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25 Years of Fundamental Rights in the Constitution of the Republic of Latvia: Development, Significance and Content

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Only in 1998, the Constitution of the Republic of Latvia – *Satversme*, which was adopted more than a hundred years ago and is one of the oldest constitutions in Europe, was supplemented with new Chapter 8 – regulation on fundamental rights. Until the adoption of Chapter 8 of the *Satversme*, only a few fundamental rights could be found in the Constitution.

The current article discusses the development of the regulation of fundamental rights in the *Satversme*, the importance of fundamental rights in a democratic state, as well as reflects the catalogue of fundamental rights. The authors, looking at the catalogue of fundamental rights included in the *Satversme*, analyse the fundamental rights by dividing them in groups, i.e., civil, political, social, economic, cultural and solidarity rights. The publication outlines the most characteristic features of each group of rights, reveals the content of those rights and also provides the recent case law of the Constitutional Court.

Keywords: fundamental rights, Constitution (*Satversme*), catalogue of fundamental rights, Constitutional Court, protection of fundamental rights.

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Introduction

2023 is the year of the 25th anniversary of inclusion into the constitution of the Republic of Latvia – the *Satversme* – Chapter 8 “Fundamental Rights”, which comprises broad and contemporary regulation of fundamental rights.

Although the *Satversme* of the Republic of Latvia (hereafter – the *Satversme*) is a constitution with a history spanning more than 100 years – it was adopted and entered into force in 1922, until the amendments of 15 October 1998 it did not contain extended regulation on fundamental rights. Until 1998, only few fundamental rights could be found in the *Satversme*, related to the electoral rights and Art. 82, in the wording of that time, defined the equality of citizens before the law and the court.¹

The situation, where the *Satversme* existed so long without an expanded catalogue of fundamental rights was a coincidence, based on the political events of the time. The fathers of the *Satversme* had intended to include the regulation on fundamental rights in a separate part of the *Satversme* – Part II, however, because of disputes among the political forces represented at the Constitutional Assembly, a few votes were missing for its adoption, thus, Part II, which had been drafted, was not adopted in 1922². Publications of the inter-war period show that in the circle of politicians and lawyers of the time the dismissal of Part II of the *Satversme* in general was not perceived as a significant failure or a deficiency of the *Satversme* – this drawback is mentioned only in a couple of articles.³

Over time, also after Latvia’s independent statehood was restored, fragmented regulation on some fundamental rights could be found in some special laws, e.g., the law of 1990 “On the Press and Other Mass Media”⁴, the law of 1990 “On

¹ Note that, until the amendments of 1998, the historical wording of Art. 82 of the *Satversme* provided: “All citizens shall be equal before the law and the court”. Latvijas Republikas Satversme [The Constitution of the Republic of Latvia] (15.02.1922). Available: <http://saeima.lv/en/about-saeima/work-of-the-saeima/constitution/> [last viewed 23.04.2023].

It must be added that the significance of fundamental rights was understood in Latvia since the establishment of the state because some fundamental rights were found in the so-called provisional constitutions, e.g., the Political Platform of the People’s Council, as well as in the Transitional Rules on the Order of the Latvian State, adopted by the Constitutional Assembly on 1 June 1920.

² Note, when the decision was made on the second part of the *Satversme* in the third reading by the Constitutional Assembly, it did not receive the necessary support of the people’s representatives – 62 Members of the Constitutional Assembly voted “for”, 6 were “against”, and 62 abstained from voting.

³ More extensively about the fundamental rights defined in provisional constitutions and draft Part II of the *Satversme*, see: *Pleps, J.* Pamattiesību konstitucionālā regulējuma ģenēzes ietekme uz Satversmes 8. nodaļas normu interpretāciju [The impact of the genesis of the constitutional regulation of fundamental rights on the interpretation of the norms of Chapter 8 of the Constitution]. In: *Aktuālās cilvēktiesību aizsardzības problēmas. Konstitucionālā sūdzība. Satversmes tiesas 2008. un 2009. gada konferenču materiālu krājums.* Rīga: TNA, 2010, 14.–23. lpp.

⁴ Likums Par presi un citiem masu informācijas līdzekļiem [Law On the press and Other Mass Media] (20.12.1990). Available: <https://likumi.lv/ta/en/en/id/64879-on-the-press-and-other-mass-media> [last viewed 30.04.2023].

the Religious Organisations”⁵, etc. After restoration of independence, more expanded regulation on fundamental rights was set out in a special law – the constitutional law of 10 December 1991 “Human and Citizen Rights and Obligations” – this law had 44 sections, divided into three chapters: general provisions, the rights and obligations of a citizen, and the rights and obligations of all human beings.⁶ The law was criticised because of its unclear legal status⁷, moreover, also the *Satversme*, which had been fully reinstated on 6 July 1993, did not envisage such type of regulatory enactments as “a constitutional law”. Because of this, the experts had noted that this constitutional law fulfilled its objective poorly because it had a formal rather than real constitutional status.⁸ Anyway, this law played the role of the main regulation on fundamental rights until 1998 when Chapter 8 was added to the *Satversme*. In addition, it should be noted that before Chapter 8 of the *Satversme* was adopted, i.e., on 27 June 1997, the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter – the Convention) and several Protocols to it entered into force in Latvia.⁹ Likewise, Latvia’s aspiration to join the European Union facilitated development of fundamental rights, because approximation of Latvia’s legal acts to the European standards had been set as one of the main objectives.

In 1998, the adoption of Chapter 8 of the *Satversme* eliminated its deficiency; i.e., due to the lack of fundamental rights it was said to be uncompleted, or, using professor M. Lazerson’s figurative simile, a “headless torso”¹⁰.

This publication aims to provide an insight into the development of regulation on fundamental rights, included in the *Satversme*, outlining the course of drafting Chapter 8 of the *Satversme*, as well as examining the practical significance of fundamental rights, included in the *Satversme*. Due to the limited scope of the article, the authors are not claiming to provide comprehensive analysis of each fundamental right, included in the *Satversme*, but will examine groups of fundamental rights, found in the *Satversme*, and will characterize fundamental rights belonging to these groups, as well as outline the most relevant and recent findings of the Constitutional Court regarding the catalogue of fundamental rights and significance of protection for fundamental rights.

⁵ Likums Par reliģiskajām organizācijām [Law On the Religious Organisations] (12.10.1990.). Ziņotājs, No. 40, 1990 [expired].

⁶ Latvijas Republikas konstitucionālais likums “Cilvēka un pilsoņa tiesības un pienākumi” [Constitutional Law of Republic of Latvia “Human and Citizen Rights and Obligations”] (10.12.1991). Available: <https://likumi.lv/ta/id/72346-konstitucionalais-likums-cilveka-un-pilsona-tiesibas-un-pienakumi> [last viewed 30.04.2023] [expired].

⁷ Latvijas Republikas Augstākās Padomes pirmās sesijas 1990. gada 3. maijs – 1993. gada 5. jūlijs 45. sēdes (1991. gada 10. decembrī) stenogramma [Transcript of the 45th session (10 December 1991) of the first session of the Supreme Council of the Republic of Latvia, 3 May 1990–5 July 1993], 198. burtnīca. Latvijas Vēstnesis, 20.04.2006.

⁸ *Satversme un cilvēktiesības*. Gadagrāmata 1999. [The Constitution and Human Rights. Yearbook 1999]. Cilvēktiesību žurnāls 9–12, 1999, LU Cilvēktiesību institūts, 2000, p. 7.

⁹ Likums Par 1950.gada 4. novembra Eiropas Cilvēka tiesību un pamatbrīvību aizsardzības konvenciju un tās 1., 2., 4., 7. un 11. protokololu [Law on the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 and its Protocols 1, 2, 4, 7 and 11] (04.06.1997.). Latvijas Vēstnesis, No. 143, 1997.

¹⁰ *Cielava, V.* Pamattiesības – Satversmē vēl tukša vieta. Aktuāli cilvēktiesību jautājumi Latvijā. [Fundamental rights – still an empty space in the Constitution. Current human rights issues in Latvia]. Cilvēktiesību žurnāls, LU Cilvēktiesību institūts, No. 3, 1996, p. 33; *Lazersons, M.* “Konstitucionālā” likumdošana un Saeimas publisko tiesību komisija [“Constitutional” legislation and the Public Rights Commission of the Saeima]. Jurists, No. 6, 1928, sl. 165.–166. Cited after: *Pleps, J.* Pamattiesību konstitucionālā regulējuma, p. 24.

1. Fundamental rights – necessity in a democratic state governed by the rule of law

The understanding of a constitution and its contents has evolved by taking into consideration important historical events (e.g., revolutions), as well as the development of legal and philosophical thought. It is noted in the doctrine that modern constitutions, which comprise, *inter alia*, also fundamental rights, have been adopted from the end of the 18th century.¹¹ Since this moment, fundamental rights as natural rights are being materialized also in regulatory act with the supreme legal force or they are constitutionalised. As noted by professor A. Sajo, at present, a typical constitution comprises or includes a catalogue of human rights, the content of which is left at the discretion of each state.¹²

The fundamental importance, both formal and substantial, has been recognised in theory, thus, they constitute the central part of all legal systems.¹³ In formal meaning, the fundamental nature of these rights can be substantiated by the fact that they are included in a regulatory enactment with supreme legal force that is binding upon all, without exceptions. Substantially, these rights are fundamental because they determine the content of other decisions, which can be justified by the natural or inherent character of these rights.

It is sometimes said that contemporary constitutionalism is characterised by the human being as the main subject, on whose rights the State should focus. Similarly, the Latvian Constitutional Court has concluded that the fundamental value of the Latvian legal system is ensuring human rights.¹⁴ Namely, a human being and their fundamental rights is a value that characterizes the Latvian State.

Adding Chapter 8 “Fundamental Rights” to the *Satversme* was a logical step, characterising the understanding of the rule of law in Latvia and the Latvian State. It turned fundamental rights into an objective part of the constitution. At the same time, fundamental rights, included in the *Satversme*, are subjective rights. This means that real and direct possibilities of protection are thereby granted to a person. One could also say that subjective fundamental rights mean the legislator’s decision on granting a right to the subject of rights.¹⁵ For a person, this creates not an illusory but real possibility in the form of a right and freedom.

Fundamental rights have a direct effect.¹⁶ It has been explained in case law that fundamental rights should be applied “directly and immediately”¹⁷. This means that exercise of fundamental rights does not mandatorily require any additional

¹¹ Loughlin, M. What is Constitutionalisation? In: *The Twilight of Constitutionalism?* Dobner, P., Loughlin, M. (eds). Oxford: Oxford University Press, 2010, p. 48.

¹² Sajo, A. *Limiting Government. An Introduction to Constitutionalism*. Budapest: CEU Press, 1999, p. 253.

¹³ Alexy, R. *A Theory of Constitutional Rights*. Oxford: Oxford University Press, 2004, p. 351.

