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Berichte

Entwicklungen des Verfassungsrechts im europäischen Raum

Evolution of Constitutionality of the Republic of Latvia: from 1918–2006

by

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More than 50 years of Soviet occupation, the state of Latvia and constitutionalism could exist only in the imagination of the people.

1. Beginning

The Republic of Latvia was proclaimed on November 18, 1918, but the first claim of Latvians for the formation of an independent state was voiced on year before. Exactly on 19 November 1917 the Latvian Provisional National Council (LPNP) adopted the resolution regarding the need to convene the Satversme assembly and to draft the Satversme (constitution). Although the LPNP united almost all of the important Latvian organisations the real-life implementer of the Latvian independence, however, was the People's Council (Tautas Padome), which achieved the State of Latvia proclamation. The People's Council was the first legislative institution of Republic of Latvia. This pre-Parliament or fore-parliament was established with the agreement of eight political parties as a body of forty members November 17, 1918 at a time when elections could not yet be held. Mandates in the Council were granted not to individuals, but to the parties. Each party had a certain number of seats in the Council, and these were filled by the members it authorized. The People's Council adopted several important laws, on rural local governments and their election, on the Latvian monetary system, on educational institutions, and on citizenship. Council elaborated a political platform which can be regarded as the first provisional constitution of the Republic of Latvia.\(^1\)

\(^1\) Lasmanis U. Kāpīst poslodinata Latvijas valsts? (When exactly was the state of Latvia proclaimed)? Diena 2003. – 15. novembra.

\(^2\) Like a state Latvia was solemnly proclaimed at the next day – November 18, 1918.

\(^3\) From the 1918–1920 the Political Platform of the Latvian People's Council (Latvijas Pašvaldības Val-
In 15 February 1922 Constituent Assembly adopt Latvian Constitution (Satversme). The adoption of the constitution was the moment of triumph of the Latvian people, and also the time of formation of constitutional law. That's was the real testimony of the political unity and the political maturity of the Latvian nation. The inhabitants of Vidzeme, Kurzeme, Zemgale and Latgale had become the Latvian nation, able to express its own will in a political struggle and to identify the basic foundations of the political philosophy of its state on the highest level.

Not long after the Constitution was adopted – on June 9, 1922 – the new law on elections also passed, opening the way to electing the new parliamentary body, the Saeima. The Constituent Assembly, which was a full-fledged, but an extraordinary legislator, automatically transferred its powers to a constitutional parliament, recognized by the Saeima. The legislative work that was begun by the Constituent Assembly was continued by the Saeima. The adoption of the Latvian Constitution happened to take place in the so-called "period between the wars" or in the time period after the First and before the Second World War. The processes in Republic of Latvia, like the similar events in Estonia and Lithuania, was a link in the chain of triumphs achieved by the post-war democracies. Like in other countries, the Latvian Satversme was a product of reception of constitutional law and at this time new constitutions were adopted in a number of European, Middle Eastern and other countries. In Germany and Finland (1919), in Greece and Austria (1920), in Poland (1919), in Estonia (1920 and 1928), in Lithuania (1922, 1928 and 1936) in Egypt (1922), in Turkey (1924), in Iraq (1924), in Lebanon (1926), in Syria (1930), etc.

The life of Latvian democracy was very short from 1922 till 1934. The last legitimate pre-war government was formed on 16 March 1934 and it lasted only for one month and 28 days before the state subversion. On 15 May 1934 the coup d'état was effected. The events in Latvia in this period of time are similar to the processes which took place in many other countries. Undemocratic regimes could be found all foreign policy in this period, which had substantial influence on the development of constitutional law, first, was the peace treaty of 11 August 1920 between Republic of Latvia and Soviet Russia in which (Clause 2) Russia "forever renounces all the sovereign rights which Russia had to the people and land of Latvia".

