] In German: Provincialrecht der Ostseegouvernements. Liv-, Est- und Curlaendishes Privatrecht. (III. Teil).

[41] *Švarcs, F.* Latvijas 1937. gada 28. janvāra Civillikums un tā rašanās vēsture. Rīga: Tiesu namu aģentūra, 2011, ISBN 978-9984-790-90-9.

[42] *Lazdiņš, J.* Baltijas Civillikums laikmeta griežos. Likuma pieņemšanas 150 gadu jubilejas atcerei, at: *Jurista Vārds*, 2014. 11. novembrī, Nr. 44/45 (846/847), 18.–24. lpp; *Schlosser, H.* Grundzüge der neueren Privatrechtsgeschichte. Rechtsentwicklung im europäischen Kontext. 9., völlig neu bearbeitete und erweiterte Auflage. Heidenberg: C. F. Müller Verlag, 2001, S. 165.

Prof. Jānis Rozenfelds recalls the following substantiation for renouncing the Civil Code of Latvian SSR:

> *"[..] the fact that the valid Civil Code [of Latvian SSR] did not comprise provisions on private property. The initial intention was to rectify this deficiency by amending the Civil Code itself. A draft was elaborated and even published in newspaper "Padomju Jaunatne" at the beginning of the 90s [of the 20th c.] Later the idea of restoring the Civil Law as a whole prevailed."*[43]

> *"A more conservative opinion prevailed that radical amendments to the content of the Civil Law, under circumstances where none of the group members had a clear perception of the system of this law, should not be introduced, as this could cause unpredictable consequences. Therefore the working group agreed that fundamental amendments should be introduced only in the part on family law, where the existing wording of the Civil Law would unavoidably become incompatible with the conventions that Latvia had already acceded to and that recognised such principles as gender equality, prohibition to discriminate against children born out of wedlock, etc. that were unknown to the Civil Law."*[44]

Prof. Kalvis Torgāns pursues this thought:

> *"The drafting of a new code would take years, but the property and contract law had to be reorganised without delay. It was admitted that one had to trust that the drafters of the 1937 [Civil Law] had a good understanding of market economy and one could rely upon what they had written, introducing only the most necessary amendments and additions."*[45]

Thus, only the part of Family Law was subject to important amendments and additions, so that it would ensure gender equality, protection of the rights of a child in accordance with human rights standards, and thus would be compatible with the international commitments that Latvia had assumed.[46]

However, civil law did not escape a radical innovation. It is connected with Section 14 in the "Law On Time and Procedures for Coming into Force of Introduction, Inheritance Law and Property Law Part of the Renewed Civil Law of the Republic of Latvia of 1937". The purpose of Section 14 was to legalise the actual property relationships that had evolved in the process of denationalising/privatising property. The cases, where one person owned the land, but another person – a building or a structure on it, were quite frequent. It collided with "*[..] the principle of the unity of land and building*"[47] included in Section 968 of the Civil

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[43] Interview with Professor Jānis Rozenfelds. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

[44] Ibid.

[45] Interview with Professor Kalvis Torgāns. Materials of the Personal Archive of Jānis Lazdiņš. [interview in the Latvian language].
See also:
1. *Torgāns, K.* Saistību tiesības. I daļa. Mācību grāmata. Rīga: Tiesu namu aģentūra, 2006;
2. *Torgāns, K.* Saistību tiesības. II daļa. Mācību grāmata. Rīga: Tiesu namu aģentūra, 2006;
3. *Torgāns, K.* Civiltiesību, komerctiesību un civilprocesa aktualitātes. Raksti 1999–2008. Rīga: TNA, 2009, and others.

[46] See also: *Vēbers, J.* Latvijas Republikas Civillikuma komentāri. Ģimenes tiesības (26.–51., 114.–125., 140.–176. lpp.). Rīga: Mans īpašums, 2000.

[47] Interview with Professor Jānis Rozenfelds. Materials of the Personal Archive of Jānis Lazdiņš. [interview in the Latvian language].

Law. However, this norm serves a legitimate aim – to ensure certain legal order in the legal property relations.

Further reform of civil law is linked to integration into the European Union[48] and embodying international law and its principles in Latvia's legal environment.[49] Prof. K. Torgāns tells:

> *"[..] the amendments to the Civil Law of later years are predominantly linked to [its] modernisation,*[50] *abiding by legal doctrine, judicature, as well as the task to implement the EU directives."*[51]

Special importance is granted to, *inter alia*, civil law protection of honour and dignity, compensation for moral damage, restricting excessive contractual penalty, etc.[52]

