RIGA GRADUATE SCHOOL OF LAW

Human Rights in the Emergency Situation: Constitutional Perspective of Latvia

BACHELOR THESIS

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DECLARATION OF HONOUR:
I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed) …….

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ABSTRACT

The concept of an emergency situation can be considered a novelty in the international legal system that gained its overwhelming importance due to the spread of Covid-19 pandemics all over the globe. Was the international community ready to employ clear and well-structured mechanisms of emergency situation concept in the context of human rights protection? Was the Latvian legal response to the Covid-19 emergency in the field of human rights protection successful? The "institution of emergency" in the international area was developed by the ECHR, whose ideas were incorporated into Latvian constitutional system and legal order. In that regard, the research uses legal doctrinal method in order to interpret the ECHR "human rights derogations clauses", interpret the Constitution of the Republic of Latvia on its preparedness to face a Covid-19 emergency, as well as Latvian emergency laws on its compliance with international human rights protection standards and procedures.

Keywords: Covid-19, European Convention on Human Rights, European Court of Human Rights, Satversme, emergency situation, constitutionalism, human rights, derogations.

SUMMARY

The thesis investigates an "emergency concept" both from the international law and Latvian national legal system perspective. The primary objective of the research is to comprehend an emergency concept in the context of human rights protection, establish its deep rooting in the Latvian constitutional system and legal order, and analyse the Latvian legal response to the Covid-19 emergency through the IHRL perspective.

To this end, Chapter 1.1 analyses the constitutional structure of the democratic state, establishing institutional and value foundations. The Chapter is heavily supported by the "constitutional theory" of Donald Lutz, exploring the main pillars of constitutionalism and trying to find these reflections in the Constitution of the Republic of Latvia. It is established, that the healthy constitutional order of the state is closely interrelated with the high level of human rights protection, as well as supported by the clear separation of powers, leaving no space for the occurrence of *de-facto* or *de-jure* constitutional gaps.

Chapter 1.2 shows the correlation between the constitutional order of the state and "economic emergency". The interdisciplinary economic analysis demonstrates the harsh decline in constitutionalism's "values" due to the consequent decline in human rights protection in EU MS during the 2008 financial crisis on the prominent example of the Greek national response to the sovereign debt crisis. In addition, the Chapter gives a definition of an emergency situation, discusses the need for emergency situation codification in national Constitutions, as well as seeks to provide a recommendation for the necessity to incorporate "emergency constitutions" into the main texts of EU MS Constitutions. As such, it is established that an emergency situation and human rights protection concepts are complementary in their entirety.

Chapter 2.1 provides an analysis of international documents that regulate human rights protection during an emergency situation, mainly the ECHR and ICCPR. An emergency concept is classified as a living instrument, deriving its clarity both from the internationally binding and non-binding documents such as the Siracusa Principles and Paris Minimum Standards, which is supported by the bulk of ECtHR case-law in relation to the topic.

In addition, Chapter 2.2 provides a historical review of the development of the human rights protection traditions in Satversme and Latvian national legislation. Using the tools of interpretation, Chapter 2.2 establishes that the ECHR enjoys constitutional status in Latvia and that national emergency legislation has incorporated an understanding of an emergency concept in the framework of human rights protection from both legally binding and non-binding IHRL instruments. The Chapter concludes with legislative recommendations to clarify and enhance some constitutional (Satversme) sections for greater legal clarity of emergency situations.

The Chapter 3 focuses on the derogation procedure under ECHR Article 15, which was extensively used by the Latvian government during the Covid-19 emergency. An extensive analysis of each of three "emergency situation periods" in Latvia is conducted. The Chapter gives an assessment of the governmental legal response during the Covid-19 pandemics in the context of human rights protection and tries to find out whether the new emergency laws are in compliance with international standards. Special attention is dedicated to the actions of the executive that posed some concerns about their proportionality and necessity. Finally, the Chapter provides an evaluation of the operations of the judiciary during the Covid-19 emergency as well as draws a conclusion on Latvian legal orders' "constitutional dedication".

Lastly, the conclusions are drawn that a Covid-19 emergency situation due to its novelty and due to the Latvian States' "theoretical unpreparedness", is impossible without particular human rights violations as well as problems with the separation and concentration of emergency powers.

LIST OF ABBREVIATIONS

Covid-19	Coronavirus disease or Sars-CoV-2 virus
ECHR, the Convention	Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR, the Court	European Court of Human Rights
EU, the Union	European Union
ICCPR	1966 United Nations International Covenant on Civil and Political Rights
MS	Member States
Satversme, the Constitution	Constitution of the Republic of Latvia
Cabinet	Cabinet of Ministers of the Republic of Latvia
CoE	Council of Europe
Siracusa Principles	Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights
Paris Minimum Standards	Paris Minimum Standards of Human Rights Norms in a State of Emergency
IHRL	International Human Rights Law

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INTRODUCTION

The protection of fundamental human rights and freedoms has become a founding pillar of the European legal order and an integral prerequisite for smooth democratic governance all over Europe. The "must" for human rights protection has not only reached the level of "universal concern" but has been deeply rooted in the constitutional systems and legal orders of all EU MS. The stability of the constitutional order of any modern democratic state is predicated on the protection of the rights and freedoms of its citizens, whose aspirations for the development, welfare, and prosperity of the individual, community, and state are embodied in the state's Constitution.[1] The legal order of each democratic state provides strong mechanisms for human rights preservation. In an emergency situation or under other emergency conditions, when not only the constitutional order but also the legal order of the state is threatened, it is possible to overcome an emergency and restore the normal functioning of the state by restricting some rights of individuals. Human rights protection is an integral part of emergency response, and governments are obligated to protect the fundamental rights and freedoms of their citizens even during an emergency situation, as well as comply with their international obligations and respect the IHRL standards embodied in such universal documents as the ECHR or ICCPR. The Covid-19 emergency situation that hit the whole world recently can be considered to be not only a health crisis but also a human rights crisis[2] that put to the test the preparedness of all EU MS, specifically Latvia, to show the high level of human rights protection under emergency circumstances.

An emergency situation was rarely explicitly established in Latvia[3], however, the existing legislation appears to be in complete agreement with international legal documents and practices, and it governs the concerns of human rights and freedoms protection under emergency circumstances with care. The legal problem of the thesis is that in moments of existential decision, when the state is faced with the need to adopt harsh measures to suppress an external or internal threat under an emergency situation, the government may be permitted to violate a person's and citizen's rights and freedoms severely, thus being incompliant with IHRL standards, as well as posing severe threats to the constitutional system foundations and smooth functioning of the domestic legal order.

