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First Century of the *Satversme*: Constitutional Development and Perspectives

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The centenary of the *Satversme* – the Constitution of the Republic of Latvia – in 2022 was an important event for the State of Latvia. The *Satversme* is one of the oldest valid constitutions in Europe. Its fate is unique, making Latvia interesting in the context of comparative constitutional law.

The authors of this article have examined the creation and evolution of the *Satversme* in the course of the last century, as well as analysed the current changes to the system of the Latvian State. Re-examining the instruments of direct democracy (referendum and legislative initiative), by expanding participation of the totality of Latvia's citizens in public administration, has been outlined as a direction requiring improvements, likewise, "parliamentary weakness", leading to judicial activism, is examined and leads to reflections on the need to increase the role of the President in the area of separation of powers, as well as control over the parliament and the executive power.

Keywords: *Satversme* (the Constitution of Latvia), parliamentarism, separation of powers, constitutional relativism, judicial activism, weakness of the parliament, the President of the State.

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Introduction

Last year, the centenary¹ of Latvia's valid constitution – the *Satversme*² of the Republic of Latvia, adopted on 15 February 1922 by the Constitutional Assembly of Latvia,³ – was celebrated. The centenary of a constitution, frankly speaking, is a rather rare event in the context of comparative constitutional law. The average term of validity of a constitution globally does not exceed 20 years.⁴ Among the European republics, Latvia's constitution is the third oldest. The Austrian Constitution of 1 October 1920⁵ is a couple of years older, while the Statutes of 8 October 1600⁶ are still in force in San Marino. The European monarchies is a different story, some of them still have even older constitutions or fragments thereof; however, even on the general background, the Latvian *Satversme* is among the ten oldest valid constitutions in Europe. The *Satversme* is the earliest valid constitution in Central and Eastern Europe.

The *Satversme* is also among the few rare constitutions in the world that has been suspended and yet, later, has been reinstated in full. In the context of comparative constitutional law, returning to the old constitution is a comparatively rare event, since the typical approach, almost always, is drafting a new basic law.⁷ The fate of the Austrian Constitution of 1 October 1920 has been similar to that of the *Satversme*, since it was reinstated after World War II, with the restoration of the Austrian statehood and sovereignty.⁸ However, the Austrian Constitution was reinstated following an interruption that slightly exceeded a decade, whereas the *Satversme* was reinstated in full more than fifty years after it had been suspended.

The history of the *Satversme* and, at the same time, that of Latvia's statehood, is unique, making it stand out against the backdrop of other national constitutions.

¹ See more: *Pleps, J.* Satversmes simtgade un Latvijas valsts [Centenary of the *Satversme* and the Latvian State]. Latvijas Zinātņu Akadēmijas Vēstis. A daļa: Humanitārās un sociālās zinātnes, 76. sējums, Nr. 4, 2022, 26.–33. lpp.

² In Latvian legal terminology, the constitution is denoted with specially created word “*Satversme*”. The term “*Satversme*” was created and proposed in 1869 by Kronvaldu Atis, one of the leaders of the Latvian National Awakening, to mean a constitution. In Latvian the use of the term “*Satversme*” refers to two main ideas of the constitutionalism – to guarantee to the people legal protection and security and to prescribe limitations of the state authority. See more: *Rodiņa, A.* *Satversme*. Jurista Vārds, No. 7(1221), 15.02.2022, 4.–5. lpp.

³ The Constitution of the Republic of Latvia. Available: <https://likumi.lv/ta/en/en/id/57980> [last viewed 04.02.2023].

⁴ *Ginsburg, T.* Constitutional Endurance. In: *Comparative Constitutional Law*. *Ginsburg, T., Dixon, R.* (eds). Cheltenham and Northampton: Edward Elgar, 2012, p. 112.

⁵ Bundes-Verfassungsgesetz (B-VG) [Federal Constitutional Law]. Available: <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=bundesnormen&Gesetzesnummer=10000138> [last viewed 04.02.2023].

⁶ Leges statutae reipublicae Sancti Marini [The statute laws of the republic of San Marino]. Available: https://archive.org/details/bub_gb_jVYhQNWm6vUC [last viewed 04.02.2023].

⁷ See more: *Pleps, J.* The continuity of the constitutions: the examples of the Baltic states and Georgia. Wrocław Review of Law, Administration & Economics, Vol. 6, issue 2, 2016, pp. 29–44.

⁸ *Geistlinger, M.* The Republic of Austria before 1938 and after 1945 — Some Thoughts on Continuity. Journal of the University of Latvia Juridiskā zinātne/Law, Vol. 9, 2016, p. 16.

Hence, Latvia's constitutional experience is interesting in the context of comparative constitutional law.⁹ The return of the *Satversme* to the legal and social reality and restoration of Latvia's independence, which took place after fifty years of occupation, on the basis of the state continuity principle, is almost an impossible event, analogous precedents of which cannot be found in the history of global constitutionalism. In this respect, the *Satversme* and Latvia's constitutional history are interesting in the context of the European and global constitutional law.¹⁰

The hundredth anniversary of the *Satversme* is a very appropriate moment not only for taking pride in this remarkable event but also for assessing the development of the Latvian constitutional law and discussing improvements to the constitutional regulation.¹¹ Over time, the *Satversme*, involuntarily, has become an important element of the national identity, alongside the official symbols of statehood (red-white-red flag, the Latvian anthem and coats of arms) and the non-official symbols (Latvia's outline, *auseklītis* – the eight-pointed star symbol, the Dome Cathedral and busts of the pre-war Presidents).¹² At the same time, it should be kept in mind that public opinion polls reveal that slightly below 35% of respondents see the *Satversme* as being modern.¹³ In society in general and among lawyers and politicians in particular, discussions regarding possible improvements to the *Satversme* are never ending. Several concrete “weak points” of the *Satversme* even have been identified, requiring amendments.¹⁴

⁹ See also: *Taube, C.* Constitutionalism in Estonia, Latvia and Lithuania. A study in comparative constitutional law. Uppsala: Iustus Förlag AB, 2001, pp. 52–55.

¹⁰ For example, during centenary of the *Satversme*, several articles on the *Satversme* and the Latvian constitutional system were prepared and published by Italian experts of constitutional and comparative law. See: *Panzeri, L.* The “national” dimension of the Latvian Constitution one hundred years after its entry into force. DPCE Online, Vol. 55, issue 4, 2023, pp. 2029–2041. Available: <https://www.dpceonline.it/index.php/dpceonline/article/view/1738> [last viewed 04.02.2023]; *Mezzetti, L.* *Satversme*, Statehood, Constitutional Culture and Traditions in Latvia. DPCE Online, Vol. 55, issue 4, 2023, pp. 2043–2055. Available: <https://www.dpceonline.it/index.php/dpceonline/article/view/1739> [last viewed 04.02.2023]; *Zinzi, M.* The Latvian parliamentary form of government and the significant powers vested in the President. DPCE Online, Vol. 55, issue 4, 2023, pp. 2057–2073. Available: <https://www.dpceonline.it/index.php/dpceonline/article/view/1740> [last viewed 04.02.2023]; *Mazza, M.* The judiciary in the Latvian Constitution of 1922, with regard to the circulation of legal models. DPCE Online, Vol. 55, No. 4, 2023, pp. 2075–2102. Available: <https://www.dpceonline.it/index.php/dpceonline/article/view/1741> [last viewed 04.02.2023]; *Duranti, F.* Constitutional justice in Latvia. A young Court, a strong institution. DPCE Online, Vol. 55, issue 4, 2023, pp. 2103–2112. Available: <https://www.dpceonline.it/index.php/dpceonline/article/view/1751> [last viewed 04.02.2023]; *Ferrari, G. F.* Rights and freedoms in Latvian constitutional law. DPCE Online, Vol. 55, issue 4, 2023, pp. 2115–2123. Available: <https://www.dpceonline.it/index.php/dpceonline/article/view/1742> [last viewed 04.02.2023].

¹¹ See more: *Balodis R., Pleps J.* Atskatoties uz *Satversmes* simts gadiem: Latvijas valsts pamatlikuma plusi un mīnusi [Looking Back on Hundred Years of the *Satversme*: Pluses and Minuses of the Basic Law of the Latvian State]. *Jurista Vārds*, No. 18(1232), 03.05.2022., 16–30. lpp.

¹² *Balodis, R.* Priekšvārds [Foreword]. In: *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības [Commentaries on the Satversme of the Republic of Latvia. Chapter VIII. Fundamental Human Rights].* Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2011, 3. lpp. See more: *Balodis, R.* *Satversme* pārkāpj 100 gadu sliekšni, mokoties ar relativisma un tiesu aktīvisma kaitēm [The *Satversme* Steps over the Threshold of 100 Years, Plagued by Relativism and Judicial Activism]. Available: <https://telos.lv/satversmes-100-gadu-slieksnis/> [last viewed 04.02.2023].

¹³ SKDS aptauja: Vai *Satversme* ir mūsdienīga un nodrošina demokrātijas pamatprincipus [SKDS Survey: Is the *Satversme* modern and does it ensure the basic principles of democracy]? Available: <https://www.lsm.lv/raksts/kas-notiek-latvija/video/skds-aptauja-vai-satversme-ir-musdieniga-un-nodrosina-demokratijas-pamatprincipus.a444267/> [last viewed 04.02.2023].

¹⁴ For example: 12. Saeimas Juridiskās komisijas deputātu darba grupas Valsts prezidenta pilnvaru iespējama paplašināšanai un ieviešanas kārtības izvērtēšanai atzinums [Opinion of the working group

This article aims to examine the *Satversme* not only from the vantage point of its centenary but also to describe its strong and weak points, outlining academically the potential future challenges to the constitutional development of Latvia's basic law. To reach this aim, a short overview of the origins and evolution of the *Satversme* during the previous century will be provided and current challenges, pertaining to the *Satversme's* architecture, algorithms, trends, will be examined. The *Satversme's* centenary still being under the shadow cast by COVID-19 pandemic and legal contradictions caused by it, the possibilities of making mechanisms for crisis management more effective will, likewise, be examined in the article.

1. First centenary of the *Satversme*

1.1. Adoption of the *Satversme* (1920–1922)

The *Satversme* was drafted and adopted by a parliament, elected specifically for this purpose – a constitutional assembly, which was named the Latvian Constitutional Assembly.¹⁵ The election of the Latvian Constitutional Assembly was the very first parliamentary election in the State of Latvia, during which Latvian citizens had the possibility to elect their own representatives for defining the basic law of the State.¹⁶ Great and, frankly speaking, even excessive and impossible hopes were set upon the Constitutional Assembly and the emerging *Satversme*, which later caused sense of disappointment in society. Actually, the work of the Constitutional Assembly on drafting the *Satversme* was not very smooth – incessant parliamentary discussions and constant search for compromises caused the first disappointment with the still unadopted constitutional document.