Environmental law. In the contemporary Europe, the civil law circulation, including the right to own property, is significantly restricted in the name of the legitimate purpose of environmental law – in the name of environmental protection. "Prior to 1940, the ecological situation in the world and in Europe was not as acute as at the end of the last century, therefore, in restoring the statehood of Latvia, in this field, considering the experience of democratic European states, predominantly new special laws were elaborated."[53] Prof. Ilma Čepāne recalls that on 20 June 1990 the law "On Environmental Protection Committee of the Republic of Latvia" [54] and on 6 August 1991 the law "On Environmental Protection"[55] was adopted. Their

> *"[..] purpose was sustainable development of the state – harmonising the interests of economic development with protection of cultural sites and also protection of environment. [..] Since at the time private ownership of land and other natural resources had not consolidated in the state, these draft laws did not encounter strong opposition, except for those cases, where the property rights of former land owners (their heirs) were not restituted in specially protected territories ([for example], reserves, restricted areas, Gauja National Park [and elsewhere]."*[56]

Until 1940 no special bill of law regulated environmental law. During the inter-war period provisions on environmental protection in Latvian law were included in

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See also: *Rozenfelds, J.* Lietu tiesības. Rīga: Zvaigzne ABC, 2004; *Rozenfelds, J.* Intelektuālais īpašums. Rīga: Zvaigzne ABC, 2004, and other.

48 See, for example: *Jarkina, V.* Ceļā uz Latvijas Republikas Civillikuma modernizāciju, at: *Jurista Vārds*, 2007, Nr. 25, 9., 10. lpp.

49 For example: United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG), Principles of European contract law, UNIDROIT Principles of International Commercial Contracts and other.

50 Interview with Professor Kalvis Torgāns. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

51 Ibid.

52 Ibid.

53 Interview with Professor Ilma Čepāne. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

54 *Par Latvijas Republikas Vides aizsardzības komiteju* [On Environmental Protection Committee of the Republic of Latvia]: Law of the Supreme Council of the Republic of Latvia. Available at http://www.likumi.lv/doc.php?id=76192 [last viewed 19.05.2015] (not effective).

55 *Par vides aizsardzību* [On Environmental Protection]: Law of the Supreme Council of the Republic of Latvia. Available at http://www.likumi.lv/doc.php?id=68676 [last viewed 19.02.2015] (not effective).

56 Interview with Professor Ilma Čepāne. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

Section 1082–1128 of the Civil Law, aimed at "[..] restricting property right in the interests of protecting environment".[57] The regulation that the Civil Law comprised was insufficient. Therefore, "[f]or a long time the laws of the Soviet period continued to be in force – Code on Land, Code on Waters, Code on Subsoil Resources, Code on Forests, the law "On Protecting Atmospheric Air" and the law "On Protection and Utilisation of Animals""[58], until these were gradually replaced by new laws.

Tax law. Fundamental rights protect the right to own property, but tax reduces property. Therefore restrictions of property rights are admissible only in exceptional cases and on the basis of law. Moreover, such restriction should serve a legitimate aim. All taxes in Latvia have been established on the basis of law, and the tax collection also has a legitimate aim – filling the budget. The state and local government budgets, as is well known, serve for general good. Therefore all taxpayers should participate in paying taxes on equal basis. However, this is not sufficient for a fair taxation policy. Tax burden must be proportional, so that taxpayers would think less about hiding their income, but more about paying taxes. For a good reason, French enlightener Charles Louis de Sekondat, Baron de Montesquieu (1689–1755) wrote:

> *"[..] nothing demands from the State such wisdom and sense as deciding the share [of income] to take from its subjects and the share to be left to them."*[59]

The success of Latvia in balancing the principle of equality and proportionality is not a debatable issue. It is a fact that 25 years after the restoration of Latvia's independence, the subsistence minimum exceeds the minimum salary after taxes and that the non-taxable minimum amount of a natural person has not even approximated the limit of subsistence minimum.[60] During the last years, the subsistence minimum in Latvia has not been calculated at all. This is not an assertion that Latvia's legislator has tried to turn against its nations. Rather, the thesis should be advanced that in the field of taxation the best possible laws had been adopted...

How did this kind of taxation policy evolve? Prof. Kārlis Ketners tells that no legislation of another country has been directly used as a model for Latvia's tax law. Until 1993–1994 the legal acts in relation to taxes were predominantly drafted by the Ministry of Economic Reforms, "[..] taking into consideration proposals made by exile Latvians".[61] The laws adopted after 1993 –1994 can be divided into three groups:

> *"1. Legal acts that are based upon legal acts elaborated in 1990 (law "On Taxes and Fees",*[62] *which both as to the structure and regulation is based upon the law "On Taxes and Fees in the Republic of Latvia". The same applies*

[57] Interview with Professor Ilma Čepāne. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

[58] Ibid.

[59] Cited in: Nalogi i nalogovoe pravo. Pod redakciej kandidata juridicheskih nauk A.V. Brizgalina. Moskva: Analika – Press, 1997, c. 79.