In light of the Covid-19 pandemic, it is obvious that Latvia has previously been in a situation requiring the proclamation of an emergency situation and will likely be in a similar circumstance in the future. Therefore, it is believed that the identification and detailed study of ways to protect the rights and freedoms of man and citizens in extraordinary conditions threatening the constitutional and legal order of Latvia can contribute to the discovery of new mechanisms for their protection and the modernization of the legislative framework and approaches to law enforcement.

The primary methodological approach of the present work is a doctrinal legal research, qualitative research method, and an interdisciplinary approach of economic analysis. Considering the writings of the most notable legal academics, a comprehensive doctrinal legal study is conducted to analyse the concept of an emergency situation using both primary and

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[1] International IDEA. *What Is a Constitution. Principles and Concepts.* Available on: https://constitutionnet.org/sites/default/files/what_is_a_constitution_0.pdf. Accessed April 11, 2022.

[2] Sanja Jovičić, "COVID-19 restrictions on human rights in the light of the case-law of the European Court of Human Rights," *ERA Forum volume 21* (2021), p. 545, accessed March 22, 2022, available on: Springer.

[3] Guntars.Laganovskis "Izņēmuma stāvoklis. Ko tas nozīmē" (Emergency Situation. What does it mean), *LV portals* (26.04.2013). Available on: https://lvportals.lv/skaidrojumi/255223-iznemuma-stavoklis-ko-tas-nozime-2013. Accessed March 12, 2022.

secondary sources. Furthermore, doctrinal legal research entails legal-textual and evolutionary interpretation (using the principles of minimum guarantees and effectiveness of law) of Articles 15 of the ECHR, Article 4 of the ICCPR, non-binding documents such as the Siracusa Principles, Paris Minimum Standards, and the Constitution of the Republic of Latvia in relation to the emergency situation concept in the context of human rights protection based on ECtHR case law, Latvian Constitutional Court case law, Council of Europe official publications, and scholarly materials. In addressing the development of the emergency situation concept, a brief historical context is established using examples from various countries to provide a global perspective. The doctrinal legal research method also provides the research of law, especially already existing as well as newly adopted emergency laws by the Latvian government in response to the Covid-19 pandemics, clarifying their flaws by placing them in a logical context and describing their relationship with international practices and standards. The cross-disciplinary economical approach of the thesis will also be used in Chapter 2 to get a better understanding of the economic rationale behind "economic emergencies" threatening the constitutional foundations of the state, using the Greek response to the economic crisis of 2008 as an example.

The bachelors' thesis will address the following research questions:

1) Is an emergency situation concept in the context of fundamental human rights protection deeply incorporated into the Latvian constitutional system and legal order in compliance with international law standards?
2) Did the Latvian legal system demonstrate a high level of preparedness and legal clarity of fundamental human rights and freedom protection mechanisms during the Covid-19 emergency situation?

The paper has two aims:

1) To explore an emergency situation concept both from the international and domestic (Latvian) legal system's perspective.
2) To identify and analyse the main problems associated with ensuring the fundamental basis of the constitutional and legal order, namely, the observance of human rights and freedoms, by analysing the legislative processes in conditions of a Covid-19 emergency situation.

The following objectives are used to fulfil the aims:

1) To characterise the constitutional system and constitutionalism concept in a democratic state, and to consider the issue of their relationship to an emergency situation.
2) To clarify an emergency situation concept through the lenses of IHRL.
3) To determine the legal basis for an emergency situation and possible limits for restrictions on man's and citizen's rights and freedoms in an emergency situation in Latvia.
4) To consider the problems of formally introducing an emergency situation in Latvia.
5) To analyse court practice related to emergency situations, identify additional mechanisms to ensure compliance with current national legislation and international legal documents in conditions of emergency in Latvia, and evaluate their effectiveness.

6) To investigate the Latvian legal response to the Covid-19 emergency in the context of human rights protection.

Despite extensive lists of scholarly works on emergency situations, the main limitation of the paper is attributable to the topicality of research- novelty of Covid-19 emergency. There is a lack of previous research on Latvia's legal response to the Covid-19 pandemic and a lack of extensive analysis of Latvian government measures adopted during an emergency situation. Other limitations include the fact that some decisions of the Latvian Constitutional Court and the ECtHR are still pending, making it complicated to support the answers to the research questions developed in the paper with factual evidence. The aforementioned limitations are in place to encourage legal scholars to conduct more research on a topic.

The first Chapter of the thesis explains the notions of "constitutionalism" and "constitutional order," establishes a correlation between constitutional stability and economic stability during an emergency situation and discusses the concept of emergency situation using examples of problematic essence from both an economic and legal standpoints. The second Chapter is devoted to emergency situation analysis through the lenses of IHRL, as well as the Latvian Constitutional system's and legal orders' compliance with international law standards and practices. Finally, the third Chapter provides an analysis of the Latvian legal response to the Covid-19 emergency in the context of human rights protection.

CHAPTER 1: CONSTITUTIONAL SYSTEM AND EMERGENCY SITUATION: AN INTRODUCTION TO THE PROBLEM

1.1. Constitutional structure: institutional and value foundations

The primary objective of this Chapter is to define and explain in detail the notions of "constitutionalism," "constitutional order," and "constitutional democracy," as well as to identify these concepts in the Latvian legal system, more precisely in the Satversme. The purpose of this Chapter is to demonstrate that the aforementioned concepts are complicated and multi-component in nature, which leaves room for certain violations and non-compliance, consequently, leading to the emergence of certain situations, such as *de-facto* and *de-jure* constitutional gaps. To ensure clarity, the approach would be substantiated and backed by prominent examples of problematic essence from both economic and legal standpoints.