The Latvian Constitutional Assembly has been called the longest constitutional assembly in the global history because usually constitutions are drafted much faster.¹⁷ The discussions on the *Satversme* outlined serious contradictions in the opinions of political groups as to what the system of the State should be like. Despite these potential difficulties and opposite views on a number of law policy issues, politicians of the newly established State had to reach complex compromises. The balance of powers in the parliament prevented from defining in the *Satversme* a President, elected by the people, to create a constitutional counterforce to the parliament. Quite on the contrary, a head of the State, elected by the parliament, was created, who depended upon the goodwill of the parliament or, more precisely, the majority of

of members of the 12th *Saeima's* Legal Committee on possible expansion of the powers of the President and evaluation of the election procedure]. Available: <https://www.saeima.lv/lv/par-saeimu/saeimas-darbs/deputatu-grupas/darba-grupa-valsts-prezidenta-pilnvaru-iespejamai-paplasinasanai-un-ieviesanas-kartibas-izvertesana> [last viewed 04.02.2023]. See also: *Rozenbergs, R.* Intervija ar Ringoldu Balodi: Satversmes simtgadē nav jāvairās runāt par politiķiem netikamām lietām [Interview with Ringolds Balodis. At the centenary of the *Satversme*, Discussions on Matters Unpleasant for Politicians should not be Avoided]. Available: <https://neatkariga.nra.lv/intervijas/371878-satversmes-simgade-nav-javairas-runat-par-politikiem-netikamam-lietam> [last viewed 04.02.2023].

¹⁵ See more: Šilde, Ā. Latvijas vēsture. 1914–1940 [History of Latvia. 1914–1940]. Stokholma: Daugava, 1976, 352.–364. lpp.

¹⁶ See more: Latvijas Satversmes sapulces vēlēšanu rezultāti [Outcomes of Election of the Latvian Constitutional Assembly]. Rīga: Valsts statistikas pārvalde, 1920. Available: <https://www.cvk.lv/lv/media/529/download?attachment> [last viewed 04.02.2023].

¹⁷ *Cielava, V.* Priekšvārds [Foreword]. In: Latvijas Satversmes sapulces stenogrammu izvilks (1920–1922). Latvijas Republikas Satversmes projekta apspriešana un apstiprināšana [Excerpt from the Transcripts of the Latvian Constitutional Assembly (1920–1922). Discussions and Adoption of the Draft *Satversme* of the Republic of Latvia]. Rīga: Tiesu Namu Aģentūra, 2006, 1. lpp.

the *Saeima* (ruling coalition).¹⁸ The President must reckon with this, in particular, during the first term in office, otherwise his chances of being re-elected would be close to zero. Admittedly, similar alternative centres of power were not created for the centre of the national political life, i.e., the *Saeima*,¹⁹ that would be able to “hold in check” the *Saeima*. As the result, both during the first period of independence and, in particular, at present, such constitutional disbalance “spoils” the parliament, making it insensitive to appeals to introduce reforms, so necessary for the national development.²⁰

It must be added that, despite the initial promises, the Constitutional Assembly was unable to include in the constitution the issue of local governments, which, by the way, has still not been fully settled in the *Satversme*. Likewise, the Constitutional Assembly did not adopt the second part of the *Satversme* that would have defined citizen’s fundamental rights and obligations (lacking votes in the third reading). The draft second part of the *Satversme* included a provision on the Latvian language as the official language, as well as safeguards for minority rights. Similarly, special guarantees were not defined for Latgale, upon which the members elected from Latgale constituency insisted.²¹ Due to the lack of regulation on human rights, at the time, the *Satversme* had been called, with certain irony, “*Rumpf-Verfassung*”, since it lacked the most important regulation, which defines the legal and political nature of the State and which usually is allocated the most prominent place in constitutions.²² Adoption of the *Satversme* did not cause great rapture in society and left quite many dissatisfied with the newly adopted basic law of the State.²³

After the *Satversme* entered into force on 7 November 1922, functioning of the new state system was fragmented. Numerous small factions, elected to the *Saeima*, and groups of deputies could not ensure a stable parliamentary majority and approve lasting governments. Arveds Bergs, one of the most prominent authors of

¹⁸ See more: *Lazdiņš, J.* Clashes of Opinion at the Time of Drafting the *Satversme* of the Republic of Latvia. Journal of the University of Latvia “Law”, Vol. 10, 2017, pp. 95–97.

¹⁹ *Dišlers, K.* Ievads Latvijas valststiesību zinātnē [Introduction to the Science of Latvian Public Law]. Rīga: A. Gulbis, 1930, 72.–73. lpp.

²⁰ For example, the amendments to the *Satversme* proposed by Presidents Valdis Zatlers and Andris Bērziņš aimed at modernising the Latvian state system still have not been seriously discussed. See: Valsts prezidenta Valda Zatlera 2011. gada 16. marta raksts Nr. 86 [Note No. 86 by President Valdis Zatlers of 16 March 2011]. Available: <https://www.president.lv/lv/media/86/download> [last viewed 04.02.2023]; Valsts prezidenta Andra Bērziņa 2013. gada 16. septembra raksts Nr. 354 [Note No. 354 by President Andris Bērziņš of 16 September 2013]. Available: <https://www.president.lv/lv/media/4954/download> [last viewed 04.02.2023].

²¹ See more: *Kučs, A.* Protection of Fundamental Rights in the Constitution of the Republic of Latvia during the Interwar Period and after the Restoration of Independence. Journal of the University of Latvia “Law”, Vol. 7, 2014, pp. 55–58; *Balodis, R., Lazdiņš, J.* *Satversmes vēsturiskā attīstība* [Historical Development of the *Satversme*]. In: Latvijas Republikas *Satversmes komentāri*. Ievads. I nodaļa. Vispārējie noteikumi [Commentaries on the *Satversme* of the Republic of Latvia. Introduction. Chapter I. General Provisions]. Sagatavojis autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2014, 58.–62. lpp.; *Balodis, R.* Kā cīņa par latgaliešu valodu ietekmēja latviešu valodas statusu [How Fight for the Latgalian Language Influenced the Status of the Latvian Language]. Jurista Vārds, No. 38(1200), 21.09.2021, 25.–31. lpp.

²² *Lazersons, M.* “Konstitucionāla” likumdošana un Saeimas Publisko tiesību komisija [“Constitutional Legislation” and the Public Law Committee of the *Saeima*]. Jurists, No. 6, 1928, 165.–166. sl.

²³ *Balodis, R.* Latvijas Republikas Valsts prezidenta institūts [The Institution of the President of the Republic of Latvia]. In: Latvijas Republikas *Satversmes komentāri*. III nodaļa. Valsts prezidents. IV nodaļa. Ministru kabinets [Commentaries on the *Satversme* of the Republic of Latvia. Chapter III. The President. Chapter IV. The Cabinet]. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2017, 12.–14. lpp.

the *Satversme*, almost immediately published an article, concluding that the *Saeima* and the *Satversme* did not “work”.²⁴ His appeal to reform the *Satversme*, envisaging a directly elected President of the State, with a broader mandate, who could be an alternative centre of power for balancing the *Saeima*, maintained a constitutional discussion and atmosphere of doubts throughout the period of pre-war parliamentarism (1922–1934).²⁵ Simultaneously, it seems that, during the first and, apparently, also the second period of independence, a major cause of the weakness of the parliamentary system was not really the *Satversme* itself but rather the regulation on the *Saeima* election,²⁶ which facilitated fragmentation of the *Saeima*, intensified by the lack of democratic traditions and parliamentary experience.²⁷ And this is characteristic of both the pre-war and the present convocations of the *Saeima*. Experts hold that the political fragmentation in the pre-war convocations of the *Saeima* was facilitated exactly by “excessively proportional law on elections”, which did not define an election “barrier” for having seats in the *Saeima*.²⁸ On the other hand, in the contemporary convocations of *Saeima*, although the number of factions is smaller, they actually have always been formed by alliances of several parties. At the same time, it cannot be ignored that the voter turn-out for the first four elections of the *Saeima* was high – usually, more than 80 % of those eligible to vote participated (election of the 3rd *Saeima* was an exception, with 74.9%), whereas in the last election of the 14th *Saeima* in 2022, only 59.41% of those eligible to vote participated.²⁹

1.2. The *Satversme* during the period of authoritarian regime (1934–1940)

It needs to be admitted frankly that, during the inter-war period, the *Satversme* did not have particularly good “public relations”. The intellectually brilliant opponents of the *Satversme* succeeded in maintaining an atmosphere of constant constitutional crisis, from which, accordingly, the demand to reform the *Satversme* was derived. Moreover, as elsewhere in the world, it was easier to blame the *Satversme* and the parliamentary state system, enshrined in it, for the failures in the development of the Latvian State.³⁰

In the conditions of global economic crisis, the *Satversme* could not be accused of inability to ensure stability of the parliamentary system. Organisers of the *coup d'état* made use of the decline of democracy, prevailing in Europe in the 1930s, caused by

²⁴ Bergs, A. Bet viņa neiet [But it Does Not Work]. *Latvis*, No. 391, 23.12.1922.

²⁵ Bergs, A. Satversmes grozījumu projekts [Draft Amendments to the *Satversme*]. *Latvis*, No. 3162, 22.05.1932.

²⁶ Likums par Saeimas vēlēšanām [Law on the *Saeima* Elections]. *Valdības Vēstnesis*, No. 141, 30.06.1922.

²⁷ See more: Kusiņš, G. *Parliamentarism in Latvia: An Overview*. Rīga: The *Saeima* of the Republic of Latvia, 2023, pp. 40–50.

²⁸ Lēbers, D. A., Bišers, I. Ministru kabinets. Komentārs Latvijas Republikas Satversmes IV nodaļai “Ministru kabinets” [The Cabinet. Commentary on Chapter IV of the *Satversme* of the Republic of Latvia “The Cabinet”]. Rīga: Tiesiskās informācijas centrs, 1998, 11.–13. lpp. See also: Rothschild, J. *East Central Europe between the Two World Wars*. Seattle and London: University of Washington Press, 1998, pp. 374–375; Judgement by the Constitutional Court of the Republic of Latvia on 23 September 2002 in case No. 2002-08-01.

²⁹ See more: 14. Saeimas vēlēšanas [Election of the 14th *Saeima*]. Available: <https://sv2022.cvk.lv/pub/aktivitate> [last viewed 04.02.2023].

³⁰ Balodis, R., Lazdiņš, J. *Satversmes vēsturiskā attīstība* [Historical Development of the *Satversme*]. In: *Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi* [Commentaries on the *Satversme* of the Republic of Latvia. Introduction. Chapter I. General Provisions]. Sagatavojis autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2014, 66. lpp.

the global economic crisis, whereas the promise to reform the *Satversme*, undoubtedly, was quite convenient front of legality for the organisers of the coup.³¹

The parliamentary development of Latvia was interrupted on 15 May 1934 and the period of authoritarianism, Latvian nationalism and the cult of Kārlis Ulmanis' personality began. Although Kārlis Ulmanis, the leader of the authoritarian regime, announced the reform of the *Satversme* as one of the main aims,³² the regime did not make any decision on suspending the *Satversme*.³³ From the constitutional perspective, the *Satversme* remained valid. Clearly, the greatest part of the *Satversme* was not functioning in the conditions of Ulmanis' regime. For example, Article 1 of the *Satversme*, which provides that Latvia is a democratic republic, or the provisions that set out the rights of the totality of Latvian citizens and the *Saeima*.³⁴ However, in view of the fact that Ulmanis' Government, in accordance with its declaration of 18 May 1934³⁵, formally had taken over only the *Saeima's* functions, part of other articles and chapters of the *Saeima* remained functional. Although the authoritarian regime attempted, in all possible ways, to diminish politically the significance of the *Satversme*,³⁶ it was used, in a fragmented way, until the very Soviet occupation in 1940. The Senators of the Latvian Senate, while in exile following the occupation in Latvia, in 1948, arrived at the following conclusion: since until the very occupation of Latvia not a single law had been adopted to revoke or invalidate the *Satversme*, the *Satversme*, hence, had been valid and effective.³⁷

1.3. Reinstatement of the *Satversme* (1990–1993)

The *Satversme* was reinstated in full by the 5th convocation of the *Saeima*, which commenced work on 6 July 1993, with a separate announcement on the entire

³¹ See more: Ščerbinskis, V. 1934. gada 15. maija apvērsums: cēloņi, norise un sekas [Coup of 15 May 1934: Causes, Course, and Consequences]. In: Apvērsums. 1934. gada 15. maija notikumi avotos un pētījumos [The Coup: Events of 15 May 1934 in Sources and Research]. Sastādītāji Dr. hist. Valters Ščerbinskis un Dr. hist. Ēriks Jēkabsons. Rīga: Latvijas Nacionālais arhivs, Latvijas arhīvistu biedrība, 2012, 9.–24. lpp.; *Taurēns, J.* Iekšējā un starptautiskā situācija pirms apvērsuma [Domestic and International Situation before the Coup]. In: 15. maija Latvija [Latvia of the 15th of May]. Rīga: Latvijas Mediji, 2017, 63.–69. lpp.

