



LATVIJAS
UNIVERSITĀTE
ANNO 1919
UNIVERSITY OF LATVIA

LATVIJAS UNIVERSITĀTES
ŽURNĀLS

Nr. 5.

Juridiskā zinātne

JOURNAL
OF THE UNIVERSITY OF LATVIA

No. 5

Law

Journal "Law" of the University of Latvia
is financed by the Faculty of Law of the University of Latvia



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Latvijas Universitātes žurnāls "Juridiskā zinātne" ir iekļauts starptautiski citējamā datu bāzē EBSCO Publishing.

Journal of the University of Latvia "Law" is included in the international database EBSCO Publishing.

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ISSN 1691-7677

The Development of Constitutional and Administrative Law in Latvia after the Restoration of Independence

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The given article presents a retrospective analysis of the most significant events in the area of constitutional and administrative law in the Republic of Latvia during its second period of independence. The authors of the article are experts in state law who have attempted to examine the events of the last 20 years objectively and independently. Separate events examined from the position of the existing legal reality have been viewed with different understanding of their contents. Although the article can be ranked as a survey study, it does not deliberately follow chronologically scrupulous division into specific stages that is a frequent feature in legal literature¹ because it is more important not to perceive certain occurrences *ad litteram* (Lat. – verbatim) but to understand the essence of processes from perspective of their use or *ad usum* (Lat. – for use, application). The present article should not be associated with the official position of the University of Latvia or Faculty of Law of the University of Latvia.

Keywords: the first independence period of Latvia, the second independence period of Latvia, occupation, Constitution, amendments to the Constitution, Constitutional Law of Latvia, Declaration of Independence of Latvia

Abbreviations used in the article:

SC – Supreme Court

CEC – Central Election Commission

EU – European Union

Declaration of Independence – Declaration of the Supreme Council of the Latvian Soviet Socialist Republic “On the Restoration of Independence of the Republic of Latvia”

CC – Constitutional Court

KGB – Committee for State Security

USSR – Union of the Soviet Socialist Republics

LSSR – Latvian Soviet Socialist Republic
 Constitution – Constitution of the Republic of Latvia

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1 Restoration and consolidation of the statehood of the Republic of Latvia

At the end of 1980s, the Soviet Union started slowly but inevitably approaching its collapse. Only in 1991 did the Soviet empire disappear from the world map entirely and the three Baltic States became independent again. From today's perspective these events can be easily described in a couple of paragraphs, but on that time

a serious struggle went on for several years from 1986 when the group *Helsinki-86*² announced its existence till the moment of the actual freedom, which was gained when the Russian Federation withdrew its armed forces from our country on 31 August 1994. It was a struggle for recognition of not only the independence of Latvia but also the soviet occupation. It was a struggle for recognition of not only the soviet occupation but also the legal continuity with the Republic of Latvia established on 18 November 1918. It was a struggle for restoration of the statehood.

The occupation fact most certainly is not to be regarded as a matter of faith on which it depends whether it is possible to form a governmental coalition with the party “Saskaņas centrs” (Harmony Centre)³, or even a religious symbol⁴, because historians of Latvia⁵, as well as experts in law⁶, and also the Parliament⁷ and the constitutional control institution – the Constitutional Court⁸ – have recognized that the soviet power was established in Latvia in 1940 unlawfully and the events that took place are to be evaluated as occupation (occupation of another state’s territory with armed force) and annexation⁹ (imposing of the administrative system of the USSR on Latvia). Certainly, such an approach is in distinct contradiction to the idea declared during the soviet times about Latvia as a territory inhabited solely by Latvians¹⁰ that has successfully become part of the USSR because imperialist countries were unable to provide military support for the Latvian bourgeoisie to fight against the revolutionary movement¹¹.

1.1 Decision on the procedure for restoration of independence

Looking back at the events of restoration of the independence of Latvia, we can conclude that apart from the proposal of opponents of this process to organize a referendum in Latvia on declaring its independence, as provided for in the Constitution of the LSSR¹², only two development scenarios were possible – the citizens’ congress when restoration of the independence of Latvia would be accomplished not by institutions of occupational power but by the citizens of the Republic of Latvia and their descendants, or the parliamentary way when the independence would be declared by the Supreme Council of the LSSR.

Citizens’ Congress. Citizens of the Republic of Latvia and their descendants would have to elect their representatives who would restore the Republic of Latvia, its Constitution and establish basis for subsequent parliamentary procedure in order to eliminate consequences of occupation. This approach was legally correct, yet more difficult to implement and possibly also more confrontational because it would mean existence of parliament and government appointed by it who might not so easily agree to their self-dissolution. It must be said that on the eve of passing the Declaration of Independence all the preliminary work for organizing the Citizens’ Congress had been done. At the end of 1989 already about 700,000 citizens of the Republic of Latvia had been registered, out of which 678,862 participated in the elections of 8–23 April, 1990. The total rate of participation was 63% from all the citizens who had voting rights. During the Citizens’ Congress elections, 232 delegates were elected who were to restore the independence of Latvia.

Parliamentary way. The Supreme Council, unlike the Citizens’ Congress that was established strictly on the principles of citizenship stemming from the times of the first independence period, was a representative institution created by the soviet power. Members of the Council were elected according to a non-democratic election law from single deputy mandate constituencies. The Citizens’ Congress way was more complicated from the vantage point of handing over the power, while the

Supreme Council's scenario would not have caused any problems with the government and power transformation would have proceeded more smoothly. An opinion has been expressed that there was no real mechanism of implementing the approach of the Citizens' Congress¹³. Some legal experts have characterized the elections to the Supreme Council as "semi-democratic"¹⁴. The Latvian Constitutional Court came to a similar conclusion later: "The Supreme Council was elected by partly free elections and was not competent to decide any issue since it represented the political will not only of the citizens of Latvia but also of other inhabitants of the LSSR"¹⁵. The Supreme Council of Latvia was elected by electorate whose characteristic feature was its legal bond with the USSR. Among the electorate of the Supreme Council there were not only citizens of the Republic of Latvia and their descendants, but also citizens of the occupying state – the Soviet Union, who had arrived in the territory of Latvia during the post-war years, including military persons of the occupying troops and their family members¹⁶. Similarly to other soviet republics¹⁷, the Supreme Council of the LSSR acted in accordance with the Constitution of the LSSR, and like elsewhere in the USSR and the Soviet Bloc, the Supreme Council's Presidium together with the Council of Ministers partly formed the government of the republic.¹⁸ Certainly, such a model violated the principle of division of power and conceptually differs from functioning of parliaments in democratic states, where the primary task of the parliamentary speaker is to manage the parliament and represent the state. Views of the defendants of the USSR system coincided with the ideas of the extremist representatives of the Citizens' Congress. Leaders of the Constitutional Supervision Department of the KGB considered that the Declaration of Independence is illegal since it conflicts with the Constitution of the USSR and with the decree of the USSR President, thus it is a declaration without any legal force¹⁹. In 1989–1990 confrontation between the Supreme Council of the LSSR and the Citizens' Congress started threatening the process of independence restoration,²⁰ because it was still important to regain independence *de facto* instead of looking for theoretically most appropriate legal solution under the conditions of the collapsing soviet empire. For this reason the declaration adopted by the Supreme Council of LSSR on 4 May 1990 "On the Restoration of Independence of the Republic of Latvia" (Declaration of Independence)²¹ should be considered as luck and success, since it paved the way to the actual independence. In this sense the ability of the communist elite of the republic to re-orientate was the decisive factor that enabled the Supreme Council to become the Parliament of the transition period²². Certainly, the basis of the parliamentary way is the factor that during the Supreme Council's election on 18 March 1990, majority of the deputies voted for the Declaration of Independence²³. The Citizens' Congress was destined historically to remain as a back-up option. If the independence supporters would have been in minority, the only possible road would be the Citizens' congress. When the Citizens' Congress was convened two weeks after the adoption of the Declaration of Independence on 15 May 1990, it could only conclude that the document adopted by the Supreme Council is legally correct and politically well-formulated and that its basic positions correspond also to the will of the Citizens' Congress²⁴. Thus, the Citizens' Congress lost its purpose as a restorer of independence since the task had been fulfilled and the goal – restoration of Latvia's independence – was achieved. The constitutional doctrine of Latvia also recognizes that constitutional functions of the Supreme Council were limited and yet it was competent to ensure that the legitimate statehood of Latvia is fully restored.²⁵

1.2 The act of restoration of independence – Declaration of Independence

As far as the Constitutional provisions have not replaced the Declaration of Independence²⁶ of 4 May 1990, the document remains a constitutional act that is in force and that by its constitutional significance and role is to be ranked among the legal acts constituting the statehood of Latvia along with the act on proclaiming the independence of Latvia of 18 November 1918, political platform of the Latvian Peoples' Council, and the Declaration on the State of Latvia of 27 May 1920, as well as the Constitution. The Declaration of Independence should be compared with the similar documents in other Baltic States. It seems that the Latvian Declaration of Independence is more accurately formulated document than in Lithuania or Estonia²⁷. It is clear that the declaration is to be ranked among constitutional laws in accordance to the Constitution of the LSSR²⁸, because 138 members of the Supreme Council of the LSSR voted for it. To adopt a LSSR constitutional law only 134 member votes out of 201 votes were necessary.

The Declaration of Independence adopted by the Supreme Council on 4 May 1990 is radically different from another declaration of the Supreme Council "On the Sovereignty of the Latvian State" adopted a year earlier on 28 July 1989. The declaration "On the Sovereignty of the Latvian State" is to be evaluated as a rebellious proclamation of a subject of the Soviet Federation on persistent noncompliance to the federation laws and not as a revolutionary act. Only the Declaration of Independence introduced the continuity doctrine²⁹ to the legal system of Latvia and offered a corresponding legal statement that the republic established on 18 November 1918 still exists and the Supreme Council restores the sovereign power of this state³⁰. The state continuity doctrine as a continuity or identity principle of a legal entity as stipulated in the international law³¹ served as basis for restoration of the statehood. Independence declaration "tore out" Latvia from the scope of the soviet law and provided a duty during the transition period to comply with the principle of continuity (succession of state) in respect to the legal acts of the first period of independence³², which is certainly a radical step. With the provision of the Declaration of Independence that no law has revoked the Constitution (Satversme)³³, dismantling of the soviet legal system was started³⁴, and at the same time the work on creating the new legal system was begun. The decision incorporated in the declaration to restore jurisdiction of the Constitution in the whole territory of Latvia but to suspend the Constitution till adoption of a new edition of the Constitution is to be considered also as revolutionary. Exceptions were Articles 1, 2, 3, and 6 or the constitutional legal basis of the Constitution that can be amended only by way of general referendum. The authors of the Declaration have admitted³⁵ that the reproach expressed by the Citizens' Congress that the Declaration of Independence did not revoke the Parliament declaration on establishment of soviet power in Latvia of 1940 is well-grounded. Certainly, the Declaration of Independence did repeal the declaration on incorporation of Latvia in the USSR but it did not refer to the establishment of the soviet political regime, according to the authors of the Declaration reason for that were concerns that by revoking the mentioned declaration the Supreme Council would undermine its own legitimacy – in this way it would recognize itself as an illegal occupation institution that has no powers to pass the Declaration of Independence³⁶. Whatever the case, the Declaration of Independence proclaims membership in the USSR as illegal from the very beginning and declared occupation as a legal fact³⁷. Declaration of Independence is based on the thesis that the state of Latvia and

its Constitution of 1922 have not ceased their power *de iure* which means that the state is not proclaimed but restored.

1.3 Period of dual power (4 May 1990 – 21 August 1991)

It has been concluded in legal sources that the period of restoring the state from 4 May 1990 till 21 August 1991 is a typical period of dual power³⁸. It is natural because during this period the Republic of Latvia did not yet possess sufficient resources in order to be able to ensure the state power throughout the entire territory of the country because of the extensive presence of the soviet military contingent. The complicated situation of the given period is also demonstrated by the fact that on 26 September 1990 the Supreme Council adopted the law “On the Public Prosecutor’s Supervision in the Republic of Latvia” by which the Public Prosecutor’s Office of the Republic of Latvia was established despite the fact that the Public Prosecutor’s Office of the LSSR under subordination of the USSR General Prosecutor’s Office continued working. While the former was only being established, the latter consistently opposed independence of Latvia while being in a better financial situation³⁹.

During this period “the transition parliament” – the Supreme Council of the LSSR – carried out systematic replacement of the USSR and other legislation with new legislation. Several laws that cardinally changed the former life were adopted; the catalogue of human rights uncharacteristic for socialism was entrenched. Only during one single year the Supreme Council adopted 140 laws and 349 ordinances to fill the legislative gaps⁴⁰. In 1991 Latvia became party to 51 international human rights documents⁴¹. Although sometimes serious problems were caused by revoking the old USSR provisions, which was to do with inability to replace them with new efficient legislation,⁴² in general the process proceeded with admirable success.

1.4 Refusal to write a new constitution and move towards reinstating the full scope of the Constitution

The authors of the Declaration of Independence considered that the former Constitution is outdated and it is necessary to work out a new constitution of the state that would meet the requirements of the times. The Constitution of 1922 seemed too concise, non-specific, and Article 7 of the Declaration of Independence prescribed setting up of a commission that would have to work out a new edition of the Constitution. The new fundamental law must be compliant to “the political, economic, and social situation”. A certain role was played by the fact that the Constitution of 1922 did not contain fundamental rights. One of the authors of the Declaration of Independence has indicated that the proposal to elaborate a new Constitution was defined by the fact that the old Constitution did not have a chapter on human and citizens’ rights and freedoms⁴³. On 31 July 1990 a special working group including 22 members of the Supreme Council was set up⁴⁴ that started elaborating a new Constitution. The transition period’s Constitution – the fundamental law of the transition period – was ready on 6 June 1991 and was submitted to the SC Presidium⁴⁵. The draft of the new Constitution consisted of 95 articles and was approved in its first reading⁴⁶. It is possible that the Supreme Council would have reviewed it also in the remaining two readings but the attempt of coup in the USSR on 19 August 1991 put an end to it. The idea about a new Constitution was completely rejected⁴⁷ when the constitutional law “On the Statehood of the Republic of Latvia” was adopted on 21 August 1991⁴⁸. The law fully restores the sovereignty of the Republic and

its first Article stipulates that the statehood of the Republic of Latvia is defined by the Constitution of 15 February 1922. As of 21 August 1991, the Constitution of the LSSR was declared void. The constitutional law “On the Statehood of the Republic of Latvia” is a document subordinated to the Declaration of Independence which emphasizes that as a result of the coup on 19 August 1991 the power and administration institutions of the USSR have ceased to exist and that the USSR government has demonstrated its inability to have constructive negotiations about restoration of sovereignty of Latvia’s statehood. It should be mentioned that a similar law was adopted in Estonia a day before and apparently the events in Estonia encouraged the parliamentarians of Latvia to act more speedily as well⁴⁹.

Summing up this period, it must be concluded that since the authoritarian regime of Kārlis Ulmanis “froze” the Constitution⁵⁰ and did not replace it with another one, it provided to Latvia a wonderful opportunity to choose a constitutional solution that was different from Estonia and Lithuania. The other Baltic States had to write and approve new constitutions⁵¹, while Latvia could restore the Constitution of 1922. The Constitution has a value as a component of national identity. Reading this document one can feel the flavour of the past since it was adopted by members of the first elected Parliament of the state of Latvia. There are very few countries whose statehood was terminated violently and who have then restored after half a century. This is the only precedent of the kind in the world. From the perspective of comparative constitutional law, the case of the Constitution of Latvia is unique⁵².

2 Development of institutions entrenched in the Constitution after reinstatement of the Constitution

Already before the 5th Saeima was convened, the transition parliament took the first steps in reorganizing the state administration. Several institutions that had existed during the first period of independence were restored and many were created anew. Although according to the theory of continuity of state, Latvia is the same state in 1990s as in 1930s yet in reality, after reinstating the Constitution, it was necessary to establish several institutions mentioned in the Constitution entirely anew (for instance, President’s and State Audit Office) or to develop the Constitution on the basis of the soviet structure and to establish new authorities that would be consistent with the new political order⁵³. During the specific stage of development, many institutions established during the soviet times were abolished, restructured, and merged. New laws were adopted (on restitution of property of repressed persons, denationalization, in the sphere of establishment of banks and privatization of companies) and the laws from the first independence period were restored (for example, the Civil Law, State Audit Office Law, and the law “On the Structure of the Cabinet of Ministers”). Typical soviet economy type institutions were reorganized or abolished; among those were the Latvian Construction Ministry, Latvian Ministry of Material Resources, Communal Economy Ministry, and Ministry of Agro-Industry. In a couple of years staff replacement at ministries and institutions sometimes reached even the rate of 95%! It is obvious that such rapid reforms could not have been comprehensively weighed out therefore part of the decisions taken during this period had temporary character and restructuring was fragmentary⁵⁴. The main task was to finish privatization process as fast as possible to liberate as many economy sectors as possible from the state monopoly. Ivars Godmanis’ government of the transition period parliament considered that by giving over to private ownership as

many sectors, properties, and companies as possible, growth of Latvia would begin. Radical attempts to abolish everything that had to do with the soviet power could be explained but they also caused spontaneous liquidation of collective farms, factories, state farms, and state companies. The state missed a unique opportunity to use the soviet heritage in order to start significant development under the new conditions. Insufficiency of the respective specialists is the reason behind it. The non-systematic character of the process was facilitated by the already mentioned rapid abolishment of soviet time ministries (with a slogan that such ministries do not exist in normal states) which did speed up privatization but to a large extent eliminated public accounting and control. It was a time of national euphoria that actually prevented Latvia from developing competitive economy. The scope of industrial production decreased considerably and Latvia turned into a small consumer state.

2.1 Court

After restoration of the Latvian Constitution, active work was started in order to restore the constitutional bodies. Some had to be created completely anew (State Audit Office, President's institution), but there were also some institutions that were already operational. The restored court system of the Republic of Latvia, Public Prosecutor's Office were also heritage from the LSSR. But restructuring of the soviet court system went on slowly since it was impossible to create judiciary appropriate for a democratic state overnight. The transition period parliament adopted the "Law on Judiciary" in 1992 without waiting for reinstatement of Chapter IV of the Constitution.

2.2 Parliament (the Saeima)

The transition period parliament subordinated its work to the new legislative reality. On 25 August 1992 the Supreme Council passed a decision "On Organizing the Work of the Supreme Council of the Republic of Latvia till Convening of the Parliament". The legislative act was in conflict with the Constitution of the LSSR of 1978 and with the Constitution of 1922⁵⁵, yet it was sufficiently good to democratize legislative work. The law passed by the Supreme Council "On Elections of 5th Saeima (Parliament)" was an amended and supplemented law on Parliament elections passed in 1922 that provided for the legislative basis for the parliamentary elections on 5 and 6 June 1993. The fifth Saeima was elected with participation rate 89.9% of all the citizens of Latvia who had voting rights, which is still an unsurpassed record of participation rate in the whole history of elections of democratic legislators. Finally the Parliament was elected in democratic elections which certainly made it essentially different from the previous transition time parliament. The first parliamentary session of the second independence period was convened on 6 July 1993⁵⁶ terminating the activities of the transition period parliament. The Constitution of 1922 came into force in full scope. With restoration of jurisdiction of the Constitution in the entire territory of Latvia, democratic state order, parliamentary republic, and division between power, which guarantees balance between and mutual control of branches of power and promotes frugality of power, were recognized on the highest level. The fact of restoration of the Constitution strengthened even more the link with the pre-war legislation continuity. One should agree to the conclusion made in legal sources that despite restoration of the Constitution its status was actually the same as that of a new constitution since the state institutions of the time did not correspond to the model stipulated by the Constitution⁵⁷. But in view of the

fact that the restored state could use also the experience of legislative experience of the first independence period already within the coming months after restoration of the Constitution, all the institutions prescribed in it were established and began functioning, and the process of improvement of a new legal system of the state was started. The Parliament approved the Cabinet of Ministers as prescribed by the Constitution. On 16 July the Law “On Re-enforcement of the Law “On the Structure of the Cabinet of Ministers” of 1 April 1925” was passed⁵⁸, that established membership of the Cabinet of Ministers⁵⁹. The law was revoked by the law “On the Council of Ministers of the Republic of Latvia” of 18 March 1992. It was updated and laid down a number of positions and institutions that were not included in the first independence period (for example, parliamentary secretaries, ministers for special assignments, and so on)⁶⁰.

Changes in the normative regulation of the Parliament seemed harmonious despite multiple amendments (31 changes!)⁶¹. The Rules of Order adopted in 1994⁶² are in force still now in 2012. The normative regulation of the Parliament of Latvia is perfected every year. The law specifies the basis of the legal provisions enshrined in Chapters II and V of the Constitution. Compared to the first period of independence, the Parliament is elected for a one year longer period⁶³. In accordance to modern understanding of lawful age, the voting rights have been granted to persons from the age of 18 prescribing also that henceforward the Parliament elections will take place only during one day on the first Saturday of October. The Constitution also specifies the procedure for giving the Member of Parliament solemn vow (oath) and the contents of the oath⁶⁴. Discussions about changes in the Parliament election law are still topical despite the amendments introduced in 2009 that preclude the use of the so-called “locomotive power” principles in the lists of party MP candidates and also do not permit the candidates to run from more than one constituency⁶⁵. Unfortunately in practice new possibilities to bypass the restrictions have been found. For the extraordinary elections of the 11th Saeima, Zatler’s Reform Party and Šlesers’ Reform Party LPP/LC were founded. Although the latter one did not get seats at the Parliament, the Zatler’s name in the title of the former was the basic “locomotive power”. Once again it foregrounded the former discussions⁶⁶ about the necessity to improve legislative regulation of elections and one should agree to the academician T. Jundzis who believes that the election system needs to be changed radically⁶⁷ since the existing proportionality voting system has explicitly shown that political responsibility equals to zero.

2.3 Government

At present the operations of the Cabinet of Ministers, apart from the Law “On the Structure of the Cabinet of Ministers”, is prescribed by the Rules of Order of the Cabinet of Ministers⁶⁸, the functioning of the state administrative institutions subordinated to it are stipulated by the State Administration Structure Law. Restoring the Cabinet of Ministers the legislative regulation of its functions was developed excruciatingly. For example, the work of the government in 1991 was regulated by Regulation of the LSSR on the Council of Ministers of 23 December 1983 which was repeatedly improved till in 1992 the new regulation on the government of Latvia was approved. On 10 August 1993 the aforementioned regulation was revoked and the Internal Rules of Order of the Cabinet of Ministers were adopted that were repealed on 14 June 1994 since new ones were approved, but on 30 April of 1996 they were replaced again⁶⁹. It must be mentioned that on 12 March 2002 the Rules of Order of

the Cabinet of Ministers were adopted which in their turn were substituted by new Cabinet of Ministers Rules of Order that revoked the 1996 regulation which again was replaced in 2009 by new Rules of Order of the Cabinet of Ministers that are still in force today. Since 1993 till the end of 2012 there have been 14 different governments in Latvia.

2.4 President

Guntis Ulmanis, the first President of the state of the second period of independence was elected on 7 July 1993. Although he was unknown by the majority of society, Ulmanis became the head of the state largely due to the nostalgic memories of people about Kārlis Ulmanis with whom he had kinship⁷⁰. During his presidency G. Ulmanis successfully accomplished two big tasks – he organized President's institution from a scratch at the same time filling it with appropriate contents. While the Parliament, Government, and court system were created on the basis of the respective institutions of the soviet times, the institute of the head of the state did not exist till reinstatement of the Constitution of Latvia. Before the Constitution was re-enacted on 20 June 1991, the fundamental law of the State supported in the first reading did not stipulate the State President institute for the transition period but the tasks of the head of the state were entrusted to the chairperson of the Parliament. In this context it is interesting to remember that when the head of the state of Latvia was invited to the current UN session, discussions began whether the chairman of the Supreme Council or the Council of Ministers is to be considered as the head of the state⁷¹. After lengthy discussions in society, the Saeima adopted the Law on Election of the State President in 2007⁷². Before passing this law there were practically no normative acts regulating election of the President of the state and all the issues concerning elections were decided at the Faction Council of the Parliament⁷³. Compared to the first period of independence, the institute of the head of the state of Latvia has not undergone essential changes except for the fact that the term of election was extended from three to four years⁷⁴. A number of committees supporting the work of the presidential functions operate under the auspices of the Presidential institute. One of the most significant is the Commission of Constitutional Law established by the state President V. Zatlers at the end of 2007. It has done several important studies in the area of constitutional law facilitating development of legal thought⁷⁵. Commission members are experts in constitutional law (EU court judge E. Levits, head of the Legal Office of the Parliament G. Kusiņš, and others), whose competence is to provide opinions on interpretation of the Constitution and its improvement, as well as facilitate academic research on constitutional law issues.⁷⁶ As for the normative regulation of the President's institution it should be noted that all the former presidents have been criticising the restricted scope of President's authority⁷⁷ and also the election procedure considering that changing of both would grant possibilities to perform the presidential tasks more efficiently. It would certainly make the executive power more efficient and should be seen as a positive step but it must be linked also with changes in the parliamentary election model.