Constitutions exist in prosperous and destitute countries, in small and large nations, and in ancient and modern nations.[4] The substance and nature of a Constitution, as well as its relationship to the rest of the legal and political order, vary widely between countries, and there is no precise definition of a Constitution.[5] When discussing the concept of the Constitution, it is impossible to overlook the concept of democracy. Democracy is governed by rules and laws, and Constitutions are the primary tools for establishing these fundamental rules and laws.[6] According to Professor Donald Lutz, the majority of European national Constitutions serve three critical functions: a legal instrument, a sociocultural proclamation, and a political instrument.[7]

Constitutions guarantee procedural predictability in the exercise of authority and limit the arbitrariness of power.[8] Additionally, by serving as sociocultural declarations, they serve to consolidate a social contract between the people and the state, in which the parties agree on the terms of effective and mutually beneficial interaction: the people delegate power to the State, agree to certain restrictions on their own rights, and in exchange receive a certain level of protection and the ability to exercise those rights.[9] The research will put an emphasis on the socio-cultural rights and freedoms enshrined in the European Constitutions. Finally, Constitutions serve as political instruments[10] by identifying the highest power and distributing power in a way that allows for effective decision-making (laying forth a clear framework for how the three parts of government, notably the judiciary, legislative, and executive powers interact[11]).[12]

According to professor Luminita Dragne, the Constitution and constitutional tradition in Europe began with the adoption of Europe's first written Constitution - the French

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[4] "What Is a Constitution?" *OAH Magazine of History*, vol. 3, no. 1 (1988): pp. 41–51, accessed April 11, 2022, URL: http://www.jstor.org/stable/25162580.
[5] International IDEA, *supra* note 1.
[6] United Nations. UN Chronicle, available on: https://www.un.org/en/chronicle/article/rule-law-and-democracy-addressing-gap-between-policies-and-practices. Accessed April 4, 2022.
[7] Donald S. Lutz, *Principles of Constitutional Design* (Cambridge: Cambridge University Press, 2006), p.17.
[8] *Ibid.*
[9] OAH Magazine of History, *supra* note 4.
[10] Lutz, *supra* note 7.
[11] Christoph Moellers, *The Three Branches: A Comparative Model of Separation of Powers* (Oxford: Oxford Scholarship Online, 2013), pp. 80-90, accessed March 15, 2022, DOI:10.1093/acprof:oso/9780199602117.001.0001.
[12] Donald S. Lutz, "Thinking about Constitutionalism at the Start of the Twenty-First Century," *Publius*, vol. 30, no. 4, (2000): p. 130, accessed March 1, 2022, doi: https://doi.org/10.2307/3330934.

Constitution of 1791.[13] It acted as a catalyst for other European countries to create their own Constitutions, resulting in the establishment of the State of Law and requiring governors to conform to fundamental values and higher standards than any other state law.[14] However, constitutional non-compliance dates all the way back to the Constitution's inception. The adoption of the Constitution does not ensure that all of its required tasks are carried out, hence expanding the *de-facto* and *de-jure* constitutional gaps[15], as well as resulting in the emergence of the "constitutional democracy" concept only on paper, but not in fact. Some Constitutions "lie" or exist only for "cosmetic" purposes, which neither constrain the state nor provide reliable information about the real governmental process.[16] Such a vague constitutional order is a result of different reasons. One of the most critical factors is the country's economic performance – it's self-evident that poor countries lack the resources and robust mechanisms necessary to fulfil the constitutionally mandated conditions of right protection.[17] Such a situation can be seen in Equatorial Guinea, where arbitrary arrests and executions by government security forces made a mockery of constitutional guarantees of freedom of expression, the right to speak, and respect for every person's life.[18] Another reason is a "special" country's regime, such as an autocractic or authoritarian.[19] The North Korean Constitution[20] is still a very bright example of constitutional non-compliance, with its formal promises of private property, freedom of speech, the press, assembly, demonstration, and association.[21] In this case, we are dealing with the issue of "fake" constitutionalism and, as a result, imitative democracy. Let us look at how the constitutional system and constitutionalism are defined.

Constitutional order is the combination of institutions and principles[22], this is a set of constitutional rules that establish the state's social structure, which is defined by economic, political, social, and public relations. According to the Satversme's Preambula, being a unitary state of a parliamentary democracy[23], Latvian constitutional order is based on:

> (…) the rule of law and on respect for human dignity and freedom ; (…) it recognises and protects fundamental human rights and respects ethnic minorities, which are of highest value.[24]

Constitutionalism as a legal theory demonstrates the necessity of constitutional government and a constitutional order, necessitates strict adherence to the rules outlined in a modern democratic Constitution (such as the inalienability of individual rights and freedoms, separation of powers,

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[13] Luminita Dragne, "Emergence of the Constitution," *International Journal of Academic Research in Economics and Management Sciences,* vol. 3, No. 1, (2014): p. 197, accessed April 2, 2022, doi: 10.6007/IJAREMS/v3-i1/605.
[14] *Ibid.*
[15] S. Voigt, *"Mind the gap: Analyzing the divergence between constitutional text and constitutional reality*," ILE Working Paper Series, No. 32 (Hamburg: University of Hamburg, Institute of Law and Economics, 2020): pp. 3-12, accessed April 1, 2022, doi: http://hdl.handle.net/10419/213491.
[16] Walter F. Murphy, "Constitutions, Constitutionalism, and Democracy," in *Constitutionalism and Democracy: Transitions in the Contemporary World*, ed. Douglas Greenberg et al. (Oxford: Oxford University Press, 1993), pp. 7-10.
[17] Giovanni Sartori, "Constitutionalism: A Preliminary Discussion," *American Political Science Review* 56, no. 4 (1962): pp. 853–864, accessed March 12, 2022, doi:10.2307/1952788.
[18] David S. Law and Mila Versteeg, "Sham Constitutions," *California Law Review*, vol. 101, no. 4 (2013): pp. 867-870, accessed April 3, 2022, doi: http://www.jstor.org/stable/23784322.
[19] *Ibid.*
[20] *Ibid.*
[21] *Ibid.*
[22] *Ibid.*
[23] European Committee of the Regions. Latvia, available on: https://portal.cor.europa.eu/divisionpowers/Pages/Latvia.aspx. Accessed March 20, 2022.
[24] Latvijas Republikas Satversme (The Constitution of the Republic of Latvia) (15 February 1922). Available on: https://likumi.lv/ta/id/57980-latvijas-republikas-satversme. Accessed March 7, 2022.

and ideological pluralism[25]), and thus protects the constitutional order.[26] There is a need to conduct a dispassionate examination of the concepts of constitutionalism and constitutional order. In Guinea and North Korea constitutionalism tends to be imitative.[27] While both countries' constitutional orders are generally well-structured, their levels of constitutionalism are rather low as a result of state-sanctioned discrimination against the population or specific ethnic/language groups, non-observance of fundamental human rights and freedoms[28], and other factors that result in the collapse of the constitutional order.[29] The 2020 Wurzburg University Ranking of Countries by Democracy Quality says that, for example, Denmark, Norway, Finland, and Latvia have strong constitutionalism and stable constitutional order; Romania, Croatia, and Slovenia have uncertain constitutionalism and unstable constitutional order; and in Pakistan, Honduras, and a number of African states constitutionalism and democracy are in doubt.[30]