³² Ministru prezidenta K. Ulmaņa runa radiofonā 1934. g. 18. maijā [Broadcast of Prime Minister K. Ulmanis Speech on the Radio on 18 May 1934]. Valdības Vēstnesis, No. 110, 19.05.1934.

³³ *Kusiņš, G.* Latvijas Republikas 1922. gada Satversmes atjaunošana [Reinstating the *Satversme* of the Republic of Latvia of 1922]. In: Nepārtrauktības doktrīna Latvijas vēstures kontekstā [Continuity Doctrine in the Context of Latvian History]. Autoru kolektīvs prof. T. Jundža zinātniskā vadībā. Rīga: Latvijas Zinātņu akadēmijas Baltijas stratēģisko pētījumu centrs, 2017, 297. lpp.; *Levits, E.* An Interview with Dietrich A. Loeber. In: The Baltic States at Historical Crossroads. Political, economic, and legal problems and opportunities in the context of international co-operation at the beginning of the 21st century. A collection of scholarly articles. Second revised and expanded edition. *Jundzis, T.* (ed.). Rīga: Latvian Academy of Sciences, 2001, pp. 39–41.

³⁴ Sal.: *Žvinklis, A.* No autoritārisma līdz padomju totalitārismam: manipulācijas ar Latvijas Republikas Satversmi [From Authoritarianism to Soviet Totalitarianism: Manipulations with the *Satversme* of the Republic of Latvia]. In: Latvijas valstiskumam 90. Latvijas valsts neatkarība: ideja un realizācija [Latvian Statehood Turns 90. Independence of the Latvian State: Ideas and Implementation]. Rīga: Latvijas vēstures institūta apgāds, 2010, 224. lpp.

³⁵ Valdības deklarācija [Government's Declaration]. Valdības Vēstnesis, No. 110, 19.05.1934.

³⁶ See more: *Kusiņš, G.* Latvijas Republikas 1922. gada Satversmes atjaunošana [Reinstating the *Satversme* of the Republic of Latvia of 1922]. In: Nepārtrauktības doktrīna Latvijas vēstures kontekstā [Continuity Doctrine in the Context of Latvian History]. Autoru kolektīvs prof. T. Jundža zinātniskā vadībā. Rīga: Latvijas Zinātņu akadēmijas Baltijas stratēģisko pētījumu centrs, 2017, 292.–297. lpp.

³⁷ Senatoru atzinums [Senators' Opinion]. Latvju Ziņas, No. 29, 17.04.1948.

Satversme coming into effect.³⁸ Merely a couple of months after the *Satversme* came into effect, the 5th convocation of the *Saeima* implemented a radical constitutional reform, aligning the existing state system with the requirements of the *Satversme*.³⁹ Looking back at the events of those time, one might be, in a slightly ironic sense, grateful to Kārlis Ulmanis' indecisiveness on the issue of reforming the *Satversme* because we, in difference to Lithuania and Estonia, did not have an adopted constitution with authoritarian content, and, thus, the *Satversme* could be reinstated.

The decisive influence in favour of reinstating the *Satversme*, rather than adopting a new constitution was exerted by the Latvian diplomatic and consular service abroad and Latvians in exile, who, throughout the period of occupation, had been persistently promoting the *Satversme*, believing that the direction, pointed out by the Latvian Central Council and Senators, was the best constitutional solution, which could be used for reinforcing the principle of state continuity.⁴⁰ The work to promote reinstatement of the *Satversme* began in 1948, in the post-war refugee camps in Germany, when the Senators of the Latvian Senate adopted their opinion and, also, when Kārlis Vanags wrote the first commentary on the *Satversme*.⁴¹ The contribution made by Egils Levits also needs to be recognised⁴² since he was the one who included in the concept document of the Declaration of Independence of 4 May 1990⁴³ the provision on reinstating the core articles of the *Satversme* (Articles 1, 2, 3 and 6 of the *Satversme*) and their validity during the transition period.

The activism of exile Latvians (regarding reinstatement of the *Satversme* in full) might have remained only a law policy proposal, because the transitional parliament, the Supreme Council, was quite sceptical about the possibility of reinstating the old *Satversme*. However, the fast development of events linked to the collapse of the USSR made politicians act without delay. Whatever members of the Supreme Council had thought prior to the coup of August 1991 in the capital of the USSR Moscow, following

³⁸ Latvijas Republikas Saeimas paziņojums [Declaration by the *Saeima* of the Republic of Latvia]. Latvijas Republikas Saeimas un Ministru kabineta Ziņotājs, No. 30, 14.10.1993.

³⁹ Balodis, R., Lazdiņš, J. *Satversmes vēsturiskā attīstība* [Historical Development of the *Satversme*]. In: Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi [Commentaries on the *Satversme* of the Republic of Latvia. Introduction. Chapter I. General Provisions]. Sagatavojis autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2014, 78. lpp. See more extensively in: Levits, E. *Latvijas tiesību sistēmas attīstības iezīmes uz XXI gadsimta sliekšņa* [Features in the Development of Latvian Legal System on the Threshold of XXI Century]. In: *Latvijas tiesību vēsture (1914–2000)* [History of Latvian Law (1914–2000)]. Prof. Dr. iur. D. A. Lēbera redakcijā. Rīga: LU žurnāla "Latvijas Vēsture" fonds, 2000, 492.–495, 504. lpp.

⁴⁰ See more: Deksnis, E. B., Beķere, K. *Latviešu trimdas loma valsts neatkarības idejas uzturēšanā (1945–1991)* [The Role of Latvians in Exile in Maintaining the Idea of Independent Statehood]. In: *Nepārtrauktības doktrīna Latvijas vēstures kontekstā* [Continuity Doctrine in the Context of Latvian History]. Autoru kolektīvs prof. T. Jundža zinātniskā vadībā. Rīga: Latvijas Zinātņu akadēmijas Baltijas stratēģisko pētījumu centrs, 2017, 233.–235. lpp.

⁴¹ Vanags, K. *Latvijas valsts Satversme* [*Satversme* of the Latvian State]. [B.v.]: L. Rumaka apgāds Valkā, 1948.

⁴² Following the victory of the Latvian Popular Front at the election of the Supreme Council on 18 March 1990, the draft declaration on the restoration of independence, prepared by Egils Levits, comprised the aim to achieve full reinstatement of the *Satversme*, to be reached gradually. See more: Levits, E. *4. maija Deklarācija Latvijas tiesību sistēmā* [Declaration of the 4th of May within the Latvian Legal System]. In: *4. maijs. Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju* [The 4th of May. Collection of Articles, Recollections and Documents about the Declaration of Independence]. Dr. habil. Tālava Jundža redakcijā. Rīga: LU žurnāla "Latvijas Vēsture" fonds, 2000, 60. lpp.

⁴³ Par Latvijas Republikas neatkarības atjaunošanu [On the Restoration of Independence of the Republic of Latvia]. Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, No. 20, 17.05.1990.

it their views on reinstating the *Satversme* in full changed.⁴⁴ On 21 August 1991, the Supreme Council adopted the constitutional law “On the Statehood of the Republic of Latvia”,⁴⁵ on the basis of which the restoration of Latvia’s independence was internationally recognised in full. Its Section 1 clearly envisages progression towards reinstatement of the *Satversme* in full, rather than drafting of a new constitution,⁴⁶ as previously was set out in para. 7 of the Declaration of Independence.⁴⁷ There were, in total, three instances when decisions were taken on reinstating of the *Satversme* following the restoration of Latvia’s independence – initially, it was declared as being partly in force (1990), following it, committing to achieve its reinstatement in full (1991), and, after three years, reinstating it in full (1993).

After the *Satversme* was reinstated, it was swiftly “mastered”, and its regulation – “adopted”, until the myth of the *Satversme* as an outstanding monument of the Latvian legal thought and undoubtedly wise authors of the *Satversme*, who had been able to draft such a successful and balanced constitution, took root.⁴⁸ In a way, it reminds of the response to the US approach, strengthening the *Satversme*’s authority in Latvia and giving to society the illusion of constitutional stability. The story about “the *Satversme* never becoming outdated” allowed parties applying law “to read into” the laconic constitutional provision contemporary regulation, thus, focusing on the legal findings of a contemporary democratic legal system.⁴⁹ In developing “the cult of the *Satversme*”, the conviction consolidated, at least among professionals, that radical revision of the *Satversme* might be a socio-political taboo.⁵⁰ Such sentiments were widespread in the legal science already after restoration of Latvia’s independence, rooted in the assumption that the *Satversme*, in general, was a constitution that had been drafted in a balanced way and ensured stable functioning of the parliamentary system.⁵¹

The authors are of the opinion that the decision by the Supreme Council, the revolutionary legislator of the transition period, to abandon the idea of writing a new constitution but just to reinstate the *Satversme* in full was the best decision. Firstly, it allowed a fast and revolutionary transformation of the constitutional

⁴⁴ See more: *Kusiņš, G.* Latvijas Republikas 1922. gada Satversmes atjaunošana [Reinstating the *Satversme* of the Republic of Latvia of 1922]. In: *Nepārtrauktības doktrīna Latvijas vēstures kontekstā* [Continuity Doctrine in the Context of Latvian History]. Autoru kolektīvs prof. T. Jundža zinātniskā vadībā. Rīga: Latvijas Zinātņu akadēmijas Baltijas stratēģisko pētījumu centrs, 2017, 302.–310. lpp.

⁴⁵ Par Latvijas Republikas valstisko statusu [On the Statehood of the Republic of Latvia]. Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, No. 42, 24.10.1991.

⁴⁶ *Balodis, R., Lazdiņš, J.* Satversmes vēsturiskā attīstība [Historical Development of the *Satversme*]. In: *Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi* [Commentaries on the *Satversme* of the Republic of Latvia. Introduction. Chapter I. General Provisions]. Sagatavojis autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2014, 76.–77. lpp.

⁴⁷ See more: *Balodis, R., Kārklīņa, A., Danovskis, E.* The Development of Constitutional and Administrative Law in Latvia after the Restoration of Independence. *Journal of the University of Latvia “Law”*, No. 5, 2013, pp. 48–49.

⁴⁸ See more: *Balodis, R.* Satversme pārkāpj 100 gadu sliekšni, mokoties ar relativisma un tiesu aktīvisma kaitēm [The *Satversme* Steps over the Threshold of 100 Years, Plagued by Relativism and Judicial Activism]. Available: <https://telos.lv/satversmes-100-gadu-slieksnis/> [last viewed 04.02.2023].