2.5 State Audit Office

After reinstating the Constitution it was necessary to establish the State Audit Office institute prescribed by the Constitution, therefore on 28 October 1993 the law of "On State Audit Office" of 1923 was re-enforced⁷⁸. In 2002 this law was replaced

by a new State Audit Office Law that extended the mandate of the constitutional body including in it also auditing of resources granted by the European Union and improvement of audit quality. The law did not provide any more for the function of administrative punishment.

3 Setting up of a new Constitutional body – the Constitutional Court – and significance of its judgements in development of legal system

Constitutional courts exist today in most of the democratic countries and their existence is rather self-evident. The situation was quite different at the beginning of 1930s and it was already in 1933 when a proposal was expressed in Latvia to supplement the Constitution with a provision that would prescribe setting up of a special court whose duties would include verification of compliance of laws, ordinances by the government and the president to the provisions of the fundamental law of the state⁷⁹. Although the proposal was not included into the agenda of the Parliament, the very fact of such a discussion slightly more than ten years after the first court of this type was stipulated in constitutional provisions (in the 1920 Constitution of Czechoslovakia) and a few years after the first court of this type began working (1929 amendments to the Constitution of Austria)⁸⁰ demonstrated that already in those days constitutional development of Latvia went along the same path as in Western Europe. That in a sense is linked with the high intellectual potential of the German minority in Latvia which brought the latest trends in the world and its newest elements into our country. Unfortunately, Latvia's constitutional development was terminated. The Baltic Germans repatriated to their ethnic homeland and lives of many Latvian state law experts (for example, Professor Kārlis Dišlers') ended in Siberia. The question about the so-called "court of law" became once again topical more than fifty years later – after the World War II and the declaration of Latvia as an independent state. Although the soviet legal school did not recognize constitutional control (in the same way as division of power and other institutes characteristic for a democratic state), the authors of the Declaration of Independence still included establishment of such a court in the document. Article 6 of the declaration prescribed establishment of the Constitutional Court in Latvia whose competence would be to examine "disputable issues on enforcement of legal acts"⁸¹. The transition period Parliament somehow "forgot" this task of legal policy they had defined by themselves because the law "On Judiciary"⁸² prescribed that jurisdiction of the Supreme Court included issues of constitutional monitoring (Article 9), but in view of the fact that the party "Latvijas ceļš" (Latvian Way) had included establishment of the Constitutional Court in their pre-election campaign and it dominated in the 5th Saeima, the Constitutional monitoring chamber was not established at the Supreme Court. In 1993 draft law on Constitutional Court was elaborated, in 1994 the above mentioned Article 9 was deleted from the law "On Judiciary" but a reference was included in the law that the work of the Constitutional Court is regulated by the Law on the Constitutional Court. The law was adopted in 1996⁸³, and the status of the Constitutional Court was entrenched also constitutionally. Despite the views expressed by some parliamentarians⁸⁴ that constitutional control must be delegated to the Supreme Court, the respective amendments were made in Article 85 of the Constitution⁸⁵, stipulating that there is a Constitutional Court in Latvia which, in accordance to legal provisions, examines cases on

compliance of laws to the Constitution, as well as other cases in its jurisdiction as provided by law.

The Constitutional Court whose duties include control of compliance to the Constitution began operating on 9 December 1996 when four judges, who had not held judges' office before, gave the judge's oath⁸⁶. There is no doubt that establishment of the Constitutional Court is to be considered as the most significant event in the constitutional development of Latvia since it regained its independence. It marked the beginning of development of legal thought in a new quality. The Constitutional Court examined its first case on 28 April 1997.⁸⁷ The active position of the new constitutional institution seemed inconvenient for politicians from the very beginning, and yet, despite confrontation with executive power⁸⁸ and different opinions among legal experts about the judgements passed by the court⁸⁹, the Constitutional Court has become a respectable institution highly honoured among people. In fact, a mechanism has been created that enables enforcement of the Constitution, turning the seemingly declarative type of provisions into actually enforceable ones⁹⁰. The legislator has granted to the Constitutional Court certain scope of authority and rights to verify the compliance of the legal acts passed by the legislator and the executive power to the Constitution. While general court must deal with private persons' disputes and administrative court reviews state officials' decisions, the Constitutional Court has to arbitrate legal disputes that directly concern legislators both in the political⁹¹ and individual aspect⁹². Certainly, the Constitutional Court as the last authoritative interpreter of the Constitution must be able to draw the line in its rulings between constitutional law and politics⁹³. But the Constitutional Court is "court of law" that has been established to prevent flaws in legislator's work, theoretical basis of its work is the division of power and it must prevent trends of usurping power⁹⁴. The latest and biggest scandal that is associated with this constitutional body is the case of the Constitutional Court judge Vineta Muižniece⁹⁵. Already after she was appointed as the Constitutional Court judge, the Prosecutor's Office brought charges against her for forging documents in her former work place. Before being elected as the judge while being the Member of the Parliament she chaired the committee that is the most important one for judiciary – the Legal Committee. The Saeima issued a permit for her criminal prosecution⁹⁶ and it is obvious that this event does not enhance authority of the court and the Saeima. Political influence was clear at the initial stage of establishment of the Constitutional Court when only six out of seven judges were elected by the Saeima; therefore, the Chairman of the Court Professor A. Endziņš initially could be elected only as an acting chairperson. Parties were fighting for the Constitutional Court judges when approving the first convocation judges⁹⁷, likewise when choosing judges later⁹⁸. It shows that also democracy in Latvia has not been able to avoid political struggle when selecting and assessing judges for the Constitutional Court. Yet during its existence the Constitutional Court has proved itself basically as independent, unbiased modern institution that stands above the political influences of a specific period. The Constitutional Court has not only received praise. Not taking into account constructive criticisms (for example, about the lack of understanding about the borderline of division of power and formalistic approach in augmenting of the conclusions of the rulings)⁹⁹, different reproaches have been expressed¹⁰⁰, including political engagement¹⁰¹, "the interest of the judges in the outcome of a case", and "involvement into discussions on politics and economy which makes the legal quality of the court judgements dubious"¹⁰². According to the first chairman of the Constitutional Court

A. Endziņš, there have been different collisions around the Constitutional Court, even an attempt to abolish it by delegating its competences to the Supreme Court¹⁰³.

In 2001 there was a new turning-point in the competences of the Constitutional Court and in the protection of individual's rights because amendments to the law on the Constitutional Court came into force on 1 July 2002¹⁰⁴ which established in Latvia the institution of constitutional complaint. From that moment the number of cases of the Constitutional Court increased considerably. The number of applications submitted by natural persons surpassed by tens of times the applications submitted by the other subjects (President, State Audit Office, MPs, courts, and others). The number of submitted constitutional complaints has tendency to grow – in 2001 there were 308 complaints, but in 2010 there were already 572 complaints. Legal scholarship has concluded that it is individuals who enhance the constitutional control process; that is understandable because constitutional complaints are significant means for protection of individuals' rights against arbitrariness of the state¹⁰⁵.

Although a considerable contribution to interpretation and enforcement of general legal principles has been made by administrative courts¹⁰⁶, for instance, in promotion of the principle of adherence to the rights of private persons¹⁰⁷, the contribution of the Constitutional Court in enforcement of principles of general rights and their interpretation is invaluable, for example, the rights to good governance. For the first time this principle was mentioned in the ruling by the Constitutional Court of 25 March 2003 in the case No. 2002-12-01, but in the judgement of 18 December 2003, case No. 2003-12-01 it was concluded that the good governance principle follows from the notion of a democratic republic stipulated in Article 1 of the Constitution and hence it has a constitutional scope¹⁰⁸. Good governance principle has entered legal language entirely due to the Constitutional Court and very few individuals today have doubts about its inclusion into the catalogue of fundamental rights¹⁰⁹. Apart from the above mentioned good governance principle, the Constitutional Court has examined a number of other principles: the principle of legal certainty¹¹⁰, the principle of the rule of law¹¹¹, the principle of supremacy of law¹¹², legality principle¹¹³, the principle of self-governance¹¹⁴, the principle of prohibition of arbitrariness¹¹⁵, proportionality principle that requires the necessity to observe reasonable balance between interests of person and the state or society¹¹⁶, and also many other principles that due to the interpretation by the court have obtained specific substance.

In fact all the judgements passed by the Constitutional Court should be viewed as formative for legal policy but separate judgements are to be emphasized particularly. Firstly, it is the judgement by the Constitutional Court of 18 January 2010 in the case No. 2009-11-01, as it is always referred to in legal literature¹¹⁷. This judgement in comparison with others is to be considered as one of the most efficiently motivated judgements and it dealt with independence of judiciary, aspects of judges' status and the rights to fair trial. The second one to be mentioned is the judgement passed by the Constitutional Court on 29 November in the case No. 2007-10-0102 on ratification of the border agreement between Latvia and Russia. The Constitutional Court examined an application submitted by Members of the Saeima from the "Jaunais laiks" (New Time) faction in which they expressed a view that the law by which the Cabinet of Ministers is authorized to initiate the agreement is non-compliant to the Declaration of Independence of 4 May 1990. According to the MPs such an issue could be decided only by citizens of Latvia in a referendum. In this judgement the Constitutional Court strengthened the principle of continuity of the

state of Latvia and provided essential considerations on the notion of the territory of the state as stipulated by Article 3 of the Constitution.

4 Establishment of the institutional system of state administration and its development

Establishment of the institutional system of state administration began a few days after passing the Declaration of Independence. At the time of adopting the Declaration of Independence, the administration system as prescribed by the LSSR Constitution and by other LSSR legal acts was operating. During the transition period till complete reinstatement of the Constitution (Satversme) the state administrative system was regulated by the laws of Supreme Council and ordinances passed by the Cabinet of Ministers. In May 1990 the Supreme Council passed the law "On Composition of the Council of Ministers of the Republic of Latvia"¹¹⁸, which apart from the structure of the Cabinet of Ministers included also programmatic provisions to set up a commission for working out proposals for the draft law "On the Government of the Republic of Latvia" and to submit proposals on the necessity of forming departments. Article 7 of the law provided that other issues are regulated by the law "On the Council of Ministers" passed by the LSSR SC. The Supreme Council passed a similar law which declared the previous one as nil and void also on 23 November 1991¹¹⁹.

On 18 March 1992 the Supreme Council passed the law "On the Council of Ministers of the Republic of Latvia"¹²⁰. This law was intended initially as a provisional law – Article 46 of the law stipulated that the Council of Ministers lays down its mandate to the elected Parliament of the Republic of Latvia at its first session. The wording of the law reflects the institutional incertitude of the state administration. Article 1 of the law provided that the Council of Ministers is "the highest state executive and enforcement institution that carries out executive power with the state administration institutions and state officials under its subordination. The Council of Ministers enacts executive power also with assistance of municipalities." Paragraph 4 of Article 4 provided that the Council of Ministers establishes, reorganizes, and abolishes other state administration institutions but Article 35 of the law stipulated that in order to perform state administration functions and to oversee state companies, the Council of Ministers may establish state administration institutions in the regions and cities. The law did not include more detailed rules about the structure of state administration institutions, their subordination and competence. It must be taken into consideration that in the period till the Constitution came into force, the principle of division of power was not recognized in the Republic of Latvia – Article 6 of the law "On The Council of Ministers of the Republic of Latvia" stipulated that the Supreme Council has the authority to revoke regulations passed by the Council of Ministers while in practice the Supreme Council established several institutions subordinated to it by passing laws. Not long before the Constitution came into force a statement of the Legal Board of the Supreme Council about compliance of legislative acts to the Constitution was published. The statement indicated that the rules of association of the Foundation of Privatization of Banks in Latvia does not comply to Article 58 of the Constitution, since the rules of association stipulate that the privatization foundation is an independent state institution; non-compliance was also identified with the law "On the Environmental Protection Committee of the Republic of Latvia" which stipulates that this committee is

subordinated to the Supreme Council, and also the law "On Archives" in accordance to which director general of the State Archives is appointed by the Supreme Council, but his deputy – by the Presidium of the Supreme Council.¹²¹

During the first years of restoring independence, state administration unity did not exist even terminologically. Professor Ilmārs Bišers has indicated that the term "institution" not used in the soviet times began to be used widely at the times of "the activities of the Supreme Council which favoured this word for some reason so much that started designating with it the most diverse subjects of law. That became the name to designate separate establishments, their structural units, as well as internal decision making structures of organizations and even separate officials. Big confusion was created and also today in separate cases we are unable to find out what the legislator has designated by this term"¹²². During this time the question about legal capacity and acting capacity of the state and its formations was not solved either. Uncertainty in the regulation in the state institutional system during the transition period can be explained with the fact that the task of the Supreme Council as a legislator of the transition period was not to solve conceptual issues of development of the state administration system.

After reinstatement of the Constitution, the first attempt to regulate the state administration institutional structure was made in 1994 when the Cabinet of Ministers adopted regulations that had the force of the law "On the Structure of Ministries"¹²³, on the grounds of Article 81 of the Constitution. For the first time since the restoration of independence, the given Regulations regulated the following issues:

- 1) structure of ministries (they consist of departments subdivided into divisions);
- 2) status of institutions subordinated to ministries;
- 3) types of subordination.

Paragraph 13 of these Regulations stipulated that "all the state institutions and establishments outside ministries, except for the Saeima Chancery and President's Chancery, are under subordination or supervision of the Cabinet of Ministers, if the law does not state otherwise." Thus, there still existed institutions that were subordinated to the Saeima or defined by law as independent. Legal status of ministries and authorities was regulated inconsistently. On the one hand, Paragraph 3 of the Regulations stated that a ministry is functioning in the name of the Republic of Latvia and its activities are binding for the Republic of Latvia. On the other hand, the Regulations granted to both ministries (Paragraph 3) and other authorities (Paragraphs 15 and 17) the status of a legal entity.

Regulation of institutions under subordination and supervision of ministries was rather a statement of the existing state of affairs, the main difference between a subordinated and supervised institution was that in the case of supervision injunction on revoking/suspending their decision could be issued only when such a decision was unlawful while for subordinated institutions any injunction issued by a higher institution was binding. But the regulations did not provide for any other classification of institutions and only gave a list of their examples: "inspections, boards, services, funds, and other institutions".

In 1995 the Cabinet of Ministers approved of the plan on the Latvian state administration reform¹²⁴, whose main provisions served as basis for the further institutional reform of state administration, which was accomplished by passing of the law on state administration. The conception defined the institutional system of the Cabinet of Ministers formed by the State Chancery, authorities under subordination

and supervision of ministries, cooperation organizations, public organizations authorized by the Cabinet of Ministers, and it was an attempt to include also such subjects of law into the institutional system of the state administration that had been delegated the tasks of state administration but which were not subjects of public law (this term has also been used in the conception for the first time). These subjects eventually were not included normatively in the state administration institutional system.

The conception included clear criteria for distinguishing authorities under subordination and supervision. Subordination institutions were established by the Cabinet of Ministers, but supervision institutions were set up on the basis of law. The Cabinet of Ministers could execute supervision only in three ways:

- 1) by choosing the head of the establishment (by recommending the Parliament the head of the establishment if the law stipulates that the head of the institution is to be appointed by the Parliament);
- 2) by recommending to allocate or not to allocate financial resources from the state budget;
- 3) only by suspending unlawful decisions.

Yet, neither the conception nor the law “On the Structure of Ministries” worked out later had distinct criteria by which to define the status of an institution (as a subordination or supervision institution). Later it was considered¹²⁵ that absence of such criteria is a drawback of the conception and the law. It was proposed to grant subordination status to those institutions that form sectorial policy, distribute and control financial resources, create preconditions for enforcement of legislative acts (issues permits and licences). While supervision institutions would be dealing with monitoring of compliance to legislative acts¹²⁶. These intentions were not entrenched as provisions.

Yet, the institutional system defined in the conception remained unclear. Apart from the above mentioned institutional entities it was prescribed that “ministry may have under its supervision also other institutions and organizations which are not state administration institutions. They operate under guidance of the respective ministry and are fully or partly financed from the state budget.”

The concept still included a provision that ministries and their bodies are legal entities. Besides, it was indicated that the cooperation organizations listed in the conception are legal entities of public or private law. The conception did not have motivation for the need of status of a legal entity. In 1998 also in legal literature criticism was expressed about the practice of granting the status of a legal entity indicating that legal entities of public law were not distinguished from legal entities of private law, criteria of distinction of these legal entities were ignored (the basis of establishment, competence, and so on)¹²⁷.

The institutional system model included in the conception was integrated into the law “On the Structure of Ministries” adopted in 1997¹²⁸. Yet, the idea of inclusion into the institutional system of those subjects that have been delegated administration tasks was not transposed into the law. In general, in the period from 1993 till 1997 the state administration structure inherited from the soviet times was almost completely abolished. The new state administration structures were formed on the basis of democratic, law-based, efficient, and rational administration model¹²⁹. A detailed list of legislative acts influencing state reforms and the description of the process for the period of time from 1993 till 1998 have been indicated in the article “Along the steps of state administration”¹³⁰.

Yet, at the beginning of the new millennium it was concluded that regulation of the institutional system of the state administration is insufficient. To solve the problem, in 2000 two draft laws were submitted to the Parliament – the draft law on state administration structure was submitted by the Cabinet of Ministers but after that the Parliamentary committee worked out and submitted for reading the draft law on public institutions¹³¹. Terminology used in the draft law on public institutions was cumbersome and heavy-handed (associations of public persons existed (state, municipal and local government), public institutions and public establishments that were considered to be derived from persons' associations, authorities – bodies, autonomous authorities, and so on). The draft law reflected lack of conceptual approach to the formation of institutional system of the state administration and lack of understanding about the contents of Article 58 of the Constitution defining the principle of unity of state administration. The draft law was an attempt to describe the existing institutional system of the state administration as stipulated by different contradictory provisions in various legal acts. Similarly, also the draft law on state administration structure attempted mainly to formulate the already existing institutional diversity in legal terms.

An essential turning-point in elaborating the draft law on state administration system took place during its reading at the Parliament; the conceptual provisions included into the draft law during the second reading have been laid out in the conception of the state administration system published later¹³².

The State Administrative Structure Law included clear conception of legal entities of public law – the Republic of Latvia as primary legal entity of public law and derived legal persons of public law. State administration institutions (ministries and others) henceforth are only institutional entities within the framework of these legal persons. Derived legal persons of public law are judicially (but not hierarchically) legal persons of public law separated from the Republic of Latvia – they are established by law or on the basis of law, they have their autonomous competence and their own budget. At present typical examples of derived legal entities of public law are municipalities and state-established higher education institutions¹³³, but such legal entities of public law are prescribed also by other laws (for example, Riga and Ventspils port authorities have such a status)¹³⁴. Legal entity of public law is subject of law but its institution (for instance, municipality school) is not (institution has no legal capacity). Bodies and institutions of legal entities of public law operate on the behalf of the respective legal entity (and not of their own), therefore:

- 1) during legal proceedings legal entity of public law is party to the proceedings but not the respective institution;
- 2) legal person of public law is liable with its budget for the operations of the institution¹³⁵ (except for public agencies that are state administration institutions but who have their budget).

The State Administration Structure Law exhaustively defines the legal capacity of a legal entity both in private legal and public legal relations¹³⁶.

Since reinstatement of the Constitution, topical issues were the scope of Article 58 (“State administration institutions shall be subordinated to the Cabinet of Ministers”) and its compatibility with the category of autonomous institutions envisaged in several other legal acts. This problem was analysed and a solution provided by a judgement of the Constitutional Court in 2006 stated that Article 1 of the Constitution permits “in separate cases, when it is impossible to ensure adequate management otherwise, to form independent state institutions. [...] But Article 1 of

the Constitution lays down also strict borderlines. Establishment of such independent state institutions is inadmissible if their functions can be as efficiently performed by an institution under subordination of the Cabinet of Ministers. This constitutional provision defines also those areas in which independent state institutions shall not be established. Parliamentary control is ultimately important in a democratic republic, and it is implemented via accountable government over armed forces and state security institutions.¹³⁷ In view of the above said, Paragraph two of Article 2 of the law “On the Structure of the Cabinet of Ministers”¹³⁸ stipulates that the Parliament by a law can delegate enforcement of executive power in separate areas also to other institutions that are not subordinated to the Cabinet of Ministers but monitoring of whose activity is prescribed by efficient mechanism in law. An extensive study on the so-called unaffiliated authorities is provided in the Conception of the Cabinet of Ministers of 2005 aimed at regulating the status of the “independent” or unaffiliated authorities¹³⁹. At present, independent authorities are mainly legal entities of public law¹⁴⁰. It must be emphasised that independent institutions are not to be confused with constitutional bodies that do not fall within the scope of Article 58 of the Constitution – the Parliament (Saeima), State Audit, Supreme Court, Ombudsman’s Office, State President’s Chancery are not elements of institutional system of the state administration¹⁴¹, because they have no legal capacity¹⁴² (the activities of these bodies in the area of state administration (for example, not responding to applications) fall within the Republic of Latvia).

The institutional system of state administration has stabilized since the law “On State Administration Structure” came into force. As a result of administrative and territorial reform, essential changes have taken place in municipality structure¹⁴³, as well as in the state service system¹⁴⁴. In 2008 a new law “On the Structure of the Cabinet of Ministers” was adopted and came into force¹⁴⁵ narrowing, among other things, the rights of the Cabinet of Ministers to issue regulations down to cases:

- 1) when the law provides for direct authorization;
- 2) of corroborating international agreements (complying to provisions of the law “On International Agreements of the Republic of Latvia”¹⁴⁶);
- 3) when that is necessary to implement the European Union legal acts and the respective issues are not regulated by law (see: Paragraph 1 of Article 31 of the law “On International Agreements of the Republic of Latvia”).

It is important henceforward to use in legal acts the terms consistent with the State Administration Structure Law (as the “umbrella law” for the institutional system of the state administration). At present there are some exceptions in:

- 1) some legal acts (for example, in the Constitution, Civil Law) adopted before the State Administrative Structure Law;
- 2) legal acts in which the terms used in the State Administration Structure Law are used with a different meaning (for example, the term “institution” in the Administrative Procedure Law);
- 3) legal acts where several subjects mentioned in the State Administration Structure Law are designated by another (common) term (for instance, the term “institution” in the Latvian Administrative Violations Code, the term “budget institution” in the law “On Budget and Financial Management”).

Such exceptions (from the perspective of legal technique) are justifiable only if the application of terms used in the State Administration Structure Law or their application in the respective meaning is bothersome or if there are some other essential considerations.

5 Development of Administrative Procedure Law

There was no law in the LSSR that would regulate the process by which state administration passed individual legal acts binding for private persons. Absence of such a law was one of the main reasons for the deficit in rule of law during the first years of restoration of independence. Already in 1992 an appeal was voiced to work out a law that would regulate the administrative procedure. The initiator of this idea was Egils Levits who emphasized the necessity to distinguish between administrative procedure and administrative violations regulation (the latter, as he claimed, is in the area of criminal law). The formulation of the idea of the administrative procedure was as follows – in a law-based state it must be stringently and precisely defined how the state apparatus and each of its components, i.e., each civil servant, function. The central question is who takes decisions (or who shall not take them)¹⁴⁷.

In 1995 the Cabinet of Ministers passed Regulations on Proceedings of Administrative Acts¹⁴⁸, which served as basis for further work on the chapters of General Provisions and on administrative procedure within an institution. The work on draft Administrative Procedure law was started already in 1996. The initial concept of the law prescribed very wide contents of the notion of administrative procedure (including also the internal procedures of the state administration and administrative violation)¹⁴⁹. Later a new conception was worked out. The motivation for elaborating the law and the process of its elaboration has been reflected in several publications¹⁵⁰.