What are the fundamental principles of constitutionalism? Donald Lutz, a world-renowned expert in constitutional law and one of the founders of "constitutional theory," characterized those as culture, power, and justice as the basic pieces of a Constitution.[31] The first critical component is cultural. The cultural notion is expressed in prolonged preambles or opening declarations. The cultural aspect reflects ideas, shared interests, shared sets of values, or even organizes collective behaviour to solve shared issues that are passed down through generations.[32] Satversme is not an exemption from this pattern. Satversme's Preambula shows that the Latvian nation is shaped by: " (…) Latvian and Liv traditions, Latvian folk wisdom, the Latvian language, universal human and Christian values."[33]

Moreover, Satversme demonstrates:

> (…) the collective mind of Latvians in not recognising occupation regimes, honouring their freedom fighters and condemning Communist and Nazi totalitarian regimes and their crimes.[34]

Secondly, the power element allocates authority to the decision-making institutions of the State.[35] In Satversme, the power element can be seen in Chapters 2 (The Saeima), 3 (The President), 4 (the Cabinet).[36] Thirdly, the justice component assists in preventing the abuse of authority in accordance with established procedures by the constitutional division of powers, which is intended to safeguard citizens against the concentration of power in the hands of a

[25] Lutz, *supra* note 12, pp. 117-121.
[26] Susan Alberts, "How Constitutions Constrain," *Comparative Politics*, vol. 41, no. 2 (2009): p. 128, accessed March 23, 2022, doi: http://www.jstor.org/stable/40599206.
[27] Chris Thornhill, *A Sociology of Transnational Constitutions: Social Foundations of the Post-National Legal Structure* (Cambridge: Cambridge University Press, 2016), pp. 31-32, accessed March 20, 2022, doi:10.1017/CBO9781139833905.
[28] Stephen Gardbaum, "Human Rights as International Constitutional Rights," *European Journal of International Law*, Volume 19, Issue 4 (2008): pp. 749–760, accessed March 19, 2022, https://doi.org/10.1093/ejil/chn042.
[29] Robert Schütze, "Constitutionalism(s)," in *The Cambridge Companion to Comparative Constitutional Law*, (Cambridge: Cambridge University Press, 2019), accessed 27 March, 2022, doi:10.1017/9781316716731.003.
[30] Wurzburg University, Ranking of Countries by Quality of Democracy, available on: https://www.democracymatrix.com/ranking. Accessed April 1, 2022.
[31] Lutz, *supra* note 12, pp. 127-128.
[32] *Ibid.*
[33] Latvijas Republikas Satversme, *supra* note 24.
[34] *Ibid.*
[35] Lutz, *supra* note 12, p. 129.
[36] Latvijas Republikas Satversme, *supra* note 24.

single individual authority.[37] In Satversme this element found its transposition in Chapter 6 (Courts)[38] and throughout the whole Constitution as such.

One thing that Donald Lutz doesn't talk about is the protection and respect for individual rights. This is something that can't be left out.[39] It must be emphasized that following year 1945, legal observers began to view international human rights as components of a legal system possessing the same power as traditional constitutional rules.[40] Human rights' horizontal significance and worldwide applicability bolstered the civility of social constitutionalism.[41] These motions are also embedded in Satversme in Chapter 8 (Fundamental Human Rights).[42]

Before discussing the relationship between the constitutional order's foundations and the emergency situation, we can deduce the following from the preceding: the constitutional order's stability and the degree of constitutionalism of a single democratic state are both contingent on the Constitution's democratic foundations. Stable constitutional systems are those in which Constitutions guarantee the separation of powers and protect democratic rights and liberties, as well as effective communication and interaction between the government and citizens, resulting in a high overall rating of democracy.[43] On a non-critical scale, violations of human rights and freedoms, the principle of separation of powers, the principle of judicial independence, and other constitutional foundations can affect a state's degree of constitutionalism; on a critical scale, they can jeopardize the state's constitutional order in its entirety.

[37] Lutz, *supra* note 12, p. 129.
[38] Latvijas Republikas Satversme, *supra* note 24.
[39] Alison L. Joung, *Democratic Dialogue and the Constitution* (Oxford: Oxford Scholarship Online, 2017), pp. 52-56, accessed April 1, 2022, doi: 10.1093/acprof:oso/9780198783749.001.0001.
[40] Thornhill, *supra* note 27, p. 18.
[41] Jiří Přibáň, "Constitutionalism as Fear of the Political? A Comparative Analysis of Teubner's Constitutional Fragments and Thornhill's A Sociology of Constitutions," *Journal of Law and Society*, vol. 39, no. 3 (2012): p. 443, accessed April 2, 2022, doi: http://www.jstor.org/stable/23257143.
[42] Latvijas Republikas Satversme, *supra* note 24.
[43] Jürgen Habermas and William Rehg, "Constitutional Democracy: A Paradoxical Union of Contradictory Principles?" *Political Theory*, vol. 29, no. 6, (2001): p. 768, accessed March 27, 2022, doi: http://www.jstor.org/stable/3072601.

1.2. Constitutional System and Emergency Situation: the main problems

The primary objective of this Chapter is to establish a correlation between constitutional stability and economic stability using the 2008 economic crisis as a case study, as well as to demonstrate, using Greece as an example, that the "economic crisis emergency" may jeopardize the state's constitutional foundations and pose numerous threats to constitutional order. Secondly, the focus of this section is to define and comprehend the idea of an emergency and to establish a correlation between the emergency and the constitution/constitutional order of the state. Finally, this Chapter discusses the tight bounds between emergency situation and international law in regards fundamental human rights and freedoms. To provide clarity, the methodology would be supported and substantiated by prominent practical and historical examples of problematic essence from both EU MS from economic and legal perspectives.