⁴⁹ See more: *Pleps, J., Pastars, E., Plakane, I.* Constitutional Law. Rīga: Latvijas Vēstnesis, 2022, pp. 52–72. Available: https://juristavards.lv/wwwraksti/JV/BIBLIOTEKA/GRAMATAS/KT_ENG.PDF [last viewed 04.02.2023].

⁵⁰ *Ibid.*, pp.76-77.

⁵¹ *Lēbers, D. A., Bišers, I.* Ministru kabinets. Komentārs Latvijas Republikas Satversmes IV nodaļai “Ministru kabinets” [The Cabinet. Commentary on Chapter IV of the *Satversme* of the Republic of Latvia “The Cabinet”]. Rīga: Tiesiskās informācijas centrs, 1998, 11.–13. lpp.

foundations of the state system and return to the traditions of Western constitutional law. Secondly, it radically distanced the legal system from socialist (Soviet) understanding of law and its methodology.⁵² Thirdly, the reinstatement of the *Satversme* meant not only formal restoration of its text but also revival of its spirit – the values of the *Satversme*, methodology of its application and constitutional theory.

1.4. Amendments to the *Satversme*

From its very origins, the *Satversme* has never been conceived as an unchangeable supreme truth, cut in stone, but, quite on the contrary, the authors of the *Satversme* have always reckoned with the need to introduce amendments over time, and respective procedures were defined. We can see it when reading Articles 76–79 of the *Satversme*, which envisage two constitutional legislators in Latvia – the people (totality of citizens) and the *Saeima*. Both are equal in their rights to amend the *Satversme*.⁵³ Again, it has to be noted, that, until now, the totality of citizens as the constitutional legislator has been unable to amend the *Satversme* even once, the cause of it could be the majority of vote in a referendum, required to amend the *Satversme*, i.e., at least half of those citizens eligible to vote in Latvia must vote for the amendments.⁵⁴ At the same time, the *Saeima*, as the constitutional legislator, has introduced into the *Satversme* fifteen amendments, in total.⁵⁵ Among these, only one amendment to the *Satversme* was made before the coup of 15 May 1934. Thus, basically, the *Satversme* has been amended after its reinstatement.

Review of amendments to the *Satversme* allows concluding that the *Saeima*, as the constitutional legislator, has not substantially amended the *Satversme*, originally created by the Constitutional Assembly. Systemic innovations (e.g., regulation on local governments, system of public administration, etc.) have been introduced by ordinary laws, adopted by the *Saeima*, without affecting the *Satversme*. The constitutional order of the State, defined by the Constitutional Assembly, still has been retained actually unchanged, introducing into the *Satversme* only some cosmetic corrections.⁵⁶

⁵² See more: *Levits, E.* Latvijas tiesību sistēmas attīstības iezīmes uz XXI gadsimta sliekšņa [Features in the Development of Latvian Legal System on the Threshold of XXI Century]. In: *Latvijas tiesību vēsture (1914–2000)* [History of Latvian Law (1914–2000)]. Autoru kolektīvs prof. D. A. Lēbera redakcijā. Rīga: LU žurnāla “Latvijas Vēsture” fonds, 2000, 504. lpp.

⁵³ *Dišlers, K.* Ievads Latvijas valststiesību zinātnē [Introduction to the Science of Latvian Public Law]. Rīga: A. Gulbis, 1930, 204.–208. lpp.

⁵⁴ National referenda on amendments to the *Satversme* have been held twice. On 2 August 2008, the referendum was held on amendments to the *Satversme* that would grant the right to no less than 1/20 of voters to initiate dissolution of the *Saeima*, whereas referendum held on 18 February 2012 pertained to amendments to the *Satversme*, proposing to define Russian as an official language, alongside the Latvian language. On both occasions, amendments were dismissed because the majority vote, required in Article 79 of the *Satversme*, was not obtained. See: *Briede, J.* *Satversmes* 78. pants [Article 78 of the *Satversme*]. In: *Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana* [Commentaries on the *Satversme* of the Republic of Latvia. Chapter V. Legislation]. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019, 292. lpp.

⁵⁵ See more: *Balodis, R., Kuzņecovs, A.* Latvijas Republikas Satversmes grozījumi [Amendments to the *Satversme* of the Republic of Latvia]. In: *Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana* [Commentaries on the *Satversme* of the Republic of Latvia. Chapter V. Legislation]. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019, 220.–258. lpp.

⁵⁶ Nevertheless, the constitutional structure of the Republic of Latvia was substantially influenced by creation of the Constitutional court, membership of the Republic of Latvia in the European Union from 1 May 2004 and adoption of the new, more detailed and conceptual preamble to the *Satversme*. The Constitutional Court strengthened the European dimension of the *Satversme* and developed

The qualified procedure for amending provisions of the *Satversme*, actually, has facilitated changing the state system by adoption of regular laws.

It is significant that the *Saeima*, by amendments to the *Satversme*, has lowered the quorum, defined in the *Satversme*, for the referendum on the accession to the European Union and changes to these relations, envisaging a lower threshold of the required quorum and the majority vote. This happened right before the accession to the European Union, to ensure more secure vote. Likewise, the term in office has been extended for the President and the *Saeima*, and the course of some constitutional procedures has been specified.

Following reinstatement of the *Satversme*, the *Saeima* has included two new and sizeable chapters in the *Satversme* (Chapter VIII “Fundamental Human Rights” and elaborated Preamble), enshrined the Latvian language as the only official language, as well as defined the constitutional grounds for Latvia’s membership in the European Union. Among amendments to the *Satversme*, the amendments,⁵⁷ which added a new body of state power to the order of the Latvian State – the Constitutional Court, should be deemed as being essential, the Court has been granted the right to review the constitutionality of laws and declare them incompatible with the *Satversme* and void.⁵⁸ This innovation should be recognised as the most important amendment to the *Satversme*, which has influenced the development of the *Satversme* and the Latvian state system.

Already during the first period of independence, professor Kārlis Dišlers concluded that “a correct opinion on the order of a state cannot be provided solely on the basis of its constitutional law”, because constitutions, in the practice of application thereof, are being expanded and change.⁵⁹ The science of constitutional law, application of the *Satversme* in the functioning of the State bodies, creating precedents and customs for further practice, as well as application of the *Satversme* in courts, by determining, with the help of findings made in judicature, and developing the content of the *Satversme*’s provisions have significantly influenced the understanding of the *Satversme*’s provisions.⁶⁰ Actually, numerous important issues related to the development of the *Satversme* have not been resolved by formal amendments to the *Satversme* but through changing practice of the State’s constitutional bodies or by expanding case law. The Constitutional Court plays a decisive role in these processes, as the interpretation of the basic law, included in the Court’s rulings, has a generally binding force.

In the context of the *Satversme*’s centenary, it should be kept in mind that the *Satversme*, nevertheless, has been functioning in full for less than half of these hundred years. To be quite exact, out of these hundred years, the *Satversme* has been applied in full in the legal and social reality only for forty-one years. Considering

the concept of the living constitution where major constitutional changes were introduced not by formal constitutional amendments, but in the case law of the Constitutional Court.

⁵⁷ Grozījums Latvijas Republikas Satversmē [Amendment to the *Satversme* of the Republic of Latvia] (05.06.1996). Available: <https://likumi.lv/ta/id/63346-grozijums-latvijas-republikas-satversme> [last viewed 04.02.2023].

⁵⁸ See more: Rodiņa, A., Spale, A. Satversmes 85. pants [Article 85 of the *Satversme*]. In: Latvijas Republikas Satversmes komentāri. VI nodaļa. Tiesā. VII nodaļa. Valsts kontrole [Commentaries on the *Satversme* of the Republic of Latvia. Chapter VI. Court. Chapter VII. The State Audit Office]. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2013, 119.–152. lpp.

⁵⁹ Dišlers, K. Latvijas Satversme [The *Satversme* of Latvia]. In: Latvieši II [Latvians II]. Rakstu krājums. Rīga: Valters un Rapa, 1932, 147. lpp.

⁶⁰ See more extensively in: Pleps, J. Satversmes iztulkošana [Interpreting the *Satversme*]. Rīga: Latvijas Vēstnesis, 2012, 31.–33. lpp.

that we have very limited access to the experience of applying the *Satversme* during the first period of independence, mainly from the *Saeima's* transcripts and Kārlis Dišlers' books, a period in the application of the *Satversme*, which has been studied in full, is only thirty years long (1993–2023). The understanding of the *Satversme* and a notion of the scope of its provision have formed and developed exactly during this period.

2. Flaws of and possible improvements to the *Satversme*

2.1. Outdated article of the *Satversme*

The architecture of the *Satversme*, its internal system and the extremely laconic or textually sparing style of expression reflect the legal technique at the beginning of the previous century and the specificity of legal Latvian of the time. Untypical in adopting constitutions, the final text of the *Satversme* formed during the second and the third reading at the sittings of the Latvian Constitutional Assembly, by voting on the submitted proposals. During the readings, significant corrections were made to the draft offered by the Committee of the *Satversme*. Decisions made regarding the name of the parliament, the procedure for electing the President and his mandate, as well as the people's legislative initiative ran contrary to the conclusions made by the Committee. This left an impact upon the quality of the *Satversme's* text, leaving, of course, also deficiencies and flaws.

For example, the Constitutional Assembly accepted only during the third reading, in Article 78 of the *Satversme*, the right of no less than 1/10 of voters to submit not only fully elaborated draft amendments to the *Satversme* but also a fully elaborated draft law.⁶¹ Since this was decided on only in the third reading, regulation on the required quorum and the majority of vote for a draft law, submitted by voters, was not included in Article 79 of the *Satversme*.⁶² The *Saeima*, as the constitutional legislator, tried to eliminate this deficiency by the first amendments to the *Satversme*,⁶³ whereas Article 73 of the *Satversme* on laws that cannot be transferred for a referendum has remained unamended.⁶⁴ Relatively recently, the Constitutional Court has concluded that a draft law, fully elaborated by no less than 1/10 of voters, cannot be submitted concerning such issues, regarding which later a referendum could not be held.⁶⁵

Similarly, the dismissal of the second part of the *Satversme* in the third reading meant that also the article, included therein, which granted the right to the Cabinet to restrict or suspend a person's fundamental rights during the state of emergency,

⁶¹ *Briede, J.* Satversmes 78. pants [Article 78 of the *Satversme*]. In: Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana [Commentaries on the *Satversme* of the Republic of Latvia. Chapter V. Legislation]. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019, 281. lpp.

⁶² *Briede, J.* Satversmes 79. pants [Article 79 of the *Satversme*]. In: Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana [Commentaries on the *Satversme* of the Republic of Latvia. Chapter V. Legislation]. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019, 295.–296. lpp.

⁶³ Pārgrozījumi Latvijas Republikas Satversmes 74. un 79. pantā [Amendments to Articles 74 and 79 of the *Satversme* of the Republic of Latvia] (21.03.1933). Valdības Vēstnesis, No. 74, 31.03.1933.

⁶⁴ *Kārklīņa, A., Lazdiņš, J., Lejnieks, M.* Satversmes 73. pants [Article 73 of the *Satversme*]. In: Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana [Commentaries on the *Satversme* of the Republic of Latvia. Chapter V. Legislation]. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019, 157.–158. lpp.

⁶⁵ Judgement by the Constitutional Court of the Republic of Latvia on 12 February 2014 in case No. 2013-05-01, para. 14.4.

was dismissed. A constitutional restriction, defining the extent, to which the Cabinet could limit a person's fundamental rights in such circumstances, was not added to Article 62 of the *Satversme*, which granted to the Cabinet the right to declare the state of emergency.⁶⁶ Later, in 1998 adopting Chapter VIII of the *Satversme*, the link between Article 62 and Article 116 was no longer maintained.