Since the Administrative Procedure Law came into force on 1 February 2004 administrative courts have been established in Latvia: administrative district court, administrative regional court, and the Department of Administrative Cases as one of the Senate departments at the Supreme Court. The goal of setting up administrative courts is to ensure efficient court control over the operations of executive power and the main means of reaching this goal is specialization of judges. During the selection procedure of judges, the knowledge of candidates to judges' position is tested in the respective area of the work, namely, a judge who has applied for a position of an administrative judge should demonstrate knowledge in the Administrative Procedure Law¹⁵¹.

Paragraph 3 of Article 104 of the Administrative Procedure Law grants rights to administrative courts not to apply the Cabinet of Ministers regulations and regulations binding for municipalities if the court concludes that they are not in conformity to provisions of the highest rule of law. This competence of administrative courts, which is not possessed by general jurisdiction courts, is motivated by the goal of the Administrative Procedure Law – to ensure court control over the activities of executive power. Since regulations by the Cabinet of Ministers and regulations binding for municipalities are form of state administration operations (and not legislation), administrative courts can control these normative acts if they are applicable in a specific case.

An exhaustive survey about the grounds of establishing administrative courts, process of their establishment, case load of the courts and their procedural solutions, most important judgements, and change of case law from 2004 till the beginning of 2009 have been provided at the 2009 conference "The first five years of administrative courts"¹⁵². It should be emphasized that administrative court cases have been a significant factor in facilitating understanding and development of the provisions of administrative law. Likewise, it must be indicated that development

of Administrative Procedure Law is inseparable from court cases of the Constitutional Court, in particular, in interpreting and applying general principles of law arising out of the Constitution. For example, an important conclusion made by the Constitutional Court is that when an institution issues an administrative act, the principle of proportionality is to be applied also if legal provision does not stipulate full discretion of the institution (the so-called mandatory administrative act is to be issued)¹⁵³. This judgement by the Constitutional Court now provides for the rights of administrative court to correct the legislator's mistake and to prevent issue of administrative act in non-typical circumstances if it leads to violation of the proportionality principle¹⁵⁴.

Not long before the enactment of the Administrative Procedure Law, the law "On Reparation of Damages Caused by State Administrative Institutions" was adopted¹⁵⁵, which specifies the rights provided by Article 92 of the Constitution on fair compensation for damages caused by administrative procedure.

An essential macro-level problem of the Administrative Procedure Law is the role of it in record-keeping of administrative violations that was first identified in the report of the working group elaborating the Administrative Procedure Law and indicating that the Administrative Procedure Law should not regulate record-keeping of administrative violations because it is a process of imposing punishment¹⁵⁶. A respective idea was entrenched in Paragraph 2 of Article 2 of the law "On the Coming into Force of the Administrative Procedure Law"¹⁵⁷, which initially stipulated that record-keeping of administrative violations will be regulated by a specific law simultaneously with enactment of the Administrative Procedure Law. Up to now no separate law regulating record-keeping of administrative violations has been adopted therefore sometimes it was considered in court practice that the Administrative Procedure Law is not to be applied at all in the record-keeping of administrative violations. Such a view in November 2009 was rejected by the Senate of the Supreme Court¹⁵⁸, emphasizing that in regard to the issues still not regulated by the Latvian Administrative Violations Code (temporary measures of protection, compensation, and so on), the Administrative Procedure Law is to be applied. Yet, simultaneous application of such two procedural laws is complicated; and this problem can only be solved by exhaustive regulation of administrative violations jurisdiction that the Ministry of Justice has undertaken to elaborate¹⁵⁹. Since 1 July 2012 all the administrative violations cases are tried by courts of general jurisdiction (formerly the majority were heard by administrative courts). But during the time the present article is being written, amendments in the Administrative Procedure Law are reviewed by the Saeima, at the second reading of the amendments, the proposal that henceforth an administrative act will not be a decision taken by way of administrative procedure, has been supported¹⁶⁰. It means complete refusal from applying provisions of the Administrative Procedure Law in administrative violations jurisdiction, which was legislator's intent already in 2001. Yet, from the vantage point of doctrine, administrative offence cases are still to be seen as part of administrative law since administrative punishment is one of the tasks of the state administration. Although administrative violations law is similar to criminal law by its substance, the fact that the task is performed by a state administration authority is essential (similarly to administrative law, disciplinary liability of civil servants is examined although it is similar to disciplinary liability by substance).

6 Fundamental rights

In the second decade of the 21st century, the assumption that human rights are to be directly applicable¹⁶¹ irrespective of how specifically human rights provisions are expounded in legal acts, does not seem to be original but self-evident. It is obvious that any extensive list of freedoms and rights will not be exhaustive in any case, it can be extended¹⁶² or new rights can be derived. In other words, human rights are inherent since birth because a human being is a human being and no state power can either grant them or dispossess of them. Human rights protection as one of the important guarantees of a law-based state determines the obligation of the state to ensure effective protection for anyone whose rights have been infringed¹⁶³. Besides, the rights and freedoms included in the Constitution do not protect only an individual because by protecting the individual they serve also a common good¹⁶⁴. Democratic state is as stable as its citizens are satisfied by its just attitude to them. Riots of 13 January 2009 in Old Riga called also the Cobblestone Revolution was a spontaneous outburst by population against the attitude of the state which was manifested in mass disorders and clashes between population and the police. Certainly, this indignation to a large extent cannot be associated with fundamental rights in their classical understanding because social insurance of the inhabitants and living standard are often outside of the classical definitions of fundamental rights. Whatever the case, it is clear that the protests by inhabitants was an obvious hint to the state power of Latvia that it is not enough to take formal care of its population but it is necessary to change its attitude from the very root.

6.1 Development of fundamental rights from 1990 till 1998

Adherence to human rights depends on the legal reality because wording of human rights provisions, both national (for instance, the fundamental rights as defined in the Constitution), as well as the international ones (conventions, treaties, and declarations) are only tentative criteria on which the human rights reality is based¹⁶⁵. Such an understanding exists at present, but the understanding of human rights among the citizens of the restored Republic of Latvia at the beginning of 1990s was opposite to that inherent in democratic and law-based state¹⁶⁶. Sceptical attitude to human rights notion was wide-spread¹⁶⁷ as well as the conviction that the state has absolute rights to control individuals. This is well-illustrated by disputes about the Latvian Administrative Violations Code which, by the initiative of the President, the Ministry of Justice wanted to supplement with a provision that would prescribe punishment for participation in unregistered religious organizations. The reason for the above mentioned legislative initiative was wish to restrict activities of the unregistered Jehovah's Witnesses activities. In order to prevent adoption of the provisions restricting human rights, the USA ambassador in Latvia and representatives of the Ministry of Foreign Affairs had to arrive at the Parliamentary commission because they considered that the mentioned amendments are in contradiction to international legal provisions¹⁶⁸. *Sovjetiskaya* or the soviet legal understanding that still dominated in Latvia in 1990s was characterized by an assumption that human rights provisions must be "put in effect" with other normative acts (law, instructions, and so on) since they were considered to be too abstract¹⁶⁹. Let us remember the Constitution of the USSR and Latvia as a subject of this union. The constitutions incorporated wide range of freedoms and rights (rights to free-of-charge health care, rights to choose a profession, rights to a domicile, free education, freedom of conscience, rights to use cultural achievements, rights to inviolability of

a person, rights to privacy, and so on)¹⁷⁰. They were often not implemented and several of them already initially were intended only as elevated declarative statements whose goal was to serve the glorification propaganda of socialism. In actual life these rights remained merely slogans. Besides, how can provisions be implemented in practice if they are not filled with contents¹⁷¹? There was no constitutional control body in the USSR and for the enforcers of rights the ideological position provided by the Communist Party was of utmost significance. This means that in reality the countless constitutional rights and freedoms were never enacted and were regularly infringed (freedom of speech, freedom of press, freedom of religion, and others). Activists during the so-called Awakening at the beginning of 1990s wanted real and not declarative rights. Refusing from the soviet ideas, the authors of the Declaration of Independence incorporated in Paragraph 8 the commitment of the state to abide by social, economic, cultural rights and political freedoms. The same paragraph included provision about the scope of the aforementioned rights and freedoms that must be observed. They “must conform to the universally recognized international human rights provisions”. In order to ensure functioning of democratic system the Parliament of the transition period developed a number of laws that would enforce the fundamental rights in life, in a great hurry as required by those times¹⁷². The initial laws were deficient because neither the legislator, nor the executive power was able to elaborate detailed legal acts that would conform to the realities of life. The initially adopted laws were later significantly supplemented (the law “On Judicial Power”¹⁷³) or substituted by new ones. The law was adopted hastily which did not conform to law “On Religious Organizations”¹⁷⁴ of 11 September 1990, which was later replaced by law “On Religious Organizations”¹⁷⁵ of 7 September 1995. A separate mention must be made of the Civil Law of 1937 that initially was reinstated in its original edition; exception is the chapter on family law that was significantly amended to comply with fundamental principles of gender equality. Some laws are still being amended to make them compliant to modern realities. For example, the law “On the Press and Other Mass Media”¹⁷⁶ of 1990, which should have clearly defined the principles of establishing mass media, was fairly general and rather declarative than normative. The law was amended only 21 years later to ensure that the enforcers of the law – public notaries – could make entries in mass media register, postpone their entry in the register, and amend the previously made registration entries on the grounds of legal provisions instead of their feelings and precedents. It should be noted that the law “On Trade Unions”¹⁷⁷ has not been yet amended and has remained very incomplete which is detrimental to the trade union movement. As we can see, the new democratic state after the restoration of its independence took rapid first steps in ensuring human rights. From 1990–1993 enshrining of civic freedoms (human rights catalogue) untypical for the socialist law was done¹⁷⁸. Till the 5th Parliament was convened, a number of laws were passed that guaranteed freedom of speech, freedom of assembly (the law “On Public Organisations and Associations Thereof”¹⁷⁹), rights to fair trial and rights to legal representation in court (“Advocacy Law of the Republic of Latvia”¹⁸⁰), as well as other rights and freedoms (for instance, the law “On Free Development of National and Ethnic Groups in Latvia and their Rights to Cultural Autonomy”¹⁸¹). The above mentioned legal acts stipulated principles of enforcement for a number of fundamental rights that had been non-functional during the soviet regime. A particular mention among these laws facilitating democracy and liberalization must be made of the constitutional law “Rights and Duties of People and Citizens”¹⁸², which listed fundamental

rights, for example, in Article 3 (individual rights to property), in Article 18 (rights to fair trial), in Article 21 (hereditary rights), in Article 33 (copyright protection), in Article 22 (rights to entrepreneurial activities), in Article 36 (family and marital rights), and so on. It must be added that in elaborating this law the legislator took into account international human rights documents and wanted to grant to this law a special status, constitutional force. Yet, a law that was called “constitutional” could not be formally and legally recognized as such. The law did not comply with the provisions of the Constitution (the Constitution does not prescribe constitutional laws) and was not adopted in compliance to provisions of the LSSR Constitution (insufficient number of votes). The deputies of the Supreme Council were aware of that and during the third reading they discussed constitutionality of the law¹⁸³. Experts have indicated that due to its dubious status the law fulfilled its task poorly¹⁸⁴.

With the change of political regime in Latvia, economy and the individuals' rights to property also changed. The socialist economy was replaced by free market. That meant radical decreasing of the state monopoly, denationalization and restitution of private property. Initially reinstatement of private property was one of the most important tasks¹⁸⁵. From the perspective of state law, the starting point for securing of these property rights is to be found in Paragraph 8 of the Declaration of Independence, later on in the constitutional law “Rights and Duties of People and Citizens”¹⁸⁶. It is impossible to mention all the duties that were enacted by the state in order to implement rights to property. It was also important for the state officials to change the frame of thought. It is possible to change constitution, political system and so on but if thinking does not change fundamentally, nothing new happens. An explicit example is the Prime Minister of the time I. Godmanis who attempted to increase the number of those companies that produced and sold bread¹⁸⁷ via administrative methods, because the government was concerned with shortage of bread and wanted to improve the situation. In 1990 the law “On the Enterprise Register of the Republic of Latvia” was adopted¹⁸⁸ and registration of first companies started. In 1992 the government wanted to increase the number of those companies that are linked with production and distribution of bread. The Enterprise Register could provide registration as a service but it did not have the power to increase the number of registered subjects. Gradually, the state power learned to understand the principle of civil rights or private rights that in legal science is called private autonomy. In the area of civil law, the subject decides independently about the use of their rights¹⁸⁹, while in public law officials operate in accordance with those legal provisions from which they derive their competence. Similar examples can be mentioned about implementation into practice of other freedoms.

In 1998 the Constitution was supplemented with Chapter VIII which includes fundamental human rights. A year before this event on 27 June 1997, European Convention for the Protection of Human Rights and Fundamental freedoms of 4 November 1950 and several of its protocols came into force in Latvia¹⁹⁰. This convention is considered to be the most effective instrument for protection of rights in the world¹⁹¹. Along with the convention, the judgements by the European Court of Human Rights and its case law became binding on Latvia and obliged Latvia to interpret its legal system in compliance with this case law and fill up the “gaps” in its laws.

At the end on 1990s, Latvia set a strategic goal – to join the European Union. It also influenced the legal system because one of the major tasks for the government became approximation of legal acts of Latvia to the European standards¹⁹². In order

to achieve this goal, Latvia firstly had to ensure stable activities of those institutions that had to guarantee compliance to democracy, rule of law, and human standards in the state¹⁹³.

6.2 Fundamental rights and the Constitution

There is no doubt that one of the most important amendments to the Constitution since its adoption are the ones passed on 15 October 1998¹⁹⁴, that supplemented the Constitution with a new Chapter VIII that provides for the constitutional force of fundamental rights in Latvia. Adoption of these amendments is particularly significant event from the perspective of constitutional law because the regulation of persons' freedoms was included in the hierarchically highest legal act – the state Constitution – since this moment. Certainly, practitioners of constitutional law in Latvia were aware that absence of fundamental rights in the major law of the state is a serious drawback¹⁹⁵ but undeniably a definite role was played by international experts' reproaches that human rights in Latvia have not been granted constitutional scope and that the fundamental rights catalogue should be incorporated in the Constitution¹⁹⁶. An important condition was the fact that Estonia and Lithuania had adopted new constitutions which included up-to-date chapters on fundamental rights. Legal experts in Latvia wanted to supplement the Constitution with Chapter VIII hoping that it would reduce the tension between the population and the state apparatus, thus stabilizing the democratic state of Latvia¹⁹⁷.

Although the first seven chapters of the Constitution stipulate the fundamental principles of the Constitution, basically our Constitution is formed by provisions that define the state authorities that enforce the state power, their competences and mutual relations¹⁹⁸. There was no fundamental rights catalogue in the initial version of the Constitution. Certainly, the fundamental rights would function in a democratic state even if the state had no written constitution. If the Constitution would not have been supplemented with Chapter VIII, the enforcers of rights anyway would have to respect the international human rights documents ratified by Latvia, as well as the conclusions made by the Court of Justice of the European Union and the European Court of Human Rights. Human rights would function in Latvia similarly to United Kingdom, which has no written constitution. In accordance to Article 13 of the law "On International Agreements of the Republic of Latvia" adopted in 1994, provisions of the ratified international agreements are in force even if laws of Latvia have different regulation. In other words, in case of collision of legal provisions the provision from the international agreement is to be applied. Clearly, the result would be the same, only one should take into account that fundamental rights is one of those areas of law where practice to a large extent is connected with activities of courts because the principles expressed in court judgements and legal inferences on human rights issues enable to achieve fair result but judges when adjudicating cases should not always substantiate the specific judgements with international conventions and conclusions made by other courts. The conclusions made by courts, as indicated in legal literature, have the status of guidelines that must serve for the purpose of clarification of the substance of rights laid down in constitutions and laws¹⁹⁹. Such cases should be rather exceptions and not daily practice. Besides, there would always be a possibility to refer to the legal definition from Article 1 [Latvia is independent and democratic republic] to read the respective rights and freedoms "into it" on the grounds of openness clause of fundamental rights. The democracy notion enshrined in Article 1 of the Constitution is the so-called functional legal

notion which refers both to decision making process and the fundamental values in a democratic state²⁰⁰. As testified by the Constitutional Court cases, it follows from Article 1 that duty of the state is to abide by a number of fundamental principles of a law-based state²⁰¹. Yet, it must be noted that in Europe such practice would be rather an exception, and one must agree to the legal doctrine stating that the fundamental rights catalogue is not declarative but guarantees incorporated in it is the most important component of the Constitution of Latvia²⁰². The Constitution by its legal power is the highest source of national law and legal act²⁰³ therefore entrenchment of the fundamental rights catalogues in the Constitution is not merely logical but even necessary from the perspective of legal system. Besides, this accomplishes the work started by the creators of the Constitution. As we know, in 1922 when the Constitution went through its second reading the necessary number of votes were not collected²⁰⁴ for the second part of the Constitution “Fundamental rules of rights and duties of citizens”. Now there can be no reproaches that the Constitution is *Rumpfkonstitution*²⁰⁵ or in translation “body without a head”²⁰⁶.

With enactment of Chapter VIII, the constitutional law “Rights and Duties of People and Citizens” was declared void, it had been adopted on 12 December 1991 and was in force till 5 November 1998. After the constitutional law (although the law was actually quasi-constitutional) became invalid, on the constitutional level there was not a single directly stipulated duty that would distinguish the Constitution of Latvia from other countries (for example, Poland, Estonia, Lithuania, Bulgaria, Germany, Russia, India, France, Japan, Armenia)²⁰⁷.

With the same law that supplemented the Constitution with Chapter VIII, amendments were made to Articles 4 and 77 of the Constitution. Article 4 of the Constitution has been supplemented with a sentence that the official language is Latvian while by amendments to Article 77 it has been stipulated that Article 4 can be amended in a referendum. So far there have been no studies made in legal scholarship about the significance of the provision in Article 4 but it must be emphasized that defining of the official language status and the weight of this provision influence also the contents of other Constitution provisions.

During the first period of independence the official language status was not normatively regulated for a long time yet valuable considerations about the official language status have been provided by the Senate in a case about the name of a company concluding that the regulations on the official language of 18 February 1932 “settle only the language issue by ruling that the official language is Latvian and that its use is mandatory in state and municipality institutions and in correspondence with them. [...] The purpose of the regulations was to formally record *de facto* the axiom that had been long ago recognized: that the official language is Latvian.”²⁰⁸

The article in the Constitution that should contain provision on the official language of the state was discussed at the meeting of the Legal Affairs Committee of the Saeima where the MPs agreed to include the respective provision in Article 4 and not in Chapter VIII²⁰⁹. Motives of such a decision have not been indicated in the minutes of the committee meeting. But since Article 4 of the Constitution can be amended only in a referendum pursuant to amendments made to Article 77 of the Constitution, a hypothesis can be put forward that Article 4 of the Constitution includes also the rights to use the official language, i.e., Latvian, which are specified in more detail in the Official Language Law²¹⁰. So far the Constitutional Court has not produced such an interpretation of Article 4 of the Constitution. The judgement about the rights to use the official or state language has practical role in deciding

whether a person can lodge a constitutional complaint on non-compliance of certain legal provisions only by reference to Article 4. This problem needs to be studied additionally but it must be emphasized that Article 4 of the Constitution is significant when interpreting other articles of the Constitution. When in 2002 Articles 18, 21, 102, and 104 of the Constitution were amended²¹¹ entrenching the constitutional values in Article 4, it was emphasized at the Saeima that these amendments are closely linked with Article 4 of the Constitution²¹². Likewise it can be concluded that the aspect of the rights stipulated in Article 90 of the Constitution – to know legal regulation – in conjunction with Article 4 of the Constitution means knowledge of the rights in the official language.

Unlike Chapter II of the draft Constitution of 1922, Chapter VIII of the Constitution does not have as a prototype one single constitution (one should remember that the example for the second part of the Constitution was German Constitution of 1919 which is called Weimar Constitution), but by its substance it relies on the Convention and the UN documents. The Constitution includes a fairly wide catalogue of rights. The Constitution stipulates both civic and political rights, as well as economic, social, and cultural rights, and also “the third generation rights” – rights to favourable environment. As indicated by the Constitutional Court²¹³, once certain social rights have been entrenched in the fundamental law of the state, the state cannot disclaim them. During the crisis these rights were subject to serious test²¹⁴. The Constitution does not mention the rights to adequate living standard *expressis verbis* but they are protected through instrumentality of other rights mentioned in the Constitution (Articles 93, 111, 109, and others)²¹⁵. Chapter VIII of the Constitution has been written taking into view specificity of the Latvian language at the beginning of the last century and it is characterized by laconic legal language. That clearly leaves a certain impact on interpretation although it has been accepted that human rights are formulated in a fairly abstract way therefore their substance is to be identified by way of reasonable interpretation taking the individual's role in Western democracy as the basis²¹⁶. The elaborators of the fundamental rights chapter of the Constitution who were the best specialists in constitutional law at the time and were aware of the drawbacks²¹⁷ were guided by the wish to adhere to the style of the Constitution language and the legal mode of expression²¹⁸. Because of their laconic character, the formulations of Chapter VIII of the Constitution fall behind the wide and specific criteria provided in the Convention²¹⁹. Especially it refers to the restrictions which unlike the Convention are to be found only in Article 116. One has to agree to the scholars studying the Constitution that the existing edition of Article 116 cannot be found in any other country²²⁰, because such a solution cannot be comprehensive. Indeed, this Article which has a complex construction misleads by an illusion that it enumerates all the rights that can be restricted (for example, it does not mention the fundamental rights enumerated in Articles 109–114 of the Constitution), likewise it is not clear why restriction of religious freedom is singled out²²¹. It is not explicitly stated which rights are to be linked with the state security interests. There is no clarity about restriction of fundamental rights under conditions of crisis and so on. Another drawback is deletion of the principle of proportionality from the section because as result the section only partly stipulates the mode of restricting fundamental rights²²². Undeniably, certain solution is court cases of the European Court of Human Rights because by referring to them the Constitutional Court can formulate its judgements more specifically. Likewise, the Constitutional Court has concluded that even if some articles (for example Article 91) of

the Constitution have not been mentioned in Article 116, it may not be considered that the respective rights cannot be restricted since it would lead to contradiction with fundamental rights of other persons guaranteed in other articles of the Constitution, and also with the principle of unity of the Constitution because the Constitution is one unified entity and its provisions are to be interpreted systemically²²³. In this sense significant role is played by court cases of the Constitutional Court because elaboration of the preconditions for restriction of certain rights²²⁴ serve as prerequisites of justifiable restriction²²⁵ and the use of proportionality criteria²²⁶ have been provided by the court in its judgements.