Constitutions and constitutional democracies evolved at a dizzying pace at the end of the twentieth and beginning of the twenty-first centuries, not just in Europe, but throughout the world- the figures, gathered by professor Donald Lutz, show that the number of constitutional democracies in the world expanded from 19 to 60 countries between 1947 and 2000.[44] To begin, the end of World War II was a critical factor in the development of the concepts of constitutionalism and constitutional democracy.[45] The collapse of communism in Eastern Europe and the Soviet Union prompted the international community to re-examine the necessity of constitutional democracy.[46] Countries that were once a part of the Soviet Union were able to break free from repressive Soviet authority, restoring their independence and sovereignty. The majority of them (for example, Estonia and Lithuania) adopted new Constitutions in the spirit of modern constitutionalism's objective.[47] Finally, the strengthening of international law, particularly that portion of international law devoted to advancing human rights ideals, had a considerable impact. It was evident in international law, such as the United Nations' own statutes, and also in regional international legal frameworks, such as the ECHR.[48] The establishment of a notion of *jus cogens*,[49] based on the broad obligation of governments to defend certain fundamental rights of their citizens, was a key achievement of the post-war period, especially in light of international law's growing importance.[50]

Despite the aforementioned favourable advances, Europe faced numerous obstacles in the growth of constitutionalism, as well as the democratic orders of the EU MS were put to the test in the twenty-first century. The first impediment, which might be considered the most severe in the history of the EU, was the 2007-2009 economic crisis that overtook the entire

[44] Lutz, *supra* note 12, p. 122.
[45] Thornhill, *supra* note 27, pp. 69-70.
[46] Michel Rosenfeld, "Is Global Constitutionalism Meaningful or Desirable?" *European Journal of International Law*, volume 25, issue 1 (2014): pp. 177-199, accessed March 21, 2022, doi: https://doi.org/10.1093/ejil/cht083.
[47] *Ibid.*
[48] Magdalena Forowitz, *The Reception of International Law in the European Court of Human Rights* (Oxford: Oxford Scholarship Online, 2011), pp. 105-107, accessed March 20, 2022, doi: 10.1093/acprof:oso/9780199592678.001.0001.
[49] Thornhill, *supra* note 27, pp. 69-70.
[50] *Ibid.,* p. 75.

continent[51] and negatively impacted the EU MS constitutional orders.[52] Another impediment, which occurred concurrently with the financial crisis, was Syria's ongoing civil conflict. Numerous legal academics, like Michael Rosenfeld, have seen an apparent shift away from constitutionalizing international law at the European level, at least in practice- the integration of constitutional and international law has been "frozen".[53] EU MS were forced to choose between the constitutional system's security and the protection of citizens' rights and freedoms guaranteed by the Constitution. Here are a few instances of such options.

According to some legal academics, such as Jose Aleman and David Joung, there is a link between the stability of constitutional democracy/constitutionalism and economic stability.[54] The 2008 financial crisis has been described as a watershed moment in the decline of constitutionally democratic systems. Economic globalization has shaken governments across Europe with its disruptive force—global arrangements for money flows, labour competitiveness, and contagious economic turmoil.[55] Greece's sovereign debt crisis, which began in 2009 and lasted until about mid-2018, can truly be considered the apotheosis of the 2008 European crisis.[56]

The scenario in Greece confirms Jose Aleman and David Joung's argument that constitutional and economic stability are inextricably linked. Greece had "difficult times" with constitutional democracy eroding, despite the fact that Greek courts struck a delicate balance between rigorous scrutiny and the necessary discretion for the government and parliament to determine a path out of the crisis.[57] In the Greece Constitutional Court decision in case No. 1972/2012[58] , it was held that the special fee on electricity supply during the crisis was found to be constitutional, but the provisions of the Deputy Minister of Finance's decision authorizing the suspension of electricity supply in the event of non-payment of the special fee for powered structured surfaces via the electricity consumption bill were found to be unconstitutional[59] (the right to electricity supply was linked to the fundamental principle of protection of human dignity enshrined in Article 2 of the Greece Constitution).[60] Going forward, it is vital to mention that the majority of the claims by Greek citizens to the ECtHR regarding the violation of their constitutionally provided human rights, for example in case *Mamatas and Others* v. *Greece*[61], were dismissed, nonetheless, the fact that the number of such claims increased rapidly during

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[51] Nicolaïdis Kalypso and Richard Youngs, "Europe's Democracy Trilemma," *International Affairs (Royal Institute of International Affairs 1944-)*, vol. 90, no. 6 (2014): pp. 1403–1419, accessed April 12, 2022, doi: http://www.jstor.org/stable/24538673.

[52] European Commission. *The Eurozone's Crisis of Democratic Legitimacy: Can the EU Rebuild Public Trust and Support for European Economic Integration?* Available on: https://ec.europa.eu/info/sites/default/files/dp015_en.pdf. Accessed March 23, 2022.

[53] Rosenfeld, *supra* note 46.

[54] José Alemán and David D. Yang, "A Duration Analysis of Democratic Transitions and Authoritarian Backslides," *Comparative Political Studies*, no. 9 (2011): pp. 1123–1130, accessed March 12, 2022, doi: https://doi.org/10.1177/0010414011405460.

[55] Tom Ginsburg, et al, "The Coming Demise of Liberal Constitutionalism?" *The University of Chicago Law Review*, vol. 85, no. 2 (2018): p. 245, accessed March 15, 2022, doi: https://www.jstor.org/stable/26455907.

[56] Grigoris Avdikos, "Judicial and Constitutional Review During the Greek Sovereign Debt Crisis: A General Overview," *European Public Law* 26, no. 2 (2020): p. 237, accessed April 1, 2022, available on: https://kluwerlawonline.com/journalarticle/European+Public+Law/26.3/EURO2020042.

[57] *Ibid.*

[58] *Ibid., p. 238.*

[59] Avdikos, *supra* note 56, pp. 238-239.

[60] Global Legal Insights. Energy Laws and Regulations Greece, available on: https://www.globallegalinsights.com/practice-areas/energy-laws-and-regulations/greece. Accessed March 23, 2022.

[61] *Mamatas and Others* v. *Greece,* no. 63066/14, ECHR 2017- I.

the Greek crisis demonstrated that the Greek government's decisions lacked constitutional clarity.

The EU implemented a variety of measures to overcome all symptoms of the crisis and maintain Greece in the Eurozone, including the creation of the European Financial Stability Fund[62], the European Stabilization Mechanism[63], and the approval of the Euro Plus Pact[64], among others. The signing of the Treaty on Stability, Coordination, and Governance in Economic and Monetary Union in March 2012[65] was the most painful step, which resulted in the mandatory constitutionalization of the laws of budgetary equilibrium at the national level.[66] Under fear of financial penalties, this rule enhanced financial discipline requirements for EU MS that are euro zone members and required MS to pursue deficit-free (balanced or surplus) budgets.[67] The treaty's preamble obligated signatories to raise the budget-balancing rule to the status of a national legal principle, requiring them to integrate it into their constitutions or laws.[68] The adoption of laws that comply with the requirements of the Treaty on the Management of the Eurozone, for example, jeopardized the entire system of delimitation of jurisdictions in Italy, because the leitmotif of the first stages of emergency reforms was strict centralization of power in order to control the budgets of all public-territorial entities from outside the centre.[69]

Let us return to the current global situation and the necessity of emergency actions. It is a difficult problem to define the concept of an emergency, and it is frequently interpreted as something functional. Natural disasters (earthquakes, volcanic eruptions, fires, floods, epidemics, environmental disasters), political events (constitutional order violations, territorial integrity violations, state of siege, civil war, terrorism, etc.) and economic occurrences (inflation, recession, crisis, etc.)[70] are all examples of emergency scenarios.