It has to be said that the amendments introduced by the *Saeima* into the *Satversme* during the second period of independence have, at times, increased deficiencies and ambiguities in the text. For example, by moving from a two-day *Saeima* election to the election held on a single day,⁶⁷ all references to the length of the *Saeima* election day, made in the *Satversme*, have not been revised. Article 9 of the *Satversme* still refers to "the first day of election", whereas in introducing the dissolution of the *Saeima* upon the proposal of no less than 1/10 of voters,⁶⁸ the required reference to recalling of the *Saeima* is not included everywhere. It is still missing from Article 13 of the *Satversme*, which regulates the procedure of the early *Saeima* election.

The amendment to Article 82 of the *Satversme*, which includes institutional enumeration of the court system,⁶⁹ actually duplicating Article 86 of the *Satversme*, which has left this issue open for regulation in law⁷⁰, should be recognised as awkward.

Article 116 of the *Satversme*, clearly, should be seen as being "extravagant", it envisages restrictions to a person's fundamental rights, attempting to cover in one article restrictions on all fundamental rights, being unable to do that correctly till the end. Already at the moment of its adoption, Article 116 was seen as the weakest and most complex construction of entire Chapter VIII of the *Satversme* and a potential "Achilles heel" in applying human rights.⁷¹ For example, Article 116 of the *Satversme* does not refer to the need in a democratic society and proportionality as a condition for restricting fundamental rights. Such addition was submitted for a discussion but the deputies dismissed it.⁷² The Constitutional Court has prevented

⁶⁶ Pleps, J. Satversmes 62. pants [Article 62 of the *Satversme*]. In: Latvijas Republikas Satversmes komentāri. III nodaļa. Valsts prezidents. IV nodaļa. Ministru kabinets [Commentaries on the *Satversme* of the Republic of Latvia. Chapter III. The President. Chapter IV. The Cabinet]. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2017, 620. lpp.

⁶⁷ Grozījumi Latvijas Republikas Satversmē [Amendments to the *Satversme* of the Republic of Latvia] (04.12.1997). Available: <https://likumi.lv/ta/id/46270-grozijumi-latvijas-republikas-satversme> [last viewed 04.02.2023].

⁶⁸ Grozījumi Latvijas Republikas Satversmē [Amendments to the *Satversme* of the Republic of Latvia] (08.04.2009). Available: <https://likumi.lv/ta/id/191210-grozijumi-latvijas-republikas-satversme> [last viewed 04.02.2023].

⁶⁹ Grozījumi Latvijas Republikas Satversmē [Amendments to the *Satversme* of the Republic of Latvia] (15.10.1998). Available: <https://likumi.lv/ta/id/50292-grozijumi-latvijas-republikas-satversme> [last viewed 04.02.2023].

⁷⁰ Pleps, J. Latvijas Republikas Satversmes grozījumu analīze: VI. nodaļa "Tiesas" [Analysis of Amendments to the *Satversme* of the Republic of Latvia. Chapter VI "Courts"]. Likums un Tiesības, No. 5(45), 2003, 133.–134. lpp. Although, compare.: Neimanis, J. Satversmes 82. pants [Article 82 of the *Satversme*]. In: Latvijas Republikas Satversmes komentāri. VI nodaļa. Tiesa. VII nodaļa. Valsts kontrole [Commentaries on the *Satversme* of the Republic of Latvia. Chapter VI. Courts. Chapter VII. The State Audit Office]. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2013, 39. lpp.

⁷¹ Levits, E. Piezīmes par Satversmes 8. nodaļu – Cilvēka pamattiesības [Notes on Chapter 8 of the *Satversme* – Fundamental Human Rights]. Cilvēktiesību Žurnāls, No. 9/12, 1999, 38.–40. lpp. See also: Mits, M. Satversmes Eiropas cilvēktiesību standartu kontekstā [The Constitutional Court in the Context of European Human Rights Standards]. Cilvēktiesību Žurnāls, No. 9/12, 1999, 64.–69. lpp.; Buka, A. Satversmes astotā nodaļa – medus muca ar... [Chapter Eight of the *Satversme* – a Barrel of Honey with...] Jurista Vārds, No. 9(116), 11.03.1999.

⁷² Mits, M. European Convention on Human Rights in Latvia. Impact on Legal Doctrine and Application of Legal Norms. Lund: Media Truck, 2010, p. 164.

potential problems in the application of Article 116 of the *Satversme*, by creating in its judicature an elaborated standard for restricting a person's fundamental rights that is compatible with Latvia's international commitments in the area of human rights.⁷³

More than ever before, the development of Latvia's legal system has been influenced by the processes of convergence, involving international law and legal systems of countries of the world.⁷⁴ Due to these changes, the possibilities of applying some provisions of the *Satversme* have changed. For example, the development of international law prohibits states from declaring an aggressive war. Thus, at present, actually, application of Article 43 of the *Satversme*, which allows the President to declare war on the basis of the *Saeima's* decision, would be close to impossible.⁷⁵ The Commission of Constitutional Law, under the auspices of the President⁷⁶, as well as the special working group of the *Saeima*, which analysed the possibilities of improving the *Satversme*⁷⁷, have pointed to Latvia's international commitments in this area.

The brevity of the *Satversme* and its openness to further elaboration by laws, adopted by the legislator, to a large extent do not expand extensively or almost do not reflect on the constitutional level several important areas. Attempts have been made to describe in maximum detail mandates of the *Saeima* and the President, whereas the matter of the mandate and the role in the state system of the Cabinet and the judicial power has been dealt with in a minimum scope. In a way, such structural disbalance conceals the dominant centre of power within the parliamentary system – the Cabinet, signalling, as it were, by the scope of regulation dedicated to it, that it is less significant than the *Saeima* and the President. Obviously, in practice, this flaw has caused “deviations” in the independence of independent authorities, making the parliament and the government certain of their right to limit the discretion of independent authorities. In some cases, this has led to terminating the functioning of independent authorities, with not too well-founded reasons. This, of course, leads to the questions whether the right balance has been set within the state system and whether, indeed, all is well with the separation of powers in the *Satversme*. Likewise, the *Satversme* is focusing in great detail on performance of one function of the State – legislation, totally neglecting matters of executive power and administration of justice. This architecture of the *Satversme* does not provide visual reflection of the true balance

⁷³ See more: *Pleps, J.* Satversmes 116. pants [Article 116 of the *Satversme*]. In: Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības [Commentaries on the *Satversme* of the Republic of Latvia. Chapter VIII. Fundamental Human Rights]. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2013, 758.–763. lpp.

⁷⁴ *Blūzma, V.* Latvijas konstitucionālo tiesību vēstures teorētiskās problēmas [Theoretical Problems in the History of Latvian Constitutional Law]. Jurista Vārds, No. 23(528), 17.06.2008.

⁷⁵ *Lejnieks, M., Pleps, J.* Satversmes 43. pants [Article 43 of the *Saeima*]. In: Latvijas Republikas Satversmes komentāri. III nodaļa. Valsts prezidents. IV nodaļa. Ministru kabinets [Commentaries on the *Satversme* of the Republic of Latvia. Chapter III. The President. Chapter IV. The Cabinet]. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2017, 261.–265. lpp.

⁷⁶ Par Valsts prezidenta funkcijām Latvijas parlamentārās demokrātijas sistēmas ietvaros [On the Functions of the President within the Framework of the Latvian System of Parliamentary Democracy]. In: Valsts prezidenta Konstitucionālo tiesību komisija. Viedokļi: 2008–2011 [Constitutional Law Commission under the Auspices of the President. Opinions: 2008–2011]. Rīga: Latvijas Vēstnesis, 2011, 155. lpp.

⁷⁷ 12. Saeimas Juridiskās komisijas deputātu darba grupas Valsts prezidenta pilnvaru iespējama paplašināšanai un ievēlēšanas kārtības izvērtēšanai atzinums [Opinion of the working group of members of the 12th *Saeima's* Legal Committee on possible expansion of the powers of the President and evaluation of the election procedure]. Available: <https://www.saeima.lv/lv/par-saeimu/saeimas-darbs/deputatu-grupas/darba-grupa-valsts-prezidenta-pilnvaru-iespejamai-paplasinasanai-un-ievelesanas-kartibas-izvertesana> [last viewed 04.02.2023]. Paras 7.3.1. and 7.3.2.

of powers within the system of separation of state powers and creates a misleading notion of the actual significance of the executive power within the state system.

2.2. Algorithms of referenda

The Constitutional Assembly envisaged a politically active totality of Latvian citizens, willing to change their lives and influence the political order. This is proven by the extensive inclusion into the *Satversme* of elements of direct democracy – both referenda and electors' right to legislate. The right to participate in decision-making, granted to the totality of citizens, considerably exceeds the rights defined for the people in constitutions of other European states.⁷⁸ Actually, the *Satversme* envisages two legislators with equal, full rights – the *Saeima* and the totality of Latvian citizens⁷⁹, of which the first should be considered as being ordinary, but the second – as extraordinary.⁸⁰ This gives grounds for characterising the system of the Latvian state as representative democracy in the typical form of parliamentary democracy with strong elements of direct or plebiscitary democracy.⁸¹

However, this is a rather theoretical characterisation because, in practice, the situation is not as rosy since exercise of this right is linked to high thresholds, directly set in the *Satversme* and laws. Due to these thresholds, exercising the right pertaining to the totality of citizens to legislate has seldom been successful in real life. Exercising the voters' right to legislate was made complicated by amendments to the law "On National Referendums, Legislative Initiatives and European Citizens' Initiative",⁸² following which, it is actually impossible to succeed in collecting the signatures of 1/10 of voters to submit a draft law. In Latvia, referenda on draft laws, initiated by voters, could be divided into two periods: before and after the referendum on language of 2012.⁸³ Before the referendum of 2012, the initiators of a draft law,

⁷⁸ *Levits, E.* Demokrātiskā valsts iekārta, brīvas vēlēšanas un parlamentārā demokrātija. Struktūra, loģika un priekšnosacījumi [Democratic State System, Free Elections, and Parliamentary Democracy. Structure, Logics, and Preconditions]. In: *Parlamentārā izmeklēšana Latvijas Republikā 1. Parlaments. Parlamentārā kontrole* [Parliamentary Inquiry in the Republic of Latvia 1. The Parliament. Parliamentary Control]. Prof. R. Baloža zinātniskā redakcijā. Rīga: Latvijas Vēstnesis, 2016, 21. lpp.

⁷⁹ See more: *Levits, E., Kuzņecovs, A., Medina, L., Caics, A., Tralmaka, I.* *Satversmes 64. pants* [Article 64 of the *Satversme*]. In: *Latvijas Republikas Satversmes komentāri. V nodaļa. Likumdošana* [Commentaries on the *Satversme* of the Republic of Latvia. Chapter V. Legislation]. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2019, 23. lpp.

⁸⁰ The *Satversme* also prescribes substantial limitations on the use of the referendum. For example, according to the Article 73, the budget and laws concerning loans, taxes, customs duties, railroad tariffs, military conscription, declaration and commencement of war, peace treaties, declaration of a state of emergency and its termination, mobilisation and demobilisation, as well as agreements with other nations may not be submitted to the referendum. Furthermore, according to the Article 75, if the *Saeima*, by not less than a two thirds majority vote, determine a law to be urgent, it may not be submitted to the referendum.