[60] *Lazdiņš, J.* Taisnīguma principa ievērošana iedzīvotāju ienākuma aplikšanā ar iedzīvotāju ienākuma nodokli. *Latvijas Universitātes Raksti. Juridiskā zinātne,* 2008, Nr. 740, 95.–111. lpp.

[61] Interview with Professor Kārlis Ketners. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

[62] *Par nodokļiem un nodevām* [On Taxes and Fees]: Law of the Republic of Latvia. Available at http://www.likumi.lv/doc.php?id=33946 [last viewed 01.06.2015].

to the law "On Personal Income Tax",[63] "On Natural Resources"[64] and "On Lottery and Gambling Tax and Fee"[65]);

2. *Legal acts that were created in 1993–1994, using the proposals of OECD seminars and experts, – the law "On Enterprise Income Tax"[66];*
3. *Legal acts elaborated on the basis of the EU regulation ("The Law of Value Added Tax",[67] "On Excise Duties",[68] "Electricity Tax Law"[69] [..])."[70]*

The judicature of the European Court of Human Rights and the Court of Justice of European Communities/ the European Union has been of a major importance in modernising the tax law with the aim to integrate into the EU common space of law understanding. The rulings of the aforementioned courts, for example, on such matters as equalling a monetary fine to a criminal punishment; the right to remain silent and not incriminate oneself; the rights of non-residents from other member states to reduce the taxable income similarly to residents, if non-residents are in economically comparable situation with the residents, etc.[71]

Approximating the EU and international standards at the same time meant the need to speed up renouncing the Soviet law. October of 1998 became a certain watershed in this process.

3. Development of Law after 15 October 1998

On 15 October 1998 the law, referred to already in the introductory part, "On Terminating the Application of Legal Acts of the Latvian SSR" was adopted. On 15 February 2000 negotiations on acceding the EU started.[72] Prior to joining the EU or shortly afterwards, the work on the necessary additions to the *Satversme* was completed and a number of important law codifications according to branches of law were adopted.

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63 *Par iedzīvotāju ienākuma nodokli* [On Personal Income Tax]: Law of the Supreme Council of the Republic of Latvia. Available at http://www.likumi.lv/doc.php?id=56880 [last viewed 02.06.2015].

64 *Par dabas resursu nodokli* [On Natural Resources Tax]: Law of the Supreme Council of the Republic of Latvia. Available at http://likumi.lv/doc.php?id=37058 [last viewed 30.08.2015] (not effective). See: *Dabas resursu nodokļa likums* [Natural Resources Tax Law]: Law of the Republic of Latvia. Available at *http://www.likumi.lv/doc.php?id=124707* [last viewed 02.06.2015].

65 *Par izložu un azartspēļu nodevu un nodokli* [On Lottery and Gambling Tax and Fee]: Law of the Republic of Latvia. Available at http://likumi.lv/doc.php?id=57415 [last viewed 30.05.2015].

66 *Par uzņēmumu ienākuma nodokli* [On Enterprise Income Tax]: Law of the Republic of Latvia. Available at: http://www.likumi.lv/doc.php?id=34094 [last viewed 01.06.2015].

67 *Par pievienotās vērtības nodokli* [On Value Added Tax]: Law of the Republic of Latvia. Available at http://www.likumi.lv/doc.php?id=34443 [last viewed 02.06.2015] (not effective). See: *Pievienotās vērtības nodokļa likums* [The Law of Value Added Tax]: Law of the Republic of Latvia. Available at http://likumi.lv/doc.php?id=253451 [last viewed 02.06.2015].

68 *Par akcīzes nodokli* [On Excise Duties]: Law of the Republic of Latvia. Available at http://www.likumi.lv/doc.php?id=81066 [last viewed 02.06.2015].

69 *Elektroenerģijas nodokļa likums* [Electricity Tax Law]: Law of the Republic of Latvia. Available at http://www.likumi.lv/doc.php?id=150692 [last viewed 02.06.2015].

70 Interview with Professor Kārlis Ketners. Materials of the Personal archive of Jānis Lazdiņš [interview in the Latvian language].

71 *Lazdiņš, J., Ketners, K.* The Effect of Court Rulings on the Dynamics of the Latvian Tax Law, at: *Journal of the University of Latvia. Law,* 2013, Nr. 5, pp. 22–43.

72 See also: *Eiropas līgums par asociācijas izveidošanu starp Eiropas Kopienām un to Dalībvalstīm, no vienas puses, un Latvijas Republiku, no otras puses* [The Association Agreement between the European Communities and their Member States and the Republic of Latvia]. Available at http://pro.nais.lv/naiser/text.cfm?Key=0240121995061232769 [last viewed 28.05.2015].