One of the primary issues associated with the emergency concept is its unpredictability—it is exceedingly difficult to detect an emergency in advance. The primary reason for this is that emergency rules throughout the world are frequently vague about the types of conditions that trigger emergency procedures.[71] According to certain legal scholars, such as Andrej Zwitter, laws and Constitutions cannot be very detailed because it is difficult to foretell what type of emergency would occur.[72] There is no way around the fact that strict

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[62] European Commission, *European Financial Stability Facility*, available on: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/financial-assistance-eu/funding-mechanisms-and-facilities/european-financial-stability-facility-efsf_en. Accessed March 26, 2022.

[63] European Commission. European Stability Mechanism, available on: https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/financial-assistance-eu/funding-mechanisms-and-facilities/european-stability-mechanism-esm_en. Accessed March 26, 2022.

[64] Eurofound. Euro Plus Pact, available on: https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/euro-plus-pact. Accessed March 26, 2022.

[65] European Commission, *Treaty on Stability, Coordination, and Governance in Economic and Monetary Union,* available on: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42012A0302(01)&from=EN. Accessed March 25, 2022.

[66] Giuseppe Martinico and Leonardo Pierdominici, "Crisis, emergency and subnational constitutionalism in the Italian context," *Perspectives on Federalism* 6 (2014): p.122, accessed March 22, 2022, ISSN: 2036-5438.

[67] European Commission, *supra* note 65

[68] European Commission, *supra* note 65.

[69] Martinico and Pierdominici, *supra* note 66, pp. 116-125.

[70] Geneva Centre for the Democratic Control of Armed Forces, *States of Emergency*, available on: https://www.files.ethz.ch/isn/14131/backgrounder_02_states_emergency.pdf. Accessed April 15, 2022.

[71] Andrej Zwitter, "The Rule of Law in Times of Crisis: A Legal Theory on the State of Emergency in the Liberal Democracy," *ARSP: Archiv Für Rechts- Und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy*, vol. 98, no. 1 (2012): p. 95, accessed March 26, 2022, doi: http://www.jstor.org/stable/24769102.

[72] *Ibid.,* p. 96.

separation of different emergency situations around the world is not practical from a legal and methodological point of view.[73] This widespread practice raises numerous problematic questions and leaves room for additional extensive analysis. Additionally, emergency circumstances are classified as "typical" or "atypical." Since “typical” emergencies could happen, the legal system comes up with models for how to handle them in advance.[74] “Atypical” emergencies usually introduce a high degree of uncertainty into the process and place enormous strain on democratic and rule of law principles.[75]

Emergency has a lot of names like “states of exception”, “states of siege”, “et cetera paribus”, etc. Because it is uncertain which events may eventually constitute an emergency, the state organs that must deal with the problem should define what constitutes an emergency.[76] This raises the question of whether legal definitions integrated into national laws and Constitutions should be broad and interpretable or whether legal provisions should be as exact as possible in order to be applicable to each unique case with a clear direction of "Who, When, and How?" guidelines. By definition, emergencies are situations in which the nature of the crisis necessitates reorganizing governmental operations and functions in order to mitigate the negative effects on the state and its population more effectively (better) and efficiently (faster), as will be proved subsequently. In a summary, an emergency situation is a legal circumstance that is distinct from normal circumstances (from times of legal normalcy).[77]

Taking the foregoing into account, it is feasible to identify certain benefits and drawbacks of the emergency concept "non-codification." The primary advantage is that the danger of failure is reduced. Due to the lack of specific listings of emergency situations in national laws and Constitutions, as well as uniform mechanisms for dealing with crises that trigger the country and its residents ("Who, When, How?" guidelines), each state has considerable discretion in determining how to address an emergency (non-limitation of State powers).[78] Because there are so many possible crises, both common and unusual ones, there is less chance of missing an urgent situation and not being able to respond quickly and effectively.[79] However, a significant disadvantage is that such devils as "constitutional dictatorship" may emerge from the still whirlpool of an emergency, and that an emergency may be used by the government to impose unjustified restrictions on human rights and civil liberties, to neutralize political opponents, to postpone elections, and to pursue other self-serving goals that would be more difficult to accomplish under normal circumstances, etc.[80] Venezuela is a good example- in May 2016, President Nicolas Maduro illegally declared a state of emergency, which severely limited the freedom of the press.[81] When Ethiopia's government declared a state of emergency in October 2016 in reaction to widespread anti-government protests, the government acted illegally and significantly restricted media freedom. In all instances, the activities violated the countries' own emergency Constitutions.[82]

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[73] *Ibid.*
[74] *Ibid.*
[75] *Ibid.*
[76] *Ibid.,* pp. 96-98.
[77] *Ibid.*
[78] Geneva Centre for the Democratic Control of Armed Forces, *supra* note 70.
[79] Geneva Centre for the Democratic Control of Armed Forces, *supra* note 70.
[80] *Ibid.*
[81] Christian Bjørnskov, Stefan Voigt, ”The architecture of emergency constitutions,” *International Journal of Constitutional Law*, Volume 16, Issue 1 (2018): pp. 101-103, accessed March 19, 2022, doi: https://doi.org/10.1093/icon/moy012.
[82] *Ibid.*

Not in vain, the term “emergency constitution” [83] was mentioned. An emergency constitution, as mentioned previously, are the “Who, When, How?” regulations, it is a set of formal legal provisions encoded in the Constitution that specifies who can declare an emergency, under what conditions an emergency can be declared, who must approve the declaration, and which actors have which special powers once the emergency has been declared that the constitution does not assign to them outside of emergencies.[84] Numerous disputes have erupted in the legal community about the necessity of "emergency constitutions," particularly in light of the recent global Covid-19 situation. Certain European legal scholars believe that when a country faces an emergency and the need to find the necessary answers in the Constitution (without incorporating "emergency constitutions") arises, the state model, general principles of decision-making, and other guidelines are extremely broad, open to in-depth interpretation, and frequently misunderstood.[85] Other legal academics, such as Ineta Ziemele, argue that there is no reason to standardize emergency situations in Constitutions and that existing Constitutions must be adapted to new circumstances.[86] The research would address the “double-view” problem, figure out whether the constitutional “rigidity”, difficult “amendmentbility” in order to refine the Constitution to meet unanticipated needs[87] and high level of “politicality” is the problem for “emergency constitution” concept development both at the Latvian and European level.