⁸¹ *Levits, E.* Demokrātiskā valsts iekārta, brīvas vēlēšanas un parlamentārā demokrātija. Struktūra, loģika un priekšnosacījumi [Democratic State System, Free Elections, and Parliamentary Democracy. Structure, Logics, and Preconditions]. In: *Parlamentārā izmeklēšana Latvijas Republikā 1. Parlaments. Parlamentārā kontrole* [Parliamentary Inquiry in the Republic of Latvia 1. The Parliament. Parliamentary Control]. Prof. R. Baloža zinātniskā redakcijā. Rīga: Latvijas Vēstnesis, 2016, 39. lpp.

⁸² *Grozījumi likumā "Par tautas nobalsošanu, likumu ierosināšanu un Eiropas pilsoņu iniciatīvu"* [Amendments to the law "On National Referendums, Legislative Initiatives and European Citizens' Initiative"] (08.11.2012). Available: <https://likumi.lv/ta/id/251973-grozijumi-likuma-par-tautas-nobalsošanu-un-likumu-ierosinasanu> [last viewed 04.02.2023].

⁸³ *Par grozījumiem Latvijas Republikas Satversmē* [On Amendments to the *Satversme* of the Republic of Latvia] (2012). Available: <https://www.cvk.lv/lv/tautas-nobalsošanas-par-grozijumiem-latvijas-republikas-satversme-2012> [last viewed 04.02.2023].

submitted by voters, could try to organise it, hoping to succeed; however, after 2012, when the *Saeima* amended the law, “filters” were made so tight that the voters’ right to initiate any draft law now exists only on paper.⁸⁴

Increasing democratic participation and legitimacy, which would bring stability and sustainability to the State, should be the primary objective of the power, which could be facilitated by returning to the people conviction that everyone can influence the power in the most direct way – his or her vote at the referendum.⁸⁵

We have taken over from the first period of parliamentarism a caution or even scepticism towards instruments of direct democracy in legislation and algorithms of the *Satversme* or constitutional “formulae” for the required quorum and majority vote at referenda.⁸⁶ Although quorum plays an important role and their expedience is rooted in the very nature of the people’s rule, which prevents a small part of the people from imposing its will upon majority, the current situation is clearly indicative of the right to a referendum as an absolutely “empty right”.⁸⁷ To put it more precisely, a right that is only written “on paper” in a supreme law but in practice is non-functional. If the defined quorum and burdens are too high and complicated, it is an obstacle to any collective decision, which stalls constitutional development. It should be examined, whether the quorum and majority vote, set in the *Satversme*, as well as the procedure for exercising the voters’ right to legislate should not be reviewed to make them actually applicable.

2.3. The President as an opportunity to improve the state system

There have been many discussions on the need to improve the *Satversme* within the Latvian constitutional practice, during both the first and the second period of independence, and the majority of them have pertained to the institution of the President. The minority of the Constitutional Assembly already saw the possibility for balancing the system of separation of powers, providing, alongside the *Saeima*, as an alternative centre of power, the President, elected by the people and with a broader mandate.⁸⁸ After the *Satversme* entered into force, changing the procedure for electing the President and revising of his mandate have been seen as a real possibility for improving and stabilising the state system of Latvia, diminishing the excesses and weakness of the parliamentary system.⁸⁹

⁸⁴ See also: *Kūtris, G.* Referendumi jeb tautas nobalsošanas: cik tas ir reāli [Referenda or the People’s Vote: How Real is it]. *Jurista Vārds*, No. 42(844), 28.10.2014.

⁸⁵ See more: *Balodis, R.* Par tautas tiesībām un faktiskām iespējām grozīt Latvijas Republikas Satversmi [On the Rights and Actual Possibilities of the People to Amend the *Satversme* of the Republic of Latvia]. In: *Tiesības un tiesiskā vide mainīgos apstākļos [Law and Legal Environment in Changing Circumstances]*. Latvijas Universitātes 79. starptautiskās zinātniskās konferences rakstu krājums. Rīga: LU Akadēmiskais apgāds, 2021, 411.–419. lpp.

⁸⁶ Arveds Bergs, Member of the Constitutional Assembly and the first convocations of the *Saeima*, used the concept “formula” instead of algorithms.

⁸⁷ See more: *Balodis, R.* Cik aktuāla ir senā diskusija par tautas nobalsošanas iespējamību Latvijā [How Relevant is the Old Discussion about the Possibility of a Referendum in Latvia]. *Jurista Vārds*, No. 16(1178), 20.04.2021; *Balodis, R.* The Procedure for Amending the *Satversme* of the Republic of Latvia and the Substance of Restrictions Established by It. *Juridiskā zinātne/Law*, Vol. 14, 2021, pp. 21–48.

⁸⁸ See more: *Lazdiņš, J.* Valsts prezidenta institūta tapšana Latvijā [Formation of the Institution of the President of the State in Latvia]. *Jurista Vārds*, No. 46(745), 13.11.2012.

⁸⁹ See also: *Satversmes reforma Latvijā: par un pret [Reform of the *Satversme* in Latvia: Pros and Cons]*. Rīga: Sociāli ekonomisko pētījumu centrs „Latvija”, 1995; *Par Valsts prezidenta funkcijām Latvijas parlamentārās demokrātijas sistēmas ietvaros [On the Functions of the President within the Framework of the Latvian System of Parliamentary Democracy]*. In: *Valsts prezidenta Konstitucionālo tiesību*

Within the Latvian state system, the President has been envisaged a ceremonial, symbolic and representative role. Pursuant to the *Satversme*, he is elected to office by the *Saeima* in open ballot with 51 votes – by the parliamentary majority’s simple decision. Max Laserson, Member of the *Saeima*, once noted that, pursuant to the construction of the *Satversme*, the President, actually, had been turned into a harmonious part of the parliament, working together with the *Saeima*’s majority as “the President in the Parliament”.⁹⁰ Another Member of the *Saeima*, Paul Schiemann, has pointed out that the President has indirect “derivative power”, granted by the *Saeima*, which subjects him to the *Saeima*. Paul Schiemann also has recognised that, after the *Satversme* entered into force, the entire power became concentrated within the parliament, achieving “absolutism of the Parliament”, where the President could not be an equivalent counterweight to the will of the *Saeima*’s majority.⁹¹ It has to be recognised that, at present, the parliament’s absolutism has taken the upper hand and has even progressed, albeit the proposals to adjust the state system, envisaging the President, elected by the people, as “a counterweight” to the Parliament, have not waned.⁹² This is the right place to mention that election of the President is solely the parliament’s prerogative only in some countries of the European Union (alongside Latvia, these are only Greece, Estonia, Italy, Malta, and Hungary), where – compared to Latvia – the procedure of election is much more complicated and an open ballot is not envisaged. The general trends in development show that direct election of the President is the predominant model also in the parliamentary republics in Europe. Although, within the public discourse, expanding the President’s mandate is emphasised, it must be noted that changing the model for electing the President does not automatically mean expanding the President’s powers and replacing the parliamentary system by a presidential one. Each of these issues may be discussed and decided on separately.

The institution of impeachment also should be introduced into the *Satversme*, establishing special procedure for removing the President from office because, currently, the *Satversme* does not set out the criteria for instances when the *Saeima* has the right to remove the President from office, therefore, a situation where the *Saeima* decides to remove the President from office for purely political reasons cannot be excluded.⁹³ Pursuant to the first sentence of Article 53 of the *Satversme*, the President does not bear political responsibility, although, actually, the President is a political figure, whose prerogative is intervening into politics and influencing the policy implemented by the *Saeima*’s majority and the government. In a democratic

komisija. Viedokļi: 2008–2011 [Constitutional Law Commission under the Auspices of the President. Opinions: 2008 – 2011]. Rīga: Latvijas Vēstnesis, 2011, 103.–178. lpp.

⁹⁰ Lazerson, M. Vlastj prezidenta Latvii [Power of the Latvian President]. *Segodnja*, No. 37, 15.02.1922.

⁹¹ Šimanis, P. Latvijas Satversmes astoņi gadi [Eight Years of the Latvian *Satversme*]. In: Šimanis, P. Eiropas problēma [A Problem for Europe]. Rakstu izlase. Rīga: Vaga, 1999, 25.–26. lpp.

⁹² See: 12. Saeimas Juridiskās komisijas deputātu darba grupas Valsts prezidenta pilnvaru iespējamai paplašināšanai un ievēlēšanas kārtības izvērtēšanai atzinums [Opinion of the working group of members of the 12th *Saeima*’s Legal Committee on possible expansion of the powers of the President and evaluation of the election procedure]. Available: <https://www.saeima.lv/lv/par-saeimu/saeimas-darbs/deputatu-grupas/darba-grupa-valsts-prezidenta-pilnvaru-iespejamai-paplasinasanai-un-ievelesanas-kartibas-izvertesana> [last viewed 04.02.2023]. [

⁹³ See more: Kārklīņa, A. Valsts prezidenta impīčmenta institūta juridiskie aspekti (II) [Legal Aspects of the Procedure for Impeaching the President of the State (II)]. *Likums un Tiesības*, No. 3(67), 2005.

republic, an official should not be without political responsibility for their political actions or failure to act.⁹⁴

It is important to note that the proposals, made quite some time ago, regarding strengthening the creative function of the President, remain relevant. The President's creative function could be expanded exactly in the direction of the judicial power, for example, by entrusting to him the chairing of the Judicial Council, granting to the President the right to propose candidates for the office of the Prosecutor General, the President of the Supreme Court and Justices of the Constitutional Court for the *Saeima's* vote.⁹⁵ Not only would this provide the possibility for using the institution of the President more effectively, but it would also make the procedure of selecting officials of the judicial power more constructive.⁹⁶

2.4. Improving regulation on crisis management

It has been long-recognised that the regulation on crisis management, included in the *Satversme*, needs serious improvements.⁹⁷ The *Satversme* comprises regulation on the state of emergency, pertaining only to threats caused by war or civil insurrection (Article 62 of the *Satversme*) but not to any other troubles in life, for example, natural disasters or pandemic, etc.⁹⁸ COVID-19 pandemic and the efforts to overcome the threats caused by it reminded, once again, that such constitutional regulation was necessary, envisaging not only for authorities the mandate needed to prevent disasters and the right to take emergency measures, but also defining constitutionally the limits of the executive power's discretion.⁹⁹

To counterbalance this lack, in 2013, the law "On Emergency Situation and State of Exception"¹⁰⁰ was adopted, which envisaged the possibility to declare an emergency situation in such cases.¹⁰¹ In fact, the procedure of Article 62 of the *Satversme* has been copied into the law, attributing the possibilities of applying the emergency legal regime, set out in it, also to cases of such threats that are not even referred to in the aforementioned provision of the *Satversme*. The solution, chosen by the legislator,

⁹⁴ *Dišlers, K.* Latvijas Republikas prezidenta politiskā atbildība [Political Responsibility of the President of the Republic of Latvia]. *Tieslietu Ministrijas Vēstnesis*, No. 2, 1922, 53.–67. lpp.

⁹⁵ *Monciunskaitē, B.* The Risks to Judicial Independence in Latvia: A View Eighteen Years Since EU Accession. *Croatian Yearbook of European Law and Policy*, Vol. 18, 2022, pp. 143–144.

⁹⁶ See more: *Balodis, R., Kārklīna, A.* Valsts tiesību attīstība Latvijā: otrais neatkarības laiks [Development of Public Law in Latvia: Second Period of Independence]. *Latvijas Universitātes žurnāls "Juridiskā zinātne/Law"*, Vol. 1, 2010, 40.–41. lpp.