¹⁴ Judgement of the Constitutional Court of the Republic of Latvia of 29 April 2016 in case No. 2015-19-01, para. 10.6. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2015/08/2015-19-01_Spriedums_ENG.pdf#search= [last viewed 16.03.2023].

¹⁵ Alexy, R. *A Theory*, p. 119.

¹⁶ Sweet, A. S. *Governing with Judges. Constitutional Politics in Europe*. Oxford: Oxford University Press, 2000, p. 94.

¹⁷ Judgement of the Constitutional Court of the Republic of Latvia of 21 December 2007 in case No. 2007-12-03, para. 20. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2007/06/2007-12-03_Spriedums_ENG.pdf#search= [last viewed 16.03.2023]; Judgement of the Constitutional Court of the Republic of Latvia of 29 October 2003 in case No. 2003-05-01, para. 32. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2003/02/2003-05-01_Spriedums_ENG.pdf#search= [last viewed 16.03.2023].

legal regulation, whilst the lack of it does not preclude exercising of the particular fundamental right. This principle is significant both in substantive and procedural sense, because a person, by referring directly to a subjective fundamental right, can use the available legal remedies to protect their (subjective) fundamental rights.¹⁸

In this regard, it is essential to point out also a person's responsibility for exercising one's subjective fundamental rights because it has been indicated in case law, that the pre-condition for the functioning of a democratic state governed by the rule of law is each individual person's ability to self-restrain one's egoistic freedom and act responsibly.¹⁹ Undoubtedly, fundamental rights can be exercised only if the state is truly democratic and governed by the rule of law. On the other hand, exercise of fundamental rights cannot be aimed against democracy as such.²⁰ It is for a good reason that the concept of militant democracy is known in law, it allows and, in some cases, even demands special self-defensive measures for ensuring the stability and effectiveness of its democratic system.²¹ *Inter alia*, envisaging restrictions on fundamental rights. However, fundamental rights may be restricted only within the framework of the constitution itself, which means that restrictions must be justified and necessary: established by law, having a legitimate aim and necessary in a democratic society. In other words, as aptly put by A. Barak, fundamental rights may be restricted but there are some restrictions on these restrictions.²²

One of the essential features of a constitution is its ability to be a living instrument. Human rights will never be constant – unchangeable. They develop and grow together with society's understanding of these rights. This means that fundamental rights in the constitution are mere words that have to be filled with content, given by a human being, by interpreting these rights, moreover, taking into consideration the development of the legal system at the particular moment.

Everybody who applies law, in establishing the content of fundamental rights, must know the methods for interpreting these fundamental rights, *inter alia*, the principle of harmony between the national and international human rights, derived from Art. 89 of the *Satversme*. Here, one can see internationalisation of constitutional law when, through interpretation, international law “enters” national law.²³ This nature of constitutional law is particularly vividly reflected in fundamental rights.

¹⁸ Judgement of the Constitutional Court of the Republic of Latvia of 5 December 2001 in case No. 2001-07-0103, para. 1. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2001/07/2001-07-0103_Spriedums_ENG.pdf#search= [last viewed 16.03.2023].

¹⁹ Judgement of the Constitutional Court of the Republic of Latvia of 11 December 2020 in case No. 2020-26-0106, para. 19.2. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2020/05/2020-26-0106_Judgement.pdf#search= [last viewed 16.03.2023].

²⁰ Judgement of the Constitutional Court of the Republic of Latvia of 30 August 2000 in case No. 2000-03-01, para. 6. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2000/03/2000-03-01_Spriedums_ENG.pdf#search= [last viewed 16.03.2023].

²¹ See: Müller, J.-W. Militant Democracy. In: Comparative Constitutional Law, Rosenfeld, M., Sajo, A. (eds). Oxford: Oxford University Press, 2012, p. 1254; Judgement of the Constitutional Court of the Republic of Latvia of 29 June 2018 in case No. 2017-25-01, para. 20.2. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2017/10/2017-25-01_Judgment_ENG.pdf#search= [last viewed 20.03.2023].

²² Barak, A. The Judge in Democracy. [b.v.]: Princeton University Press, 2006, p. 84.

²³ Chang, W.-C., Yeh, J.-R. Internationalization of Constitutional Law. In: Comparative Constitutional Law, Rosenfeld, M., Sajo, A. (eds). Oxford: Oxford University Press, 2012, p. 1168.

The principle of the *Satversme's* unity has become enshrined both in the theory of the *Satversme* and its application.²⁴ This means that provisions of the *Satversme* cannot be examined in isolation. This, first of all, structurally outlines the fact that, within the *Satversme*, fundamental rights are not found solely in Chapter 8 of the *Satversme*. Secondly, fundamental rights, defined in the *Satversme*, constitute a balanced system,²⁵ therefore, content-wise, several articles of the *Satversme* may protect one and the same right. For example: the right to inviolability of family life is guaranteed in both Art. 110 and Art. 96 of the *Satversme*.²⁶

The theory of human rights speaks, validly, about diverse systematisation (division) of human rights, e.g., into negative, positive, active fundamental rights²⁷ or, also, into absolute and relative fundamental rights. Undoubtedly, the *Satversme* comprises both civil and political rights, as well as economic, social and cultural fundamental rights, and also solidarity rights. However, it is not that important to find the affiliation of a particular fundamental right with one group or another; it is more important to respect them.²⁸ Likewise, the same fundamental right might take on different natures. For example, the right to education has the nature of both civil and political rights, as well as the nature of economic, social and cultural rights, which demands positive actions by the State, and even an element of solidarity.²⁹ At the same time, there are differences, e.g., in the assessment of the State's role and its engagement, discretion, in ensuring fundamental civil or social rights. Thus, due attention is still paid, both in science and practice, to the groups of fundamental rights.

The premise that fundamental rights should be respected in Latvia, even if they have not been included in the *Satversme*, is undeniable. That would follow both from the fact that Latvia is a state governed by the rule of law, and the fact that several international legal acts, which include the respective standard of human rights, are binding upon Latvia. However, the presence of fundamental rights in the *Satversme* is a value that characterizes the Latvian State and society and must be respected by all.

2. Drafting and adoption of Chapter 8 of the *Satversme*

Following the restoration of independence, inclusion of fundamental rights in Latvian constitutional legal acts was one of the most relevant constitutional law issues. When the Declaration of the Supreme Council of the Latvian SSR of 4 May 1990 "On the Restoration of Independence of the Republic of Latvia" was adopted, its

²⁴ Judgement of the Constitutional Court of the Republic of Latvia of 8 November 2006 in case No. 2006-04-01, para. 15.3. Available: https://www.satv.tiesas.gov.lv/web/viewer.html?file=/wp-content/uploads/2006/03/2006-04-01_Spriedums_ENG.pdf#search= [last viewed 16.03.2023].

²⁵ Judgement of the Constitutional Court of the Republic of Latvia of 13 May 2005 in case No. 2004-18-0106, para. 10. Available: https://www.satv.tiesas.gov.lv/web/viewer.html?file=/wp-content/uploads/2004/08/2004-18-0106_Spriedums_ENG.pdf#search= [last viewed 16.03.2023].

²⁶ *Satversmes tiesas* 2009. gada 23. aprīļa spriedums lietā Nr. 2008-42-01 [Judgement of the Constitutional Court of the Republic of Latvia of 23 April 2009 in case No. 2008-42-01] para. 8. Available: https://www.satv.tiesas.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/02/2008-42-01_Spriedums.pdf#search= [last viewed 16.03.2023].

²⁷ See more, for example, *Alexy, R. A Theory*, pp. 163–177.

²⁸ Judgement of the Constitutional Court of the Republic of Latvia of 11 December 2006 in case No. 2006-10-03, para. 14.1. Available: https://www.satv.tiesas.gov.lv/web/viewer.html?file=/wp-content/uploads/2006/07/2006-10-03_Spriedums_ENG.pdf#search= [last viewed 16.03.2023].

²⁹ Judgement of the Constitutional Court of the Republic of Latvia of 23 April 2019 in case No. 2018-12-01, para. 20. Available: https://www.satv.tiesas.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/07/2018-12-01-12.-Saeimas-dep_latvie%C5%A1u-valoda-valsts-skol%C4%81s_ENG.pdf#search= [last viewed 16.03.2023].

para. 8 set out the commitment to “guarantee to the citizens of the Republic of Latvia and the citizens of other states, residing permanently in the territory of Latvia, social, economic and cultural rights, as well as political freedoms, which comply with the generally recognised international human rights provisions [...]”.³⁰ On the same day, the Supreme Council adopted the declaration “On the Accession of the Republic of Latvia to International Legal Documents on Human Rights Issues”, acceding a number of international human rights documents.³¹ Thus, a guarantee of a catalogue of human rights of general nature was made by this declaration, referring to the respective international human rights provisions.³² However, at that time, in practice, state authorities and courts, following the outdated Soviet understanding of law, perceived human rights provisions as declarative documents and almost did not apply them at all.³³

After the restoration of independence, the Supreme Council’s initial intention was to adopt for the transitional period the Basic Law, comprising also fundamental rights; however, due to various reasons, this idea was not implemented, and shortly afterwards the constitutional law, referred to above, of 10 December 1991 “Human and Citizen Rights and Obligations” was adopted.

The inclusion of Chapter 8 “Fundamental Rights” into the *Satversme* was the achievement of the 6th *Saeima*; the draft amendment to the *Satversme*, which envisaged adding a new chapter to the *Satversme*, Chapter 8, was submitted to the *Saeima* for review in 1996, it was adopted on 15 October 1998, and entered into force already on 6 November.³⁴ As provided for in the transitional provisions, with Chapter 8 of the *Satversme* entering into force, the constitutional law “Human and Citizen Rights and Obligations” became void.

International experts, who were critical of the fact that human rights in Latvia had not been defined on the constitutional level, exerted certain influence upon drafting and inclusion into the *Satversme* the catalogue of fundamental rights.³⁵ Latvian legal experts also were aware that the absence of the catalogue of fundamental rights

³⁰ Latvijas PSR Augstākās Padomes deklarācija “Par Latvijas Republikas neatkarības atjaunošanu” [Declaration of the Supreme Council of the Latvian Soviet Socialist Republic On the Restoration of Independence of the Republic of Latvia] (04.05.1990). Available: <https://likumi.lv/ta/id/75539-par-latvijas-republikas-neatkaribas-atjaunosanu> [last viewed 30.04.2023].

³¹ Par Latvijas Republikas pievienošanos starptautisko tiesību dokumentiem cilvēktiesību jautājumos. Augstākās padomes deklarācija [On the accession of the Republic of Latvia to international legal documents on human rights issues. Declaration of the Supreme Council]. Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, No. 20, 1990.

³² *Ziemele, I.* Starptautiskās tiesības Latvijas tiesību sistēmā un tiesu un administratīvajā praksē [International law in Latvian legal system and judicial and administrative practice]. In: *Cilvēktiesību īstenošana Latvijā: tiesa un administratīvais process*. Rīga, Latvijas Cilvēktiesību institūts, 1998, pp. 27–30.