The leader of the plot was nothing else than the lawful Latvian Prime Minister of the state Kārlis Ulmanis and he was assisted by the Minister of War and Justice, army and atsargs (a special paramilitary organisation). Everything happened fast and no blood was shed. Actually no resistance at all. Immediately thereafter, under the pretext of "internal disorders" state of war was announced. Three days after the coup on 18 May 1935 the Cabinet of Ministers was formed, and with no doubt in his head the leader of conspirators – Kārlis Ulmanis. The German and Italian way was realized – punitches keeps the lawfully elected State President Alberts Krievis in office. Of course it has no connections with lawfulness or constitutionalism, more likely it is a tragicionic creation of qwest rule of law. The illusion is kept among the population that everything is lawful; the bad corrupt Saeima is banished, the president and the government are "the same" therefore there is no reason to worry. Although the partisans stated that their "actions were not against the Latvian democracy" immediately after the seizure of power one of the main principles of democracy – division of power – was suspended. First of all the freedom of speech was restricted and censure was introduced. All political organizations without any exceptions were closed, all manifestations and political meetings (including the meetings of city councils) were prohibi-
around Latvia: Italy, Germany, Poland, Estonia, Lithuania, the Balkans and Austria.15

A week after the putsch putchist’s justifies the coup with the general experience of others countries. Officially, the badly drafted Satversme was blamed as the reason for the coup because it supposedly granted all the executive power to the parliament which started to exercise this power contrary to the interests of the society and the state. Under these circumstances “the parties were about to become a state within the state” and this processess without doubt needed stop “somebody.”16

In time of authoritarian all of the most important decisions in Latvia were made by the Cabinet, appointed by dictator Karlis Ulmanis. He took over the functions of the Saeim, legislative power became concentrated in the executive branch of government.17 It can be admitted that the period of “Ulmanis’ regime” from 1934 till 1940 was the period of stability,18 overall welfare and economic boom of the state,19 but illusions should not be cherished.

2. Occupation

The government of the Soviet Union issued an ultimatum to Republic of Latvia on June 16, 1940, asking for the government to resign. The following day the Soviets invaded, in violation of basic principles of international law, and occupied the country. It is clear that the state would be lost also if it were a parliamentary republic, but the Germans believe that it was big mistake that the state was given away without resistance. Besides, the president signed legal documents dictated by the invaders in an already occupied country. A sad curiosity is the circumstance that Kurnis Ulmanis was struck by Alberts Krievsis’s fate, only in contrast to the latter, he did not legitimise an undemocratic regime, but commit something much worse – Ulmanis helped liquidate his independent and sovereign state. In 1940 the Soviet occupation regime began total destruction of the Latvian authorities, which was continued after the Second World War.20 Latvia was violently transposed into a foreign legal system where the backbone and basis of the state structure was the Communist Party. The Soviet authorities, in complete disregard of the limits specified by international law, turned very quickly to the process of sovietisation, which meant the adaptation of the domestic structures of three Baltic States to the methods of communist, one-party system.21

Elections to the parliament of occupied Latvia were conducted in July in conditions of political terror under an illegal and unconstitutional election law. The new parliament adopted the Constitution of the Latvian Soviet Socialist Republic – a copy of Stalin’s constitution.

At first Soviet power lasted only for a year as World War II brought Nazi German occupiers to Latvia. The country fell into the Soviet sphere following the war; in resumed its status as an involuntary republic of the Soviet Union. When the Second World War ended, Europe and the world divided into two hostile ideological camps, Latvia, like other countries of the Eastern Europe, had had luck because it became a part of the Soviet territory. Even worse – Latvia became a republic of the Soviet Union and the USSR, against its will.

3. Restoration

Soviet leader – General Secretary of the Communist party Michael Gorbatchev began liberalisation of the Soviet Union what finished with the collapse of the USSR, like many others post-socialist countries and Soviet republics, Latvia gained independence. The process or the way to the second independence of the Republic of Latvia began when the Supreme Council of the Latvian Soviet Socialist Republic (LSSR, SC) adopted the declaration “On the Sovereignty of the State of Latvia” on 28 July 1989. The declaration (Article 5) provided that the USSR laws become effective in the territory of Latvia after their ratification by the LSSR SC. It was a beginning because this is how automatic application of the USSR laws in Latvia was stopped and the way to dismantling the Soviet system and establishing a new legal system was opened. In the second independence a point of reference in the evolution of constitutional law22 is the declaration on the restoration of independence of the Republic of Latvia adopted by the LSSR SC on 4 May 1990. The Declaration of 4 May was the beginning of abolition of the Soviet legal system.23 This is the most precisely formulated document, in comparison with the other Baltic States24 maybe because the neighbors...