⁹⁷ For example: *Jundzis, T.* Ārkārtējo situāciju un krīžu vadība: tiesiskā regulējuma nepilnības [Management of Emergency Situations and Crises. Deficiencies of Legal Regulation]. *Likums un Tiesības*, No. 2(6), 2000; *Par Valsts prezidenta funkcijām Latvijas parlamentārās demokrātijas sistēmās ietvaros* [On the Functions of the President within the Framework of the Latvian System of Parliamentary Democracy]. In: *Valsts prezidenta Konstitucionālo tiesību komisija. Viedokļi: 2008–2011* [Constitutional Law Commission under the Auspices of the President. Opinions: 2008–2011]. Rīga: *Latvijas Vēstnesis*, 2011, 153.–155. lpp.

⁹⁸ *Balodis, R.* Ārkārtējās situācijas normatīvais regulējums: vēsture un nākotnes izaicinājumi [Normative Regulation on Emergency Situation: History and Future Challenges]. *Jurista Vārds*, No. 6(1168), 09.02.2021.

⁹⁹ See more: *Balodis, R., Danovskis, E.* Functionality Problems of Collegial Government Institutions During the COVID-19 Pandemic and Solutions for the Future. *Juridiskā zinātne/Law*, 2021, No. 14, pp. 197–215.

¹⁰⁰ *Par ārkārtēju situāciju un izņēmuma stāvokli* [On Emergency Situation and State of Exception] (07.03.2013). Available: <https://likumi.lv/ta/id/255713-par-arkartejo-situaciju-un-iznemuma-stavokli> [last viewed 04.02.2023].

¹⁰¹ See more: *Druvaskalns, K.* Kā saprast jēdzienu "ārkārtējo situācija" [How to Understand the Concept of "Emergency Situation"]. *Jurista Vārds*, No. 2(649), 11.01.2011.

is quite questionable from the perspective of constitutional law because, substantially, the government has been granted extraordinary mandate by an ordinary law, without regard for the *Satversme*.

The experience gained during COVID-19 pandemic in organising crisis management suggests necessary improvements to the *Satversme*, envisaging in it, alongside the state of exception, also conditions for declaring an emergency situation, its procedure and the necessary restrictions.¹⁰² Likewise, the *Satversme* should include regulation on restricting a person's fundamental rights in emergency situations, during the state of exception and war, eliminating the deficiency that once was caused by dismissing the Second Part of the *Satversme*.

The period of COVID-19 pandemic also reaffirmed the scepticism, once expressed by experts of constitutional law¹⁰³, regarding the hasty and politicised deletion of Article 81 from the *Satversme*¹⁰⁴, without replacing it by equivalent instruments of delegated legislation, which would give the right to the Cabinet, in case of need, to act as the legislator and, in an emergency situation, issue regulations with the force of law. The management of emergency situation has clearly shown that the Cabinet needs such mandate, and the government's right to issue regulations with the force of law during the period of special regime should be envisaged.¹⁰⁵ A quite completed proposal of the respective wording has been drafted, it would be worth serious discussions.¹⁰⁶

Unless the regulation on emergency situation is reviewed and revised, we can expect also in the future that the government's regulations will be unnecessarily repeatedly re-approved by the *Saeima*. Such redundant duplication causes unnecessary contradiction in the application of emergency regulation, causing questions about the government's role in such moments, as well as makes the legislator co-responsible for such situations, actually, prohibiting from setting into motion the mechanism of parliamentary control during the post-crisis period, which would allow analysing the mistakes made during the period of crisis.

Russia's full-scale invasion in Ukraine of 24 February 2022 and the war it has launched in Ukraine, threatening the existing political and legal order in Europe, has created a new "reality of crisis".¹⁰⁷ Although a formal state of exception or extraordinary situation have not been declared, in some cases, the decisions made by the *Saeima* and the government are actually linked to managing the crises caused by Russia's war, the existence of the crisis is accepted by all, although it has not been

¹⁰² Balodis, R. Ārkārtas situācijās Saeimai pilnvaras uz laiku ir jānodod valdībai [In Emergency Situations, the *Saeima* should Temporarily Transfer its Mandate to the Government]. *Jurista Vārds*, No. 18(1128), 05.05.2020.

¹⁰³ See more: Juristi analizē Valsts prezidentes rīcību un Satversmes 81. pantu. Lietpratēji atbild uz "Jurista Vārda" jautājumiem [Lawyers Analyse the Actions of the President and Article 81 of the *Satversme*. Experts Answer Questions Put by "Jurista Vārds"]. *Jurista Vārds*, No. 12(465), 20.03.2007.

¹⁰⁴ Grozījumi Latvijas Republikas Satversmē [Amendments to the *Satversme* of the Republic of Latvia] (03.05.2007). Available: <https://likumi.lv/ta/id/157308-grozijumi-latvijas-republikas-satversme> [last viewed 04.02.2023].

¹⁰⁵ Balodis, R. Ir nepieciešama adekvāta pēcnācējnorma svītrotā Satversmes 81. panta vietā [Adequate Successor Provision Replacing Deleted Article 81 of the *Satversme* is Needed]. *Jurista Vārds*, No. 43(1153), 27.10.2020.

¹⁰⁶ Levits, E. Satversme ārkārtas apstākļos [The *Satversme* in Emergency Conditions]. *Jurista Vārds*, No. 18(1128), 05.05.2020.

¹⁰⁷ See also: Levits, E. Satversmes simtgade jaunajos ģeopolitiskajos apstākļos [Centenary of the *Satversme* in the New Geopolitical Conditions]. *Jurista Vārds*, No. 18(1232), 03.05.2022.

formally declared.¹⁰⁸ Actual management of the threats of war causes risks and valid concerns regarding restricting a person's fundamental rights properly in such circumstances. Russia's war in Ukraine has reinforced the trends from COVID-19 crisis regarding restrictions on fundamental rights both in Latvia and elsewhere.¹⁰⁹

2.5. Constitutional relativism

Another important feature, which should not be overlooked, is the fact that, after reinstatement of the *Satversme*, several important changes to it have occurred without formal amendments. This has happened by changing opinions of parties applying the *Satversme* on this or that matter. Initial sticking to the written word, letter,¹¹⁰ rather strictly adhering to grammatical interpretation of provisions of the *Satversme*, over time has shifted towards a much more dynamic interpretation of it. The *Satversme* is viewed as a living constitution, developing with the times¹¹¹ and such that can be influenced by parties applying law. Egils Levits has been the one who has promoted this approach in a targeted way and encouraged the parties applying the *Satversme* to develop it creatively.¹¹² As the result of this, interpretation of the *Satversme* also allows that, which has not been written into the *Satversme*'s text and has not been permitted textually by the constitutional legislator.

Thus, the *Satversme* of the second period of independence is marked by a phenomenon, which might be called constitutional relativism or freer interpretation.¹¹³ Initially, this method was successfully mastered by parties applying the *Satversme* in the political process (the *Saeima*, the President, and the Cabinet), ensuring development of the *Satversme* through ordinary laws, without formal amendments to the *Satversme*. This began with the election of the 5th convocation of the *Saeima* in 1993 when, contrary to the provision of Article 8 of the *Satversme*, the Supreme Council defined in the Election Law of the 5th *Saeima*¹¹⁴ another minimum age for voters. Perhaps, this can be written down as taking constitutional law lessons in practice since, after being elected, the 5th convocation of the *Saeima* amended the *Satversme* urgently, to align the minimum age of electors in the *Satversme* and the Law on

¹⁰⁸ For example: Grozījumi Latvijas Pareizticīgās Baznīcas likumā [Amendments to Law on Latvian Orthodox Church]. Available: <https://likumi.lv/ta/id/335376> [last viewed 04.02.2023]; Grozījumi Imigrācijas likumā [Amendments to Immigration Law]. Available: <https://likumi.lv/ta/id/331565-grozijumi-immigracijas-likuma> [last viewed 04.02.2023].

¹⁰⁹ Likums "Par pagaidu papildu prasībām Saeimas deputātu un pašvaldību domju deputātu darbam" [Law "On Temporary Additional Requirements for the Work of Members of the *Saeima* and Councillors of Local Government Councils"]. Available: <https://likumi.lv/ta/id/32764> [last viewed 04.02.2023].

¹¹⁰ For example: *Sinaiskis, V.* Lietderība un noteikumi likumu tulkošanā (Sakarā ar dep. Goldmaņa neaizskaramību) [Expedience and Rules in Interpretation of Laws (In Connection with Deputy Goldmanis' Immunity)]. *Jurists*, No. 3, 1928; *Cielēns, F.* Latvijas Republikas Satversmes noteikumi par deputātu imunitāti [Rules of the *Satversme* of the Republic of Latvia on Deputies' Immunity]. *Tieslietu Ministrijas Vēstnesis*, 1929, No. 1/2.

¹¹¹ See more: *Pleša, J.* *Satversmes iztulkošana* [Interpreting the *Satversme*]. Rīga: Latvijas Vēstnesis, 2012, 184.–188. lpp.

¹¹² For example: *Levits, E.* *Satversme 1995. gada 18. novembrī* [The *Satversme* on 18 November 1995]. *Diena*, No. 270, 17.11.1995.; *Levits, E.* Tiesību normu interpretācija un Satversmes 1. panta demokrātijas jēdziens [Interpretation of Legal Provisions and the Concept of Democracy of Article 1 of the *Satversme*]. *Cilvēktiesību Žurnāls*, No. 4, 1997.

¹¹³ See more: *Balodis, R.* *Satversme pārkāpj 100 gadu sliekšni, mokoties ar relativisma un tiesu aktīvisma kaitēm* [The *Satversme* Steps over the Threshold of 100 Years, Plagued by Relativism and Judicial Activism]. Available: <https://telos.lv/satversmes-100-gadu-slieksnis/> [last viewed 04.02.2023].

¹¹⁴ Par 5. Saeimas vēlēšanām [On the Election of the 5th *Saeima*] (20.10.1992). Latvijas Republikas Augstākās Padomes un Valdisas Ziņotājs, No. 46/48, 03.12.1992.

Election of the *Saeima*.¹¹⁵ At the same time, for example, transformation of the President's role within the Latvian state system occurred and the scope of his mandate was expanded, contrary to provisions initially made in the *Satversme*.¹¹⁶ In the same way, i.e., without formal amendments to the *Satversme* and the Rules of Procedure of the *Saeima*, during COVID-19 pandemic, the *Saeima* has introduced remote sittings of the *Saeima* and its Committees, as well as e-*Saeima* digital platform.¹¹⁷

It should be kept in mind that the science of Latvian constitutional law also takes a positive view on the creative development of the *Satversme*. For example, the idea of the inviolable core of the *Satversme* and Latvia's constitutional identity has been defined exactly as the opinion of constitutional law experts, which was quite quickly taken over into the practice of applying the *Satversme*.¹¹⁸ The concept of the core of the *Satversme*, as well as the expanded introduction to the *Satversme* have guided the understanding of the *Satversme* as a relative document.