³³ *Levīns, E.* 4. maija Deklarācija Latvijas tiesību sistēmā [Declaration of May 4th in the Latvian legal system]. In: 4. maijs. Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju. Rīga: LU žurnāla “Latvijas Vēstures” fonds, 2000, p. 64.

³⁴ Grozījumi Latvijas Republikas Satversmē [Amendments to the Constitution of the Republic of Latvia] (15.10.1998). Available: <https://likumi.lv/ta/id/50292-grozijumi-latvijas-republikas-satversme> [last viewed 30.04.2023].

³⁵ Atbildes uz ANO Cilvēktiesību komitejas locekļu jautājumiem [Answers to the questions of the members of the UN Human Rights Committee]. *Cilvēktiesību Žurnāls*, No. 2, 1996, pp. 78–79. Cited after *Pleps, J.* Pamattiesību katalogs starpkaru periodā [Catalogue of fundamental rights in the interwar period]. *Jurista Vārds*, No. 48 (553), 23.12.2008.

in the national basic law was a serious drawback.³⁶ The fact that, at that time, new constitutions, comprising extensive chapters on fundamental rights, were adopted in the other two Baltic states – Estonia and Lithuania, also was of certain importance in the drafting of the chapter of fundamental rights.³⁷ All this led to the idea of including broad regulation on fundamental rights in the *Satversme*. Experts predicted that the fact that, finally, fundamental rights would be put into the *Satversme* “in black and white”, would disallow a civil servant or a judge to ignore them as easily, and, thus, this addition to the *Satversme* could contribute significantly to improving human rights in Latvia, possibly, decreasing tensions between inhabitants and the State’s apparatus, thus, stabilising the independent and democratic State of Latvia.³⁸

Adoption of Chapter 8 of the *Satversme* is the most considerable amendment to the *Satversme* and, in view of the special significance of fundamental rights, it can be described as the most fundamental amendments, ever introduced to the *Satversme*. These amendments changed the structure of the *Satversme*, it acquired a new chapter, Chapter 8, consisting of 28 articles. Moreover, the first article, included in Chapter 8, Art. 89, refers directly to the principle of harmony between the Latvian and international law, *inter alia*, Latvia’s commitment to safeguard human rights, defined also in international legal acts, whereas Art. 116 sets out regulation on restricting human rights. The remaining articles of Chapter 8, however, comprise various fundamental rights, thus forming a quite extensive human rights catalogue, encompassing all generations of human rights.

When Chapter 8 was discussed from the perspective of legal technique, the idea of, possibly, changing the structure of the *Satversme* was touched upon, because it is typical for the constitutions of other states to include regulation of human rights as one of the first chapters, thus symbolically underscoring the special significance of a human being and their rights in the state; however, with respect to the *Satversme*, the conclusion was that, from the perspective of legal technique, such amendments would significantly affect the numbering of all other articles in it. Hence, it was decided to include fundamental rights, as the most recent chapter, in the final part of the *Satversme*, as Chapter 8, which, clearly, in no way diminishes its significance.

Chapter 8 of the *Satversme* was drafted in compliance with the specificity of the Latvian language of the last century and legal brevity, and the content of the provisions, included in the Chapter was created in conformity with the *Satversme*’s internal style, therefore, fundamental rights have been written into the *Satversme* in general wordings.³⁹ This, definitely, has a certain impact on interpretation, although it is generally accepted that human rights are worded in a quite abstract manner, therefore their content must be established through reasonable interpretation,

³⁶ *Kusiņš, G.* Kā pilnveidot mūsu valsts Satversmi [How to improve the Constitution of our state]. In: *Satversmes reforma Latvijā: par un pret. Ekspertu seminārs Rīga 1995. gada 15. jūnijs.* Rīga: Sociāli ekonomisku pētījumu institūts „Latvija”, 1995, 39. lpp.

³⁷ *Balodis, R., Kārklīņa, A., Danovskis, E.* Latvijas konstitucionālo un administratīvo tiesību attīstība pēc neatkarības atjaunošanas [The development of Latvian constitutional and administrative law after the restoration of independence]. *Latvijas Universitātes žurnāls „Juridiskā zinātne/Law”*, No. 3, 2012, 59. lpp.

³⁸ *Levits, E.* Piezīmes par Satversmes 8. nodaļu – Cilvēka pamattiesības [Notes on Chapter 8 of the Constitution – Fundamental Rights]. *Satversme un cilvēktiesības. Gadagrāmata 1999. Cilvēktiesību Žurnāls*, No. 9–12, 1999, p. 17.

³⁹ *Balodis, R.* Ievads Latvijas Republikas Satversmes VIII nodaļas komentāriem [Introduction to the comments on Chapter VIII of the Constitution of the Republic of Latvia]. *Latvijas Republikas Satversmes komentāri. VIII nodaļa.* Rīga: Latvijas Vēstnesis, 2011, p. 15.

taking as the basis the role of an individual in a Western democracy.⁴⁰ It has been noted in legal literature that, due to the laconic wordings in Chapter 8, it is lagging behind the extensive and concrete criteria, provided by the European Human Rights Convention.⁴¹ This, in particular, applies to restrictions, which, in difference to the Convention, where restrictions are defined in each article, can be found in only one article of the *Satversme*, i.e., Art. 116. Of course, one can agree with scholars of the *Satversme* who have pointed out that the construction, similar to Art. 116, is not found in any other state,⁴² and this article, with very complex structure, is misleading, as if it would provide exhaustive enumeration of all rights that *may* be restricted and would also refer to all criteria for restrictions. Similarly, also the regulation set out in Art. 91 of the *Satversme*, “all human beings in Latvia shall be equal before the law and the courts”, might create a misleading perception that this article is applicable only to natural persons and not to private legal persons.

In difference to draft Part II of the *Satversme* of 1922, many ideas of which members of the Constitutional Assembly had drawn from Germany’s Weimar Constitution of 1919, no particular national constitution was used as a prototype, content-wise it was based on regulation defined in international documents, and rights, included, in particular, in the Convention, as well as UN documents, constitutions of other states also served as a model.

It was envisaged to include several of the fundamental rights, found in Chapter 8, in Part II of the *Satversme*, which was not adopted in 1922, e.g., the rights of ethnic minorities to use their language and develop their ethnic and cultural identity, gender equality, inviolability of home and correspondence, freedom of movement, freedom of science and arts, *inter alia*, the right to education and minimum compulsory education.⁴³

Over time, several amendments to articles of Chapter 8 have been adopted. They were introduced due to domestic political considerations, e.g., in 2002, Art. 101 was amended, providing that the working language of local government was Latvian, Art. 104, which defines the right to receive reply from State or local government institutions in the official language⁴⁴, Art. 110 was amended in 2005, providing that marriage was a union between a man and a woman⁴⁵. Several articles have been amended because of international commitments, e.g., in 2004, the *Saeima* amended Art. 98 of the *Satversme*, allowing to extradite a Latvian citizen to a foreign country in cases provided for in international agreements ratified by the *Saeima*. Likewise, in

⁴⁰ *Levits, E.* Cilvēktiesību normas un to juridiskais rangs Latvijas tiesību sistēmā [Human rights norms and their legal rank in the Latvian legal system]. *Juristu Žurnāls*, No. 5, *Cilvēktiesību Žurnāls* No. 6, 1997, 32.–53. lpp.

⁴¹ *Vildbergs, H. J., Feldhūne, G.* Atsauces Satversmei [References to the Constitution]. Rīga: Latvijas Universitāte, 2003, 125. lpp.

⁴² *Pleps, J., Pastars, E., Plakane, I.* Konstitucionālās tiesības [Constitutional law]. Rīga: Latvijas Vēstnesis, 2004, 719. lpp.

⁴³ Latvijas Republikas Satversmes II daļas redakcija [Draft law of Part II of the Constitution of the Republic of Latvia]. Latvijas valsts tiesību avoti. Valsts dibināšana-neatkarības atjaunošana. Dokumenti un komentāri. Rīga: TNA, 2015, 124–126. lpp., see also Latvijas Republikas Satversmes stenogrammu izvilks (1920–1922) [digital publication]. Rīga: TNA, 2006.

⁴⁴ Grozījumi Latvijas Republikas Satversmē [Amendments to the Constitution of the Republic of Latvia] (30.04.2002). Available: <https://likumi.lv/ta/id/62020-grozijumi-latvijas-republikas-satversme> [last viewed 30.04.2023].

⁴⁵ Grozījumi Latvijas Republikas Satversmē [Amendments to the Constitution of the Republic of Latvia] (15.12.2005). Available: <https://likumi.lv/ta/id/124957-grozijums-latvijas-republikas-satversme> [last viewed 30.04.2023].

connection with Latvia's accession to the EU, in 2004, an amendment was introduced to Art. 101, providing that citizens of the EU who permanently resided in Latvia also had the right to vote in local elections and participate in the work of local governments, as provided by law.⁴⁶

Clearly, supplementing the *Satversme* with Chapter 8 "Fundamental Rights" is one of the most significant amendments to the *Satversme*. It was a logical step, characterising Latvia's understanding of the rule of law and the State of Latvia. I.e., fundamental rights had become an objective part of the constitution and have been included in the hierarchically supreme legal act – the national constitution.

Immediately after the Chapter 8 of the *Satversme* was adopted, legal experts had noted: "The new chapter on fundamental rights cannot be perceived as a correction of a cosmetic defect. The worst that might happen would be if the *Satversme* were supplemented but the actual practice of authorities and courts would not change soon. In such a case, provisions of the *Satversme* would be degraded into declarative norms, which is typical of constitutions in ideological dictatorships".⁴⁷ Looking from the current perspective, it can be concluded that, luckily, experts' concerns have not materialised and, although problems can be identified in guaranteeing some fundamental rights or errors in the practical application thereof, at present there are no grounds to consider that state authorities would not be aware of the fundamental meaning of basic rights in Latvia as a democratic state governed by the rule of law, likewise, the courts, within the limits of their jurisdiction, engage in effective protection of fundamental rights.

3. Structure of fundamental rights in the *Satversme*

It is typical of constitutions of many countries to structure their catalogues of fundamental rights according to the so-called principle of human rights' generations, i.e., beginning with the regulation on the first generation of human rights – civil and political fundamental rights, followed by the second-generation human rights – social, economic and cultural rights, and, finally, the third-generation rights, designated as the solidarity rights. French lawyer K. Vasak is considered to be the author of the division of human rights into generations, and the division into generations, proposed by him, helps to understand the course of historical development taken by human rights, however, it does not form hierarchy among human rights.⁴⁸

In view of the fact that the *Satversme*'s part on fundamental rights has been created relatively late – close to the turn of the centuries, the *Satversme*, in difference to constitutions of many democratic states, includes fundamental rights of all generations, while even social and economic rights are not found in the constitutions of several states.⁴⁹

⁴⁶ Grozījumi Latvijas Republikas Satversmē [Amendments to the Constitution of the Republic of Latvia] (23.09.2004). Available: <https://likumi.lv/ta/id/94651-grozijumi-latvijas-republikas-satversme> [last viewed 30.04.2023].