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15 Treji R. Kārls Ulmanis Devīspadomietni Ministru prezidentis / Latvijas valsts vadības stūresvētī
16 Ģīmis A. Latvijas vēsture. (History of Latvia) – Rīga, 1936. – 282 lpp.
position was borrowed. The state has not suspended its operation de iure and during the transitional period the principle of continuity (state succession) is complied with in respect of the regulatory enactments of the first independence time. The declaration had the status of a constitutional law. The declaration acknowledges that the declaration on accession to the USSR dated 15 February 1940 is invalid ab initio, restores the statehood of 18 November 1918 de facto, providing that the relationship between Latvia and Russia is based on the 1920 peace treaty between Latvia and Russia. This document recognizes the fact of occupation as a legal fact for the first time. As mentioned professor and European Human Rights Court judge Ineta Ziemele "at the same time, the illegal occupation and annexation of Latvia continued in that USSR troops were present in Latvia nad thus functioning State institutions, including the Supreme Court, were lacking legitimate authority from the point of view of the 1922 Constitution. Only after Soviet troops gone and first after war Parliament was elected and take all power we can speak about legitimate 18 November state restoration.

From 2004 Republic of Latvia, like the other Baltic and Eastern European countries, becomes the subject of this process and together with Germany, United Kingdom and France will attempt to influence the further development of the European Union, which greatly depends on the constitutionalism of the individual states. On 5 and June 1993 the 5th Latvian Parliament (Saeima) was elected which gathered for the first session on 5 July of the same year. This was the first assembly of the Parliament after the war. From constitutional point of view Supreme Council of the Republic of Latvia was under doubt and restored Parliament (Saeima) are of course legitimate because organise all procedures under 1922 Constitution (Satversme) of the Republic of Latvia and not under Soviet occupation process rules.


26 Ērijs Jelgains, judge of the Latvian Constitutional Court, considers that because the 1922 Constitution (Articles 1.2.3 and 6) could be reinstated in the Republic of Latvia and a part of the 1978 USSR constitution could be declared valid only by a constitutional law. Jelgains also states that, in his opinion, declaration should be considered a constitutional law because 138 MPs voted for the declaration on restoration of independence in Latvia, but to adopt a constitutional law only 134 of 201 have to cast their votes. Besides, Jelgains suppose that with regard to the great importance of the the constitutional ground of Latvia is not one, but two constitutional documents – Declaration on Restoration of Independence of Latvia of 4 May 1990 and the 1922 Satversme. (Jelgains Ē. Latvijas tautas konstitūcija (Written Constitution Of Latvia) / Latvijas Vēstnesis 1997 – 14. maijs)


4. Transformation

Some years ago Dr. Egils Levits, judge of the European Community, points out that the Latvian legal system is "slowly drifting" from the initial socialist (Soviet) family of law to the Western (continental Europe) family of law. Development of the Latvian legislation from regaining independence to the mid 1990-ies should be considered dynamic because significant changes took place in the law awareness of the society, which are mainly related to the transfer from the socialist principle "what is allowed" to "everything that is not prohibited, is allowed". An objective cause is the speed of drafting new laws together with the lacking knowledge in the field of legislation. Former two-time Minister of Justice and judge of European Community, Ingrīda Labucka that after passing through several stages of development (restoration of civil freedoms and reform of private law; constitutional reforms; re-orientation to the European law traditions on the level of legislative provisions) the Latvian legal system has reached the transfer to European thinking and court practice. The Latvian legislator has replaced all Soviet laws step by step, however the obstacle or "light not leaving ground" in the law awareness inherited from the Soviet times is. It is a factor which certainly impedes the process of transformation of law to a great extent. Going back to the previously cited Egils Levits, one should agree to his opinion that Latvia as a small legal system with small legal capacity cannot develop a vast collection of legal ideas, even on quantitative basis, which is possible in large legal systems where the legal science has long history and the court practice is extensive. For this reason the Latvian law scholars and practitioners should not attempt to construct the basic legal principles anew, but should try to find initiatives and answers for further development already approved in another, comparable legal system. This is an idea which definitely should be supported, even more – in the area of fundamental law the legal ideas found in the international court practice also should be adopted.