6.3 Establishment of Ombudsman's Office and its impact on the fundamental rights development

Joining the Convention hastened adoption of Chapter VIII of the Constitution and made the state officials consider setting up institutions that would serve as a filter for complaints submitted by the population in Latvia to the European Court of Human Rights. Firstly, establishment of the Constitutional Court must be mentioned which started reviewing constitutional complaints submitted by population from 2000. Secondly, establishing of administrative courts as a specific branch of courts served for the same purpose, their main goal was to decrease the case load of courts of general jurisdiction. Thirdly, in accordance to the National Programme for the Protection and Promotion of Human Rights in Latvia, law "On National Human Rights Office"²²⁷ (NHRO) which became a specific transition model for passing over to Ombudsman's institution and the main agency in the area of fundamental rights protection²²⁸. Despite the difficult process of selecting and then appointing the director of the NHRO, the Office was not regarded as Ombudsman's Office, because NHRO was collegiate "human rights protection institution", whose ultimate task was to facilitate respect for human rights in Latvia. Thus from the very beginning one general Office was established unlike the countries with several ombudsmen (for example, United Kingdom)²²⁹. NHRO existed from 1995 till 2007 and then it was transformed into Ombudsman's Office²³⁰. In 1997 NHRO became a member of the International Ombudsman Association. When NHRO was being formed, several models of human rights institutions and ombudsmen were used, but mostly the Australian one.²³¹ Similarly to the Australian prototype, the law on NHRO defined its three main areas of activity – receiving and reviewing individual complaints, analysing and researching of human rights situation, and raising of public awareness about human rights issues²³². Although NHRO was also to act as a mediator and during amending laws in human rights area it was supposed to act as a catalyst, in practice the picture was not as optimistic as that. Besides, one of the main tasks in setting up this organization was reviewing complaints from the population about infringements of human rights. Comparing the number of complaints received by NHRO and the State President's Chancery during the first three years of our century one can conclude that the lion's share was sent by citizens to the President, and not to the office. The State President's Chancery received almost eight times more applications than NHRO in 2002 (President – 8,916, NHRO – 969), but in the subsequent two years five times more (in 2002: President – 9,893, NHRO – 1,151, in 2003: President – 9,973, NHRO – 1,437)²³³. A large part of complaints addressed to the President is about alleged violations committed by public officials, as well as about groundless infringements of the rights of population²³⁴. State President V. Viķe-Freiberga, wishing to transfer the burden of reviewing both groups of applications

from the State President's institution, and also taking into view recommendations of the European Union about Ombudsman's Office²³⁵, formed a working-group to elaborate the concept of an ombudsman's institution. The working group included representatives from the Latvian Lawyers Association, the Constitutional Court, NHRO, the Centre for Protection of Children's Rights, and also two professors from the Faculty of Law of the University of Latvia²³⁶. Professor of political sciences from Brock University in Canada J. Dreifelds was appointed as the head of the group. The initiative was supported also by the UN and OSCE. The work resulted in legislative initiative by the President. In a letter of 16 June 2004, the President proposed the Saeima to adopt a law on ombudsman indicating that the activities of NHRO must be expanded, and an institution must be established whose name would correspond to the scope of the mandate. The intention was that the Ombudsman would alleviate work load of courts by being able to solve problems much faster, not making the population spend money on legal advice and writing claim statements but simply individually examining the circumstances of the case and requiring explanations from public officials about delay of a certain decision, unfavourable and incompetent attitude, and the like²³⁷. Expectations were also expressed that the Ombudsman could be like a "lightening-rod" who would improve the psychological climate in society²³⁸. A hope flourished in society that the Ombudsman would strengthen the position of individual in face of the state power and would take care that the state power in Latvia would treat every person with due respect²³⁹. Yet the politicians did not cherish any illusions that the new institution would guarantee compliance to human standards in the state with a help of "a magic wand" because essentially that is the task of the entire state administration²⁴⁰. A law was passed²⁴¹ that came into force on 1 January 2007. It can be considered that this was the moment when the Ombudsman's Office of the Republic of Latvia was established. Along with setting up the Ombudsman's Office, the legal mandate of NHRO was expanded and the good governance function was added. Several technical improvements were also made that basically were to do with a thorough analysis of NHRO practice. According to the law, Ombudsman is a public official approved by the Saeima who is independent in his activity. The functions of the Ombudsman of Latvia are ensured by an Office established according to the Paragraph 1 of Article 18 of the Ombudsman Law and it is an independent state organization²⁴². The Office is not part of the system of state administration institutions subordinated to the Cabinet of Ministers as stipulated by Article 58 of the Constitution. Unlike the President, courts and the State Audit Office, the status of the Ombudsman's Office for the time being has not been entrenched in the Constitution. Observing independence of the Ombudsman's Office in the area of its budget, the legislator stipulates for the Ombudsman's Office similar rights like for the constitutional institutions (for example, the State Audit Office) as provided by Paragraph 5 of Article 19 of the law "On Budget and Financial Management"²⁴³.

After tense political battles²⁴⁴, the former Constitutional Court judge and one of the authors of the Declaration of Independence R. Apsītis became the first Ombudsman. It should be indicated that he often expressed his opinions not directly but instead it was done by the staff members of the Ombudsman's Office (for instance, when an employee of a post-office had put out the flag of Russia or the so-called George's ribbon at his office car²⁴⁵, and others).

There is no doubt that establishing of a universal Ombudsman's Office was based on economic considerations because already in 2001 the working-group set up by

the President had examined an opportunity to organize also a separate Ombudsman's Office that would be responsible only for the municipality issues²⁴⁶. Likewise, Latvia would definitely need an ombudsman for children's rights because if previously these issues were dealt with by the Centre for Protection of Children's Rights, whose functions, to a certain extent, were taken over by the Ministry for Family and Children's Affairs, an organization that is non-existent today. There are several institutions in Latvia that have some features of ombudsman. For example, the Centre for Protection of Consumers' Rights which protects interests of a certain social group, there used to be the Board for Religious Affairs whose duties included assistance to religious organizations, for instance, proposals for laws that would improve freedom of religion and would eliminate discrimination, and the like.

Yet, the new structure has also its drawbacks: there are few inspections that have been done on their own initiatives, there are not many applications to the Constitutional Court, and finally the Ombudsman has less authority than NHRO used to have. This institution has not been entrenched in the Constitution, yet it has little to do with its capacity and apparently it cannot be justified by lack of resources. Despite it all, NHRO and the Ombudsman's Office have facilitated fundamental rights protection in the state and attracted public attention also to issues of good governance only by their mere existence and the process of selection of the candidates for their directors' position²⁴⁷.

Since the adoption of the Ombudsman Law, the amendments of 2008 are still the most important ones²⁴⁸ that prolonged the term of authority of the Ombudsman from four to five years and opened opportunities for judges and civil servants to become Ombudsman, since it contains a provision (Paragraph 2 of Article 9) that after their Ombudsman's authority expires, the judge or civil servant has the right to return to their previous position. The number of members of the Parliament who have the right to propose dismissal of the Ombudsman was increased (from at least 5 to 1/3). Likewise, the amendments in the law specified the Ombudsman's authority to request documents, their amount, and terms for individuals and institutions within which they are to be submitted, as well as his presence at the government meetings in the status of an adviser.

7 Development of rights of the body of citizens

According to Article 2 of the Constitution, sovereign power of the State of Latvia shall belong to the people of Latvia. People implement their sovereign power both by way of direct and representative democracy. The direct democracy mechanisms are referendums and electors' legislative initiatives. While the basis of representative democracy is principle that people act and take decisions via their representatives. Both these forms of democracy since the restoration of the state of Latvia have undergone essential development.

7.1 Referenda

On 3 March 1991, at the time when the Declaration of Independence of Latvia was adopted but *de facto* independence of Latvia was not yet renewed and the Constitution was not fully reinstated either, all-Latvia poll took place in which all the permanent residents of Latvia from the age 18 could participate. The participants of the poll had to answer to the following question: "Are you for democratic and independent state of the Republic of Latvia?" The results of the poll convincingly showed the support by the population to establish independent state because out of 87.56%

of the people with voting rights participating in the poll, 73.68% said “yes” to the independence of Latvia²⁴⁹. That was one of the factors encouraging the legislator of those times – the Supreme Council – to take the next steps towards the restoration of the statehood. In legal terms it was not a referendum and yet by its form the poll had all the characteristic features of a referendum: voting in polling stations, careful monitoring of the process, seriously worked out legal basis²⁵⁰.

7.1.1 Provisions for referenda stipulated by the Constitution at the moment of its reinstatement

On 6 July 1993 when the Constitution of the Republic of Latvia (1922) was fully reinstated, it stipulated only four cases when referendums are to be organized.

1) If the Parliament has amended Articles 1, 2, 3, or 6 of the Constitution for such amendments to acquire the force of law referendum must be organized (Article 77 of the Constitution).

On 15 October 1998 the law “Amendments to the Constitution of Latvia” was passed which, among other things, supplemented Article 77 of the Constitution prescribing that a referendum must be organized also if the Parliament has amended Article 4 of the Constitution, and also Article 77. As indicated by the case law of the Constitutional Court, a referendum on the grounds of Article 77 of the Constitution should be also organized if the Parliament would have amended these articles of the Constitution by substance – without introducing textual modifications in the very Article 77 but by integrating such modifications via other legal acts²⁵¹. Those principles that have been entrenched in Articles 1, 2, 3, 4, and 6 of the Constitution form the conceptual basis of the Constitution, namely, define the fundamental principles of the state order in Latvia, protect independence of the Republic of Latvia and its democratic order²⁵², and the Parliament shall not amend these principles without approval of the people.

There has been no such referendum in the history of Latvia so far. There were discussions about people’s referendum in Latvia before its accession to the European Union – whether Latvia’s membership in the European Union would not influence the notion of independence stipulated in Article 1 of the Constitution and the principle of people’s sovereignty as enshrined in Article 2 and whether for this reason it is not necessary to organize a referendum on the grounds of Article 77 of the Constitution. The responsible authorities concluded that by acceding the European Union, sovereignty and independence of Latvia is not infringed therefore there is no need to organize people’s referendum on grounds of Article 77 of the Constitution²⁵³.

A new legal type of discussion concerning Article 77 of the Constitution took place when the issue of the treaty between the Republic of Latvia and Russian Federation about the state border between Latvia and Russia was on the agenda. The applicants, parliamentary deputies, turned to the Constitutional Court claiming that by signing the border treaty Article 3 of the Constitution has been violated and hence a referendum on grounds of Article 77 of the Constitution had to be organized. Yet, examining the case, the Constitutional Court ruled that the state border mentioned in the border treaty does not violate the territory of Latvia mentioned in Article 3 of the Constitution, which meant that there was no infringement of Article 3 of the Constitution and the referendum was not to be organized²⁵⁴. Similarly, in the judgement of 2009 in the so-called Lisbon case, where the applicants had indicated that the “Treaty of Lisbon amending the Treaty on European Union and the

Treaty establishing the European Community” has by substance modified Article 2 of the Constitution and therefore it was necessary to organize a referendum, the Constitutional Court did not identify such provisions in the Treaty of Lisbon that would infringe upon the people’s sovereignty principle entrenched in Article 2 of the Constitution. The court established that in this case the referendum was not to be organized, too²⁵⁵.

2) The President has initiated dissolution of the Parliament (Article 48 of the Constitution).

This legal provision has been enacted since adoption of the Constitution and has not been amended so far. Article 48 of the Constitution is closely correlated with Article 50 of the Constitution that states: “If the dissolution of the Saeima is opposed in the referendum by more than one-half of the votes cast, the President shall be regarded as dismissed and the Saeima shall elect a new President for the remaining period of office of the President who has been dismissed.” Foreign legal specialists have characterized this case of a referendum as fairly unusual²⁵⁶. In his own day, Professor K. Dišlers already indicated that “President should be granted the rights to initiate dissolution of the Parliament without risking his office”.²⁵⁷ Such a proposal was put forward also in 2008 by the Constitutional Law Committee of the President about improvement of the mechanism of pre-term elections of the Parliament²⁵⁸, on the basis of which President V. Zatlers, on several occasions²⁵⁹, submitted to the Parliament legislative initiatives proposing a new edition of Article 48 of the Constitution that would provide for the President the rights to dissolve the Parliament independently without a referendum. Yet, none of these proposals has led to the respective amendments.

In his own time, Professor K. Dišlers, analysing the procedure laid down in Article 48 of the Constitution expressed doubts whether “proposal to dissolve the Parliament would ever become an institution enforced in reality”²⁶⁰. Other legal scholars had also expressed similar assumptions. These forecasts were not fulfilled because on May 28, 2011 President V. Zatlers issued the decree No. 2 “On the proposal on dissolution of the Saeima”. On the grounds of this decree on 30 May 2011 the Central Election Committee declared a referendum on dissolution of the 10th Saeima which was held on 23 July.

The above mentioned decree by the President caused a number of discussions among legal specialists²⁶¹, including an application that was submitted to the Administrative District Court requesting to revoke the decision No. 10 by the Central Election Committee “On declaration of a referendum”. The major discussions among lawyers were caused by the question if the President could issue a decree on dissolution of the Parliament so shortly before the end of his presidential office (President V. Zatler’s office ended on 7 July 2011), and thus it was actually impossible to enact the mechanism stipulated by Article 50 of the Constitution – if the dissolution of the Saeima is opposed in the referendum by more than one-half of the votes cast, the President shall be regarded as dismissed. The Administrative Court decided to refuse to accept the application since it concluded that the decision by the Central Election Committee (CEC) is not an independent decision that establishes legal relations in the area of state administration but only an organizational executive instrument subordinated to the President’s decree. CEC decision in itself is not aimed at creating new legal consequences (even more so – for specific persons), because the possibility for people to vote for dissolution of the Parliament is not granted by the CEC decision but by the decree issued by the State President²⁶².

As a result, on 23 July 2011 the referendum took place during which the participation rate of electors was 44.73%. A convincing majority – 94.3% of all the votes were cast for dissolution of the Saeima, but only 5.48% were cast against the dissolution²⁶³. It must be noted that the referendum for dissolution of the Saeima would have been valid even if only some voters would have taken part in it since this is the only type of referendum stipulated in the Constitution that does not need a quorum. As a result of the referendum on 23 July 2011 on the grounds of Article 48 of the Constitution, the Parliament was dissolved and CEC announced new parliamentary elections which, as laid down in Article 48 of the Constitution, must take place no less than two months after the dissolution of the Parliament. The first extraordinary parliamentary elections in the history of Latvia took place on 17 September 2011.

3) **The President has suspended publishing a law for two months and within these two months a request from no less than one tenth of the total number of electors has been received to organize a referendum on this suspended law (Article 72 of the Constitution)**²⁶⁴.

This is a peculiar two-step provision – first, signatures of at least one tenth of electors must be collected to request a referendum, and after that, if the necessary number of signatures has been collected, the referendum is held. The purpose of this referendum provision entrenched in the Constitution is revoking of a law. In this type of a referendum the people use their veto rights or the rights to reject the law adopted by the Parliament²⁶⁵.

The President must suspend the law on the request of no less than one third of the MPs (the second sentence in Article 72), yet the President may also act at his own discretion – he has the rights to suspend promulgation of the law for two months (the first sentence in Article 72).

Article 72 of the Constitution lays down a complicated procedure and one has to agree to the opinion expressed by legal scholarship that despite the fact that the Constitution does not stipulate the preconditions when the President is empowered to use these rights, President apparently will decide to suspend promulgation of a law only if the issue stipulated in the law will be decisive and significant for the state of Latvia²⁶⁶.

So far the Presidents have suspended promulgation of a law by the request of MPs but the largest discussions in the context of Article 72 of the Constitution took place in 2007 when the President V. Viķe-Freiberga on 10 March 2007 used her rights as laid down in Article 72 of the Constitution suspending the law “Amendments to the National Security Law” and “Amendments to the Law on National Security Authorities” for two months²⁶⁷. This was the first case when the President had suspended promulgation of a law on her own initiative. The mentioned case caused series of constitutional discussions, including the question whether such a decree by the President (i.e., when the law is suspended on the initiative of the President) needs co-signature²⁶⁸. The President had suspended promulgation of this law without a co-signature and, in view of the fact that objections were not raised; this established a practice that such decisions do not need the co-signature²⁶⁹. The second question largely discussed was whether after the announcement about suspension of promulgation of the law was published, it can be revoked. An interesting situation was established in practice because after suspension of these laws the Parliament revoked the previously accepted and critically analysed amendments thus as if correcting its mistake. Hence a legal uncertainty emerged whether a collection of signatures are to be organized and a referendum held. Yet, experts of constitutional

law expressed fairly unanimous views that even if the parliamentary majority after suspension of the law make amendments it neither cancels collection of signatures, nor referendum²⁷⁰.

4) **The Parliament has not accepted without substantial amendments a draft law or the draft amendments to the Constitution from no less than one-tenth of electors (Article 78 of the Constitution).**

This provision of Article 78 of the Constitution that provides for a referendum if the Parliament does not approve a draft law submitted by electors is unusual and rare in other countries. As indicated by I. Ņikuļceva, from the European countries, such a provision exists only in Switzerland²⁷¹.

This case of a referendum is closely linked with the second institution of direct democracy – the electors' legislative initiative and therefore will be discussed in greater detail in the next sub-chapter. Yet, concerning the referendum practice it must be indicated that after restoration of independence referenda were held because the Saeima had not approved of the draft law submitted by electors. The first referendum on the grounds of Article 78 of the Constitution was organized on 2 August 2008 because on 5 June 2008 the Parliament had rejected the draft law submitted by electors which was aimed at amending Articles 78 and 79 of the Constitution stipulating that no less than one tenth of electors have the right to propose dissolution of the Parliament²⁷². Therefore on 2 August 2008 a referendum was held. Although during the referendum 608,847 electors voted "for" the adoption of the draft law, it was not approved since according to Article 79 of the Constitution at least half of all the citizens with voting rights, i.e., 757,468 electors, are to vote for the amendments to the Constitution to grant them the force of law²⁷³. The second referendum took place quite soon afterwards – on 23 August 2008 because the Saeima had rejected the draft law submitted by electors "Amendment to the Law on State Pensions"²⁷⁴. This draft law was not approved either because the referendum did not reach quorum²⁷⁵. While the third referendum on grounds of Article 78 of the Constitution was held on 18 February 2012 because the Saeima had rejected amendment proposals to the Constitution submitted by no less than one-tenth of electors, the purpose of the amendments was to grant to the Russian language the status of the second official language in Latvia. These amendments were not adopted during the referendum because they were not supported by at least half of all the people with voting rights as stipulated by Article 79 of the Constitution.

7.1.2 Cases of referenda introduced after reinstating the Constitution

After reinstatement of the Constitution three more cases have been entrenched in the Constitution when referenda are to be organized.

1) **The issue on membership of Latvia in the European Union initiated by the Parliament (Article 68 of the Constitution).**

This case of referendum was inscribed in the Constitution in 2003²⁷⁶, on the basis of the fact that on 13 December 2002 Latvia received in Copenhagen an invitation to accede the European Union after which the question of a referendum became one of the most significant issues in domestic policy.

At the same time in 2003 amendments were made to Article 79 of the Constitution concerning quorum, establishing that the decision put on referendum about Latvia's membership in the European Union or about essential changes in conditions of this membership is adopted if the number of electors is at least half of the number of electors participating in the last Parliamentary elections and if the

majority have voted for membership of Latvia in the European Union or essential changes in provisions of this membership.

The question in what way membership in the European Union is to be decided was an object of extensive polemics both among lawyers and politicians²⁷⁷. Three options on what the referendum should be organized were discussed:

- 1) amendments to the Constitution;
- 2) a law by which the accession agreement of Latvia in the EU is confirmed;
- 3) an abstract question.

The working group came to a conclusion that an abstract question is the best option since it would allow for a simpler and more clearly formulated question to be put on vote.

Thus during the referendum held on 20 September 2003 the electors had to answer the question: "Are you for membership of Latvia in the European Union?"²⁷⁸ 1,010,467 electors participated in the referendum. Since 66.97 % electors responded to the question affirmatively, Latvia became a full-fledged member of the EU on 1 May 2004, and an essential stage in a purposefully implemented foreign policy was finished.

2) An issue is to be decided on essential changes in provisions about Latvia's membership in the European Union and it is requested by at least half of the MPs (Article 68 of the Constitution).

This case of referendum was also entrenched in the Constitution in 2003 at the same time with the question about Latvia's membership in the EU.

The working group that worked out amendments to the Constitution concerning the planned membership in the EU substantiated the need for such a referendum by indicating as follows: "since the question about membership in the EU depends on people's choice it would not be correct to confine it merely by accession or secession. Changes in the European Community Law or in the Law on European Union may change very essentially balance between the issues to be decided on the national level and the exclusive EU competence. Therefore, in order to maintain legitimacy for Latvia's membership in the EU, it is necessary to prescribe a possibility of putting issues about changes in the Treaties on a referendum²⁷⁹."

Such a referendum is to be organized only about essential issues concerning the EU and the question if these changes are sufficiently essential to be put on a referendum vote would be decided by at least half of the MPs. The fact that the members of the Saeima have the rights but not the duty to put issues connected with the EU integration on a referendum has also been indicated by the Constitutional Court in its case law²⁸⁰. The requirement that such a request be voiced by at least half of the MPs is a fairly high threshold and requires a large political consensus, which means that most probably referenda will be organized indeed only about genuinely important European integration issues.

So far no such referenda have been held in Latvia. As mentioned before, in 2008 a constitutional complaint was submitted to the Constitutional Court to dispute the procedure of ratifying the Treaty of Lisbon, indicating at a possible violation of Paragraph 4 of Article 68 of the Constitution because in Latvia no referendum was held on Lisbon treaty by which the Treaty on European Union and the Treaty Establishing the European Community were amended. In Latvia the Treaty of Lisbon was ratified by the Parliament although in other countries its corroboration was decided by way of referenda. Examining the case, the Constitutional Court ruled that the procedure laid down in Article 68 of the Constitution was not infringed²⁸¹.

3) **Referendum on recalling the Parliament (Article 14 of the Constitution).**

This type of referendum was introduced in the constitutional law of Latvia only on 8 April 2009 by adopting the last amendments to the Constitution so far²⁸². The mentioned amendments were enacted when the 10th Parliament was convened – on 2 November 2010.

In accordance to Article 14 of the Constitution, no less than one-tenth of electors have the right to initiate a referendum on recalling the Parliament. If the majority of electors vote in the referendum for recalling the Parliament and the participation rate has been at least two thirds from the electors during the last Parliament elections, then the Parliament is to be considered as recalled. The rights to propose a referendum on recalling of the Parliament may not be used till a year after the election of the Parliament, a year before the end of the Parliament's mandate, during the last six months of the Office of the President, and no sooner than six months after the previous referendum on recalling the Parliament²⁸³. The electors' rights to initiate and decide the question on recalling the Parliament are rare in other countries of the world²⁸⁴.

Thus, after enactment of these amendments, the number of cases when the period of mandate of the Parliament may expire, has been extended because apart from the previous provisions that provided for the rights to **dissolve** the Parliament on the grounds of Article 48 of the Constitution the electors now have also the rights to **recall** the Parliament which means that now people can initiate themselves a referendum on dissolution of the Parliament and it is not necessary that this procedure would be started by the President on the grounds of Article 48 of the Constitution.

Attempts to entrench in the Constitution the rights of people to recall the Parliament had been made also before – on 2 August 2008 a referendum was held on adoption of the law “Amendments to the Constitution of the Republic of Latvia”. These draft amendments to the Constitution were initiated by the Free Trade Union Association and the purpose was to amend Articles 78 and 79 of the Constitution stipulating that the electors have the right to propose dissolution of the Parliament. The Parliament rejected these draft amendments therefore in accordance to Article 78 of the Constitution it was to be put on a referendum. During the referendum electors' were not very active, the draft law was not adopted – 42% of electors took part in the referendum from which a convincing majority 96.78 % supported adoption of the amendments²⁸⁵. After the unsuccessful referendum, the President V. Zaķis set a task to the Parliament to work out the Constitution amendments, which already on 8 April 2009 were adopted.

Thus, at present the Constitution provides for 7 cases in which referendums are to be held. All the cases when referenda are to be organized and detailed provisions laid down can be found in a special legislative act in the law “On National Referendums and Legislative Initiatives” passed by the Parliament on 31 March 1994²⁸⁶. By adopting this law the Parliament has to a large extent retained the provisions that were included in the law “Latvian Law on National Referendums and Legislative Initiative” of 1922.

7.1.3 Referenda held after the restoration of independence

Compared to the pre-war Latvia, referendums now take place comparatively more frequently. During the period from 1922, when the Constitution was enacted, till 1934 when the Constitution was suspended, there were four referendums held (in 1923, 1927, 1931, and in 1933), and they were all organized on the grounds of

Article 78 of the Constitution, i.e., the Saeima had not accepted legislation initiatives submitted by the electors²⁸⁷. After the restoration of independence of Latvia, eight referendums have been organized (excluding 3 March 1991 poll of the population on the independence of the Republic of Latvia), and they took place for diverse reasons.

The first referendum in the renewed Latvia took place on 3 October 1998 simultaneously with the elections of the 7th Saeima. During this referendum the electors had to decide whether to revoke or to keep in force the law adopted by the Saeima on 22 June 1998 "Amendments to the Citizenship Law". The referendum was held on the grounds of Article 72 of the Constitution because during the collection of signatures, after the amendments to the law were suspended, more than one tenth of the electors with voting rights participating in the last Parliamentary elections voted for holding a referendum on the law. These amendments stipulated that on the grounds of an application submitted by parents, citizenship is to be granted to the children of non-citizens and stateless persons born after 21 August 1991 without requiring the Latvian language test, likewise the amendments were to nullify naturalization quotas. 69.8% electors participated in this referendum (or 97.14 % of those electors who participated in the elections of the last Parliament). This can be regarded as one of the most active referendums in the history of Latvia. Since the majority of the electors were against revoking the law, the amendments to the Citizenship Law were not repealed and were enacted. The newly adopted provisions complied with the European Union recommendations and improved the status of Latvia's foreign policy.