⁴⁷ Levits, E. Piezīmes par Satversmes 8. nodaļu – Cilvēka pamattiesības [Notes on Chapter 8 of the Constitution – Fundamental Rights]. *Satversme un cilvēktiesības*. Gadagrāmata 1999. Cilvēktiesību Žurnāls, No.9-12, 1999, p. 17.

⁴⁸ Mits, M. Pilsoniskās un politiskās tiesības [Civil and political rights]. In: *Cilvēktiesības Latvijā un pasaulē*. I. Ziemeles zinātniskā redakcijā. Otrais papildinātais izdevums. Rīga, TNA, 2021, 100. lpp.

⁴⁹ Kučs, A. Satversme un Latvijas konstitucionālo institūciju izveidošana. Pamattiesības. Pilsonība [Constitution and creation of constitutional institutions of Latvia. Fundamental rights. Citizenship]. In: *Latvijas valsts tiesību avoti. Valsts dibināšana-neatkarības atjaunošana. Dokumenti un komentāri*. Rīga: TNA, 2015, 123. lpp.

The catalogue of fundamental rights, established in the *Satversme*, may not be narrower than the scope of natural rights, recognised in a state governed by the rule of law, and the rights defined in international documents binding upon Latvia, and it must meet the standard defined in the EU acts. Our *Satversme* can be proud of an extensive catalogue of human rights, *inter alia*, the right, defined in the *Satversme*, which is rather untypical of other national constitutions, the right to know one's rights, included in Art. 90, which introduces the catalogue of human rights, defined in the *Satversme*, and points to how significant it has been for the legislator to enshrine this fundamental right in the *Satversme*⁵⁰. As underscored by the Constitutional Court – only a person who knows his or her rights is able to exercise them effectively and, in the case of unfounded infringement, protect them in a fair trial.⁵¹

Further in this article, providing insight into the fundamental rights, included in the *Satversme*, they will be examined in accordance with the so-called principle of groups of fundamental rights, characterising briefly the features of the particular group and the catalogue of fundamental rights, belonging to the group, in the *Satversme*. Since the content of fundamental civil rights has been extensively revealed and is aligned with international human rights, due to the limited scope of the article, the part on civil rights will be more concise, outlining the main features and classification of this group, whereas description of other groups of fundamental rights will offer also broader insight into the Constitutional Court's findings with respect to the particular fundamental rights.

3.1. Fundamental civil rights

The term “fundamental civil rights” is used to denote rights vested in every person and without which life in organised society would be impossible.⁵² These are the oldest rights, the seeds of which germinated already at the time of the French and American revolutions in the 18th century⁵³, however, the particularity of this group is that it has the closed connection with natural rights and, even if these rights had not been included in legal acts, they should be ensured. Substantially, fundamental civil rights are included in all the national constitutions that regulate fundamental rights.

As regards the classification of fundamental rights, it is typical of this group that these rights are, predominantly, the so-called negative fundamental rights, i.e., they impose an obligation on the State to abstain from taking some actions and not to interfere in the individuals' space of freedom, i.e., they have been formulated as an individual's liberties. Historically, in accordance with the liberal constitutional theory, fundamental rights have been established to protect citizens against the State's interference into citizens' legal interests of particular significance.⁵⁴

However, to ensure any fundamental right, including the negative fundamental rights, the State, of course, is expected to fulfil its duties to enable individuals to enjoy

⁵⁰ Apart from Latvia, this right is found only in two European countries and there are very few constitutions that would include this right in the world. See *Rudevskis, J.* *Satversmes 90. panta komentārs* [Commentary on Article 90 of the Constitution]. In: *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā.* Rīga: Latvijas Vēstnesis, 2011, 61. lpp.

⁵¹ Judgement of the Constitutional Court of the Republic of Latvia of 20 December 2006 in case No. 2006-12-01, p. 16. *Latvijas Vēstnesis*, No. 206, 2006.

⁵² *Mits, M.* *Pilsoniskās un politiskās tiesības* [Civil and political rights]. In: *Cilvēktiesības Latvijā un pasaulē. I. Ziemeles zinātniskā redakcijā. Otrais papildinātais izdevums.* Rīga, TNA, 2021, 100. lpp.

⁵³ *Ibid.*

⁵⁴ *Münch, I. von.* *Staatsrecht. Band 2. 5., Neubearbeitete Auflage* [State Law. Vol. 2. 5th revised edition]. Stuttgart, Berlin, Köln, Verlag W. Kohlhammer, 2002, Rn.145.

these rights, or the State must create such a system of legal acts and state authorities that give a person the possibility to exercise one's rights.⁵⁵ For example, to ensure the right to a fair trial, the State, in accordance with Art. 92 of the *Satversme*, must act to create such a system of institutions belonging to the judicial power that understands the principles of a state governed by the rule of law and is able to protect persons' rights and lawful interests. It also follows from the provision made in Art. 93, that "the right of life of everyone shall be protected by law", that the State has the obligation to protect life and facilitate creation of favourable conditions for exercising the right to life, i.e., the State has the obligation "not only to issue provisions aimed at protecting human life, but also to create an effective system for monitoring implementation of these provisions"⁵⁶. At the same time, as conclude by the Constitutional Court, the State's obligation to ensure the necessary medication to everyone free of charge does not follow from this right.⁵⁷

The standard of fundamental civil rights is most directly determined by the standard included in documents of international organisations – both the global (UN) system of human rights and international documents of regional human rights systems. Thus, in Latvia's context, the main document of the European regional human rights system, i.e., the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols to it, plays a particularly important role, its standard is taken into account also in interpreting the content of the *Satversme's* legal provisions.

The majority of subjects of civil rights are natural persons, because many fundamental civil rights are linked to particularities (features) of a human being as a physical being, e.g., right to life (Art. 93), prohibition of torture (Art. 95), freedom of movement (Art. 97), freedom of thought and conscience (Art. 99), prohibition to subject a person to cruel or degrading punishment (Art. 95), inviolability of private life (Art. 96), right to family and marriage (Art. 110). However, several rights of this group may be enjoyed also by a legal person governed by private law, e.g., right to a fair trial (Art. 92), inviolability of correspondence (Art. 96), freedom of expression and prohibition of censorship (Art. 100), right to property (Art. 105) should be ensured also to legal persons. The provision made in Art. 91 that "all human beings in Latvia shall be equal before the law and the courts", despite its *expressis verbis* wording, applies also to legal persons governed by private law. Likewise, the provision of Art. 92 that "everyone, where his or her rights are violated without basis, has a right to commensurate compensation" is applicable also to legal persons.

Depending on whether fundamental rights may be restricted, legal science classifies them into relative or absolute rights. The prevailing majority of fundamental civil rights (similarly to the overwhelming majority of rights belonging to other groups) are relative rights, i.e., rights that may be restricted in certain cases and in certain procedure. However, several rights, which belong exactly to the group of fundamental civil rights, are absolute rights, i.e., rights that may not be restricted. Prohibition of torture (Art. 95) is an absolute right, the Constitutional Court also has noted that prohibition of torture, as well as cruel or degrading treatment or punishment provides

⁵⁵ *Mits, M.* Pilsoniskās un politiskās tiesības [Civil and political rights]. In: *Cilvēktiesības Latvijā un pasaulē. I. Ziemeles zinātniskā redakcijā. Otrās papildinātais izdevums.* Rīga, TNA, 2021, 100. lpp.

⁵⁶ Judgement of the Constitutional Court of the Republic of Latvia of 28 March 2013 in case No. 2012-15-01, p. 18.2. *Latvijas Vēstnesis*, No. 63, 2013.

⁵⁷ Judgement of the Constitutional Court of the Republic of Latvia of 7 January 2010 in case No. 2009-12-03, p. 15.2. *Latvijas Vēstnesis*, No. 5, 2010.

for an absolute guarantee for the protection of human rights, from which the State has no right to derogate.⁵⁸ The presumption of innocence, which is an absolute right in criminal law, follows from the provision made in Art. 92 of the *Satversme* that “Everyone shall be presumed innocent until his or her guilt has been established in accordance with law.”⁵⁹ Over time, the understanding of how the right to life should be classified has changed, i.e., taking into account the provisions made in Art. 2 of the Convention, the right to life, due to the exemptions made in this article⁶⁰ cannot be classified as an absolute right.⁶¹ As the Constitutional Court has concluded, also the right, set out in the second sentence of Art. 98 of the *Satversme*, which protects the right of Latvian citizens to return freely to Latvia, cannot be restricted.⁶² Likewise, the rights defined in Art. 99 – the right to freedom of thought, conscience and religion (internal expression) are to be regarded as absolute rights, however, external manifestations of these freedoms may be restricted.⁶³

3.2. Fundamental political rights

Although, following the principle of generations of human rights, civil and political human rights are frequently examined together, presently, fundamental political rights are often treated as a separate autonomous concept,⁶⁴ understanding them as those rights that are linked to an individual’s involvement in State and local government institutions (service), an individual’s right to vote and participate in the decision-making process. From articles of Chapter 8 of the *Satversme*, the rights referred to in Art. 101–104 could be classified as fundamental political rights. In legal literature, the freedom of speech is often included in this group, depending on the content and aim of the particular type of expression the freedom of speech takes (speech, writing, artwork or other kind of expression).⁶⁵

The particularity of fundamental political rights is that several of these rights are attributable directly to the citizens of State as persons who have a direct link with the State (citizenship). For example, only citizens can enjoy active and passive electoral rights at the *Saeima* elections. Likewise, Art. 101 of the *Satversme* is applicable only to citizens – “every citizen of Latvia has the right, as provided for by law, to

⁵⁸ Judgement of the Constitutional Court of the Republic of Latvia of 20 December 2010 in case No. 2010-44-01, p. 81, *Latvijas Vēstnesis*, No. 202, 2010.

⁵⁹ Judgement of the Constitutional Court of the Republic of Latvia of 15 November 2016 in case No. 2015-25-01, p. 18, *Latvijas Vēstnesis*, No. 224, 2016.

⁶⁰ Note – 1st part of Art. 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms provides: “1. Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection.” Available: https://www.echr.coe.int/documents/convention_lav.pdf [last viewed 12.03.2023].

⁶¹ *Mīts, M. Pilsoniskās un politiskās tiesības [Civil and political rights]. In: Cilvēktiesības Latvijā un pasaulē. I. Ziemeles zinātniskā redakcijā. Otrais papildinātais izdevums. Rīga, TNA, 2021, p. 103.*

⁶² Decision of the Constitutional Court of the Republic of Latvia of 18 February 2022 in case No. 2021-10-03, p. 14, *Latvijas Vēstnesis*, No. 37, 2022.

⁶³ Judgement of the Constitutional Court of the Republic of Latvia of 26 April 2018 in case No. 2017-18-01, p. 18, *Latvijas Vēstnesis*, No. 85, 2018.