1) On 15 October 1998 – Chapter 8 of the *Satversme* – *Cilvēka pamattiesības*[73] [Fundamental Human Rights];
2) On 17 June 1998 – *Krimināllikums*[74] [The Criminal Law];
3) On 14 October 1998 – *Civilprocesa likums*[75] [Civil Procedure Law];
4) On 13 April 2000 – *Komerclikums*[76] [The Commercial Law];
5) On 20 June 2001 – *Darba likums*[77] [Labour Law];
6) On 25 October 2001 – *Administratīvā procesa likums*[78] [Administrative Procedure Law];
7) On 21 April 2005 – *Kriminālprocesa likums*[79] [Criminal Procedure Law], etc.

With the so-called codification of major law/ bills of law coming into effect, in fact, the renouncing of the Soviet law was completed. On 1 May 2004 Latvia became an EU member state, and from then on the EU sources of law (general principles of law, regulations, directives, etc.) became directly applicable to Latvia, in compliance with the provisions of the transitional period.

Fundamental human rights and principles of law. Chapter 8 of the *Satversme* – "Fundamental Human Rights", adopted on 15 October 1998, had an important role in ensuring human rights and developing new legal relationships. In assessing these additions, E. Levits and Mārtiņš Mits wrote that they complied with classical political, civic and also social fundamental rights.[80] Hence, fundamental human rights in Latvia had also gained a constitutional shape. Formally, the Soviet constitutions also referred to citizens' fundamental rights.[81] However, under the conditions of a totalitarian system, enjoying them, in particular with regard to political freedoms, was actually impossible.

Likewise, the understanding of the sources of law themselves in the Soviet law differed from this understanding in democratic countries. Even though in both systems of law a bill of law is the source of law, in democratic states a bill of law is not the only source of law. In accordance with the doctrine of natural law, the following are recognised as the source of law – "first of all, general principles of law,

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73 *Grozījumi Latvijas Republikas Satversmē* [Amendments to the Constitution of the Republic of Latvia]: Law of the Republic of Latvia. Available at http://www.likumi.lv/doc.php?id=50292 [last viewed 28.05.2015].

74 *Krimināllikums* [The Criminal Law]: Law of the Republic of Latvia. Available at http://likumi.lv/doc.php?id=88966%2520 [last viewed 02.06.2015].

75 *Civilprocesa likums* [Civil Procedure Law]: Law of the Republic of Latvia. Available at http://www.likumi.lv/doc.php?id=50500 [last viewed 01.06.2015].

76 *Komerclikums* [The Commercial Law]: Law of the Republic of Latvia. Available at http://www.likumi.lv/doc.php?id=5490 [last viewed 02.06.2015].

77 *Darba likums* [Labour Law]: Law of the Republic of Latvia. Available at http://www.likumi.lv/doc.php?id=26019 [last viewed 02.06.2015].

78 *Administratīvā procesa likums* [Administrative Procedure Law]: Law of the Republic of Latvia. Available at http://www.likumi.lv/doc.php?id=55567 [last viewed 02.06.2015].

79 *Kriminālprocesa likums* [Criminal Procedure Law]. Law of the Republic of Latvia. Available at http://www.likumi.lv/doc.php?id=107820 [last viewed 02.06.2015].

80 *Levits, E.* Piezīmes par Satversmes 8. nodaļu – Cilvēka pamattiesības, at: *Cilvēktiesību Žurnāls*, 2000, Nr. 9–12, 11.–40. lpp.; *Mits, M.* Satversme Eiropas Cilvēktiesību standartu kontekstā, at: *Cilvēktiesību Žurnāls*, 2000, Nr. 9–12, 41.–82. lpp.

81 See: *Padomju Sociālistisko Republiku Savienības Konstitūcija (Pamatlikums)* [The Constitution of the Union of the Soviet Socialist Republics]: Law of the Union of the Soviet Socialist Republics. Rīga: Liesma, 1977, Art. 39–69.

such as rationality, justice, legal certainty, proportionality, which either are woven into legal norms or operate independently".[82]

In free Europe the renaissance of natural law started after the World War II (1945), whereas in Latvia – only after the collapse of the USSR (1991). This process was in many ways made easier by the famous "Radbruch formula". If the injustice of a bill of law (gesetzliches Unrecht) collides with the principle of justice to such an inconceivable degree that the positive law can no longer be considered as being law at all, then the injustice of the bill of law must retreat before the principle of justice, i.e., before the general principles of law that are superior to positive law.[83]

The Constitutional Court of RL (hereinafter – the Constitutional Court) played a significant role in embodying the principles of law in Latvia's legal system.[84] Thus, for example, a judgement by the Constitutional Court states the following:

> *"The principle of equality [..] prohibits state institutions from adopting such norms that, without reasonable grounds, allow differential treatment of persons, who are under similar and according to particular criteria comparable circumstances. Differential treatment is discriminatory, if it lacks objective and substantiated cause, i.e., a legitimate aim, as well as if the relationship between the chosen measures and the set aims are not proportional."*[85]