Another problem is that many legal orders are lacking a precise definition of what constitutes an emergency, and several Constitutions lacking any legal definition at all. For example the Constitution of Belgium[88] and Sweden[89] does not provide the emergency regime at all. Moreover, only in the case of hostile invasion and infectious sickness does the Norwegian constitution specify "exceptional circumstances”.[90] Italian Constitution recognises only the “state of war” in Article 78[91] not mentioning the “state of emergency”.

To summarize the foregoing, it is critical to note that the emergency concept can be considered to be a “complicated novelty” in the international legal system that is still not explored in its entirety. The analysis proved the fact that the emergency situation, in particular the “economic emergency” might jeopardize the state's constitutional order, as well as pose other severe consequences. It was established that the emergency concept has its deep roots in national legal systems, as well as being found in the majority of European Constitutions. Finally, the analysis identified some flaws in emergency concept understanding, implementation and codification in the domestic constitutional systems.

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[83] *Ibid.,* pp. 102-104.
[84] *Ibid.*
[85] Ineta Ziemele, “Satversme jāpiemēro atbilstoši apstākļiem, nav nepieciešams normativizēt katru situāciju,“ (The Satversme must be applied in accordance with the circumstances, it is not necessary to standardize every situation) *Jurista Vārds*, Nr. 18 (2020): pp. 12-13.
[86] *Ibid.*
[87] Richard Albert, *Constitutional Amendments: Making, Breaking, and Changing Constitutions* (Oxford: Oxford Scholarship Online, 2019), p. 4, accessed March 12, 2022, doi: 10.1093/oso/9780190640484.001.0001.
[88] Constitution of Belgium (17 February 1994). Available on: https://www.refworld.org/country,LEGAL,,,BEL,50ffbce522c,4562d8b62,,0.html. Accessed April 15, 2022.
[89] Constitution of Sweden (1810). Available on: https://www.refworld.org/docid/3ae6b5090.htm. Accessed April 15, 2022.
[90] Constitution of Norway (17 May 1814). Available on: https://www.refworld.org/docid/3ae6b4f94.html. Accessed April 15, 2022.
[91] Constitution of Italy (22 December 1947). Available on: https://www.refworld.org/docid/3ae6b59cc.html. Accessed April 15, 2022.

CHAPTER 2: CONSTITUTIONAL ORDER IN THE EMERGENCY SITUATION: LEGAL FRAMEWORK

2.1. International instruments regulating the observance of human rights in the Emergency Situation

The primary objective of this Chapter is to trace the origins of the emergency concept in Europe, to provide an overview of the emergency development process through the lenses of international conventions such as the ECHR and ICCPR, legally non-binding documents such as the Siracusa Principles and Paris Minimum Standards, and ECtHR case law. One of the Chapters' aims is to demonstrate that the emergency concept and IHRL are inextricably linked and complementary. Finally, this Chapter lays the groundwork for subsequent research in Chapters 2.2 and 3 on the premise that international instruments strengthen, support, and are major pillars of national legal regimes, allowing them to develop, adapt, and improve.

An assessment of Latvia's emergency legislation system would appear to begin with an examination of international legal sources on emergency law. The legal concept of an emergency can be traced back to nineteenth-century Western Europe and the liberal democratic heritage.[92] The contemporary concept of a state of emergency was established in 1789 by the French Constituent Assembly, when "state of siege" was distinguished from a "state of peace." Later on, the Constitution of the Second French Republic inserted a new article requiring that the circumstances, forms, and effects of the "state of siege" be codified in law.[93] The Weimar Constitution of 1919 in Article 48[94] went further and attempted to prevent constitutional breakdown in an emergency, allowing the President broad powers to respond to systemic threats, including the capacity to take[95] "measures necessary to restore peace and order, including the suspension of a specific and limited set of rights."[96]

If we look in Satversme, it is possible to identify that Article 62 of Satversme (cornerstone Article in relation to emergency[97]) was initially drafted by the Constitutional Commission using the wording of Article 48 of the 1919 Weimar Constitution, however, throughout the Constitutional Commission's deliberations, there was an inclination to copy the article's text from the already-existing Regulations on the State of War[98] in force in Latvia.[99] The proposal of replicating the French Third Republic's laws on declaring a "siege state" was also rejected, since essential responsibilities were handed to the parliament and the government was only authorized to declare a state of emergency in extraordinary circumstances with considerable limitations.[100] So, the Constitutional Commission gave a lot of weight to the

[92] Scott P. Sheeran, "Reconceptualizing States of Emergency under International Human Rights Law: Theory, Legal Doctrine, and Politics," *Michigan Journal of International Law* Volume 34, Issue 3 (2013): p. 492, accessed March 26, 2022, available on: https://repository.law.umich.edu/mjil/vol34/iss3/1 .
[93] *Ibid.,* p. 496.
[94] Louis L. Snyder, *Documents of German History* (New Jersey: Rutgers University Press, 1958), pp. 385-392.
[95] *Ibid.*
[96] *Ibid.*
[97] Satversme, *supra* note 24.
[98] Noteikumi par kara stāvokli (Provisions on the state of war). *Latvijas Sargs,* February 13, 1919, Nr.21.
[99] Authors' team under the scientific supervision of prof. R. Balodis, *Latvijas Republikas Satversmes komentāri. 3 nodaļa. Valsts Prezidents. 4 nodaļa. Ministru kabinets (Comments on the Constitution of the Republic of Latvia. Chapter 3. President of the State. Chapter 4. Cabinet of Ministers.)* (Rīga: Latvijas Vēstnesis, 2017), pp. 614-615.
[100] *Ibid.*

Saeima's role in the question of declaring a state of emergency, giving the Saeima the final say on the matter as the highest and most responsible body.[101]

Prior to the mid-twentieth century, the institution of emergency was mostly undeveloped and isolated[102], as its correlation with fundamental human rights and freedoms was vague. Nowadays, discussing an emergency without mentioning human rights is untenable, as the two concepts are equivalent and complementary, however, this union is susceptible to flaws. The primary question is whether the legal framework established by international human rights treaties as the ECHR effectively reflects the underlying theory of emergency situations.[103] Some legal experts, like Scott P. Sheeran argue that this unity is still in its early stages, and that the growing need and necessity for human rights protection necessitates the creation of a more holistic understanding and a new approach to legal doctrine governing states of emergency, because the proclamation of an emergency is one of the most serious impediments to the application of IHRL today.[104]