⁶⁴ *Schabas, W. A. The Customary International Law of Human Rights. Oxford University Press, 2021. <https://doi.org/10.1093/oso/9780192845696.003.0008>*

⁶⁵ Judgement of the Constitutional Court of the Republic of Latvia of 23 November 2006 in case No. 2006-03-0106, p. 7. *Latvijas Vēstnesis*, No. 192, 2006.

participate in the work of the State and of local government, and to hold a position in the civil service.” As mentioned above, with respect to local governments, since Latvia’s accession to the European Union, alongside citizens of Latvia with full rights, the right to elect local governments has been granted also to those citizens of the European Union who reside permanently in Latvia. Likewise, a citizen of the EU, residing permanently in Latvia, has the right to participate in the work of local governments. The Constitutional Court has noted that determination of persons who, in the context of this article, are to be regarded as a citizen with full rights, falls within the legislator’s competence,⁶⁶ however, if there are concerns regarding validity of restrictions established by the legislator, the Constitutional Court has the jurisdiction to review them.⁶⁷ It should be explained that civil service, in the context of Art. 101 of the *Satversme*, comprises all positions created in institutions of legislative, executive and judicial power.⁶⁸

Freedom of association is one of the political rights. Art. 102 of the *Satversme* provides that everyone has the right to form joint associations, political parties and other public organisations. The Constitutional Court has underscored that the freedom of association is one of the most essential political rights of a person⁶⁹ and one of the pre-conditions of a democratic state order. This freedom ensures to persons the possibility to fight for their legal interests by uniting to achieve common aims and, thus, persons gain the opportunity to participate in democratic processes.⁷⁰ However, this right also can be restricted, e.g., the prohibition for judges to become members of political parties has been recognised as being justifiable.⁷¹ In the context of this freedom, the second sentence of Art. 108 of the *Satversme* should be mentioned, since it regulates the freedom of association particularly in the area of labour law; i.e., the freedom of trade unions, defining the State’s obligation to refrain from interfering into the activities of trade unions.⁷²

The freedom of assembly is also important in all democratic states, it is one of the values of a democratic state and an essential pre-condition for the functioning of a state governed by the rule of law.⁷³ It is found in Art. 103 of the *Satversme*, which provides that “the State shall protect the freedom of previously announced peaceful meetings, street processions, and pickets.” In several of its judgements, the Constitutional Court has underscored that the freedom of assembly ensures the possibility for society to influence political processes, *inter alia*, by criticising the state power and protesting against the State’s actions. While exercising the right envisaged in Art. 103, persons can discuss significant problems, express their

⁶⁶ Judgement of the Constitutional Court of the Republic of Latvia of 15 June 2006 in case No. 2005-13-0106, p. 13.2. *Latvijas Vēstnesis*, No. 95, 2006.

⁶⁷ Judgement of the Constitutional Court of the Republic of Latvia of 30 March 2022 in case No. 2021-23-01, p. 18, 19. *Latvijas Vēstnesis*, No. 66, 2022.

⁶⁸ Judgement of the Constitutional Court of the Republic of Latvia of 10 May 2013 in case No. 2012-16-01, p. 31.1. *Latvijas Vēstnesis*, No. 90, 2013; Judgement of the Constitutional Court of the Republic of Latvia of 15 December 2022 in case No. 2021-41-01, p. 11. *Latvijas Vēstnesis*, No. 244, 2022.

⁶⁹ Judgement of the Constitutional Court of the Republic of Latvia of 23 November 2006 in case No. 2006-03-0106, p. 7. *Latvijas Vēstnesis*, No. 192, 2006.

⁷⁰ Judgement of the Constitutional Court of the Republic of Latvia of 10 May 2013 in case No. 2012-16-01, p. 17. *Latvijas Vēstnesis*, No. 90, 2013.

⁷¹ *Ibid.*

⁷² Judgement of the Constitutional Court of the Republic of Latvia of 23 April 2014 in case No. 2013-15-01, p. 9. *Latvijas Vēstnesis*, No. 82, 2014.

⁷³ Judgement of the Constitutional Court of the Republic of Latvia of 23 November 2006 in case No. 2006-03-0106, p. 6. *Latvijas Vēstnesis*, No. 192, 2006.

support for or condemn the politics implemented by the State. The freedom of assembly ensures the possibility to persons to make known their opinion or views to wider public.⁷⁴

The right of petitions or submissions, envisaged in Art. 104 of the *Satversme*, also belongs to the group of political rights. It needs to be added that, in applying this right, it is important to reach a fair balance between public interests and protection of each individual's rights. Often, an overly active exercising of the rights, set out in Art. 104, by some individuals have created challenges for public authorities and, as noted in case law, an individual should exercise the right to submissions in good faith, i.e., if a person unfoundedly, through their requests of information or submissions requiring a substantive response, demands excessive resources from the State, this causes unfounded restrictions on other persons' rights to receive substantive responses, because the State is unable to examine them properly.⁷⁵

In summing up the above, one can conclude that relativism is a typical feature of the group of political rights, i.e., they may be restricted, and often the very content of the particular legal provision points to the admissibility of these restrictions – they may be linked to certain criteria, e.g., having citizenship or full rights, the criterion of peacefulness in the context of assembly, etc.

Political rights, just like civil rights, have the features of both positive and negative rights – several of them envisage freedoms to individuals (i.e., unhindered exercise of them), at the same time, it would be impossible to exercise these rights without a system of institutions and mechanisms created by the State, which ensures practical implementation of these rights.

To sum up, one must uphold the conclusions made in legal literature that clarity of content is typical of both political and civil rights, because the states, which are the main guarantors of human rights, have been able to agree on detailed definitions of rights in both national and international human rights treaties.⁷⁶ This can be explained by the fact that the economic situation in the state does not influence exercise of these rights, and the content of civil-political rights is constantly improved by international institutions, and effective mechanisms for protecting human rights have been developed to allow exercising these rights.⁷⁷ Specification of these rights in the legal acts of each state is more typical of fundamental political rights, which is linked to the politics, historical experience of the state, etc., and these factors may influence the circle of subjects who, within the state, enjoy the particular fundamental political human rights.

3.3. Fundamental social rights

Fundamental social rights are very important but at the same time – they are special and differ from other groups. The particular feature of this group is that exercise of social rights, as the rights of second generation, require considerable state financial resources, therefore, ensuring of these rights depends upon the economic

⁷⁴ Judgement of the Constitutional Court of the Republic of Latvia of 23 November 2006 in case No. 2006-03-0106, p. 6. *Latvijas Vēstnesis*, No. 192, 2006., p. 7.

⁷⁵ Judgement of the Supreme Court of the Republic of Latvia of 8 June 2007 in case No. SKA-194/2007, Available: <https://www.at.gov.lv/lv/judikaturas-nolemumu-arhivs-old/senata-administrativo-lietu-departaments/hronologiska-seciba/2007> [last viewed 30.04.2023].

⁷⁶ *Mīts, M.* Pilsoniskās un politiskās tiesības [Civil and political rights]. In: *Cilvēktiesības Latvijā un pasaulē*. I. Ziemeles zinātniskā redakcijā. Otrās papildinātais izdevums. Rīga, TNA, 2021, p. 100.

⁷⁷ *Ibid.*, p. 101.

situation and the available resources of each state.⁷⁸ The conclusion that, globally, the development of social and economic rights is rather uneven, is very valid.⁷⁹ Due to these reasons, social rights have been worded as general obligations of the State also in international documents, leaving a wide margin of appreciation to the States in the implementation of these rights.

The perspective of comparative law leads to the conclusion that Member States of the European Union have chosen different approaches to regulating fundamental social rights in their constitutions. For example, in Austria, fundamental social rights have not been enshrined on the constitutional level. Neither does the Basic Law of the German Federal Republic contain regulation on fundamental social rights⁸⁰. The choice made by states to not include fundamental social rights in the constitution is explained by the lack of the State's possibilities to ensure these benefits in unlimited scope, and, thus, such rights, if they had been included in the catalogue of fundamental rights, could be interpreted only as the objectives of the State, or items on agenda.⁸¹

Fundamental social rights are included in the *Satversme's* catalogue of human rights, i.e., individuals can use the mechanisms envisaged in regulatory enactments to demand that these subjective rights are ensured. The conclusions, made by the Constitutional Court, are valid and aligned with the findings of international law, i.e., that, without contesting the close link between implementation of social rights and the financial possibilities of each state, if any social rights are included in a State's basic law, then the State cannot derogate from them and, in such a case, these rights no longer have only a declarative nature.⁸² At the same time, insofar general legal principles are complied with, the State enjoys discretion in choosing the methods and mechanisms for implementing and safeguarding social rights.⁸³

Fundamental social rights are based on the idea that the State, with the purpose of ensuring social justice, assumes responsibility for those citizens, the basic needs of which should be provided for, taking into consideration the resources at its disposal.⁸⁴ Since the right to social security is based on the State's obligation to create a sustainable system of social security, the legislator must align the financial possibilities of the special budget not only with a person's rights in the social sphere but also with the need to ensure the welfare of entire society. The responsibility for aligning the special budget and reasonable use of budget resources lies upon

⁷⁸ Judgement of the Constitutional Court of the Republic of Latvia of 13 March 2001 in case No. 2000-08-0109, *Latvijas Vēstnesis*, No. 41, 2001.

⁷⁹ *Tāre, I.* Ekonomiskās, sociālās un kultūras tiesības [Economic, social and cultural rights]. In: *Cilvēktiesības Latvijā un pasaulē. I. Ziemeles zinātniskā redakcijā. Otrais papildinātais izdevums.* Rīga, TNA, 2021, p. 132.

⁸⁰ Grundgesetz für die Bundesrepublik Deutschland [Basic Law for the Federal Republic of Germany]. Available: <https://www.gesetze-im-internet.de/gg/BJNR000010949.html> [last viewed 11.03.2023]. However, the constitutions of several German Lands (e.g., the Constitution of Brandenburg) have taken a different path and sufficiently broad guarantees of fundamental social rights are included in them. *Verfassung des Landes Brandenburg* [Brandenburgas zemes konstitūcija]. Available: <https://bravors.brandenburg.de/de/gesetz-212792#47> [last viewed 11.03.2023].

⁸¹ *Coelln, C. von.* Vorbemerkung Grundrechte [Preliminary remarks for fundamental rights]. In: *Gröpl, C., Windthorst, K., Coelln, C. von.* Grundgesetz. Studienkommentar [Basic Law. Commentary]. 2. Auflage. München: Verlag C. H. Beck, 2015, Rn. 15.

⁸² Judgement of the Constitutional Court of the Republic of Latvia of 13 March 2001 in case No. 2000-08-0109, p. 6. *Latvijas Vēstnesis*, No. 41, 2001.

⁸³ Judgement of the Constitutional Court of the Republic of Latvia of 15 June 2017 in case No. 2016-11-01, p. 14. *Latvijas Vēstnesis*, No. 121, 2017.