The second referendum took place on 13 November 1999. During this referendum the electors were to decide whether to revoke the law "Amendments to the law "On State Pensions" which had been suspended by the President on the request of one third of the MPs (on the grounds of Article 72 of the Constitution). The law stipulated a gradual increase of pension age till 62 years and several other changes. Unlike the referendum on citizenship issues, the activity of electors was not sufficient to consider it valid and therefore the suspended law was not revoked in the referendum, although 94.17% of the electors had supported its repealing.

The third referendum was organized on 20 September 2003. During this referendum the electors had to answer the question: "Are you for membership of Latvia in the European Union?" A convincing majority – 66.97 % of the electors – voted for accession of Latvia to the European Union.

The fourth referendum was organized on 7 July 2007. It was held to decide revoking of the laws "Amendments to the National Security Law" and "Amendments to the Law on National Security Authorities" suspended by the President Vaira Vīķe-Freiberga. This was the first case in history of Latvia when the President suspended promulgation of a law on her own initiative (on the grounds of Article 72 of the Constitution). During the signature collection on organizing the referendum, 14% of the electors from the number of electors participating in the last elections of the Parliament supported the referendum, but the number of valid ballot-papers submitted during the referendum about each of the laws was not sufficient to consider the referendum valid and therefore the suspended laws were not revoked.

In the sense of direct democracy, 2008 was particularly active when during one month two referenda were held in the country. On 2 August 2008 a referendum on adopting the law "Amendments to the Constitution of the Republic of Latvia" was held. The rate of participation in this referendum was also insufficient and the draft law was not adopted²⁸⁸. Due to the low rate of participation of electors, the referendum on the draft law initiated by electors and rejected in the Parliament

“Amendments to the Law on State Pensions” failed as well. Therefore, in accordance to Article 78 of the Constitution a referendum was to be held. Only 22.9% of electors participated in this referendum therefore it was to be considered as failed.

The seventh referendum took place on 23 July 2011 when a referendum on dissolution of the 10th Saeima was held after the President had issued the ordinance No. 2 “On the proposal on dissolution of the Saeima” on May 28, 2011. Participation rate of electors in this referendum was comparatively low (44.73%), out of which a convincing majority – 94.3% of electors – voted for the dissolution of the Saeima and therefore the Saeima was dissolved.

The eighth referendum since the restoration of Latvia’s independence took place on 18 February 2012 about adoption of the draft law “Amendments to the Constitution of the Republic of Latvia”. The draft law submitted by electors envisaged changes in several articles of the Constitution enshrining the Russian language as the second official language in Latvia, but the Saeima rejected these amendments which meant that in accordance to Article 78 of the Constitution a referendum had to be held. It can be said with assurance that this referendum caused the biggest discussions among legal scholars, foregrounding as the main question whether the electors can initiate amendments about any issue even if it is possibly in contradiction with the spirit of the Constitution and the principle of a national state. This referendum led to active discussions about the contents of the so-called nucleus of the Constitution²⁸⁹ and to the question what the role of the Central Election Committee and the President is within the context of a draft law initiated by electors. A number of unclear issues were caused also by the fact that a month before the referendum the MPs submitted an application to the Constitutional Court requesting to stop the referendum. The Constitutional Court took a decision not to stop the referendum and at the time of preparing this article the case is at its preparatory stage. This referendum excelled with big activity – 71% of the electors participated in it and 74.8% voted against amendments to the Constitution²⁹⁰, i.e., against the Russian language as the second official language (to adopt amendments to the Constitution they must be supported by at least half of all those who have voting rights).

In the history of Latvia so far referendums have been held for different reasons. Out of the seven cases when a referendum shall be organized, three cases have still not been used in practice – the mechanism enshrined in Article 14 of the rights to propose law (legislative initiatives) that grants the rights to electorate to recall the Saeima, amendments to the Constitution that must be approved on the grounds of Article 77 of the Constitution, and the issues to be decided on the grounds of Article 68 of the Constitution about essential changes in the provisions of Latvia’s membership in the European Union.

Although referenda have been held quite often during the last few years, they have not excelled with high participation rates of the electors – several of the referenda did not even reach the necessary quorum. It should be noted though that in the four referenda that were held in the pre-war Latvia quorums were not reached either and these facts sometimes inspire a discussion in legal science whether a lower quorum threshold should not be set for referenda²⁹¹.

There are no consultative referenda in Latvia, which means that all the referenda prescribed in the Constitution have a binding result.

Unlike many other countries there are no municipality level referenda in Latvia yet, but it is possible that the municipality inhabitants will be able to express their

opinions in referenda soon since the draft law on local municipality referenda is being worked out at present²⁹².

7.2 The rights to propose law (legislative initiative)

Since adoption of the Constitution it includes a provision on legislative initiative of the electors. Article 64 of the Constitution stipulates that the right of legislation shall belong to both the Saeima and to the people, within the procedure and extent provided for in this Constitution. Article 65 specifies that draft laws may be submitted to the Saeima by one-tenth of the electors, while Article 78 of the Constitution stipulates the procedure of the legislative initiative of the electors: "Not less than one-tenth of the electors shall have the right to submit to the a fully elaborated draft for the amendments to the Constitution or the draft law, which shall be submitted to the Saeima by the President. If the Saeima does not adopt this draft law without substantial amendments, it shall be submitted to a referendum." The above mentioned provision of the Constitution has remained unchanged until today.

All the citizens of Latvia who have the right to elect Saeima can participate in a referendum and in proposing laws. Electors have the right both to initiate draft laws and draft amendments to the Constitution, and irrespective of the fact what kind of legal act is being initiated, the procedure of proposing them is identical.

Electors' rights to propose laws do not exist in all the democratic states; in the European scale such rights are not too widespread either²⁹³.

The issues concerning legislative initiative rights are regulated by the previously mentioned law "On National Referendums and Legislative Initiatives" of 1994 in which the provisions setting out procedure of proposing laws are quite laconic.

The procedure by which electors may propose laws has several stages.

- 1) In accordance to Article 22 of the law "On National Referendums and Legislative Initiatives", no fewer than 10,000 Latvian citizens eligible to vote, upon indicating their full name and personal identity number, shall have the right to submit to the Central Election Commission a fully elaborated draft law or a draft amendments to the Constitution. No earlier than 12 months before the submission of the draft law or the draft amendment to the Constitution, each signature must be certified by a sworn notary, public or a local government authority that performs notary functions. This first stage of the electors' legislative initiative is organized by electors without involving in it public institutions.

It should be noted that by adopting the law in 1994, it defined a larger necessary number of draft law initiators because till then these issues were regulated by the law of 1922 which stipulated that no fewer than 1,000 electors have the right to submit a draft law.

Questions related to this stage of legislative initiative have been analysed also in the case law of the Constitutional Court – on the grounds of an application of 20 members of the Saeima, the Constitutional Court had to evaluate whether the second sentence of Article 22 of the law "On National Referendums and Legislative Initiatives", which provides that each signature must be certified by a sworn notary, complies to the principle of good governance following from Article 1 of the Constitution. In its judgement of 19 May 2009 the Constitutional Court indicated that the instruments chosen by the state that require certifying of signatures at a sworn notary or in a custody court are the most efficient means for achieving the legitimate goal because with other instruments the legitimate goal cannot be

achieved in the same quality. In the first stage of legislative initiative, that allows to ensure authenticity and validity of the expression of a person's will in order to decrease a possibility to influence people's legislative process with forged signatures or in some other illegal way and thus to protect the democratic order of the state. The Constitutional Court indicated in its judgement that the prescribed procedure in the disputed provision that includes restrictions of electors' rights is necessary in a democratic state. The Constitutional Court also indicated that the means chosen by the legislator are suitable for achieving the legitimate goal and that such a procedure ensures equal enjoyment of rights and ruled that the disputed provision does not contradict the principle of good governance²⁹⁴. During the last few years more often such draft laws are initiated that are to be evaluated in a twofold way and that are aimed against the national identity of the state (for example, attempts to enshrine in the Constitution the Russian language as the second official language and amendments to the Citizenship Law that provide for automatic granting of citizenship of Latvia to non-citizens)²⁹⁵. That has promoted the question about increasing the minimum threshold of signatures necessary for submission of draft laws. In 2012 Saeima adopted a draft law which stipulated that 50,000 electors would have such rights, but it was suspended. It is expected that this issue will get into the agenda of Saeima again quite soon because several political parties represented in Saeima have expressed determination to return to this issue²⁹⁶.

- 2) If it is established that the necessary amount of valid signatures has been collected – the state undertakes the duty to organize collection of signatures. CEC announces that collection of signatures is started for proposing the particular law, at the same time submitting to the election committees the respective draft law or draft amendments to the Constitution, as well as registration sheets for signature collection (Article 23 of the law). The time-limit of signature collection is 30 days.
- 3) If the draft law or the draft amendments to the Constitution have been signed by no fewer than one-tenth of the Latvian citizens who were eligible to vote in the previous Saeima elections, the President of Latvia shall submit to the Saeima the draft law or the draft amendments to the Constitution; the Saeima must consider them in the same session during which they have been submitted. If the draft law or the draft amendments to the Constitution have been submitted during a recess or at an extraordinary session, it must be considered at the next regular session or a special extraordinary session which is convened to consider the said draft law or the draft amendments to the Constitution (Article 25 of the law). Saeima has the duty to consider the draft law submitted by electors but it has no duty to accept it.
- 4) If the Saeima does not adopt the submitted draft or adopts it with substantial alterations, then, in accordance to Article 78 of the Constitution, a national referendum is to be held. At this stage a difference becomes apparent – whether electors have initiated a simple draft law or draft amendments to the Constitution because there are different quorum requirements for the respective amendments – the amendments to the Constitution submitted to the national referendum shall be adopted if at least one-half of those who have the right to vote have declared themselves in their favour, while the draft law shall be adopted if the number of participating electors is at least one-half of those who participated in the previous Saeima elections and if the majority has voted for the adoption of the draft law (Article 79 of the Constitution).

Electors' legislative initiative right is a mechanism that has been used in practice. After the restoration of independent statehood of Latvia, twelve collections of signatures have been organized by the CEC, out of which seven were organized by the legislative initiatives of electors because no fewer than 10,000 electors had submitted a draft law (the other collections of signatures were done on the grounds of Article 72 when the President had suspended a law adopted by the Saeima)²⁹⁷.

The first collection of signatures initiated by electors after the restoration of independence took place in 1995 when the union "Tēvzemei un Brīvībai" (For Motherland and Freedom) submitted to the Central Election Committee a draft law "Citizenship Law" signed by 11,222 electors. During collection of signatures, the proposal of Citizenship Law was signed by 116,153 electors. Thus together with the signatures submitted to the CEC the proposed Citizenship Law was supported by 126,564 electors which was not enough to submit the draft law to the Saeima.

On 30 March 2000, the Latvian Professional Trade Union "Energy" submitted to the CEC a draft law "Amendments to Energy Law" signed by 12,337 citizens of Latvia. After collection of signatures, the CEC established that the draft law submitted by electors has been signed by 307,330 electors or 22.9% of those who were eligible to participate in the Saeima election. The draft law was submitted to the President who submitted it to the Saeima for review. The Saeima adopted this law submitted by electors without changes of its substance²⁹⁸.

In 2002 the political union "Centrs" (Centre) attempted to collect signatures for draft amendments to the Constitution on election of the President by the people, on 16 September 2002 the union submitted to the Central Election Committee draft amendments to the Constitution signed by 10,587 electors. After validating the signatures, the CEC concluded that the number of signatures is insufficient to start a nation-wide collection of signatures, because resulting from the validation it was established that 3,995 signatures were invalid²⁹⁹.

In 2008 other amendments to the Constitution were initiated –Latvian Free Trade Union Association started signature collections and on 1 February submitted to the Central Election Committee a draft law signed by 11,095 electors which was aimed at amending Articles 78 and 79 of the Constitution providing that no fewer than one tenth of electors have the rights to propose dissolution of the Saeima. The number of signatures collected was 14.6% or more than one tenth of the electors eligible to participate in the last Saeima elections and therefore the amendments to the Constitution were submitted to the President, who submitted them to the Saeima. On 5 June 2008 the Saeima rejected the draft amendments to the Constitution submitted by electors and therefore on 2 August 2008 a national referendum was held. Although 608,847 electors voted "for", the draft law "Amendments to the Constitution of the Republic of Latvia" was not adopted during the national referendum, because for the amendments to the Constitution to get the force of law as follows from Article 79 of the Constitution at least 757,468 electors or half of all the citizens eligible to vote had to vote for its adoption³⁰⁰.

On 18 February 2008 the union "Sabiedrība citai politikai un tiesiskai valstij" (Society for Other Politics and Law-Based State) jointly with the "Pensionāru un senioru partija" (Pensioners' and Senior Citizens' Party) submitted to the Central Election Committee a draft law signed by electors "Amendments to the law "On State Pensions"". The number of the collected signatures was 11.9% or more than one tenth of the citizens with voting rights during the last Saeima elections, therefore the amendments were submitted to the President who submitted them to the

Saeima. The Saeima did not adopt the amendments therefore on 23 August 2008 a national referendum was organized. The draft law was not adopted during the referendum because there was no quorum (only 38.2% of those electors who took part in the last Saeima elections participated in the referendum).³⁰¹

On 29 March 2011 the CEC received a draft law signed by electors “Amendments to the Constitution of the Republic of Latvia”. This collection of electors’ signatures was organized by the union “Tēvzemei un Brīvībai/LNNK” (For Motherland and Freedom/LNNK). The draft law stipulated amendments to Article 112 of the Constitution supplementing it with a provision that “the State provides free-of-charge primary and secondary education in the official language”, it also proposed a transition provision prescribing that “as of 1 September 2012 in all the municipality and state educational establishments starting with form 1, the language of instruction is Latvian”. Checking the submitted signatures, the CEC established that 10,140 electors have signed for the proposing of amendments to the Constitution therefore it announced the nation-wide signature collection about the draft law, and yet the necessary number of signatures was not collected (it was necessary to collect signatures of 153,232 electors but only 123,844 signatures were collected)³⁰².

So far the last collection of signatures organized by the CEC on the grounds of electors’ legislative initiative took place in November 2011 with a purpose to propose the draft law “Amendments to the Constitution in the Republic of Latvia” which were aimed at enshrining in the Constitution the provision that the Russian language shall be the second official language. In both stages the support of proposing amendments to the Constitution was given by 12.14% of the citizens who had voting rights during the last Saeima elections. Thus the draft law was submitted to the President who submitted it to the Saeima for reviewing. On 22 December 2011 the Parliament rejected the proposals of amendments to the Constitution submitted by electors and already on 18 February 2012 a national referendum was organized³⁰³.

As seen from the above, so far submission of electors’ legislative initiatives has been co-ordinated by political parties, and also trade unions that have the status of public organizations³⁰⁴. It must be noted that there are no legal acts in Latvia that would restrict political parties in canvassing electors during the collection of signatures. Out of the seven instances when after the restoration of independence collection of signatures for electors’ legislative initiatives has been organized by the CEC in four of them the necessary number of signatures was collected to submit the draft law for reviewing in the Saeima. From the draft proposals submitted by electors only one was adopted in the Saeima without changes in its substance but the others were rejected and submitted to national referendums during which they were not adopted either.

In fact after the restoration of independence the legal provisions regulating electors’ legislative initiative have had minimum changes because the law of 1994 regulating this issue is based on the law “On National Referendums and Legislative Initiative” of 1922.

In regard of relations between the body of citizens and the Saeima it must be noted that since 2012 a new mechanism for implementation of the rights of the body of citizens has been enshrined in the legal provisions in Latvia – the rights to submit to the Saeima a collective application or the so-called procedure of “my voice”. On 19 January 2012 the Saeima adopted amendments to the rules of order of the Saeima by enshrining in them a new procedure – reviewing of a collective application³⁰⁵. This procedure provides that no fewer than 10,000 citizens of Latvia who have

reached the age of 16 on the day of submission of the application have the right to submit to the Saeima a collective application. Signatures in support of such an initiative can be collected in an internet site; neither notary nor any other certification is required. By this procedure it is possible to submit to the agenda of the Saeima any issue that must be reviewed by a legislative procedure, including initiative for elaboration of a draft law in the Saeima, ensuring inclusion of an already elaborated draft law in the Saeima agenda and its evaluation and improvement in the Saeima committees. Quite soon after the new procedure was introduced – in June of 2012 – the first collective application was submitted to the Saeima that proposed to determine liability for breaking the MPs oath³⁰⁶.

7.3 Voting rights

One of the ways for the people to enjoy its sovereign power is free and democratic elections. In Latvia voting rights are periodically enacted by electing the Saeima, European Parliament, and municipalities. During the last few years there have been several attempts to initiate amendments to the Constitution by which the electors would be entrusted the rights to elect the President but none of these initiatives has so far got the support of the majority in the Saeima therefore it is the Saeima's and not the electors' prerogative to elect the President.

7.3.1 Saeima elections

Since the restoration of independence in Latvia there have been six current elections of the Parliament – in 1993, 1995, 1998, 2002, 2006, and 2010, but on 17 September 2011 extraordinary Saeima elections were held in Latvia for the first time in its history when the 11th Saeima (the seventh Saeima after the restoration of independence in Latvia) was elected.

5 and 6 June 1993 was a historical time for Latvia because after a 62 years break democratic multi-party elections were held in Latvia again – the 5th Saeima elections³⁰⁷. The procedure of these elections was laid down in a special law of the Supreme Council adopted on 20 October 1992 “On the Elections of the 5th Saeima”³⁰⁸. This legal act in reality was slightly amended law “On the Saeima Elections” of 1922 and complied with requirements of democratic elections. 89.9% of citizens eligible to vote took part in the elections of the 5th Saeima, which remains an unsurpassed rate of participation in the elections that have taken place after the restoration of independence.

On 6 July 1993 the Constitution of Latvia was reinstated in full scope and hence the constitutional provision framework of the elections was re-enacted. On 25 May 1995 a new legal act was adopted the law “On the Saeima Elections”³⁰⁹ which still regulates the procedure of the Saeima elections and had been amended more than 10 times.

The election system in Latvia has undergone a number of changes during the 20 years since the restoration of independence. Within this span of time, a transition from the majority election system used in the LSSR to the proportional election system has been made, the latter was used in the Republic of Latvia in 1920s and 1930s; a multi-party system has been strongly established in Latvia as well, the legislative acts regulating the procedure of elections have been reinstated and improved.

Various significant changes have affected all the most important issues that are to do with elections – the procedure of submission and registration of candidate lists, nomination rights and restrictions, election procedure, calculation of the

results, setting up of election committees and the procedure of appealing the election committee decisions. The legal provisions that are connected with elections have been also amended in the Constitution.

Article 6 of the Constitution stipulates that the Saeima shall be elected in general, equal, direct, and secret ballot elections, on the basis of proportional representation – those are fundamental election principles recognized in democratic states.

In 1994 amendments to the Constitution were adopted that reduced the age of eligibility in elections. Since 1994 the rights of election have been granted to full-fledged citizens of Latvia who have reached the age of 18 (till then the minimum threshold for elections was 21 years)³¹⁰. It should be noted that during the 5th Saeima elections all the citizens of Latvia who had reached the age of 18 had the rights to vote because it was laid down in the special law “On the Elections of the 5th Saeima”.

Some months after the adoption of the law on the Saeima elections – on 9 August 1995 the Saeima passed a law that had a significant impact upon the elections – law “On Pre-election Canvassing before the Saeima Elections”. In 2004 the scope of the law was slightly extended including into it the issues that are to do with the elections to the European Parliament, therefore the name of the law was also amended – “On Pre-election Canvassing before the Saeima Elections and Elections to the European Parliament”³¹¹.

In 1997 several amendments to the Constitution were adopted that regulate the election procedure, among others Article 10 of the Constitution was amended which stipulates that the Saeima shall be elected for a period of four years instead of three as the case was so far³¹². To reduce the election costs, Article 11 of the Constitution provided that the Saeima elections shall take place on the first Saturday in October and not during two days – on Saturday and Sunday, as before³¹³. It is interesting that by adopting these amendments Article 9 was not changed and therefore there still is a provision that a candidate for Saeima must be over twenty-one years of age on the first day of elections.

One of the essential changes in legislative provisions after the restoration of independence is introduction of election threshold. The excessive fragmentation of the first four Saeimas encumbered or even made impossible normal and efficient functioning of the Parliament and caused difficulty in forming government. Therefore, learning from the past mistakes in the 5th Saeima elections election threshold was introduced for the first time in the history of Latvia. During the first reading it was envisaged to introduce only a 2% threshold but eventually the legislator decided to introduce a 4% threshold³¹⁴. In 1995 passing the new Saeima election law, a 5% threshold was enshrined in it – it means that those lists of candidates that have received from all Latvia fewer than 5% votes from the total number of votes cast in the election do not participate in distribution of seats of members of the Saeima. Introduction of election threshold has caused obvious changes in the number of parties represented in the Saeima. In the pre-war Latvia in each Parliament more than 45 candidate lists were elected (in the first Saeima – 46 lists; in the second Saeima – 48; in the third Saeima – 54; in the fourth Saeima – 57)³¹⁵, but after the restoration of independence this number has considerably shrunk. In the 5th Saeima MP mandates were acquired by 8 lists; in the 6th Saeima – 9 lists; in the 7th Saeima and the 8th Saeima – 6 lists; in the 9th Saeima – 7 lists; in the 10th Saeima and in the 11th Saeima – only 5 lists³¹⁶.

It must be noted that introducing of election threshold gives disadvantage to the smaller parties and therefore representatives of some smaller parties have lodged a

constitutional complaint to the Constitutional Court disputing that Article 38 of the law “On the Saeima Elections” which stipulates 5% threshold, is in contradiction to the Constitution³¹⁷. Reviewing the case, the Constitutional Court analysed several principles that are connected with the election rights and ruled that the opinion of the applicants is not grounded. Among other things the Constitutional Court indicated that the disputed provision regulates the activities of the Central Election Committee when deciding the distribution of the seats among the candidate lists but does not influence the subjective rights of the electors. Likewise, the Constitutional Court indicated in its judgement that defining an election threshold is justified by the necessity of forming such a Parliament that would be able to work in a co-ordinated way, fulfilling its functions as set out in the Constitution, at the same time facilitating also the existence of stable executive power, democracy, and welfare³¹⁸.

In 2002 by the initiative of the President V. Viķe-Freiberga the section in the Saeima election law that stipulated that persons who do not know the state language in the third and highest competence level cannot be nominated as candidates and elected in the Saeima and that the candidate can be crossed out of the list if he or she did not possess the highest language skill, which had to be confirmed at the State Language Centre, was deleted. The OSCE had indicated that this requirement puts part of the citizens in an unequal position and is in contradiction to the principle of equality enshrined in the Constitution. This amendment was positively evaluated also by the international society, EU, and NATO³¹⁹.

In the course of time, several restrictions of active voting rights associated with the Saeima elections have been revoked. At present the only restriction laid down in the Saeima election law is the provision that those persons that have been on the grounds of law recognized as incapacitated have no right to vote. Till 2003, Article 2 of the Saeima election law stipulated that such rights cannot be enjoyed by “suspects, the accused persons or persons on trial if arrest has been used against them as a security measure”. In 2003 on the grounds of a constitutional complaint, the Constitutional Court ruled that such a restriction is in contradiction to the principle of general elections enshrined in Article 6 of the Constitution and to the notion of “citizens who enjoy all rights” laid down in Article 8 of the Constitution therefore it was decided to announce the restriction stipulated in Paragraph 2 of Article 2 of the Saeima election law as invalid³²⁰. In 2009 the Saeima adopted amendments to the law which repealed the restriction of election rights for the persons who serve their time in a place “where their liberty is deprived”³²¹.

In 2009 after lengthy discussions highly approvable amendments were adopted to the Saeima election law, which prohibit the use of the so-called “engine” principle in the party candidate lists and lays down that the same candidate may be included only in one candidate list bearing the same name distributed in one constituency³²².