> *"[..] legal stability is an element in the principle of a judicial state. It, inter alia, demands not only regulated legal proceedings, bus also something like a conclusion that would be legally stable. At the same time, the principle of a judicial state requires that the outcome of criminal proceedings were also fair, i.e., that persons were not be sentenced for such criminal offenses that they did not commit, and the persons, who have committed criminal offenses, were appropriately sentenced."*[86]

The President of the Constitutional Court Aldis Laviņš underscores the importance of the Constitutional Court in the development of legal thinking in the state of Latvia:

> *"The Constitutional Court has a significant role in the Latvian system of courts not only because it has been granted special jurisdiction – implementation of constitutional review, but mainly because it is driving the legal thinking in the state. The Constitutional Court, already with its first rulings, inspired Latvian lawyers to change their legal thinking and adopt understanding of*

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[82] *Levits, E.* Pārveidojot PSRS tiesiskās sistēmas mantojumu, at: *Likums un Tiesības*, 2002, 4. sēj., Nr. 6, 166. lpp.

[83] *Radbruch, G.* Gesetzliches Unrecht und übergesetzliches Recht, at: *Radbruch, G.* Gesamtausgabe. Band 3. Rechtsphilosophie III. Heidelberg: F. C. Müller, Juristischer Verl., 1990, S. 83–85; *Kleinheyer, G., Schröder, J.* (Hrsg.). Deutsche und Europäische Juristen aus neuen Jahrhunderten. Eine biographische Einführung in die Geschichte der Rechtswissenschaft. 5., neu bearbeitete und erweiterte Auflage. Heidelberg: C. F. Müller Verlag, 2008, S. 356, 357; *Rüthers, B., Fischer, Ch.* Rechtstheorie. Begriff, Geltung und Anwendung des Rechts. 5., überarbeitete Auflage. München: Verlag C. H. Beck, 2010, S. 597.

[84] See, for example: *Vildbergs, J. H., Feldhūne, G. Atsauces Satversmei* (references / commentary / annotations to Satversme). Mācību līdzeklis. Rīga: EuroFaculty, 2003; *Mazākumgrupu (minoritāšu) integrācijas aspekti Latvijā*. Dr. Inetas Ziemeles redakcijā. Rīga: Latvijas Universitātes Juridiskā fakultāte, Cilvēktiesību institūta bibliotēka, 2001.

[85] Judgment in Case No. 2002-15-01 23 February 2002. Available at http://www.satv.tiesa.gov.lv/upload/2002-15-01.rtf [last viewed 02.06.2015].

[86] Judgment in Case No. 2001-10-01 05 March 2002. Available at http://www.satv.tiesa.gov.lv/upload/2001-10-01.rtf [last viewed 02.06.2015].

law and methodology for applying it conformity with the Western circle of law. The Constitutional Court, by consistently recognising in its rulings that Latvia's legal system is based upon the principles of democratic order, judicial and socially responsible state, has proceeded towards consolidating in Latvian society certainty about constitutional supremacy and the possibilities for every person to defend his fundamental rights and freedoms."[87]

Criminal procedure. Criminal procedure, as no other branch of legal science, demands effective exercise of fundamental human rights. Respecting such principles of law as *the presumption of innocence* or *no punishment without guilt* more than anything else strengthens the foundations of a judicial and democratic state. As Marcus Tullios Cicero(106–43 BC) once wrote:

"[..] the question – whether the innocence of the accused has been proven – cannot be asked, instead – whether the charges have been proven".[88]

The judicature of the European Court of Human Rights (hereinafter – ECHR) had an important role in renouncing the Soviet understanding of criminal procedure and in drafting the new Criminal Procedure Law. To a large extent, the ECHR judicature was embodied in the Latvian legal system with the mediations of the RL Supreme Court.[89] Gunārs Kūtris, the head of working group for drafting the Criminal Procedure Law and the former President of the Constitutional Court, recalls:

"[..] no sources of law from another country were used as a direct model. Procedural law is linked to the regulation on substantial law, typical of a state, as well as the system of law enforcement institutions that exists in the state. Likewise, experience amassed over decades and traditions in a particular field are also important. Moreover, criminal procedure in the countries of continental Europe follows similar principles.

In drafting the law, special focus was put on integrating into the law recommendations put forward in the Recommendation No. (87)18 by the Council of Europe Committee of Ministers on Simplifying Criminal Justice (and in many other documents. So we looked at how Sweden [..] and Germany had succeeded in their procedural laws. Also, the insights expressed in theory about deficiencies in the existing code and development trends were important. The experts, who were included in the working group, had personally studied criminal procedure in practice in Lithuania, Estonia, Sweden, Germany, France, the Netherlands, Canada, the USA, Japan, and other [states]."[90]

The idea is continued by prof. Kristīne Strada-Rozenberga, who notes that in drafting the Criminal Procedure Law, special attention was paid to the regulation on international cooperation, as well as that:

[87] Interview with the Chairman of the Constitutional Court of the Republic of Latvia Aldis Laviņš. Materials of the Personal archive of Jānis Lazdiņš [interview in the Latvian language].