⁸⁴ Judgement of the Constitutional Court of the Republic of Latvia of 13 February 2013 in case No. 2012-12-01, p. 14.1. *Latvijas Vēstnesis*, No. 33, 2013.

the State.⁸⁵ Fundamental social rights have to suffer serious challenges when states experience financial crises, and, often, during these periods of economic crisis, individuals have turned to the Constitutional Court to protect their fundamental rights.⁸⁶

Art. 109 of the *Satversme* is one of the main articles on fundamental social rights, containing extensive social security, provides: “Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law.” The State’s positive duty to introduce measures that would allow a person to exercise the right to social security, when the risks referred to in the article set in, is enshrined in the article.⁸⁷ The legislator is obliged to specify the content of social rights, included in Art. 109, in laws, and these laws become part of the state social security.⁸⁸ The State’s obligation both to establish such system of social security that ensures appropriate provisions in the case of social risk setting in, and functioning of this system follows from this article. However, the *Satversme* envisages neither specific amounts to be disbursed as social security, nor conditions for calculating specific amounts, nor specific producer for granting these amounts; however, the legislator’s actions in making decisions pertaining to the area of social rights must comply with general legal principles and other provisions of the *Satversme*.⁸⁹ The *Satversme* guarantees to everyone the right to stable and foreseeable, as well as effective, fair and sustainable social security.⁹⁰

Fundamental social rights are also closely linked to the concept of human dignity – the aim of the rights, falling within the scope of Art. 109, is, to the extent possible, ensure social justice and the possibility for everyone to lead a life that is compatible with human dignity.⁹¹

The content of fundamental social rights is found in Art. 110 of the *Satversme*, which provides that the State protects family, marriage, the rights of parents and the rights of a child, and provides special support to disabled children, children left without parental care, or those, who have suffered from violence. The State’s positive obligation to ensure social and economic protection to the family follows from this article.⁹²

The right to health care also belongs to the group of fundamental social rights and is included in Art. 111 of the *Satversme*. The Constitutional Court, in specifying

⁸⁵ Judgement of the Constitutional Court of the Republic of Latvia of 19 October 2017 in case No. 2016-14-01, p. 9.3. *Latvijas Vēstnesis*, No. 209, 2017; Judgement of the Constitutional Court of the Republic of Latvia of 31 March 2021 in case No. 2020-35-01, p. 10. *Latvijas Vēstnesis*, No. 64, 2021.

⁸⁶ See, for example, Judgement of the Constitutional Court of the Republic of Latvia of 10 June 2011 in case No. 2010-69-01, *Latvijas Vēstnesis*, No. 92, 2011; Judgement of the Constitutional Court of the Republic of Latvia of 30 March 2011 in case No. 2010-60-01, *Latvijas Vēstnesis*, No. 51, 2011; Judgement of the Constitutional Court of the Republic of Latvia of 15 March 2010 in case No. 2009-44-01, *Latvijas Vēstnesis*, No. 43, 2010, etc.

⁸⁷ Judgement of the Constitutional Court of the Republic of Latvia of 31 March 2021 in case No. 2020-35-01, p. 8. *Latvijas Vēstnesis*, No. 64, 2021.

⁸⁸ *Ibid.*, p. 9.

⁸⁹ Judgement of the Constitutional Court of the Republic of Latvia of 31 March 2021 in case No. 2020-35-01, p. 8. *Latvijas Vēstnesis*, No. 64, 2021.

⁹⁰ Judgement of the Constitutional Court of the Republic of Latvia of 10 July 2020 in case No. 2019-36-01, p. 8. *Latvijas Vēstnesis*, No. 133, 2020.

⁹¹ Judgement of the Constitutional Court of the Republic of Latvia of 25 June 2020 in case No. 2019-24-03, p. 17. *Latvijas Vēstnesis*, No. 121, 2020; Judgement of the Constitutional Court of the Republic of Latvia of 10 December 2020 in case No. 2020-07-03, p. 15. *Latvijas Vēstnesis*, No. 240, 2020.

⁹² Judgement of the Constitutional Court of the Republic of Latvia of 5 December 2019 in case No. 2019-01-01, p. 16. *Latvijas Vēstnesis*, No. 246, 2019.

the scope of Art. 111, has recognised three different obligations of the State, derived from it: to respect, protect and ensure (implement) a person's right to health. Firstly, the obligation to respect the right to health means that the State should abstain from interfering into a person's rights and freedoms. Thus, it should abstain from actions that restrict every person's own possibilities to provide one's own health care. Secondly, the obligation to protect the right to health means that the State must protect a person against interference by other private persons in exercising these fundamental rights. Thirdly, the obligation to ensure the right to health means that the State must introduce specific measures for implementation of fundamental rights.⁹³ Moreover, this article covers all the areas affecting a person's health, i.e., also the right to healthy environmental conditions.⁹⁴ The right to health comprises both a person's freedoms (e.g., the right to control one's health, body, by choosing methods of treatment) and also the rights ensured by the State, i.e., the right of access to a health care system.

The above allows concluding that fundamental social rights have the nature of positive rights, and the fundamental rights belonging to this group are enjoyed by individuals – natural persons.

3.4. Fundamental economic human rights

In legal literature, fundamental economic rights are often examined in conjunction with fundamental social rights; however, fundamental economic rights are characterised by their own, different features. They may be described as rights, with the help of which an individual attains financial independence and is able to provide for one's own wellbeing and that of one's family. Essentially, this group comprises fundamental rights linked to various aspects of employment.

The right to work or the right to employment can be identified as an economic right, regulation concerning it is included in Art. 106 of the *Satversme*, which provides that everyone has the right to freely choose their employment and workplace according to their abilities and qualifications, as well prohibits forced labour. It should be underscored that the Constitutional Court has repeatedly recognised that the *Satversme* does not directly guarantee the right to work but the right to freely choose one's employment and workplace.⁹⁵ Thus, the content of this article is a negative fundamental right, which envisages the freedom of employment, i.e., protects a person against such State's actions that limit this freedom. At the same time, this article does not prohibit the State from setting such requirements that a person must meet in order to take certain employment. The legislator enjoys the discretion to impose requirements with respect to specific professional activities, insofar it is necessary for public interests.⁹⁶

The rights, set out in Art. 107 of the *Satversme*, also can be included in the group of economic rights, i.e., the right to remuneration for work and the right to rest, the latter of these is linked to the right to private life and, indirectly, to the right to health. The Constitutional Court already has recognised that the scope of fundamental

⁹³ See judgement of the Constitutional Court of the Republic of Latvia of 9 March 2010 in case No. 2009-69-03, p. 8.1. *Latvijas Vēstnesis*, No. 40, 2010; Judgement of the Constitutional Court of the Republic of Latvia of 19 December 2017 in case No. 2017-02-03, p. 16. *Latvijas Vēstnesis*, No. 254, 2017.

⁹⁴ *Ibid.*

⁹⁵ See for example, Judgement of the Constitutional Court of the Republic of Latvia of 25 March 2021 in case No. 2020-36-01, p. 12. *Latvijas Vēstnesis*, No. 62, 2021.

⁹⁶ Judgement of the Constitutional Court of the Republic of Latvia of 25 March 2021 in case No. 2020-36-01, p. 12. *Latvijas Vēstnesis*, No. 62, 2021.; Judgement of the Constitutional Court of the Republic of Latvia of 28 January 2021 in case No. 2020-29-01, p. 17. *Latvijas Vēstnesis*, No. 22, 2021.

rights in the area of employment has been defined in Art. 107, has been specified in regulatory enactments and is applicable to every person in paid employment – both to an employee, who is employed in accordance with the Labour Law, and various public officials, for example, civil servants and officials in service. The *Satversme*, of course, typically for constitutions, does not define the amount of minimum remuneration for work, but points out that the amount of minimum remuneration for work should be set within the state.⁹⁷

Likewise, the right of employed persons to a collective labour agreement and the right to strike, defined in Art. 108 belong to the group of economic rights. Art. 108 also establishes the safeguards for the freedom of trade unions, which, essentially, constitute an expression of the right to association.

Looking at the content of the examined rights, one could conclude that economic rights, in difference to the groups of fundamental rights examined before, are characterised by the so-called horizontal effect. I.e., private persons are also the objects of these fundamental rights because, in employment relations, employers are legal persons governed by private law, or natural persons, and a number of obligations are imposed on them as employers, which they have to ensure to an individual (an employee) as the fundamental rights, guaranteed in the *Satversme*, i.e., the obligation derived from Art. 107 to disburse commensurate remuneration for work done and grant to the employee the right to rest, as well as the right, envisaged in Art. 108, to ensure conclusion of a collective agreement in the cases and procedure set out in the Labour Law, as well as the right to strike. A difference can be discerned also in terms of the burden this group of fundamental rights places on the state budget, i.e., guaranteeing the fundamental social rights requires considerable financial resources of the State and creates a burden for tax-payers, whereas ensuring the fundamental economic rights does not create a financial burden for the State, since, basically, ensuring these rights falls within employers' competence, moreover, the taxes paid by employers constitute a considerable part of the state budget revenue.

The rights belonging to the group of economic rights are characterised by the content of both positive and negative fundamental rights, because they both grant rights to individuals (e.g., the right to remuneration for work) and envisage that the particular fundamental rights should be enjoyed without interference (prohibition of forced labour, freedom to choose one's employment).

3.5. Fundamental cultural rights

In international law, the right to education, the right to participate in cultural life, the right to enjoy benefits of scientific progress, the author's right to moral and substantial protection of scientific, literary and artistic work, freedom of scientific activity and creative expression are considered to be cultural rights.⁹⁸

⁹⁷ Judgement of the Constitutional Court of the Republic of Latvia of 21 November 2005 in case No. 2005-03-0306, p. 6, *Latvijas Vēstnesis*, No. 189, 2005; Judgement of the Constitutional Court of the Republic of Latvia of 9 June 2011 in case No. 2010-67-01, p. 8.1. *Latvijas Vēstnesis*, No. 91, 2011.

⁹⁸ *Stamatopoulou, E.* Cultural rights in international law: Article 27 of the Universal Declaration of Human Rights and beyond. Leiden; Boston: Martinus Nijhoff, 2007, pp. 2–3. Compare with *Riedel, E., Giacca, G., Golay, Ch.* The Development of Economic, Social, and Cultural Rights in International Law. In: *Economic, Social, and Cultural Rights in International Law*, *Riedel, E., Giacca, G., Golay, Ch.* (eds). Oxford: Oxford University Press, 2014, p. 9.