Although the Saeima election law has numerous amendments, politicians and experts are still discussing other improvements in the legislative election provisions. The competent institutions have expressed their determination to decide about introduction of the so-called “pre-voting” (a possibility to vote before the election day) thus offering a possibility to participate in the elections to those persons who because of work or religious considerations cannot arrive to a polling station on the election day and cast their vote till 20.00. It is interesting that quite shortly before the 11th Saeima elections, respecting religious rights of Jewish people the Saeima passed a decision that during the 11th Saeima elections at least one polling station

in each local authority will be open for 2 hours longer till 22:00 thus granting rights to Jews to participate in the elections after their religious holiday Sabbath³²³. But now one of the most discussed issues already for a longer period of time in regard of improvement of voting legislation is a decision whether Latvia following the technological development should not pass over to electronic voting system, thus reducing election costs and possibly also improving the participation rate which has a tendency to decrease³²⁴.

7.3.2 Elections of European Parliament

After Latvia's accession to the European Union, electors enjoy their voting rights also by electing the European Parliament. On 29 January 2004 the Saeima adopted the Elections to the European Parliament Law³²⁵, and under its provisions the European Parliament elections were held in Latvia for the first time on 12 June 2004. The second European Parliament elections took place in Latvia on 6 June 2009 simultaneously with the local government elections. The fact that the second European Parliament elections were held simultaneously with the local government elections considerably increased the participation rate of electors (in the first elections 41.3% electors took part, but in the second elections – 53.7%). It demonstrates that whenever it is possible it is financially more cost-effective and more efficient to organize national referendums or elections on several issues on one and the same day.

The rights to vote for the European Parliament in Latvia are enjoyed both by citizens of Latvia and European Union citizens who are not citizens of Latvia but who are staying in the Republic of Latvia. Electors of Latvia had to elect eight representatives in the European Parliament. On 1 December 2009 the Lisbon Treaty came into force in accordance to which the subsequent European Parliaments will have a larger number of representatives thus the number of representatives from Latvia will increase to 9 members³²⁶.

Unlike the Saeima elections and the national referendums during the European Parliament and local government elections, the electors register is used which means that each elector is registered in a specific polling station depending on the registered place of residence. Besides, during the European Parliament elections the whole Latvia is one single constituency³²⁷.

7.3.3 Local government elections

On 29 May 1994 the first multi-party and democratic local government elections were held in the restored state of Latvia. The legal basis for the elections was the law "On Elections of City Council, Regional Council and Local Council" passed on 13 January 1994³²⁸.

After the restoration of independence, five local government elections have been held in Latvia – in 1994, 1997, 2001, 2005, and 2009, and in accordance to the existing legal provisions the local government is elected for four years³²⁹.

In 2008 the law "On Administrative Territories and Populated Areas" was adopted and after it was enacted an essential stage of administrative reform was concluded. The new legal act divides Latvia into three types of administrative territories: regions³³⁰, cities, and municipalities³³¹. In view of the territorial reform, the title of the 13 January 1994 law was changed and now it is called law "On Elections of the Republic City Council and Municipality Council". On 6 June 2009 in accordance to the new legislative provisions local governments of 109 municipalities and 9 republic cities were elected, and hence in comparison

to the previous administrative structure of the local governments, the number of elected council members as a result of the territorial reform has decreased more than twice³³².

The number of local government council members to be elected depends on the number of the population in the respective administrative territory of the local government on the day of announcing the elections registered in the Population Register. In the legislative act a specific number of council members are provided only for the city of Riga – 60 council members.

Unlike the Saeima and European Parliament elections, during the local elections the administrative territory of each city and municipality government comprises a separate constituency.

The rights to elect the local governments are enjoyed by the citizens of Latvia and in accordance to the amendments adopted to the Constitution in 2004³³³ and the amendments to the election law – also by the European Union citizens who are not citizens of Latvia but who have been registered in the Population Register and if they fulfil all the requirements set out by the law. It should be noted that separate political forces more frequently are discussing that also the non-citizens should be granted the rights to elect local governments. Such a position has been also recommended by the OSCE commissioner in 2011³³⁴ but it is not a legal obligation of the state but a political decision.

There have been also attempts in Latvia to get the council member mandates also in an illegal way – in 2005 in the city of Rēzekne repeated elections were organized since the judgement by the Administrative Regional Court came into force which declared the results of elections to Rēzekne City Council null and void, since buying of electors votes had taken place on such a scale that could have influenced the distribution of seats in Rēzekne City Council³³⁵. Unplanned local government elections had to be organized also because of the changes in the administrative territories, for example, on 18 December 2010 on the grounds of the law “On division of Roja municipality and starting the work of the newly established municipalities” new local government elections took place in these territorial entities³³⁶. Extraordinary local government elections have been also organized because the decision making body of the local governments had been dissolved³³⁷.

8 Citizenship institute

The question on citizenship was one of the most disputable and legally most complicated issues about which the legislator had to decide after the restoration of independence of Latvia.

Already adopting 4 May 1990 declaration, the Supreme Council was not consistent in regard to the citizenship question because instead of reinstating the law “On Citizenship” of 1919, on July the Supreme Council established a working-group to elaborate the citizenship concept of the Republic of Latvia. The draft law was worked out but it was not supported in the largest Supreme Council faction by the Latvia Popular Front since there were concerns that by adopting a new citizenship law, the Supreme Council would give up the conception about the restoration of the Republic of Latvia as proclaimed in 1918³³⁸.

After the restoration of independence the legislator in Latvia had to make a choice between two models in defining the scope of citizens. The first model – the so-called “zero option” – would have meant that all the inhabitants of non-Latvian

origin would be automatically recognized as citizens. Although initially this model was considered as one of the possibilities in the Supreme Council, still in course of time the conviction crystallized that the second option would be more suitable, namely, the one following from the theory of continuity of the Baltic States. This theory means that the state of Latvia established in 1918 continues to exist and therefore in view of 1940 occupation automatic recognition of citizenship for Russian immigrants was considered to be impossible³³⁹.

After long discussions, on 15 October 1991 the Supreme Council passed a law "On the Renewal of the Rights of Citizens of the Republic of Latvia and Fundamental Principles for Naturalization". The preamble of this law stated that despite the fact that "the Republic of Latvia was occupied on 17 June 1940 and the state lost its sovereign power, the body of citizens in accordance with the law of 23 August 1919 "On Citizenship" continues to exist"³⁴⁰. The law laid down a provision that passports of the citizens of the Republic of Latvia will be issued to the persons who had Latvian citizenship and to the descendants of these persons, and it was also stipulated that general naturalization will be started as of 1 July 1992 on the grounds of a special law on citizenship. The legal act also stipulated that a citizen of the Republic of Latvia cannot be a citizen of another country or its national³⁴¹.

Taking into account the fact a number of members of the Supreme Council considered that the Council has no right to adopt the Citizenship Law and decide the issues of naturalization, the Supreme Council could not reach a compromise in the citizenship question for a long time because of political disagreements and therefore the decision of these questions came into the competence of the Saeima³⁴².

The newly elected Saeima adopted the new Citizenship Law on 22 July 1994³⁴³. The Citizenship Law included a provision that the citizens of Latvia are the persons who were citizens on 17 June 1940 as well as their descendants, Latvians and Livs whose permanent place of residence is Latvia, foundlings, as well as the persons who have naturalized. The other persons, mainly of Russian origin, did not qualify for the status of citizen and got non-citizen's status. The law prescribed gradual naturalization and initially the so-called "window system" was introduced which meant setting quotas for the new citizens. Such a system was harshly criticized by the high commissioner of OSCE and the EU. Taking into consideration recommendations by international organizations, on 22 June 1998 the Saeima adopted significant amendments to the Citizenship Law that stipulated that on the grounds of the parents' application, Latvian citizenship is granted to those children of non-citizens and stateless persons in Latvia who were born after 21 August 1991 without requiring proof of the Latvian language skills and also stipulated revoking of the naturalization quotas. Since these amendments were to introduce quite radical changes they were suspended and submitted to the national referendum on grounds of Article 72 of the Constitution. During the national referendum, the majority voted against revoking of the law therefore the amendments adopted by the Saeima to the Citizenship Law, but subsequently suspended, were not revoked and were enacted. The newly adopted provisions corresponded to the European recommendations and improved Latvia's international policy status since the naturalization process was simplified and the "window" system abolished³⁴⁴.

Requirements for a person to be granted citizenship by way of naturalization are laid down in the Citizenship Law and essentially it means that the candidate must pass the state language test, must know the basic provisions of the Constitution, the text of the national anthem, and history of Latvia. In the course of time, the

naturalization procedure has been simplified but still 14% of all the population in Latvia are non-citizens³⁴⁵.

Citizen's status gives a number of advantages – both active and passive voting rights, opportunities to work in civil service, to be a judge, sworn notary, sworn lawyer, bailiff, police officer, a ship captain on a Latvian ship, and the like. Besides, after the accession of Latvia to the European Union only citizens of Latvia become automatically the EU citizens that grants to a person many advantages, too³⁴⁶.

Non-citizens' status, rights, and duties are defined in the law adopted in 1995 "On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State"³⁴⁷. One can agree that this status is unclear³⁴⁸. At the beginning of 1990s, a view became widespread that aliens are also non-citizens yet that is an erroneous view. The European Court of Human Rights as well in its judgement of 9 October 2003 in the case *Slivenko v. Latvia*³⁴⁹ has recognized that non-citizens as a group of persons who lost citizenship of the USSR as a result of collapse of this country and have not accepted citizenship of another country are not to be considered as having the status of aliens or stateless persons. The European Court of Human Rights designates non-citizens as "the former USSR citizens" by that underlining their closer links with the Republic of Latvia that aliens and stateless persons have³⁵⁰. As it has been indicated by Professor E. Levits, non-citizen's status is considerably more favourable than the status of aliens and stateless persons because to a large extent it equates non-citizen's economic and social rights to the rights of citizens of Latvia³⁵¹.

Questions that are to do with citizenship legislation have been reviewed by the Constitutional Court a number of times. As can be seen from the judgements and rulings of the Constitutional Court, citizenship legislation has a political character which indirectly determines also the scope of control carried out by the Constitutional Court. Likewise, the Constitutional Court has indicated that all the essential issues related to the citizenship institute are firstly the competence of the legislator, but those issues about which the Saeima has not been able to reach consensus, both in 1927, as well as in 1998, are to be submitted to the national referendums³⁵².

The Citizenship Law was last amended in 1998, yet time and again citizenship issues have attracted the attention of society. Most frequently the discussions are about children's citizenship if only one of the child's parents is a citizen of Latvia, likewise appeals to give up the ban of double citizenship³⁵³. On 1 February 2011, by using his legislative initiative rights as enshrined in the Constitution, the President sent to the Saeima wording of the suggested amendments to the Citizenship Law, the main idea of which is to do with simplification of the procedure of naturalization of the children born in Latvia and with the aspects of double citizenship³⁵⁴.

During working on the present article there is a topical discussion about automatic granting of citizenship to all the non-citizens because 12,686 electors have signed a draft law that stipulates that the non-citizens who have not expressed a wish to retain a non-citizen's status would automatically be recognized as citizens as of 1 January 2014³⁵⁵. Considering the fact that there are doubts whether the mentioned draft law is to be viewed as fully elaborated, the CEC on grounds of Article 78 of the Constitution has requested opinions of a number of experts before deciding whether to begin collection of signatures about it. Irrespective of the decision about the further movement of the draft law it can be anticipated that citizenship legislation issues might cause wide discussions in the nearest future.

Summary

During the second period of independence the significant events in the state law area in Latvia are the reinstatement of the Constitution, establishing of the Constitutional Court, inclusion of the human rights catalogue in the Constitution, setting up of the institutional system of the state administration, enactment of the Administrative Procedure Law, and establishment of administrative courts, as well as aspirations to improve separate constitutional law institutions – the national referendum and citizenship institution. During the first two decades, these achievements are the main bulwarks of Latvia's state law building. Time and again larger or smaller improvements in this building, strengthening of the foundation, or some other re-building must be made to increase the comfort. The accomplishments so far enable to expect that the subsequent changes will be well-considered and ensure continuity. If the continuity of the legal thinking will be ensured in the further development of state law then the aim of the present article will be achieved.

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- ² Helsinki-86 is a human rights advocacy group established during the Soviet regime which organized several anti-Soviet activities in 1987: in commemoration of victims of the communist terror on 14 June they organized laying of flowers at the Freedom Monument, renouncing the Molotov-Ribbentrop Pact they organized a rally on 23 August and on 18 November they celebrated the anniversary of the Republic of Latvia. Helsinki-86 mapped out the road of the second independence of Latvia.
- ³ In autumn of 2011 a wide discussion was held at the Parliament about possibility of forming "Rainbow Coalition" but the nationally minded politicians objected against participation of the party association "Saskaņas centrs" (Harmony Centre) in the government since they did not recognize the fact of occupation.
- ⁴ *Āboliņš, I., Zirnīs, E.* Daivaiķe kopā! [an interview with the Chair of the society "Dzimtā valoda" (Native Language) Vladimir Linderman] *SestDiena*. 9–15 July 2011.
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- ⁶ *Ziemele, I.* State Continuity, Human Rights, and Nationality in the Baltic States. The Baltic States at Historical Crossroads (Ed. Jundzis T.). Rīga: Latvian Academy of Sciences, 2001, p. 229.
- ⁷ 2005. gada 12.maija Deklarācija par Latvijā īstenotā Padomju Sociālistisko Republiku Savienības totalitārā komunistiskā okupācijas režīma nosodījumu (Declaration of 12 May 2005 renouncing totalitarian communist occupation regime carried out in Latvia by the Union of Soviet Socialist Republics). *Latvijas Vēstnesis*, No. 77 (3235), 17 May 2005.
- ⁸ Judgement by the Constitutional Court of the Republic of Latvia of 17 May 2011 in the case No. 2010-20-0106, Paragraphs 11 and 13 of the Conclusions, see also: judgement by the Constitutional Court of the Republic of Latvia of 29 November 2007 in the case No. 2007-10-0102 Paragraphs 11, 32.3 of the Conclusions.
- ⁹ For example, some foreign professors (e.g., Professor Erwin Oberlender from the University of Mainz) object to the formulation "occupation" because they consider that in the case of Latvia it

- would be more correct to use the word “annexation” (Svece A.: an interview with the Professor Erwin Oberlander from the University of Mainz “Between Occupation and Genocide”). *Diena*, 21 May 2004.
- ¹⁰ LPSR mazā enciklopēdija (The Small encyclopaedia of the LSSR). Rīga: Zinātne LPSR zin. akadēmija, Vol. II 1969, p. 261.
 - ¹¹ *Plaude, E., Kripēns, J., Lielā, E.* Latvijas PSR Vēsture (History of the LSSR). Rīga: Latvijas valsts izdevniecība, 1958, p. 183.
 - ¹² No LR AP pirmās sesijas 1990. gada 3. maijs–4. augusts 31. sēdes (1990. gada 10. jūlija) stenogrammas (From the minutes of the 31st session of the Supreme Council of the Republic of Latvia, May 3–4 August 1990). *Latvijas Vēstnesis*, No. 190 (3138), 1 December 2004.
 - ¹³ *Avotiņš, V.* Valsts atjaunošanas jēga – pašiem lemt, kā dzīvot savā valstī (The significance of restoration of the state – to decide by ourselves how to live in our country) [interview with T. Jundzis, E. Levits]. *Neatkarīgā*, 29 April 2010.
 - ¹⁴ *Ibid.*
 - ¹⁵ Judgement by the Constitutional Court of the Republic of Latvia of 13 May 2010 in the case No. 2009-94-01, Paragraph 14.1 of the Conclusions. Available: <http://www.satv.tiesa.gov.lv/uplod/> [last viewed 12 August 2011].
 - ¹⁶ *Mednis, I.* Iezīmes mūsdienu Latvija politiskās elites portretam (Features of contemporary political elite in Latvia). *Latvijas vēsture*, No. 4 (60), 2005, p. 33.
 - ¹⁷ The Supreme Council of the LSSR both by its form of activity and its legal basis was a clone of other Supreme Councils of the USSR republics (for instance, Kazakhstan SSR or Moldavian SSR), as well as of the parliaments of the East European socialist republics of those times. The system, which had already been established in Stalin’s times, functioned from its very beginning under administration performed by the Communist Party on the basis of directions given by its Political Bureau. The actual head of the state in the soviet model was Secretary General of the Communist party of the USSR because of the system under which the soviet republics’ parliaments, or to put it in more precise terms, pseudo-parliaments worked, because of the election system and the actual possibilities of decision making.
 - ¹⁸ *Balodis, A.* Latvijas un latviešu vēsture (History of Latvia and people of Latvia). Rīga: Neatkarīgā Teātra “Kabata” grāmatu apgāds, 1991, 248. lpp.
 - ¹⁹ Likumīgs parlaments, nelikumīgi likumi (Legitimate parliament, illegitimate laws). Intervija ar VDK Konstitucionālās aizsardzības daļas priekšnieku K. Eihmani (An interview with the head of the Department of Constitutional defence of the KGB K. Eihmanis). *Lauku Avīze*, 1990, 25. maijs.
 - ²⁰ History of Latvia the 20th Century. Bleiere D., Butulis I., Feldmanis I., Stranga A., Zunda A. Rīga: Jumava, 2006, 438.
 - ²¹ LPSR AP deklarācija “Par Latvijas Republikas neatkarības atjaunošanu” (Declaration of the Supreme Council of the LSSR “On the Restoration of Independence of the Republic of Latvia”). *Latvijas Republikas Saeimas un Valdības Ziņotājs*, No. 20, 1990.
 - ²² To liberalize state administration based on a single-party system to democratic one can certainly be done and it was done (1990–1993), but to a large extent it was a success because the top Communist party functionaries of the republic became loyal to the idea of an independent state. It was the capacity of the leading communist elite to prevent collisions was the foundation for transformation of the occupation institute into “the parliament of the transition period”, which was able adequately to ensure legislator’s functions till election of a democratic Saeima (Parliament) and till it became its activities. Although many communists should be mentioned, the first one among them should be pointed out Anatolijs Gorbunovs. He was the secretary of the Central Committee of the Communist party of Latvia and at the same time also the speaker of the Supreme Council of the LSSR (1988–1990). Anatolijs Gorbunovs was the one to become the speaker of the transition period parliament – the chairperson of the Supreme Council of the Republic of Latvia (1990–1993) and the speaker of the first Saeima of the second period of independence (1993–1995).
 - ²³ Initially 122 MPs were elected to the Supreme Council from the list of the Popular Front of Latvia (henceforward PFL) but later 9 more MPs joined the faction – all in all 131 MPs out of 201. Thus an overwhelming majority from the LPF was established – almost two thirds – in the Parliament and it was possible to pass the Declaration of Independence.
 - ²⁴ 4. maijs. Rakstu, atmiņu un dokumentu krājums par neatkarības deklarāciju (May 4. A collection of articles, memories and documents about the Declaration of Independence). Jundzis T. (zin. red.) Rīga: LU žurnāla “Latvijas Vēsture” fonds, 2000, p. 403.
 - ²⁵ Satversmes tiesas 2010. gada 13.maija spriedums lietā Nr. 2009-94-01 secinājumu daļas 14. punkts (Judgement of the Constitutional Court of 13 May 2010 in the case No. 2009-94-01, Paragraph 14 of the Conclusions).

- ²⁶ Satversmes tiesas 2007. gada 29. novembra spriedums lietā Nr. 2007-10-0102. (Judgement of the Constitutional Court of 29 November 2007 in the case No 2007-10-0102); *Levičs, E.* 4. maija Deklarācija Latvijas tiesību sistēmā (May 4 Declaration in the context of law in Latvia). In: 4. maijs Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju (May 4. Collection of articles, memories, and documents on the Declaration of Independence). Ed. Jundzis T. Rīga: LU žurnāla "Latvijas Vēsture" fonds, 2000, pp. 266–294.; Valsts prezidenta Valda Zatlera 2010. gada 19. janvāra raksts Nr. 19 Saeimas priekšsēdētājam G. Daudzem: Par grozījumiem likumā "Par svētku, atceres un atzīmējamām dienām" (Address of the President Valdis Zatlers to the Chair of the Saeima G. Daudze: On amendments to the law "On Days of Holidays, Commemoration and Celebration"). *Latvijas Vēstnesis*, No. 11 (4203), 21 January, 2010.
- ²⁷ *Levičs, E.* 4. maija Deklarācija Latvijas tiesību sistēmā (May 4 Declaration in the context of law in Latvia). In: 4. maijs Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju (May 4. Collection of articles, memories, and documents on the Declaration of Independence). Ed. Jundzis T. Rīga: LU žurnāla "Latvijas Vēsture" fonds, 2000, p. 53.
- ²⁸ *Jelāgins, J.* Latvijas rakstītā konstitūcija (The written Constitution of Latvia). *Jurista Vārds*, Nr. 10(52), 14 May 1997.
- ²⁹ Latvijas Republikas Satversmes tiesas spriedums lietā Nr. 2004-15-0106 (Judgement of the Constitutional Court in the case No. 2004-15-0106). Available: www.satv.tiesas.gov.lv/upload/2004-15-0106.rtf [last viewed 12 July 2011].
- ³⁰ Satversmes tiesas 2007. gada 29. novembra sprieduma lietā Nr. 2007-10-0102. Konstatējošās daļas 64.punkts (Judgement of the Constitutional Court of 29 November 2007 in the case No. 2007-10-0102, Paragraph 64 of the Findings).
- ³¹ Latvijas Republikas Satversmes tiesas 2010. gada 13. maija spriedums lietā Nr. 2009-94-01 secinājumu daļas 11. punkts (Judgement of the Constitutional Court of the Republic of Latvia of 13 May 2010 in the case No. 2009-94-01, Paragraph 11 of the Conclusions). Available: http://www.satv.tiesas.gov.lv/upload/spriedums_2009_94_01.htm [last viewed 12 July 2011].
- ³² Judgement of the Constitutional Court of 29 November 2007 in the case No. 2007-10-0102 presents an extensive analysis of continuity doctrine of the state of Latvia concluding that the continuity of the state is characterized by continuity or identity in international law. The basis of continuity of a state are also the claims linked with it that have been put forward in compliance with the applicable provisions or procedures of international law and the fact that these claims are accepted by the international community when there are doubts about identity of the state.
- ³³ *Lēbers, D. A.* Latvijas neatkarības atjaunošanas prasības dažos dokumentos pirms 1990. gada 4. maija (Requirements for independence of Latvia in some documents before 4 May 1990). In: 4. maijs. Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju (May 4. Collection of articles, memories, and documents on the Declaration of Independence). Ed. by Jundzis T. Rīga: LU žurnāla "Latvijas Vēsture" fonds, 2000, pp. 28–29.
- ³⁴ *Balodis, R., Kārklīna, A.* Divdesmit gadi kopš Latvijas Neatkarības deklarācijas: valststiesību attīstības tendences un risinājumi (Twenty years since Declaration of Independence of Latvia: trends and solutions of development of state law). *Jurista Vārds*, Nr.17/18, 27 April 2010; *Balodis, R., Kārklīna, A.* Valsts tiesību attīstība Latvijā: otrais neatkarības laiks (Development of state law in Latvia: the second period of independence). *Journal of the University of Latvia*. No.1. Law. Latvijas Universitāte, 2010, pp. 25–52.
- ³⁵ *Avotiņš, V.* Valsts atjaunošanas jēga – pašiem lemt, kā dzīvot savā valstī (The significance of restoration of the state – to decide by ourselves how to live in our country) [interview with T. Jundzis, E. Levičs]. *Neatkarīgā*, 29 April 2010.
- ³⁶ *Ibid.*
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- ³⁹ Latvijas Republikas tieslietu sistēma 1918–2008 (Legal system in Latvia 1918–2008). Rīga: Tieslietu ministrija, 2008, p. 57.
- ⁴⁰ *Birkavs, V. (Ievads), Vītiņš V.* Vispārējais tiesību pārskats (General overview of law). Rīga: Verdikts, 1993, p. 8.