Period from the 1990 till 1993 is called the "transitional period" in the Latvian Declaration of Independence. In this period the civic freedoms (catalogue of human rights), not characteristic for socialist law, was reinforced. A correct strategic goal was also set at this time – to transform property relations in compliance with the practi-
ples of market economy and the principle of private property was restored. It was the end of the forms of socialist property and liquidation of command economy, and to a large extent these processes were related to the restoration of the Civil Law.

As mentioned Senator of Latvian Supreme Court Jurtite Briede after the restoration of independence one of the principal tasks of Latvia was considered the renewal of democratic legitimacy — according to the reinstated Constitution of 1922. That’s why the State Reform Ministry of Latvia was established which manages the implementation of the state institutional reform, and it should be pointed out that concurrently with the changes in the public administration apparatus, reforms are started in the local authorities and on 19 May 1994 the Latvian Law on Local Authorities is passed. Many governmental institutions established in the Soviet time in this period were reorganised, merged or liquidated. Several bodies which existed during the first time of independence were renewed and new institutions were created. Admittedly, a large number of decisions were provisional and transformations were fragmented. Process closed only in 2002 by the adoption of the State Administration Structure Law.

5. Currently

With full restoration of the Constitution (Savvireks) in 1993 democratic state structure, a parliamentary republic and division of power are recognized in Latvia on the highest level. With the assembly of the 5th Saeima and formation of the government one can consider that the legal succession has been consistently complied with in Latvia. From 1995 Latvia sets the goal to join the European Union. On 12 June 1995 Republic of Latvia signs the Association Agreement with the EU, and in the end of the same year the government puts forward approximation of the Latvian laws to the European standards as one of its main tasks. It initiates many processes, associated with, for example, fight against corruption and establishment of efficient public ad-

ministration. In order to join the European Community Latvia had to ensure stable operation of those institutions which had to guarantee democracy, rule of law and compliance with the human rights in the state. On 5 December 1996 the Law on the Human Rights Bureau was passed. On 5 June of the same year the Latvian Law on the Constitutional Court was passed and on 28 April 1997 the Constitutional Court reviews in first case. Intense work at harmonising the legislation with the EU norms is still necessary. All human rights (new chapter Nr. 8) are added to the Constitution. Many of the professionally weak and hastily adopted laws of the first stage are repealed and replaced by new laws. So, for example, the Law on Religious Organisations, referred to above, which was adopted on 11 September 1990, is revoked and replaced by a new Religious Organisations Law on 7 September 1995. A novelty is the Cabinet Regulation “On Administrative Act Procedure”, which was adopted on 13 June 1998 and which provided for methods for interpreting legal norms. It would be rather difficult to enlist all those important regulatory enactments that were adopted in this third stage, however, two of them should be definitely mentioned. They are the Criminal Law of 17 June 1998 and the Commercial Law of 13 April 2000. New Labour Law adopted on 20 June 2001, Administrative Procedure Law adopted on 25 October 2001 and Public Administration Structure Law adopted on 6 June 2002.

Singificant that the political declarations of the Latvian governments already include such statements as determination “to finish the ongoing codification of legal provision”.

At the end Latvia become member of EU. It will be one of the greatest events in the history of the state of Latvia — after formation of the state in 1918, loss of independence in 1940 and restoration of independence in 1990–1991. By voluntary delegation of a part of its independence but retaining its sovereignty Latvia will again obtain “full” independence. As Latvian present Foreign Affairs minister and professor Artis Fabsiks mentioned: “We do it because: the strength and influence of a small country lies in its ability to become involved in international politics despite its limited dimensions and economic power. (...) If Latvia had stayed on the other side of EU, our influence...”

34. Sandite K., Iljona D. Latvijas tiesību sistēmas vajadzības novērtējums (Assessment of the Needs of the Latvian Legal System) / Liktums un Tiesības 2001, – 1. jūnijs, nr. 6 (22).
38. We’re a State with Growing Self – Confidence/ Baltic Outlook april/may 2006 p. 30-31.
would be far less but the pressure on us much, much greater. Joining both organisations (NATO and EU) simultaneously we have taken into account the maximum negative impact."

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