Often, fundamental cultural rights receive less attention than fundamental civil and political rights. And yet, undeniably, culture represents a person's soul, morals, human self-sufficiency and self-respect. Hence, these rights cannot be regarded solely as "luxury rights".⁹⁹ It has been noted, that respecting fundamental cultural rights is essential to retain human dignity and positive social interaction between individuals in society in the diverse and multicultural world.¹⁰⁰ The fundamental cultural rights, considering, in particular, their content, developed in case law, are and will be of great importance in society, facing various challenges, e.g., in the Internet environment, diversity of art and creativity, and development. The fundamental cultural rights can be "politically sensitive", because one of the fundamental rights in this group is linked to the protection of ethnic minorities. Likewise, it should be taken into account that the exercise of fundamental cultural rights in each state will depend on the understanding and content of culture. Culture, in general, determines the essence and quality of a human being. Undeniably, these fundamental rights influence and are closely linked to the exercise of other fundamental rights.

The right to education is one of the most important fundamental cultural rights, it has been enshrined in Art. 112 of the *Satversme* and creates the possibilities for a person to develop as a free personality and to become integrated into civil society¹⁰¹ and, substantially, is a pre-condition for consolidating democratic society.¹⁰² Pursuant to the second sentence of Art. 112 of the *Satversme*, primary and secondary education, paid for by the State, is the minimum of rights that the State has committed itself to guarantee and the decrease of which is inadmissible.¹⁰³ The mandatory nature of primary education, defined in the third sentence of this article, follows from the principle of a democratic state governed by the rule of law, because the foundation of such a state is an educated person, able to acquire information independently, reason, think critically and make rational decisions.¹⁰⁴

The Constitutional Court has made important conclusions with respect to higher education, noting that, firstly, the right to education is applicable to education programmes of all levels and types, *inter alia*, higher education¹⁰⁵, as well as post-graduate study programmes¹⁰⁶; secondly, that Art. 112 of the *Satversme*, however, does not provide for a person's right to demand that higher education is provided

⁹⁹ Stamatopoulou, E. Cultural rights in international law: Article 27 of the Universal Declaration of Human Rights and beyond. Leiden; Boston: Martinus Nijhoff, 2007, p. 5.

¹⁰⁰ General comment No. 21. Right of everyone to take part in cultural life (Art. 15, para. 1 (a) of the International Covenant on Economic, Social and Cultural Rights). Committee on Economic, Social and Cultural Rights, Forty third session, 2–20 November 2009, p. 1. Available: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F21&Lang=en [last viewed 20.03.2023].

¹⁰¹ Judgement of the Constitutional Court of the Republic of Latvia of 23 April 2019 in case No. 2018-12-01, para. 20. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/07/2018-12-01-12.-Saeimas-dep_latvie%C5%A1u-valoda-valsts-skol%C4%81s_ENG.pdf#search= [last viewed 17.03.2023].

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Judgement of the Constitutional Court of the Republic of Latvia of 6 May 2011 in case No. 2010-57-03, para. 11.1. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/02/2010-57-03_Spriedums.pdf#search= [last viewed 17.03.2023].

¹⁰⁶ Judgement of the Constitutional Court of the Republic of Latvia of 24 October 2019 in case No. 2018-23-03, para. 11.2. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2018/11/2018-23-03_Judgment.pdf#search= [last viewed 17.03.2023].

free of charge¹⁰⁷; thirdly, that the State must provide for persons' right to acquire higher education free of charge, within the limits of its financial means¹⁰⁸.

Art. 113 of the *Satversme*, in turn, includes two distinguishable legal aspects: freedom of creative activity and protection of the created work.¹⁰⁹ This article, alongside Art. 112 of the *Satversme*, protects, *inter alia*, academic freedom, which is one of the foundations of higher education.¹¹⁰ Likewise, protection is granted to the freedom of scientific research, which, essentially, is a safeguard for a person engaged in scientific activities against the State's interference in exercising this freedom, as well as a safeguard for creating high-quality scientific works, because this freedom makes it possible for researchers (scientists) to form autonomous research units, define aims and objectives of research, as well as the methods used, cooperate with other researchers, share scientific data and analysis with policy makers and society.¹¹¹ This is the reason why the State should be interested in both respecting and protecting, as well as guaranteeing the rights of respective persons to the freedom of scientific research, artistic and other creativity.¹¹²

Both Art. 14 of the *Satversme* and the Preamble to it speak about ethnic minorities and reinforce their rights. Undoubtedly, representatives of other ethnicities have always lived in Latvia alongside Latvians. Ethnic minorities have a close link with Latvia and constitute an integral part of it.¹¹³ The rights of ethnic minorities, guaranteed in Art. 114 of the *Satversme*, envisage recognition of minority values and rights and are aimed at ensuring balance in society, creating a benevolent environment for preserving the language, ethnic and cultural identity of ethnic minorities, simultaneously ensuring appropriate respect for the constitutional values.¹¹⁴ In Latvia, these rights are enjoyed by a person, permanently residing in Latvia, who self-identifies as belonging to an ethnic minority, which historically has lived in the territory of Latvia.¹¹⁵ At

¹⁰⁷ Judgement of the Constitutional Court of the Republic of Latvia of 6 May 2011 in case No. 2010-57-03, para. 11.2. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/02/2010-57-03_Spriedums.pdf#search= [last viewed 17.03.2023].

¹⁰⁸ *Ibid.*

¹⁰⁹ Judgement of the Constitutional Court of the Republic of Latvia of 2 May 2012 in case No. 2011-17-03, para. 12. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2011/08/2011-17-03_Spriedums_ENG.pdf#search= [last viewed 17.03.2023].

¹¹⁰ Judgement of the Constitutional Court of the Republic of Latvia of 11 June 2020 in case No. 2019-12-01, para. 25.1. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/07/2019-12-01_Judgement.pdf#search= [last viewed 17.03.2023].

¹¹¹ General comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights); para 13. Available: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQdxONLLLJiul8wRmVtR5Kxx73i0Uz0k13FeZiqChAWHKFuBqp%2B4RaxfUzqSAfyZYAR%2Fq7sqC7AHRa48PPRRALHB> [last viewed 21.03.2023].

¹¹² Judgement of the Constitutional Court of the Republic of Latvia of 11 June 2020 in case No. 2019-12-01, para. 25.1. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/07/2019-12-01_Judgement.pdf#search= [last viewed 17.03.2023].

¹¹³ Judgement of the Constitutional Court of the Republic of Latvia of 13 November 2019 in case No. 2018-22-01, para. 21.2. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/11/Judgment-in-the-case-2018-22-01_EN-1.pdf#search= [last viewed 17.03.2023].

¹¹⁴ Judgement of the Constitutional Court of the Republic of Latvia of 23 April 2019 in case No. 2018-12-01, para. 23.2. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/07/2018-12-01-12.-Saeimas-dep_latvie%C5%A1u-valoda-valsts-skol%C4%81s_ENG.pdf#search= [last viewed 17.03.2023].

¹¹⁵ Judgement of the Constitutional Court of the Republic of Latvia of 23 April 2019 in case No. 2018-12-01, para. 23. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/07/2018-12-01-12.-Saeimas-dep_latvie%C5%A1u-valoda-valsts-skol%C4%81s_ENG.pdf#search= [last viewed 17.03.2023].

the same time, Art. 114 comprises also collective rights with an overall objective of ensuring preservation and development of the ethnic minority's identity, because a person, belonging to an ethnic minority, can preserve one's identity only together with other persons belonging to the respective ethnic minority.¹¹⁶ This conclusion complies with the findings made in theory that cultural rights should rather be viewed as collective rights, which perform two important functions. Firstly, they are "the shield and the sword" for ethnic minorities, allowing to defend the provisions made in the *Satversme*.¹¹⁷ Secondly, these rights reflect the constitutional system itself, where this group is a part of the State.

3.6. Solidarity rights

The *Satversme*'s catalogue of human rights, Art. 115, includes the so-called third-generation¹¹⁸ fundamental rights, which define everyone's right to live in a benevolent environment, by providing information about environmental conditions and by promoting its preservation and improvement. An opinion can be found in theory that this right could be viewed rather as an aim – an ideal, because it protects a universal value – environment. This is the reason why they can be considered as being solidarity rights.¹¹⁹

Definitely, the rights related to environment and its protection were identified only in the 1970s, when the link between environment and human rights became apparent.¹²⁰ Moreover, identification of this link became relevant alongside the understanding that the possibilities of human existence directly depend upon environment and its situation. Undoubtedly, facing various environment-related challenges (availability of resources, reducing pollution, global warming), these are exactly the rights that outline one of the central dimensions of the entire catalogue of fundamental rights. It has been emphasized, for a good reason, that environment is the pre-condition for human existence.¹²¹ All of the above shows that the catalogue of human rights, included in the *Satversme*, which contains also the right to live in a benevolent environment as its integral part, can be recognised as being progressive and far-sighted.

The Constitutional Court in its case law has explained the content of this article quite extensively. It has been concluded that this provision, firstly, imposes the obligation upon public authorities to create and ensure an effective system of environmental protection; secondly, grants the right to a private person to obtain,

¹¹⁶ Judgement of the Constitutional Court of the Republic of Latvia of 23 April 2019 in case No. 2018-12-01, para. 23. Available: [https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/07/2018-12-01-12.-Saeimas-dep_latvie%C5%A1u-valoda-valsts-skol%C4%81s_ENG.pdf#search=\[last viewed 17.03.2023\]](https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2018/07/2018-12-01-12.-Saeimas-dep_latvie%C5%A1u-valoda-valsts-skol%C4%81s_ENG.pdf#search=[last viewed 17.03.2023]).

¹¹⁷ *Shoudhry, S.* Group Rights in Comparative Constitutional Law: Culture, Economics, or Political Power? In: *Comparative Constitutional Law*, *Rosenfeld, M., Sajo, A.* (eds). Oxford: Oxford University Press, 2012, p. 1100.

¹¹⁸ *O'Byrne, D. J.* Human Rights: An Introduction. Harlow: Pearson Education Limited, 2003, p. 387.

¹¹⁹ *Gentimir, A.* Environmental Protection as Fundamental Right Guaranteed to the European Level. Present Environment and Sustainable Development, Vol. 14, No. 2, 2020, p. 124.

¹²⁰ *Satversmes 115. panta komentārs [Commentary of Article 15]* In: *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā [Commentaries on the Constitution of the Republic of Latvia. Chapter VIII. Fundamental rights. Prepared by the of authors under the scientific supervision of prof. R. Balodis]*. Rīga: Latvijas Vēstnesis, 2011, p. 719.