[88] Cited by: *Omel'chenko, O. A.* Istorija politicheskih i pravovyh uchenij. Istorija uchenij o gosudarstve i prave. Uchebnik. Moskva: EKSMO Education, 2006, c. 137.

[89] Interview with the former Chairman of the Constitutional Court of the Republic of Latvia Gunārs Kūtris. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

[90] Ibid.

"The aim of the Criminal Procedure Law was to establish such criminal procedure that would ensure that the norms of the Criminal Procedure Law are applied effectively, as well as a fair regulation of criminal law relationships, without unjustified interference into a person's life. [Likewise] respect for human rights within the framework of criminal proceedings was reinforced. [The Criminal Procedure Law was developed] in compliance with international standards and requirements established by international documents."[91]

Criminal law. Renouncing the Soviet understanding of criminal law was determined by the change of political system. "[..] in the process of restoring independence the norms of the Criminal Code of Latvian SSR could not be used, since many of them were incompatible with the new political, economic, social and moral prerequisites in public life and activities. The draft of the new Criminal Law was elaborated in compliance with the concept of a judicial state."[92] In contrast to civil law, the criminal law experience that existed prior to the World War II was of little use. Prof. Uldis Krastiņš recalls:

"The legal basis for elaborating a new criminal law was the concept document approved by the Supreme Council of the Republic of Latvia in December 1990 on the basic principles for drafting a new criminal law. To a large extent the need to elaborate a new criminal law followed from the changes that had taken place since 1933 both in political and in social life of Latvia. [On 24 April 1933 the Penal Law of the Republic of Latvia was adopted.] Quite few outdated legal terms, as well as sometimes archaic Latvian language was used in the Penal Law."[93]

Due to this coincidence of circumstances criminal law after 1990–1991 developed in the framework of the continental European penal law and in compliance with the international commitments and political aims of Latvian state. The penal law experience of no particular state was absolutized in this process. The experience of the Baltic States, Germany, Sweden, Denmark, France, the Russian Federation, as well as recommendations made by international experts became the most important sources in drafting the Criminal Law.[94]

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[91] Interview with Professor Kristīne Strada-Rozenberga. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].
See further: *Meikališa, Ā., Strada-Rozenberga, K.* Kriminālprocess. Raksti, 2005–2010. Rīga: Latvijas Vēstnesis, 2010.

[92] Interview with Agra Reigase. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

[93] Interview with Professor Uldis Krastiņš. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].
See more:
1. *Krastiņš, U., Liholaja, V.* Salīdzināmās krimināltiesības. Igaunija, Latvija, Lietuva. Rīga: Tiesu namu aģentūra, 2004; *Krastiņš, U., Liholaja, V.* Salīdzināmās krimināltiesības. Latvija, Austrija, Šveice, Vācija. Rīga: Tiesu namu aģentūra, 2006;
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[94] Interview with Agra Reigase. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

Administrative procedure. The reform of administrative law was strictly focused upon the experience of the Continental European Law. The experience of Germany was of particular importance in elaborating administrative procedure.

Prof. Jautrīte Briede recalls that in drafting the Administrative Procedure Law, the Administrative Procedure Law of Germany (Verwaltungsverfahrensgesetz), German and Latvian legal doctrine, as well as the judicature of the European Court of Human Rights were used as a model. The purpose of the Administrative Procedure Law was

> *"To improve and regulate an individual's relationship with public administration, as well as to found a specialised court for hearing disputes."*[95]

To facilitate embodying the general principles of law into the relationship between the state and citizens, a number of principles of law were integrated into the Administrative Procedure Law, such as the principle of respecting the rights of a private person, the principle of reasonable application of legal norms, the principle of proportionality, etc.[96]

Civil procedure. The necessity to draft the new Civil Procedure Law followed from the new civil law relationship that developed after the independence of the Republic of Latvia was restored and transition to the market economy occurred. This became particularly relevant after the effectiveness of the Civil Law was restored in 1992–1993. The Civil Law of Latvian SSR, adopted during the Soviet period on 27 December 1963, even with significant amendments and additions, could not meet the civil law requirements of a free society.[97]

Separating the civil procedure from administrative procedure had become relevant in Latvia as a judicial state. Hearing the disputes between the state and citizens in accordance with the adversary principle of civil procedure was not admissible. In a procedure like this a citizen, obviously, would be placed in an unequal situation. Therefore, as the judge of the Supreme Court Gunārs Aigars writes,