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- ⁴³ *Jundzis, T.* Divvaldības periods. 1990. gada 4. maijs – 1991. gada 21. maijs/Latvijas Valsts atjaunošana (Period of dual power. 4 May 1990 – 21 May 1991/Restoration of the state of Latvia). 1986–1993 Latvijas Universitātes žurnāla "Latvijas Vēsture" fonds, Latvijas Zinātņu akadēmijas Baltijas stratēģisko pētījumu centrs. Rīga, 1996, p. 250.
- ⁴⁴ Par darba grupas izveidošanu Latvijas Republikas Satversmes jaunās redakcijas un Latvijas Republikas pilsonības koncepcijas projekta izstrādāšanai (On setting up a working group for elaboration of the new wording of the Constitution of the Republic of Latvia and draft concept for the citizenship of the Republic of Latvia). Ordinance of the Supreme Council of the LSSR. *Latvijas Republikas Saeimas un Valdības Ziņotājs*, No. 33, 16 August 1990.
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- ⁴⁷ *Apsītis, R.* Neatkarības deklarācijas pieņemšanas gadadienā (On the anniversary of adoption of the Declaration of Independence). *Jurista Vārds*, No. 16(371), 3 May 2005.
- ⁴⁸ Par Latvijas Republikas valstisko statusu. LR konstitucionālais likums ("On the Statehood of the Republic of Latvia". Constitutional law of the Republic of Latvia). *Ziņotājs*, No. 42, 24 October 1991.
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- ⁵⁰ Latvijas Republikas Augstākās padomes (1990–1993) 1. sesijas 13. sēdes 1990. gada 28. maijā stenogramma, 13. burtnīca (The minutes of the first session of the Supreme Council (1990–1993) of the Republic of Latvia, sitting No. 13, volume 13). *Latvijas Vēstnesis*, attachment "Documents", 3 May 2004.
- ⁵¹ Although the internationally recognized continuity principle doctrine was followed in all the three Baltic States, Latvia was the only one to reinstate its Constitution of 1922. Lithuania initially reinstated its Constitution of 1938 (nullifying some articles of authoritarian nature), then revoked it adopting a transition period Constitution which was enacted till 1992. Afterwards a completely new Constitution was adopted. A similar approach was taken in Estonia where initially the pre-war Constitution was reinstated to replace it in 1992 with a completely new Constitution. It must be noted that the neighbouring countries did not have another option because the last pre-war Constitutions were legitimately adopted (by people's referendum) yet in their substance they were undemocratic and authoritarian. Such Constitutions are sometimes called also "Bonapartean constitutions".
- ⁵² *Balodis, R.* Ievads Latvijas Republikas Satversmes VIII nodaļas komentāriem. Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības (Introduction to Comments on the Chapter VIII of the Constitution of the Republic of Latvia. Comments on the Chapter VIII of the Constitution of the Republic of Latvia. Fundamental human rights). Group of authors, scientific ed. Prof. R. Balodis. *Latvijas Vēstnesis*. Rīga, 2011, p. 6.
- ⁵³ For example, the structural unit of the USSR religious affairs in Latvia – the Council of Religious Cults of the Council of Ministers of the LSSR, which included also staff from the KGB – was transformed into the Department of Religious Affairs. The last commissioner of the LSSR Religious Affairs Arnolds Kublinskis became the director of the Department of Religious Affairs of the Republic of Latvia. Although the competence of the Council of Religious Cults was maintaining of a register of religious organizations, actually it was an administrative institution of atheist regime. (See: Balodis, R. *Baznīcu tiesības (Rights of the Church)*. Rīga: Reliģijas Brīvības Asociācija, 2002, pp. 258–259).
- ⁵⁴ *Jansone, D., Reinholde, I., Ulncāne, I.* Latvijas publiskā pārvalde (Public administration in Latvia). Rīga: EuroFaculty, 2002, p. 45.
- ⁵⁵ *Lēbers, A., Bišers, I.* Komentārs Latvijas Republikas Satversmes IV nodaļai "Ministru kabinets" (Commentary on Chapter IV "Cabinet of Ministers" of the Constitution of the Republic of Latvia). Rīga: Privatizējamā valsts SIA "Tiesiskās informācijas centrs", 1998, p. 27.

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- ⁵⁷ *Leviņš, E.* Latvijas tiesību sistēmas attīstības iezīmes uz XXI gadsimta sliekšņa (Features of legal system in Latvia on the verge of the XXI century). In: *Latvijas tiesību vēsture (1914–2000) (History of law in Latvia, 1914–2000)*. Ed. Prof. Dr. iur. D. A. Lēbers. Rīga: LU žurnāla “Latvijas Vēsture” fonds, 2000, p. 493.
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- ⁵⁹ Since 1 June 1996 this law is called law “On the Structure of the Cabinet of Ministers”). Available: <http://www.mk.gov.lv/lv/mk/vesture/> [last viewed 9 August 2011].
- ⁶⁰ *Lēbers, A., Bišers, I.* Komentārs Latvijas Republikas Satversmes IV nodaļai “Ministru kabinets” (Commentary on Chapter IV “Cabinet of Ministers” of the Constitution of the Republic of Latvia). Rīga: Privatizējamā valsts SIA “Tiesiskās informācijas centrs”, 1998, p. 27.
- ⁶¹ Stringent restrictions concerning the public officials, including also MPs are laid down in the law “On Prevention of Conflict of Interest in Activities of Public Officials”. *Latvijas Vēstnesis*, No. 69 (2644), 2002.
- ⁶² Saeimas kārtības rullis (Rules of Order of the Saeima): Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 96, 1994.
- ⁶³ Grozījumi Latvijas Republikas Satversmē (Amendments to the Constitution of the Republic of Latvia): Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 331/332 (1046/1047), 1997.
- ⁶⁴ Grozījumi Latvijas Republikas Satversmē (Amendments to the Constitution of the Republic of Latvia): Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 70 (2645), 2002.
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- ⁶⁶ Satversmes grozījumi juristu domās (Amendments to the Constitution as seen by legal specialists). *Jurista Vārds*, No. 17 (570), 2009; *Damberg, M.* Vēlēšanu sistēmas evolūcija, nevis revolūcija. Intervija ar Vēlēšanu reformas biedrības valdes priekšsēdētāju V. Liepiņu (Evolution and not revolution of the election system. An interview with the Chair of the Board of the Election Reform Society V. Liepiņš). *Jurista Vārds*, No. 6(559), 2009.
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- ⁶⁸ Ministru kabineta kārtības rullis: MK noteikumi Nr. 300 (Rules of Order of the Cabinet of Ministers: Cabinet of Ministers Regulations No. 300). *Latvijas Vēstnesis*, No. 58 (4044), 2009.
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- ⁷³ Par Valsts prezidenta vēlēšanu regulējumu līdz Valsts prezidenta ievēlēšanas likuma pieņemšanai (On regulation of election of the President till adoption of the Presidential Election Law), see: *Kukule, S.* Valsts prezidenta vēlēšanas: tiesiskais regulējums (Elections of the President: legal regulation). *Jurista Vārds*, No. 41(444), 17 October 2006.
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- ⁷⁵ For example, in September 2012 the Commission declared its opinion about the fundamentals of the Constitution of the Republic of Latvia and its inviolable nucleus. The opinions of the Commission are available at: http://www.president.lv/pk/content/?cat_id=2896 [last viewed 1 November 2012].
- ⁷⁶ On 30 April 2008 the Constitutional Law Committee published a large-scale study on improvements of the mechanism of extraordinary elections of the Parliament. See: *Viedoklis par Saeimas priekšlaicīgu vēlēšanu mehānisma pilnveidošanu (An opinion about improving the mechanism of extraordinary elections of the Saeima)*. Available: http://www.president.lv/images/modules/items/PDF/item_1680_KTK_30042008_Viedoklis_par_Saeimas_priekslaicigu_velesanu_mehanismu_pilnveidosanu.pdf [last viewed 11 August 2011].
- ⁷⁷ See, for example, *Serdāns, V., Mūrniece, I.* Latvijai laiks ievākt ražu (Time to reap harvest in Latvia) [interview with the President]. *Latvijas Avīze*, 30 December 2006.

- ⁷⁸ Till 1993 the State Audit Office operated in accordance to 17.12.1991 law of the Supreme Council of the Republic of Latvia "On State Audit Office", which stipulated that the State Audit Office is formed by the Supreme Council and the State Audit Office reports directly to it. See on history of State Audit Office: <http://www.lrvk.gov.lv/index.php?id=1715>.
- ⁷⁹ An idea about the need of an institution that would safeguard the Constitution was voiced in Latvia for the first time by the Saeima member Pauls Šimanis in 1930 in his article "Eight years of the Constitution of Latvia". Taking up this idea, on 8 May 1934 the Saeima member Hermanis Štegmans submitted a proposal to supplement the Constitution with Article 86.1 that would provide for setting up a special state court. Yet, this proposal did not receive the necessary majority of votes. See homepage of the Constitutional Court: <http://www.satv.tiesa.gov.lv/?lang=1&mid=3> [last viewed 1 August 2011].
- ⁸⁰ Rodiņa, A. Konstitucionālās sūdzības teorija un prakse Latvijā (Theory and practice of constitutional complaint in Latvia). *Latvijas Vēstnesis*, 2009, p. 46.
- ⁸¹ Par Latvijas Republikas neatkarības atjaunošanu (On the Restoration of independence of the Republic of Latvia). Declaration of the Supreme Council of LSSR. *LR Saeimas un MK Ziņotājs*. No. 20, 1990.
- ⁸² Par tiesu varu (law "On Judiciary"). Law of the Supreme Council. *Ziņotājs*. No. 1, 1993.
- ⁸³ Satversmes tiesas likums (Constitutional Court Law). Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 103 (588), 1996.
- ⁸⁴ Tihonovs, I. Satversmes tiesa nevar tikt Satversmē (The Constitutional Court cannot get into the Constitution). *Diena*, 9 August 1995.
- ⁸⁵ Grozījums Latvijas Republikas Satversmē (Amendments to the Constitution of the Republic of Latvia): Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 100 (585/586), 1996.
- ⁸⁶ Homepage of the Constitutional Court: <http://www.satv.tiesa.gov.lv/?lang=1&mid=3> [last viewed 1 August 2011].
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- ¹⁹² Ziņojums par Ministru Kabineta sastādīšanu un Deklarācija par Ministru kabineta iecerēto darbību (Declaration on the composition of the Cabinet of Ministers and its intended activities). *Diena*, 23 November 1995.
- ¹⁹³ *Sandgrēns, K., Iljanova, D. Sandgrēns, K., Iljanova, D.* Latvijas tieslietu sistēmas vajadzību novērtējums (Assessment of needs of the judicial system in Latvia). *Likums un Tiesības*. Vol. 3, No. 6 (22), June 2001.
- ¹⁹⁴ Grozījumi Latvijas Republikas Satversmē (Amendments to the Constitution of the Republic of Latvia): Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 308/312 (1369/1373), 1998.
- ¹⁹⁵ *Kusiņš, G.* Kā pilnveidot mūsu valsts Satversmi/ Satversmes reforma Latvijā: par un pret (How to improve the Constitution of our country/ Constitutional reform in Latvia: pros and cons). Experts seminar in Rīga, 15 June 1995. Rīga: Institute for social-economic research "Latvija", 1995, p. 39.
- ¹⁹⁶ Atbildes uz ANO Cilvēktiesību komitejas locekļu jautājumiem (Answers to the questions of members of the UN Human Rights Committee). *Cilvēktiesību Žurnāls*, No. 2, 1996, p. 78–79. Quoted by: *Pleps, J.* Pamattiesību katalogs starpkaru periodā (Fundamental rights catalogue in the period between the wars). *Jurista Vārds*, No. 48 (553), 23 December 2008.
- ¹⁹⁷ *Levičs, E.* Piezīmes par Satversmes 8. nodaļu – Cilvēka pamattiesības (Notes on Chapter 8 of the Constitution – Fundamental human rights). Satversme un cilvēktiesības: gadagrāmata 1999 (The Constitution and human rights: yearbook 1999). *Cilvēktiesību žurnāls*, 9–12. Rīga: Latvijas Universitāte, 1999, p. 17.
- ¹⁹⁸ According to the legal scholar Dr. iur. J. Pleps the Constitution consists of: "(1) Fundamental principles of the Constitution (Articles 1, 2, 3, 4, 6, and 77) as formulated by Article 77 of the Constitution and the principles of rights derived from these provisions; (2) Provisions that define the state power and the state power institutions implementing the state power, as well as their competences and mutual relations (instrumental part); (3) Fundamental rights catalogues – provisions that stipulate relations between person and state." (From Pleps' Doctoral Thesis "Satversmes iztulkošanas konstitucionāli tiesiskie un metodoloģijas problēmjaudājumi (Constitutionally legal and methodological issues of interpretation of the Constitution) 2011, p. 141.)
- ¹⁹⁹ *Neimanis, J.* Ievads tiesībās (Introduction to law). Rīga: zv.adv. J. Neimanis, 2004, p. 157.
- ²⁰⁰ *Levičs, E.* Tiesību normu interpretācija un Satversmes 1. panta demokrātijas jēdziens (Interpretation of legal provisions and the notion of democracy in Article 1 of the Constitution). *Cilvēktiesību žurnāls*, No. 4, 1997.
- ²⁰¹ Judgement by the Constitutional Court of 13 May 2010 in the case No. 2009-94-01, Paragraph 16.1 of the Conclusions, see also judgement by the Constitutional Court of 10 June 1998 in the case No. 04-03(98) the Conclusions, and judgement of 24 March 2000 in the case No. 04-07(99).
- ²⁰² *Pleps, J.* Pamattiesību katalogs starpkaru periodā (Fundamental rights catalogue in the period between the wars). *Jurista Vārds*, No. 48 (553), 23 December 2008.
- ²⁰³ *Neimanis, J.* Ievads tiesībās (Introduction to law). Rīga: zv.adv. J. Neimanis, 2004, p. 80.
- ²⁰⁴ Examining Chapter 2 of the Constitution in the third reading, the draft did not get the necessary support at the Constitutional Assembly of the representatives of people – 62 voted "for"; 6 were "against", but 62 members of the Constitutional assembly abstained.
- ²⁰⁵ *Akmentiņš, R.* Latvijas Satversmes reforma (Reform of the Constitution of Latvia). *Jurists*, No. 5 (57), May 1934.
- ²⁰⁶ *Cielava, V.* Pamattiesības – Satversmē vēl tukša vieta. Aktuāli cilvēktiesību jautājumi Latvijā (Fundamental rights – still an empty place in the Constitution. Topical human rights issues in Latvia). *Cilvēktiesību žurnāls*, No. 3, 1996, p. 33.
- ²⁰⁷ The constitutions of these countries contain provisions that lay down the following duties as constitutional: to respect the constitutional basis of the country; to protect the country, to maintain the country (to pay taxes), as well as specific constitutional duties. The duty to maintain the country as

a constitutional duty of citizens has been recognized in very many countries because every citizen must participate in covering expenses of the state and municipalities, by paying taxes and duties as set by the law. Even if it has not been stipulated by the Constitution for various reasons it is an essential provision in constitutional laws (for example, in France). Sometimes the duty to pay taxes is set down as a constitutional duty of all the individuals residing in the country (e.g., Article 46 of the Constitution of Armenia, Article 30 of the Constitution of Japan, Article 56 of the Constitution of China, Article 84 of the Constitution of Poland) or as a duty only of citizens (e.g., Article 60 of the Constitution of Bulgaria). To protect the state from foreign armed attacks is manifested as a duty in compulsory military or alternative service for male citizens. Such provisions exist, for example, in the Constitution of Lithuania (Article 139), in the Constitution of Russia (Article 59), in the Constitution of China in Article 53, in the Constitution of Estonia (Article 124), in the fundamental law of Germany (12a §), in the Constitution of Poland (Article 60), and in the Constitution of Armenia (Article 47). Women are not drafted in the army during the times of peace but by way of an exception under conditions of war (for example, in Russia and Germany) those women who have obtained special military education may be subject to call-up in the army. Respect of constitutional basis of the state. This duty may be manifested as “loyalty to the state” (e.g., Article 82 of the Constitution of Poland), while the Constitution of India stipulates that “the duty of citizens of the state is to cherish and live by noble ideas that inspired the people to fight for independence and to protect sovereignty, unity and integrity of the state”. Constitutional duties, as well as the rights and freedoms may be granted also to citizens from other states (for example, Articles 9 and 55 of the Constitution of Estonia) providing that the rights enshrined in the Constitution are equally guaranteed to all the persons residing in Estonia – not only to citizens of Estonia but also to citizens from other countries and to stateless persons who, while being in Estonia, must respect its constitutional system. As specific provisions one should mention the family duty laid down in Article 27 of the Constitution of Estonia to bring up and take care of children and for those members of the family who needs assistance, or the provision in the Constitution of Japan (Article 26) for parents and guardians to ensure schooling of children.

- ²⁰⁸ Senāta Apvienotās sapulces 1937. gada 25. septembra spriedums Nr. 17 (Judgement No. 17 of the Joint Meeting of the Senate of 25 September 1937). Latvijas Senāta spriedumi (1918–1940) (Judgements by the Senate of Latvia, 1918–1940). Vol. 1, Senāta Apvienotās sapulces spriedumi (Judgements by the Joint Meeting of the Senate). Latvijas Republikas Augstākā tiesa (the Supreme Court of the Republic of Latvia). Senatora Augusta Lēbera fonds (Fund of Senator Augusts Lēbers). By: Šmite A., Poriete A.; Ed. Krūmiņa L. Rīga: Latvijas Republikas Augstākā tiesa; Senatora Augusta Lēbera fonds, 1997, p. 354.
- ²⁰⁹ Latvijas Republikas 6. Saeimas Juridiskās komisijas 1998. gada 27. aprīļa sēdes protokols (Minutes of the Legal Committee of the 6th Saeima of the Republic of Latvia, 27 April 1998) [not published].
- ²¹⁰ Valsts valodas likums (Official Language Law). Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 428/433 (1888/1893), 1999.
- ²¹¹ Grozījumi Latvijas Republikas Satversmē (Amendments to the Constitution of Latvia): Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 70 (2645), 2002.
- ²¹² See: debates at the sitting of the Saeima of 20 March 2002 where the mentioned amendments to the Constitution were adopted in the first reading. Available: http://www.Saeima.lv/steno/2002/st_2003/st2003.htm [last viewed 4 August 2011]
- ²¹³ Judgement of the Constitutional Court of 13 March 2001 in the case No. 2000-08-01-09.
- ²¹⁴ See: for example, judgement of the Constitutional Court of 10 June 2011 in the case No. 2010-69-01, Judgement of the Constitutional Court of 15 March 2010 in the case No. 2009-44-01, and others).
- ²¹⁵ Kovaļevska, A. Tiesības uz atbilstošu dzīves līmeni (Rights to adequate standard of living). *Jurista Vārds*, No. 51/52, 22 December 2009.
- ²¹⁶ Levits, E. Cilvēktiesību normas un to juridiskais rangs Latvijas tiesību sistēmā (Human rights provisions and their legal scope in the system of law in Latvia). *Juristu žurnāls*, No. 5, Cilvēktiesību Žurnāls, No. 6, 1997, p. 32–53.
- ²¹⁷ Satversme un cilvēktiesības: gadagrāmata 1999 (The Constitution and human rights: yearbook 1999). Cilvēktiesību žurnāls, 9–12. Rīga: Latvijas Universitāte, 1999, p. 64–65.
- ²¹⁸ *Ibid.*, p. 51.
- ²¹⁹ Vildbergs, H. J., Feldhūne, G. Atsauces Satversmei: mācību līdzeklis (References to the Constitution: a study aid). Rīga: Latvijas Universitāte, 2003, p. 125.
- ²²⁰ Pleps, J., Pastars, E., Plakane, I. Konstitucionālās tiesības (Constitutional law). Rīga: *Latvijas Vēstnesis*, 2004, p. 719.

- ²²¹ Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības (Comments on the Constitution of the Republic of Latvia. Chapter VIII. Fundamental human rights). Group of authors, scientific ed. Prof. R. Balodis. *Latvijas Vēstnesis*. Rīga, 2011, p. 746.
- ²²² *Pleps, J., Pastars, E.* Satversmes lasīšana Satversmes tiesā (Reading of the Constitution at the Constitutional Court). *Jurista Vārds*, No. 47, 20 November 2007.
- ²²³ Judgement by the Constitutional Court of 18 February 2011 in the case No. 2010-29-011, Paragraph 15 of the Conclusions.
- ²²⁴ Judgement by the Constitutional Court of 10 February 2011 in the case No. 2009-74-01, Paragraph 17 of the Conclusions.
- ²²⁵ Judgement by the Constitutional Court of 16 May 2007 in the case No. 2006-42-01, Paragraph 10 of the Conclusions.
- ²²⁶ Judgement by the Constitutional Court of 30 March 2011 in the case No. 2010-60-01, Paragraph 23 of the Conclusions.
- ²²⁷ Likums par Valsts cilvēktiesību biroju (law “On State Human Rights Office”). Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 221, 1996 (not effective).
- ²²⁸ Ed. Ziemele I. Cilvēktiesības Latvijā un pasaulē (Human rights in Latvia and in the world). Rīga: SIA “Izglītības soļi”, 2000. p. 305.
- ²²⁹ *Balodis, R.* Konstitucionālo tradīciju īpatnības Apvienotajā Karalistē (Peculiarities of constitutional traditions in the UK). Rakstu kopas “Apvienotās Karalistes konstitucionālās tiesības” 1. raksts (The 1st article from the series “Constitutional law in the UK”). *Likums un Tiesības*, Vol. 6, No. 5(57), 2004.
- ²³⁰ The English name used is “Ombudsman” but following the proposal of the State Terminology Commission the Latvian equivalent “Tiesībsargs” (guardian of law) has been adopted. “Ombudsman” in translation from the Swedish *ombud* is *authorized agent*; thus it means “people’s authorized agent”. The proposal to use the Latvian version perhaps is more correct from the linguistic point of view but not from a practical position because prosecutors, police officers and even the personnel of the Ministry of Justice are often called “guardians/enforcers of law” in mass media thus making the institute of Ombudsman less recognizable in the Latvian language.
- ²³¹ *Brūveris, O., Biksiniece, L.* Tiesībsarga pilnvaras ir jāpaplašina (The Ombudsman’s authority must be expanded). *Jurista Vārds*, No. 32 (290), 9 September 2004.
- ²³² Available: <http://www.tiesibsargs.lv/lat/tiesibsargs/vesture/> [last viewed 1 August 2011].
- ²³³ *Kukule, S.* Vai Latvijai nepieciešams tautas tiesībsargs (Does Latvia need an Ombudsman for the nation). *Jurista Vārds*, No. 44(349), 16 November 2004.
- ²³⁴ It is worth mentioning that 2/3 of complaints submitted to the State Human Rights Office according to the office itself do not relate to the mandate of the Office. Thus, for example, 20-25% of the correspondence between the Office and the population are to do with the problems of the population, with solving of issues related to flats (From the report by experts on functions of the State Human Rights Office and Ombudsman in Latvia. *Jurista Vārds*, No. 19 (212), 19 June 2001).
- ²³⁵ Recommendation of the Committee of Ministers of the Council of Europe 9 (2001) appeals to the states to facilitate and use alternative dispute resolution means between institutions and private persons, Recommendation 1615 (2003) proposes the states to establish autonomous institution independent of the government, whose task would be to protect person from governance mistakes or injustices committed by them. EU proposes to entrench this institution constitutionally and to stipulate its functions in law. The institution should be provided the rights to submit to the government recommendations for elimination of mistakes and no governmental structure or institution should be indicating how and what it must do.
- ²³⁶ Projekts par Ombuda institūciju (Project on the Ombudsman’s institution). *Latvijas Vēstnesis*, No. 39 (2426), 9 March 2001.
- ²³⁷ *Kukule, S.* Vai Latvijai nepieciešams tautas tiesībsargs (Does Latvia need an Ombudsman for the nation?). *Jurista Vārds*, No. 44(349), 16 November 2004.
- ²³⁸ *Barladžana, M.* Ombudsmeņa institūts: vēsture, teorija un tiesiskie aspekti (Ombudsman’s institution: history, theory, and legislative aspects). *Jurista Vārds*, No. (427), 20 June 2006.
- ²³⁹ *Gobiņš, M.* Kāpēc Latvijai ir vajadzīgs tiesībsargs? (Why does Latvia need an Ombudsman?) *Diena*, 13 December 2006.
- ²⁴⁰ *Arāja, D.* Tiesībsargs – bez naudas un jaudas (Ombudsman – without money and capacity). *Diena*, 13 November 2006.
- ²⁴¹ Tiesībsarga likums (Law on ombudsman): Law of the Republic of Latvia. *Latvijas Vēstnesis*, Nr. 65(3433), 2006.
- ²⁴² The judgement of the Constitutional Court of 25 November 2010 in the case No. 2010-06-01), Paragraph 14.4 of the Conclusions.
- ²⁴³ *Ibid.*