The Constitutional Court has been particularly active in dynamic interpretation of the *Satversme*, in its rulings, the Court has expanded significantly the scope of the *Satversme*, diminishing the possibility for the *Satversme*'s text becoming outdated, and developed the Latvian constitutional law.¹¹⁹

It is impossible to develop a correct notion of the *Satversme* without the findings, included in the Constitutional Court's rulings, because many constitutional principles and provisions have evolved through the interpretation of this Court. In fact, this has also marked a shift of the constitutional power away from the formal constitutional legislator – the *Saeima* and the totality of Latvian citizens, in favour of the Constitutional Court as the interpreter of the *Satversme*.¹²⁰ This process has been facilitated by the parliament's inability to cope with procedures that regulate the parliament, as well as the parliament's incapacity to promote public trust in good legislation.¹²¹ The *Saeima* has been given signals, serious enough, asking it “to improve the process of legislation and ensure that qualitative laws are adopted in due procedure” because it is incompatible with “the standards of a modern democratic state, governed by the rule or law”.¹²² However, the parliament has been unable

¹¹⁵ Grozījums Latvijas Republikas Satversmē [Amendment to the *Satversme* of the Republic of Latvia] (27.01.1994). Available: <https://likumi.lv/ta/id/57946-grozijums-latvijas-republikas-satversme> [last viewed 04.02.2023].

¹¹⁶ See, for example: Pleps, J. Piebriestošā prezidentūra [Swelling Presidency]. Available: <https://providus.lv/raksti/piebriestosa-prezidentura/> [last viewed 04.02.2023].

¹¹⁷ Rodiņa, A., Libiņa-Egnere, I. E-*Saeima*, one of the first parliaments in the world ready to work in fully remote mode. In: The impact of the health crisis on the functioning of Parliaments of Europe, pp. 70–80. Available: https://www.robert-schuman.eu/en/doc/ouvrages/FRS_Parliament.pdf [last viewed 04.02.2023].

¹¹⁸ Par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu. Konstitucionālo tiesību komisijas viedoklis un materiāli [On the Constitutional Foundations of the Latvian State and the Inviolable Core of the *Satversme*. Opinion and Materials of the Constitutional Law Commission]. Rīga: Latvijas Vēstnesis, 2012.

¹¹⁹ See more: Plepa, D., Pleps, J. Satversmes tiesas ietekme uz Latvijas tiesiskās sistēmas attīstību [The Constitutional Court's Impact upon the Development of the Latvian Legal System]. Jurista Vārds, No. 49(952), 06.12.2016.

¹²⁰ Pleps, J. Satversmes iztulkošana [Interpreting the *Satversme*]. Rīga: Latvijas Vēstnesis, 2012, 54.–56. lpp.

¹²¹ Pleps, J. Likumdošanas procesam jāveicina sabiedrības uzticēšanās [Legislative Process should Promote Public Trust]. Available: <https://lvportals.lv/viedokli/299267-likumdosanas-procesam-javeicina-sabiedrības-uzticēšanas-2018> [last viewed 04.02.2023].

¹²² Judgement of the Constitutional Court of the Republic of Latvia on 12 April 2017 in case No. 2017-17-01; Judgement of the Constitutional Court of the Republic of Latvia on 12 April 2018 in case No. 2017-17-01.

to respond to it properly and all encouragements by the parliamentary opposition, the President or the Ombudsman have been plainly ignored. The parliament itself has been incapable, for a long time, to implement meaningful revision of the Rules of Procedure of the *Saeima*, improving both the procedures of legislation and internal organisation of its work, the need for which has been long-recognised.¹²³ Holding several events to celebrate the centenary of the first Rules of Procedure of the *Saeima*, the *Saeima* has not used the opportunity to modernise its work.

The Constitutional Court's judicial activism has created confusion in the centres of political power as politically important matters are no longer decided politically but are now resolved by court rulings. An example of this is both the initial activism of the Constitutional Court by limiting, through its judgement, both the Cabinet's right to issue regulations within the framework of law and the delegated right to legislate, included in Article 81 of the *Satversme*.¹²⁴ Likewise, application of the principle of good legislation, developed by the Constitutional Court, which has tangibly restricted the *Saeima's* discretion in the legislative process, remains sensitive.¹²⁵ Interpretation of Article 110 of the *Satversme* by the Constitutional Court, including into the concept of "family" also same-sex couples, and envisaging the legislator's obligation to elaborate regulation that would ensure legal protection of such couples, is a challenge for the legislator and parties applying law.¹²⁶ This has caused not only discussions about the particular legal matter but also conceptual reflections on separating the competences of the legislator and the Constitutional Court and the dialogue between branches of power in applying the *Satversme*.¹²⁷

Law policy discussions about the limits of judicial activism and correct approach to interpretation of the *Satversme* are only just starting in Latvia's society.¹²⁸ It is clear that judicial activism is linked to the quality(weakness) of the parliament's work, which, actually, invites the court, in defending persons' fundamental rights, to intervene into the process of legislation and "step into the legislator's shoes".¹²⁹

¹²³ For example: *Ābolīņa, S.* Likumdošanas procesa norise un kvalitāte – no Saeimas skatpunkta [The Course and Quality of Legislative Procedure – from the *Saeima's* Perspective]. *Jurista Vārds*, No. 41(944), 11.10.2016.

¹²⁴ See more: *Jelāgins, J.* Tiesību pamatavoti [Basic Sources of Law]. In: *Jelāgins, J.* Latvija ceļā uz tiesiskumu [Latvia on its Paths towards the Rule of Law]. Rakstu krājums. Rīga: Tiesu Namu Aģentūra, 2020, 107.–113. lpp.

¹²⁵ See more: *Engīzers, K.* Labas likumdošanas principa ģenēze Latvijas tiesiskajā sistēmā [Genesis of the Principle of Good Legislation within the Latvian Legal System]. *Jurista Vārds*, No. 49(1211), 07.12.2021.

¹²⁶ Judgement of the Constitutional Court of the Republic of Latvia on 12 November 2020 in case No. 2019-33-01.

¹²⁷ See more: *Briede, J.* Ģimene [Family]. *Jurista Vārds*, No. 7 (1221), 15.02.2022. *Balodis, R.* Satversme pārkāpj 100 gadu sliekšni, mokoties ar relativisma un tiesu aktīvisma kaitēm [The *Satversme* Steps over the Threshold of 100 Years, Plagued by Relativism and Judicial Activism]. Available: <https://telos.lv/satversmes-100-gadu-slieksnis/> [last viewed 04.02.2023]; *Margeviča, A.* Konstitucionālās krīzes nebija. Intervija ar Satversmes tiesas priekšsēdētāju Aldi Laviņu [There was no Constitutional Crisis. Interview with the President of the Constitutional Court Aldis Laviņš]. *Diena*, 29.03.2023., No. 50(9023).

¹²⁸ For example: *Osipova, S.* Tiesiska valsts vai "tiesnešu valsts" [A State Governed by the Rule of Law or "Judges' State"?]. In: *Osipova, S.* Nācija, valoda, tiesiska valsts: ceļā uz rītdienu [Nation, Language, State Governed by the Rule of Law: On the Path towards Tomorrow]. Rakstu krājums. Rīga: Tiesu Namu Aģentūra, 2020, 313.–322. lpp.; *Balodis, R.* Satversme pārkāpj 100 gadu sliekšni, mokoties ar relativisma un tiesu aktīvisma kaitēm [The *Satversme* Steps over the Threshold of 100 Years, Plagued by Relativism and Judicial Activism]. Available: <https://telos.lv/satversmes-100-gadu-slieksnis/> [last viewed 04.02.2023].

¹²⁹ See more: *Feldhūne G.* "Likuma klusēšana" un Satversmes tiesas kompetence ["Silence of Law" and the Competence of the Constitutional Court]. *Likums un Tiesības*, No. 3(31), 2002, 83.–86. lpp.

Respectively, weakness of the parliament, its ineffective work and political stagnation is the true cause of judicial activism.¹³⁰

Examination of similar discussions in the USA allows concluding that they may last for centuries and, possibly, each generation will have its own answers regarding the correct relations between the legislator and the judicial power. With consolidation of stable ideological parties, they, similarly to the USA, might become inclined to select and approve of liberal or conservative Justices of the Constitutional Court, upon which the 13th convocation of the *Saeima* has placed particular focus.¹³¹ However, it is important that this discussion is held within the framework of the *Satversme*, respecting the principles of a parliamentary republic, independence of the judicial power and separation of state powers, included in the *Satversme*, as well as strengthens and develops a democratic state, governed by the rule of law, in Latvia and the authority of the *Satversme* as the basic law of the State.

Summary

The fate of the *Satversme* is closely intertwined with Latvia's statehood, its historic meanderings, initial rapture upon its adoption (1922), followed by authoritarianism (1934), which announced a reform of the *Satversme*, as well as the following years of occupation by two totalitarian regimes – the Nazi and the Soviet (1940–1990). The *Satversme* was adopted in pre-war Latvia and was reinstated following restoration of Latvia's independence. No other analogue is found in the world, and the case of *Satversme* is so special that it cannot be overlooked against the backdrop of other national constitutions. Over time, the *Satversme* has become an important element of the national identity, which has been carefully cultivated, in particular, during the last decade.

The decision, made following restoration of Latvia's independence, to reinstate the *Satversme* in full, rather than write a new constitution, was right and far-sighted. Reinstatement of the *Satversme* meant not only a formal restoration of its text but also a revival of its spirit – the values of the *Satversme*, methodology of its application and constitutional theory. Reinstatement of the *Satversme* allowed the legislator, initially, to “master” the system of the *Satversme* and, afterwards, to form and develop it.

14 amendments to the *Satversme*, adopted after the restoration of independence, have not significantly changed the original *Satversme*, created by the Constitutional Assembly. At the same time, some flaws in the text of the *Satversme* still have not been eliminated. It is time to align regulation of the *Satversme* with Latvia's international commitments in the area of national defence and to improve the current constitutional provisions of the *Satversme* on crisis management, which revealed their low effectiveness during COVID-19 pandemic. To decrease the growing gap between the power and society, with the purpose of increasing the legitimacy of power and reinforce the separation of powers, the algorithms of the *Satversme* regarding

¹³⁰ It should be noted that judicial activism is mostly viewed and conceptualized as a non-legal category, which, nevertheless, is used in the constitutional law. It is rather a category more characteristic of sociological, political science, or interdisciplinary discourse. See more: *Mesonis, G.* Judicial Activism in the Context of the Jurisprudence of the Constitutional Court. In: *Konstitucionālās tiesas aktīvisms demokrātiskā valstī. Satversmes tiesas 2016.gada konferences materiālu krājums. Judicial Activism of a Constitutional Court in a Democratic state. Proceedings of the 2016 Conference of the Constitutional Court of the Republic of Latvia.* Rīga: Latvijas Republikas Satversmes tiesa, 2016, pp. 342–361.

¹³¹ *Monciunskaitē, B.* The Risks to Judicial Independence in Latvia, pp. 142–145.

the referendum and in regulation on legislative initiative, the model of the *Saeima* elections and the procedure for electing the President should be revisited.

Parliamentary weakness and inability to ensure qualitative work, by resolving in good legislative procedure, in a meaningful and sustainable way, issues of long-term national development, has facilitated judicial activism. If the *Saeima* itself is unable to provide political solution to problems, they, inevitably, sooner or later are dealt with in proceedings before the Constitutional Court. Development of legal system and equivalent dialogue between powers requires qualitative growth of the *Saeima* as the legislator elected by voters, and improvements to the legislative process. Likewise, the parliament should develop a political dialogue about the model for electing the President and his mandate, “returning” referenda to citizens and other important matters pertaining to the development of the state system, since postponing of such discussions and stagnation does not promote citizens’ faith in the State and its aims and, in the long-term, may endanger Latvia’s democracy.

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