> *"[..] the term "civil cases" is understood as cases comprising a civil law dispute. This directly follows from the text of Section 1, the first part of which envisages that every person has the right to protect his or her civil or lawful interests that have been infringed upon or disputed in court. Thus, the draft does not contain chapters that regulate the procedure for hearing cases that have originated from administrative law relationships. [..] the hearing of such cases should be regulated by the Administrative Procedure Law."*[98]

The first and fundamentally significant step in elaborating the new civil procedure was "[..] the adoption of the law "On Judicial Power" on 15 December 1992 [..]. The basic principles of the new Civil Procedure Law [were] integrated into the 15 December 1992 law "On Judicial Power" (independence of the judicial

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95 Interview with Professor Jautrīte Briede. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

96 See: Art. 4.–14.[1]

97 See: *Civilprocesa likuma kodekss* [Civil Procedure Code]: Law of the Supreme Council of the Latvian Soviet Socialist Republic, at: *Latvijas Padomju Sociālistiskās Republikas Augstākās Padomes un Valdības Ziņotājs*, Nr. 1, 1964 (not effective).

98 *Aigars, G.* Par Latvijas Republikas Civilprocesa likuma (CPL) projektu, at: *Latvijas Vēstnesis*, 1997, Nr. 38/39 (753/754), 10. lpp.

power, three level system of courts, equality of parties in civil procedure, dispositive principle, adversarial system, the truth, etc.)".[99]

In drafting the Civil Procedure Law, no civil procedure law of any country was used as a model, but, as assist. prof. Daina Ose recalls,

> *"[..] the [civil procedural] principles, doctrine existing in European states and [..] the case law that was developing, taking into consideration the hearing of disputes regulated in the Civil Law in courts and the need for precise regulation, since the Civil Procedure as public law does not allow using analogy to the same extent as it is admissible in substantive law (Civil Law)."*[100]

Commercial law. In the USSR private persons were not allowed to engage in commercial activities. The basis for this was the position of the Marxist-Leninist ideology that prohibited a person from exploiting another person. After the collapse of the Soviet ideals, as noted before, Latvia adopted a series of laws that regulated business activities in urgent procedure. However, in the long-term, the fact that separate, sometimes contradictory laws were in force, was not acceptable. A comprehensive law, without legal collisions, for regulating commercial activities had to be drafted.

The elaboration of the Commercial Law was not easy, since "[n]o equal legal act existed prior to 1940"[101] as "[..] commercial law is a dynamic branch, which develops, thus [constantly] the most progressive trends must be taken into consideration".[102] As prof. Kaspars Balodis recalls, the Commercial Law was drafted with the aim:

> *"To create a comprehensive, modern legal act, a code as to its nature that would be suited to the Latvian system of private law and appropriate for the needs in practice to regulate commercial law circulation."*[103]

In drafting the Commercial Law, Latvia was orientating towards the traditions of the Romano-Germanic law traditions of continental Europe, the legal acts of Germany and the EU were significant, as well as the commercial law doctrine of Germany, Switzerland and Latvia. In elaborating the Commercial Law, the most important German legal acts were the Trade Law (*Handelsgesetzbuch, HGB*), the Law on Shares (*Aktiengesetz, AktG*) and the Law on Limited Liability Companies (*Gesetz betreffend der Gesellschaften mit beschränkter Haftung, GmbHG*).[104] Assist.

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[99] *Aigars, G.* Par Latvijas Republikas Civilprocesa likuma ..., 10. lpp.

[100] Interview with assistant professor Daina Ose. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].
See more:
1. Civilprocesa likuma komentāri. Trešais papildinātais izdevums. Sagatavojis autoru kolektīvs prof. K. Torgāna vispārīgā zinātniskā redakcijā. Rīga: Tiesu namu aģentūra, 2006;
2. Civilprocesa likuma komentāri. III daļa (61.–86. nodaļa). Sagatavojis autoru kolektīvs Prof. K. Torgāna zinātniskajā redakcijā. Rīga: Tiesu namu aģentūra, 2014, and other.

[101] Interview with associate Professor Kaspars Balodis. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

[102] Interview with assistant Professor Aivars Lošmanis. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

[103] Interview with associate Professor Kaspars Balodis. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

[104] Interview with associate Professor Kaspars Balodis. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language]; Interview with assistant Professor Aivars Lošmanis. Materials of the Personal archive of Jānis Lazdiņš [interview in the Latvian language].

prof. Aivars Lošmanis, a member of the group for drafting the Commercial Law, recalls:

> *"[Without the Commercial Law] Latvian system of private law would not have been complete. [..] The legislator, by reinstating without amendments Part on Contract Law of the Civil Law, thus had envisaged following the concept of dual private law regulation that the Civil Law comprised, similarly to Germany, Austria, France and other countries of continental Europe, i.e., special private law codification existing alongside general civil law, which regulates specific legal relationships, which are characterised by simplicity, efficiency, as well as increased level of protecting trust, publicity and responsibility. Moreover, in contrast to general civil law, where the principle of protecting socially more vulnerable and legally and commercially less experienced persons, the commercial law, quite to the contrary, abandons this kind of protection of such commercially inexperienced individuals, who, in view of the particularities of the legal relationships referred to before, must take into consideration that adverse consequences may set it."*[105]

Labour Law. As demonstrated by Latvia's experience in transiting from planned economy to market economy, labour law is not subject to dynamics as great as that in economic activities.[106] There was a reason why the Labour Law Code of Latvian SSR (of course, with amendments and additions) remained effective until 1 June 2002, when the Labour Law entered into force. However, the Soviet labour law in the long-term could not satisfy the relationships in free society. Shortly before the independence of the state was restored, prof. Vilnis Zariņš provided an apt description of the essence of labour relations in the Soviet state:

> *"In contrast to slavery in antiquity and capitalism, where slaves and workers know, the riches of which slave-owner or capitalist they are aggrandizing, exploitation [in the Soviet state] occurs anonymously with the mediation of the state apparatus. The common property, as it were, belongs to no one and everybody works on equal terms, only some receive much more and live in great prosperity, but other receive little and live in great poverty."*[107]

As assist. prof. Erlens Kalniņš recalls, the new Labour Law was drafted with the purpose of:

> *"[..] implementing into Latvia's legislation the European Union directives, as well as the requirements of the conventions and recommendations by the International Labour Organisation, and also – to modernise labour law, adapting it to the requirements of market economy. In elaborating the draft "Labour Law", (alongside "Latvian Labour Law Code" and the law "On Collective Agreements") predominantly legal acts of Germany [and] German*

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[105] *Lošmanis, A.* Par topošo Latvijas komerctiesību aktuālajiem mezglu punktiem. Available at http://www.juristavards.lv/index.php?menu=DOC&id=24715 [last viewed 02.04.2015].

[106] *Lazdiņš, J.* Padomju darba tiesību transformācija neatkarīgajā Latvijā, at: *Latvijas Universitātes Raksti. Juridiskā zinātne*, 2004, Nr. 667, 61.–76. lpp.

[107] *Zariņš, V.* Kas ir "reālā sociālisma" sabiedrības valdošā šķira? At: *Atmoda*, 1990, 23. janv., Nr. 3 (63), 11. lpp.

> *legal doctrine, which comprised also findings of judicature, were taken into account."*[108]
>
> *"The following were seen as being of special importance – German "Law on Collective Agreements" (*Tarifvertragsgesetz*), draft law "On Labour Contract" (*Entwurf eines Arbeitsvertragsgesetzes*) and "Law on "Law on Working Hours" (*Arbeitszeitgesetz*). Moreover, regarding some issues [discrimination in labour law, transfer of companies] the respective German [Civil Law] provisions were taken as a model from the chapter [of this law] "Dienstvertrag"."*[109]

Thus, in the field of private law, Latvia's legal system is strictly oriented towards the family of Romano-Germanic law, and within it – towards German experience in particular.

Summary

1. Renouncing the Soviet law and returning to the family of continental European law in terms of time was a longer process than restoring the statehood of the Republic of Latvia.
2. In transition from a legal system of totalitarianism to a legal system of a democratic state not only the legal, but also psychological aspects must be taken into account. Due to psychological reasons, for a long period of time the legal norms, which met the requirements of a democratic state, were applied in accordance with Soviet legal thinking.
3. In reinstating legal acts or drafting new ones, Latvia has mainly used experience of law from continental Europe. In the continental European legal framework, the German law should be singled out as being of a particular importance.
4. In the process of renouncing the Soviet law, the scientific activity, the general principles of law and the judicature of Latvian courts was of a great significance, taking into account the findings made by the European Court of Human Rights and the Court of Justice of the European Communities / the European Union.

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[108] Interview with assistant Professor Erlens Kalniņš. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].

[109] Ibid.

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Materials of the personal archive

1. Interview with Professor Jautrīte Briede. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].
2. Interview with Professor Ilma Čepāne. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].
3. Interview with Professor Kārlis Ketners. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language].
4. Interview with Professor Uldis Krastiņš. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language]
5. Interview with Professor Sanita Osipova. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language]
6. Interview with Professor Jānis Rozenfelds. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language]
7. Interview with Professor Kristīne Strada-Rozenberga. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language]
8. Interview with Professor Kalvis Torgāns. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language]
9. Interview with associate Professor Kaspars Balodis. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language]
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11 Interview with assistant Professor Aivars Lošmanis. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language]
12. Interview with assistant Professor Daina Ose. Materials of the Personal Archive of Jānis Lazdiņš [interview in the Latvian language]
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