¹²¹ *Bogojevic, S., Rayfuse, R.* Environmental Rights in Europe and Beyond: Setting the Scene. In: *Environmental Rights in Europe and Beyond*, *Bogojevic, S., Rayfuse, R.* (eds). Bloomsbury Publishing Plc, 2018, p. 12.

in the procedure set out in regulatory enactments, environmental information and participate in the process of making the decisions related to the use of environment; thirdly, places the right to live in a benevolent environment on the level of fundamental rights.¹²² Moreover, the rights defined in this article envisage the State's obligation to protect a person from the activities that are actually taking place and might endanger human health or environment, as well as the activities planned for the future.¹²³

The subject of Art. 15 of the *Satversme*, "everyone", comprises both natural persons and legal persons. Concurrently, the Constitutional Court has provided a very far-sighted explanation of the subject of this article, pointing out that this right comprises "the interests of living in a benevolent environment not only of the present but also of the future generations", which, thus, must always be respected when deciding on environment-related matters.¹²⁴

The possibilities of the present generation and the future generations of living in a benevolent environment directly depend on the readiness of states to implement sustainable development. In other words, Art. 115 of the *Satversme* cannot be examined in isolation from the principle of environmental sustainability, included in the Preamble to the *Satversme*, which means responsible treatment of the future generations, prohibiting actions which might endanger or seriously encumber the life of future generations.¹²⁵ The concept of "environmental constitutionalism"¹²⁶ is known in science, which means that legal provisions of constitutional level deal with environmental issues, which might pertain to references to environmental protection, ecology, and nature.¹²⁷ The recent case law of the Constitutional Court reflects directly on this, noting that the principle of sustainability and the fundamental rights, included in Art. 115 of the *Satversme*, constitute a united system of environmental constitutionalism.¹²⁸ In Latvia, environmental constitutionalism is implemented (reflected) as a specific fundamental right – the right to live in a benevolent environment, as well as in the principle of sustainability, which should be viewed as one the basic principles of constitutionalism and the national development

¹²² Judgement of the Constitutional Court of the Republic of Latvia of 14 February 2003 in case No. 2002-14-04, para. 1. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2002/07/2002-14-04_Spriedums_ENG.pdf#search= [last viewed 17.03.2023]; Judgement of the Constitutional Court of the Republic of Latvia of 21 December 2007 in case No. 2007-12-03, para. 13. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2007/06/2007-12-03_Spriedums_ENG.pdf#search= [last viewed 17.03.2023].

¹²³ Judgement of the Constitutional Court of the Republic of Latvia of 17 January 2008 in case No. 2007-11-03, para. 13.1. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2007/05/2007-11-03_Spriedums_ENG.pdf#search= [last viewed 17.03.2023].

¹²⁴ Judgement of the Constitutional Court of the Republic of Latvia of 24 September 2008 in case No. 2008-03-03, para. 17.1. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=/wp-content/uploads/2016/02/2008-03-03_Spriedums.pdf#search= [last viewed 17.03.2023].

¹²⁵ *Levits, E.* Izvērstis Satversmes preambulas iespējamā teksta piedāvājums un komentārs [Extended proposal and commentary on a possible text for the Preamble to the Constitution]. In: *Levits, E. Valstsgrība. Idejas un domas Latvijai 1985-2018* [National will. Ideas and thoughts for Latvia 1985–2018]. Rīga: Latvijas Vēstnesis, 2019, p. 648.

¹²⁶ See for example, *Weis, L. K.* Environmental constitutionalism: Aspiration or transformation? *International Journal of Constitutional Law*, Vol. 16, issue 3, 2018, pp. 836–870.

¹²⁷ *O'Gorman, R.* Environmental Constitutionalism: A Comparative Study. *Transnational Environmental Law*, Vol. 6, issue 3, 2017, p. 438.

¹²⁸ Judgement of the Constitutional Court of the Republic of Latvia of 27 October 2022 in case No. 2021-31-0103, para. 36.1. Available: https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/07/2021-31-0103_Spriedums.pdf#search= [last viewed 17.03.2023].

as such. It comprises, definitely, also environmental protection and environmental sustainability.

4. Significance of protecting fundamental rights

The principle of a state governed by the rule of law can be viewed in both narrower and broader understanding. In the narrow understanding of it, it comprises two basic elements – control over the power and rights,¹²⁹ whereas in the broader understanding it also embraces such principles as, for example, separation of powers, democracy, as well as protection of human rights.

To protect one's fundamental rights, persons need effective legal remedies at their disposal. The need for such remedies follows from the principle of a state governed by the rule of law, which, *inter alia*, comprises protection of fundamental rights against the abuse of power. The State is obliged to ensure effective protection to anyone whose rights have been violated.¹³⁰

Usually, the constitutional court is deemed to be the guardian of the constitution. However, the opinion of the Lithuanian constitutional law expert E. Kuris should be upheld, – he has noted that, although judges of the constitutional court undeniably are the ones who, in view of the court's nature, are the guardians of the constitution and also of the fundamental rights, at the same time they are not the only ones performing this function.¹³¹ Protection of the constitution is also the task of other institutions and persons.¹³² Clearly, protection of fundamental rights at the constitutional court should be seen as one of its functions. The direct applicability and the subjective nature of the fundamental rights, included in the *Satversme*, has given to Latvia the opportunity to create the constitutional complaint, which is sometimes called the acme of fundamental rights. It should be emphasised here that persons do not have the right to turn directly to the constitutional court to defend their violated fundamental rights in all countries. For example, such possibility is non-existent in Estonia. In Lithuania, the constitutional complaint was introduced only on 1 September 2019 when amendments to the Lithuanian Constitution entered into force.¹³³

The institutional existence and functioning of legal remedies constitute only one of the aspects. Access to these legal remedies and, in particular, to courts is of decisive importance. As noted by American scholar T. Ginsburg, access to court is one of the most essential and important aspects of the right to trial.¹³⁴ A. Barak also has underscored that the way in which a judge applies the provisions that define access

¹²⁹ *Lautenbach, G.* The Concept of the Rule of Law and the European Court of Human Rights. Oxford: Oxford University Press, 2013, p. 19.

¹³⁰ Judgement of the Constitutional Court of the Republic of Latvia of 5 December 2001 in case No. 2001-07-0103, para. 1. Available: https://www.satv.tiesas.gov.lv/web/viewer.html?file=/wp-content/uploads/2001/07/2001-07-0103_Spriedums_ENG.pdf#search= [last viewed 17.03.2023].

¹³¹ *Kuris, E.* Judges as Guardians of the Constitution: "Strict" or "Liberal" Interpretation. In: The Constitution as an Instrument of Change, *Smith, E.* (ed.). [b.v.]: SNS Förlag, 2003, p. 191.

¹³² See more about rights protection mechanisms in Latvia: *Ziemele, I.* Cilvēktiesību aizsardzības mehānismi Latvijā [Human rights protection mechanisms in Latvia]. In: *Cilvēktiesības pasaulē un Latvijā*, *Ziemele, I.* (ed.). Rīga: TNA, 2021, pp. 441–466.

¹³³ *Jočiene, D.* Challenges to the Implementation of Individual Constitutional Complaints: Lithuanian Experience. In: Reports from the XVI Bilateral Conference of the Justices of the Constitutional Court of the Republic of Lithuania and the Constitutional Court of the Republic of Latvia 30 September–1 October 2021, Vilnius. Vilnius: Lietuvos Respublikos Konstitucinis Teismas, 2022, p. 166.

¹³⁴ *Ginsburg, T.* Judicial Review in New Democracies: Constitutional Courts in Asian Cases. New York: Cambridge University Press, 2003, p. 37.

to court is, in a way, a test of the understanding of the judge's role.¹³⁵ One might subscribe to the thesis that, frequently, access to court depends on the interpretation of a legal provision.¹³⁶ Namely, it depends exactly upon the justices; for example, how in the proceedings before the Latvian Constitutional Court, a person's obligation to exhaust legal remedies will be examined or how the term for submitting the application will be assessed.

However, the existence of legal remedies *per se* may be unable to reach the aim, if the Constitutional Court's judgements are not enforced. A legal remedy, including the Constitutional Court, may be deemed to be effective only if the delivered judgements are enforced. This conclusion applies to enforcing the judgements of all courts. However, this principle is most substantially manifested with respect to the enforcement of the Constitutional Court's judgements, because these judgements have *erga omnes* legal nature.

Every country, which respects the rule of law, invariably enforces a judgement delivered by the Constitutional Court. In Latvia, enforcement of the Constitutional Court's judgement can be presumed because a state governed by the rule of law cannot accept a different solution but to enforce the constitutional court's judgement that has entered into force. There cannot be any doubt, whether the Constitutional Court's judgement that has entered into force is enforceable. This finding not only follows from the constitutionally legal status of the Constitutional Court and the legal nature of its judgements, but is also an element of the rule of law. Enforcement of the judgement is presumed by, *inter alia*, the fact that no control over enforcement of these judgements has been envisaged. As noted above – enforcement of judgements is the presumption of a state governed by the rule of law.

Enforcement of the Constitutional Court's judgement does not mean only enforcement of the substantive part of the ruling. If the Court has provided interpretation of a legal provision in its findings, which requires the legislator's actions, the legislator has to respect the Court's rulings. To specify, this finding does not apply directly to *obiter dicta*. Simultaneously, it is worth reminding that a reasonable legislator always listens to the constitutional court's *obiter dicta*.

Enforcement of the Constitutional Court's judgements that pertain directly to the issues of fundamental rights, reveals, especially, whether fundamental rights are respected within the state. Namely, enforcement of judgements demonstrates, in a way, whether that, which has been defined in the theory of fundamental rights, conforms with the truth and reality.

Summary

Fundamental rights are an objective part of the constitution. However, the subjective understanding thereof, the direct effect, the ability to be "alive" give them a special place within the national legal system.

The inclusion of fundamental rights in the *Satversme* is a value that characterises the State and society, and should be respected by all.

The *Satversme's* catalogue of human rights can be characterised as modern, – it comprises fundamental rights belonging to all groups, including the most

¹³⁵ Barak, A. The Judge, p. 192.

¹³⁶ Langford, M. Judicial Review in National Court. Recognition and Responsiveness. In: Economic, Social, and Cultural Rights in International Law. Contemporary Issues and Challenges, Riedel, E., Giacca, G., Goley, Ch. (eds). Oxford: Oxford University Press, 2014, p. 425.

recent one – the third-generation rights, solidarity rights, which are not found in the constitutions of many other countries.

The fundamental civil rights enshrined in the *Satversme* do not have particularly national characteristics, as these rights are firmly related to international human rights standards. Notably, several fundamental political rights can be exercised only by the citizens, and the catalogue of political rights have expanded after the accession of Latvia to the European Union.

In difference to many other countries, fundamental social rights have also been included in the *Satversme's* catalogue of fundamental rights, and the subjects of social rights, i.e., individuals, may use the mechanisms envisaged in the state to demand guarantees of these subjective rights.

Fundamental cultural rights create a person as a self-sufficient member of society. They simultaneously form the grounds for manifestations of human dignity and influence the diversity of interactions between a person and society.

In Latvia, environmental constitutionalism is manifested both as the specific fundamental right to live in a benevolent environment, and as the principle of sustainability.

The constitutional court is not the only instrument for protecting human rights. However, *erga omnes* nature of its judgement makes it special.

Enforcement of a judgement delivered by the Latvian Constitutional Court is presumable. The enforcement of its judgements follows from the principle of a state governed by the rule of law.

Enforcement of the Constitutional Court's judgement does not mean enforcing only its substantive part. The entire judgement is binding, including the interpretation of a legal provision provided within the findings.

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