- ²⁴⁴ Egle, I. Tiesībsargam divi pretendenti (Two candidates for Ombudsman's Office). Diena, 6 December 2006; Mūrniece, I. Tiesībsarga amatam divi pretendenti (Two candidates for Ombudsman's Office). *Latvijas Avīze*, 7 December 2006; Antonēvičs, M. Jautājums atlikts (The issue has been postponed). *Latvijas Avīze*, 13 January 2007; Kuzmina, I. Jāmeklē jauni kandidāti (New candidates must be looked for). *Latvijas Avīze*, 12 January 2007; Kuzmina I. Tiesībsarga meklēšanā – pīppauze (Looking for an Ombudsman – taking a break). *Latvijas Avīze*, 16 January 2007; Lulle, B. Dramaturģija nevietā (Drama out of place). *Neatkarīgā*, 13 January 2007.
- ²⁴⁵ The Ombudsman's Office: the employer can restrict expression of national views. Available: <http://www.delfi.lv/archive/print.php?id=29787097> [last viewed 9 August 2011].
- ²⁴⁶ Konceptija ombuda institūcijas ieviešanai Latvijā (Concept for introducing the Ombudsman's institution in Latvia). *Likums un Tiesības*, January 2001.
- ²⁴⁷ Lulle, B. Circenes lāča pakalpojums (Circene's ill office). *Neatkarīgā*, 23 February 2011; Kārklīņš, K. Uzklauša, bet viedokli nemaina. *Neatkarīgā*, 23 February 2011.
- ²⁴⁸ Grozījumi Tiesībsarga likumā (Amendments to the Ombudsman Law): Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 82 (3866), 2008.
- ²⁴⁹ Iedzīvotāju aptauja par Latvijas Republikas neatkarību (Population survey on independence of the Republic of Latvia). Available: <http://www.cvk.lv> [last viewed 1 May 2011].
- ²⁵⁰ Taurēns J. 1991. gada 3. marta referendums un tā nozīme Latvijas neatkarības atjaunošanā (Referendum of 3 March 1991 and its significance in the restoration of independence of Latvia). Available: http://web.cvk.lv/pub/upload_file/Konference_J_Taurens_1991_gada_3_marta_referendums.pdf [last viewed 1 October, 2012].
- ²⁵¹ Judgement of the Constitutional Court of 29 November 2007 in the case No. 2007-10-0102; judgement of 7 April 2009 in the case No. 2008-35-01.
- ²⁵² Dišlers, K. Ievads Latvijas valststiesību zinātnē (Introduction to state law of Latvia). Riga: A. Gulbis, 1930, p. 110.
- ²⁵³ The issues concerning accession to the EU were evaluated by a working group set up by order of the Prime Minister. See ordinance by the Prime Minister of 20 April 2011 No. 147 "On the working group for elaboration of the draft law ensuring compatibility of the constitutional system of Latvia with the European Community law". *Latvijas Vēstnesis*, No. 63, 24 April 2001.
- ²⁵⁴ Judgement by the Constitutional Court of 29 November 2007 in the case No. 2007-10-0102.
- ²⁵⁵ Judgement by the Constitutional Court of 7 April 2009 in the case No. 2008-36-01.
- ²⁵⁶ Сахаров, А.Н. Институт президентства в современном мире (Presidential institute in modern world). Moscow: Юридическая литература, 1994, p. 129.
- ²⁵⁷ Dišlers, K. Ievads Latvijas valststiesību zinātnē (Introduction to state law of Latvia). Riga: A. Gulbis, 1930, p. 177.
- ²⁵⁸ Valsts prezidenta Konstitucionālo tiesību komisija. Viedoklis par Saeimas priekšlaicīgu vēlēšanu mehānisma pilnveidošanu (Constitutional Law Committee of the President. An opinion about improving the mechanism of extraordinary elections of the Saeima). *Latvijas Vēstnesis*, No. 69, 7 May 2008.
- ²⁵⁹ Initiatives of this kind were sent to the Saeima on 3 June 2008, on 6 August 2008, on 21 January 2009, and on 16 March 2011. The last one submitted on 16 March 2011 was the most specific one and it proposed to stipulate in Article 48 specific preconditions when the President would have the rights to initiate dissolution of the Saeima. See: http://www.president.lv/pk/content/?cat_id=6387 [last viewed 12 June 2011]; See the initiative sent on 16 March in: Proposal on amendments to the Constitution by the President). *Jurista Vārds*, No.12 (659), 2011.
- ²⁶⁰ Dišlers, K. Ievads Latvijas valststiesību zinātnē (Introduction to state law of Latvia). Riga: A. Gulbis, 1930, p. 177.
- ²⁶¹ Saeimas atļaišana: Satversme un neskaidrie jautājumi (Dissolution of the Saeima: the Constitution and the unclear issues). *Jurista Vārds*, No. 23 (670), 7 June 2011.
- ²⁶² Decision of Administrative Court on refusal to accept application. *Jurista Vārds*, No. 28 (675), 12 July 2011.
- ²⁶³ Available: <http://web.cvk.lv/pub/public/29957.html> [last viewed 17 June 2011].
- ²⁶⁴ Referendum is not held if the Saeima once again votes on this issue and if no less than ¾ of all the MPs participate in the debate (Article 72 of the Constitution).
- ²⁶⁵ Dišlers, K. Referendumu veidi Latvijas Republikas Satversmē (Types of referendums in the Constitution of the Republic of Latvia). *Jurists*, No. 3, 1930.
- ²⁶⁶ Pleps, J. Satversmes 72. pants (Article 72 of the Constitution). *Jurista Vārds*, No. 12 (465), 20 March, 2007.
- ²⁶⁷ The disputable amendments to the law on security institutions envisaged to extend the competence of the Cabinet of Ministers in issues related with the state security providing that the Council of the

- State Security is led not by professionals of security issues but by the Prime Minister. Heads of law enforcement agencies expressed concerns about these amendments because the scope of people who would receive operative information would widen.
- ²⁶⁸ Juristi analizē Valsts prezidentes rīcību un Satversmes 81. pantu (Lawyers analysing the activities of the President and Article 81 of the Constitution). *Jurista Vārds*, No. 12(465), 20 March 2007.
- ²⁶⁹ *Pleps, J.* Satversmes 72. pants (Article 72 of the Constitution). *Jurista Vārds*, No. 12 (465), 20 March, 2007.
- ²⁷⁰ *Ibid.*
- ²⁷¹ *Ņikuļceva, I.* Vēlētāju likumdošanas iniciatīva Latvijā (Electors' legislative initiative in Latvia). *Jurista Vārds*, No. 49, 8 December 2009.
- ²⁷² 1414.6% of the citizens with voting rights or more than 19% from those who had participated in the last Saeima elections had signed this draft law, therefore the amendments to the Constitution were submitted to the President who submitted them to the Saeima. See: <http://web.cvk.lv/pub/public/29005.html> [last viewed 11 July 2011].
- ²⁷³ Available: <http://web.cvk.lv/pub/public/29005.html> [last viewed 11 July 2011].
- ²⁷⁴ The number of signatures collected was 11.9% or more than 10% of the citizens with voting rights participating in the last Saeima elections therefore the amendments proposed by electors to the law "On State Pensions" were submitted to the President who submitted them to the Saeima.
- ²⁷⁵ Available: <http://web.cvk.lv/pub/public/29052.html> [last viewed 11 July 2011].
- ²⁷⁶ Grozījumi Latvijas Republikas Satversmē (Amendments to the Constitution of the Republic of Latvia): Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 76 (2841), 2003.
- ²⁷⁷ Kādēļ Latvijas konstitūcijā nepieciešami labojumi? Darba grupas Satversmes grozījumu izstrādāšanai piedāvātā projekta teorētiskais pamatojums (See: Why does the Constitution in Latvia need amendments? Theoretical motivation proposed by the working group developing the draft amendments to the Constitution). *Jurista Vārds*, No. 14, 5 May 2001.
- ²⁷⁸ Available: www.cvk.lv/cgi-bin/.sae8dev.bals_rez03e [last viewed 28 July 2011].
- ²⁷⁹ Kādēļ Latvijas konstitūcijā nepieciešami labojumi? Darba grupas Satversmes grozījumu izstrādāšanai piedāvātā projekta teorētiskais pamatojums (Why does the Constitution of Latvia need amendments? Theoretical motivation proposed by the working group elaborating the draft amendments to the Constitution). *Jurista Vārds*, No. 14, 5 May 2001.
- ²⁸⁰ Judgement of the Constitutional Court of 7 April 2009 in the case No. 2008-35-01.
- ²⁸¹ *Ibid.*
- ²⁸² 85 MPs voted for the amendments, 3 voted against and no one abstained. Available: <http://www.saeima.lv/steno/Saeima9/090408/st090408.htm> [last viewed 10 April 2011].
- ²⁸³ Grozījumi Latvijas Republikas Satversmē (Amendments to the Constitution of the Republic of Latvia): Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 66 (4052), 2009.
- ²⁸⁴ *Ņikuļceva, I.* Tiešā demokrātija Eiropā (Direct democracy in Europe). *Jurista Vārds*, No. 43 (638), 26 October 2010.
- ²⁸⁵ Tautas nobalsošana par likumprojektu "Grozījumi Latvijas Republikas Satversmē" (People's referendum on the draft law "Amendments to the Constitution of the Republic of Latvia"). Available: <http://web.cvk.lv/pub/public/29108.html> [last viewed 11 August 2011].
- ²⁸⁶ Par tautas nobalsošanu un likumu ierosināšanu (law "On National Referendums and Legislative Initiatives"). Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 47, 1994 (It must be noted that this law in fact does not contain the latest one – the case adopted in 2009 about the rights of people to recall the Saeima).
- ²⁸⁷ *Ņikuļceva, I.* Tiešā demokrātija Eiropā (Direct democracy in Europe). *Jurista Vārds*, No. 43 (638), 26 October 2010; Par tautas nobalsošanu un likumu ierosināšanu (law "On National Referendums and Legislative Initiatives"). Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 47, 1994, pp. 432–433; Dišlers, K. Ievads Latvijas valststiesību zinātnē (Introduction to state law of Latvia). Rīga: A. Gulbis, 1930, p. 112.
- ²⁸⁸ Tautas nobalsošana par likumprojektu "Grozījumi Latvijas Republikas Satversmē" (People's referendum on the draft law "Amendments to the Constitution of the Republic of Latvia"). Available: <http://web.cvk.lv/pub/public/29108.html> [last viewed 11 August 2011].
- ²⁸⁹ Latvijas valsts kodolu meklējot (Looking for the nucleus of the state of Latvia). *Jurista Vārds*, No. 6 (705), 7 February 2012; Konstitucionālās tiesību komisijas viedoklis par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu (Opinion of the Constitutional Law Committee on the constitutional foundations of Latvia and the inviolable nucleus of the Constitution). Available: http://www.president.lv/pk/content/?cat_id=2896 [last viewed 7 October 2012].
- ²⁹⁰ Available: <http://www.tn2012.cvk.lv/> [last viewed 6 September 2012].

- ²⁹¹ *Ņikuļceva, I.* Tiesā demokrātija Eiropā (Direct democracy in Europe). *Jurista Vārds*, No. 43 (638), 26 October 2010.
- ²⁹² Available: www.mk.gov.lv/doc/2005/VARAManot_101011_referendumi.1139.doc [last viewed 12 September 2012].
- ²⁹³ As indicated by *Ņikuļceva*, from the European states it is so in Albania, Andora, Georgia, Italy, Lithuania, Lichtenstein, Poland, Romania, Slovenia, Spain, Switzerland, and Hungary. See: *Ņikuļceva, I.* Vēlētāju likumdošanas iniciatīva Latvijā (Electors' legislative initiative in Latvia). *Jurista Vārds*, No. 49, 8 December 2009.
- ²⁹⁴ Judgement by the Constitutional Court of 19 May 2009 in the case No. 2008-40-01.
- ²⁹⁵ Vladimir Linderman, the leader of the party "For the native language!" is the initiator of these initiatives.
- ²⁹⁶ President supports the intention that the initiators of referendums should collect 30.000 signatures. www.delfi.lv. Published 8 October 2012 [last viewed 8 October 2012].
- ²⁹⁷ Available: <http://www.cvk.lv> [last viewed 11 September 2012].
- ²⁹⁸ Available: <http://web.cvk.lv/pub/public/27593.html> [last viewed 11 July 2011].
- ²⁹⁹ Available: <http://web.cvk.lv/pub/public/28740.html> [last viewed 11 July 2011].
- ³⁰⁰ Available: <http://web.cvk.lv/pub/public/29005.html> [last viewed 11 July 2011].
- ³⁰¹ Available: <http://web.cvk.lv/pub/public/29052.html> [last viewed 11 July 2011].
- ³⁰² Available: <http://web.cvk.lv/pub/public/29863.html> [last viewed 20 August 2011].
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- ³⁰⁵ Grozījumi Saeimas kārtības rullī (Amendments to the Rules of Order of the Saeima): Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 18 (4621).
- ³⁰⁶ Available: <http://www.Saeima.lv/lv/aktualitates/saeimas-zinas/19988-saeima-uzdod-tieslietu-ministrijai-petit-deputatu-zveresta-regulejumu-es-dalibvalstis> [last viewed 12 September 2012].
- ³⁰⁷ The previous Saeima elections were held on 3 and 4 October 1936.
- ³⁰⁸ Par 5. Saeimas vēlēšanām (law "On the Election of 5th Saeima). Law of the Supreme Council of the Republic of Latvia. *Ziņotājs*, No. 46, 1992 (not effective).
- ³⁰⁹ Saeimas vēlēšanu likums (The Saeima Election Law). Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 86 (369), 1995.
- ³¹⁰ Grozījums Latvijas Republikas Satversmē (Amendments to the Constitution of the Republic of Latvia): Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 19 (150), 1994.
- ³¹¹ Par priekšvēlēšanu aģitāciju pirms Saeimas vēlēšanām (On Pre-election Canvassing before the Saeima Elections). Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 120(403), 1995; More on pre-election canvassing see the judgement of the Constitutional Court of 22 February, 2010 in the case No. 2009-45-01.
- ³¹² According to 4 December 1997 edition of the law that was enacted on 31 December 1997.
- ³¹³ This amendment was related with wish to increase the electors' trust in the election results because sometimes the electors have expressed concerns that possibly during the night between both election days the election results are misconstrued (forged).
- ³¹⁴ Saeimas vēlēšanu likums (The Saeima Election Law). Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 86 (369), 1995.
- ³¹⁵ Available: <http://www.Saeima.lv/lv/par-saeimu/likumdejevu-vesture> [last viewed 11 August 2011].
- ³¹⁶ Available: <http://www.Saeima.lv/lv/par-saeimu/likumdejevu-vesture> [last viewed 11 August 2011].
- ³¹⁷ Judgement of the Constitutional Court of September 23, 2002 in the case No. 2002-08-01.
- ³¹⁸ Issues of election rights have been analyzed in several judgements of the Constitutional Court, e.g., in the judgement of 30 August 2000 in the case No. 2000-03-01; in the judgement of 15 June 2006 in the case No. 2005-13-0106. Essential contribution to case law is also the judgement of 3 November 2006 by the Administrative Cases Department of the Supreme Court in the case No. SA-5/2006, which is connected with the process of the Saeima elections campaign and its validation in court. More on this judgement also in: Levits, E. Nozīmīgs spriedums par vēlēšanām (A significant judgement on elections). *Jurista Vārds*, No. 50(453), 19 December 2006.
- ³¹⁹ Grozījumi Saeimas vēlēšanu likumā (Amendments to the Saeima Election Law): Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 76 (2651), 2002.; See also: *Lejiņš, A.* Valodas dēļ Latvija iedzīta stūrī (Latvia has been cornered because of language). Available: <http://www.politika.lv/temas/cilvektiesibas/6350> [last viewed 12 June 2011]. More on language requirements for MPs also in the judgement of the European Court of Human Rights in the case *Podkolzina vs. Latvia* (No. 46726/99). Available: <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbk&action=html&highlight=Podkolzina&sessionId=78662816&skin=hudoc-en> [last viewed 12 June 2011].

- ³²⁰ Judgement of the Constitutional Court of 5 March, 2003 in the case No. 2002-18-01.
- ³²¹ Grozījumi Saeimas vēlēšanu likumā (Amendments to the Saeima Election Law): Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 43 (4029), 2009.
- ³²² Ibid.
- ³²³ Available: <http://www.Saeima.lv/lv/aktualitates/saeimas-zinas/18845-atseviski-velesanu-iecirkni-saeimas-arkartas-velesanas-bus-atverti-lidz-desmitiem-vakara> [last viewed 16 September 2011].
- ³²⁴ For example, the highest activity of electors was in the 5th Saeima elections, in which 89.9% of all those who have voting rights participated, but the lowest participation was during the 11th Saeima elections when only 59.48% of those citizens with voting rights participated. See: www.cvk.lv [last viewed 16 September 2011].
- ³²⁵ Eiropas Parlamenta vēlēšanu likums (Elections to the European Parliament Law). Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 22 (2970), 2004.
- ³²⁶ Available: <http://www.mfa.gov.lv/lv/eu/3863/3872/> [last viewed 17 August 2011].
- ³²⁷ Available: <http://web.cvk.lv/pub/public/27611.html> [last viewed 17 August 2011].
- ³²⁸ Pilsētas domes, rajona padomes un pagasta padomes vēlēšanu likums (law “On Elections of City Council, Regional Council and Local Council”). Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 10 (141), 1994.
- ³²⁹ Available: <http://web.cvk.lv/pub/public/27484.html> [last viewed 11 June 2001].
- ³³⁰ Districts have not yet been formed. In accordance to the Article 24 of the transitional provisions of the law “On Administrative Territories and Populated Areas”, the Cabinet of Ministers must elaborate and submit to the Saeima the draft law on formation of districts by 31 December 2013.
- ³³¹ Administratīvo teritoriju un apdzīvoto vietu likums (law “On Administrative Territories and Populated Areas”). Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 202, 2008. Till July 1, 2009 Latvia had 26 regional authorities and 522 local authorities, including 50 regional cities and 7 republic cities, 41 districts with territorial units, 424 local authorities. See: <http://www.rapl.gov.lv/pub/index.php?id=1733> [last viewed 11 August 2011].
- ³³² See the homepage of the Ministry of Regional Development and Local Governments <http://www.rapl.gov.lv/pub/index.php?id=1738> [last viewed August 01, 2011].
- ³³³ On 1 May 2004 the amendments to Article 101 of the Constitution came into force providing that every citizen of the European Union who permanently resides in Latvia has the right, as provided by law, to elect local governments and participate in the work of local governments.
- ³³⁴ OSCE commissar again makes an appeal to grant to non-citizens the rights to elect local governments. Available: www.bns.lv. [published 16 February 2011, last viewed 17 August 2011].
- ³³⁵ Judgement of the Administrative Court of 22 March 2005 about the application on nullifying the results of Rēzekne City Council election results and holding of repeated elections. Case No. A42241405. Available: <http://www.tiesas.lv/index.php?id=1477> [last viewed 1 June 2011].
- ³³⁶ Available: <http://web.cvk.lv/pub/public/29828.html> [last viewed 1 June 2011].
- ³³⁷ Extraordinary local government elections have taken place in 2003 in Renda district, in view of the fact that Renda local council elected on 11 March 2001 was dissolved. Available: <http://web.cvk.lv/pub/public/27183.html> [last viewed 1 June 2011].
- ³³⁸ Latvijas tiesību vēsture (1914–2000) (History of law in Latvia, 1914–2000). Ed. Prof. Dr. iur. D. A. Lēbers. Rīga: Fonds Latvijas Vēsture, 2000, p. 461.
- ³³⁹ Raihs, N. Pilsonības institūta problēmjautājumi jaunajās Eiropas Savienības dalībvalstīs (Problematic issues of the citizenship institution in the new EU Member States). *Likums un Tiesības*. 2004, No. 5. Par kontinuitātes aspektiem pilsonības institūta kontekstā skat. Satversmes tiesas 2010. gada 13. maija spriedumu lietā Nr. 2009-94-01 (On continuity aspects in the context of citizenship institute see the judgement of the Constitutional Court of 13 May 2010 in the case No. 2009-94-01).
- ³⁴⁰ Par Latvijas Republikas pilsoņu tiesību atjaunošanu un naturalizācijas pamatnoteikumiem (Law “On the Renewal of the Rights of Citizens of the Republic of Latvia and Fundamental Principles of Naturalization”). Decision of the Supreme Council of the Republic of Latvia. *Zinotājs*, 1991. (not effective).
- ³⁴¹ The mentioned legal act was in force till 25 August 1994.
- ³⁴² Latvijas tiesību vēsture (1914–2000) (History of law in Latvia, 1914–2000). Ed. Prof. Dr. iur. D. A. Lēbers. Rīga: Fonds Latvijas Vēsture, 2000, p. 462.
- ³⁴³ Pilsonības likums (Citizenship Law): Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 93 (224), 1994.
- ³⁴⁴ People’s referendum on revoking the law “Amendments to the Citizenship Law”. Available: <http://web.cvk.lv/pub/public/27532.html>. See also Raihs, N. Pilsonības institūta problēmjautājumi jaunajās Eiropas Savienības dalībvalstīs (Problematic issues of the citizenship institution in the new EU Member States). *Likums un Tiesības*. 2004, No. 5, p. 149.

- ³⁴⁵ According to the data of Citizenship and Migration Affairs Office, the number of non-citizens on 1 July 2011 was 319,267 or 14.35% from all the population of Latvia. Although part of the non-citizens arrived during the soviet times, many have been born in the territory of Latvia, including about 15,000 who were born after the restoration of the independence. It should be noted that this number tends to decrease. For example, in 2003 there were more than 500,000 non-citizens. The decrease of the number of non-citizens is mainly associated with mortality and emigration. See: Muižnieks, N. Vai viss kārtībā ar naturalizāciju un nepilsoņiem? (Is everything alright with naturalization and non-citizens?). Available: <http://www.ir.lv/2011/8/31/vai-viss-kartiba-ar-naturalizaciju-un-nepilsoniem> [last viewed 28 August 2011].
- ³⁴⁶ Ziemele, I., Krūma, K. Eiropas Savienības pilsonība un Latvijas nepilsoņi (The EU citizenship and non-citizens of Latvia). *Jurista Vārds*, No. 33(291), 16 September 2003.
- ³⁴⁷ Par to bijušās PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības (law “On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State”). Law of the Republic of Latvia. *Latvijas Vēstnesis*, No. 63 (346), 1995. More on the issue of non-citizens: Judgement of the Constitutional Court of 7 March 2005 in the case No. 2004-15-0106.
- ³⁴⁸ Ziemele, I., Krūma, K. Eiropas Savienības pilsonība un Latvijas nepilsoņi (The EU citizenship and non-citizens of Latvia). *Jurista Vārds*, No. 33(291), 16 September 2003.
- ³⁴⁹ Slivenko v. Latvia, Judgment of 9 October 2003. [http://www.unhcr.org/refworld/publisher,ECHR,LVA,402b5b034,0.html](http://www.unhcr.org/refworld/publisher/ECHR/LVA,402b5b034,0.html) [last viewed 12 August, 2011].
- ³⁵⁰ See for example: the judgement of the Constitutional Court of 13 May 2010 in the case No. 2009-94-01.
- ³⁵¹ Levīts, E. Latvijas pilsonība un tās reforma (Citizenship of Latvia and its reform). *Jurista Vārds*, No. 14/15, 3 April 2012.
- ³⁵² See for example the judgement of the Constitutional Court of 13 May 2010 in the case No. 2009-94-01.
- ³⁵³ Ozola, A. Pilsonības politikas analīze. Dubultpilsonības institūts (Analysis of citizenship policy. Institute of dual citizenship). Available: <http://lv.lv/?menu=doc&id=174536> [published 28 April 2008; last viewed 11 June 2011].
- ³⁵⁴ President of the State proposes amendments to the Citizenship Law). *Jurista Vārds*, No. 6, 8 February 2011.
- ³⁵⁵ Available: <http://www.cvk.lv/pub/public/> [last viewed 19 September 2012].