In 1950, the CoE drafted the ECHR, which established the development of an emergency institution and its integration with international human rights.[105] For the first time in history, the concept of "derogations" was introduced into the Convention[106], allowing states parties to legally suspend their commitment to observe and defend the Convention's core human rights during "war or other public emergency threatening the nation's life." [107] The ECHR inserted the derogation clause in recognition of the fact that crises provide easy justifications for governments to expand their powers, undermine democratic institutions, and crush political opponents.[108] Nonetheless, the drafters recognized that sovereign nations have an obligation to safeguard their populations and domestic institutions, and, in order to create a balance between these opposing concerns, the treaties' drafters included an escape clause that enabled restrictions on certain rights during emergencies but subjected them to international law's constraints. [109] Additionally, the drafters of the Convention questioned the "(…) utility of domestic institutions in limiting emergency suspensions of rights"[110], consequently stating that adherence to national rules governing the public announcement and judicial review of emergency measures "(…)would therefore not ensure treaty compatibility for rights restrictions that were no longer exclusively of domestic concern"[111], because the treaties established a detailed international regime of limitations, safeguards, notifications, and review procedures.[112] In the event of an

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[101] *Ibid.*
[102] Evan J, Criddle, "Designing a Human Rights Regime for Emergencies," in *Human Rights in Emergencies*, (Cambridge: Cambridge University Press, 2016), pp. 15-30, accessed March 15, 2022, doi: https://doi.org/10.1017/CBO9781316336205.
[103] Sheeran, *supra* note 92, p. 492.
[104] *Ibid.*
[105] Venkat Iyer, "States of Emergency - Moderating Their Effects on Human Rights," *Dalhousie Law Journal* Volume 22, Issue 2 (1999): p. 134, accessed April 10, 2022, available on: https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1791&context=dlj.
[106] Emilie M. Hafner-Burton, "Emergency and Escape: Explaining Derogations from Human Rights Treaties," *International Organization*, vol. 65, no. 4 (2011): pp. 678–681, accessed April 22, 2022, doi: S00208183110002IX.
[107] Council of Europe. European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 *November 1950, ETS 5*, available on: https://www.echr.coe.int/documents/convention_eng.pdf. Accessed March 14, 2022.
[108] Hafner-Burton, *supra* note 106.
[109] *Ibid.*
[110] *Ibid.,* p. 676.
[111] *Ibid.*
[112] *Ibid.*

emergency, Article 15 (1) of the Convention sets out three conditions for a state's valid derogation from fundamental human rights and freedoms:

- it must be in time of war or other public emergency threatening the life of the nation;
- the measures taken in response to that war or public emergency must not go beyond the extent strictly required by the exigencies of the situation; and
- the measures must not be inconsistent with the State's other obligations under international law. [113]

While interpreting this paragraph, we can observe that the term "public emergency" is not openly defined. Nonetheless, in 1959, the ECtHR and Commission members articulated the idea of "public emergency endangering the nation's life" for the first time in a report on the *Lawless v. Ireland*[114] case, stipulating that it is:

> An exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed.[115]

In the case *A and Others* v. *United Kingdom*[116] the ECtHR polished the understanding of a "public emergency" concept, giving a more general definition:

> An exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community.[117]

The ECtHR continued to refine the idea of "public emergency" and created the four-step criteria for "public emergency" in the *Greek*[118] case, which still remain the dominant criteria in the Court's jurisprudence:

- Actual or imminent;
- The effect of emergency must involve the whole population;
- The organised life of the community must be threatened;
- The danger must be exceptional and the measures implemented by the High Contracting parties are ought to be permitted to maintain public order, health, and safety.[119]

When discussing the ECHR Article 15 in more detail, it is possible to identify that Article 15(2) protects certain rights from derogation. According to the text of Article 15(2), non-derogable rights are: Article 2 (the right to life), except in respect of deaths resulting from lawful acts of war; Article 3 (the prohibition of torture and other forms of ill-treatment); Article 4(1) (the prohibition of slavery or servitude); and Article 7 (no punishment without law).[120] Article 15(3) requires a Contracting State that deviates from the Convention to notify the Secretary General

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[113] Council of Europe. *Guide on Article 15 of the European Convention on Human Rights.* Available on: https://www.echr.coe.int/documents/Guide_Art_15_ENG.pdf. Accessed March 2, 2022.
[114] *Lawless* v. *Ireland*, Judgment on Merits, App no 332/57 (A/3), [1961] ECHR 2, (1961) 1 EHRR 15, IHRL 1 (ECHR 1961), 1st July 1961, European Court of Human Rights [ECHR].
[115] Council of Europe, s*upra* note 113.
[116] *A and Others* v. *United Kingdom*, Application no. 3455/05, Council of Europe: European Court of Human Rights, 19 February 2009.
[117] *Ibid.,* para 176.
[118] *Denmark, Norway, Sweden and the Netherlands* v. *Greece* (the "Greek case"), 3321/67, 3322/67, 3323/67, 3344/67, [1970].
[119] Council of Europe*, supra* note 113.
[120] *Ibid.*

of the CoE of the actions adopted, the reasons for their adoption, and the date on which they will be discontinued.[121]

Meanwhile, the ECHR and its Protocols No. 1, 2, 4, 7, and 11 were adopted by the Latvian Parliament on June 4, 1997[122], and its contents became legally binding in Latvia. The Latvian Parliament automatically acknowledged the Commission's and the ECtHR's jurisdiction to deal with particular cases concerning Latvia.

A broader description of the emergency situation concept can be found in the ICCPR, which was accessed by Latvian Parliament on the 14 April 1992.[123] It is apparent that an emergency idea and its close ties with IHRL needed more time to be "polished" and worked out in greater detail after the adoption of ECHR. In comparison to the ECHR, the ICCPR much more clearly and in more detail defined emergency in Article 4(1)[124], as well as supplemented the definition with a clear explanation in The Siracusa Principles, formulated in 1982 at a meeting of the United Nations Economic and Social Council and adopted in 1985.[125]

Indeed, Article 4 of the ICCPR and Article 15 of the ECHR can be considered identical in regards to the lists of non-derogable human rights and freedoms (however, in ICCPR the list is broader, adding, for example, the right not to be imprisoned merely on the ground of inability to fulfil a contractual obligation, etc[126]), as well as to the "must" procedure of notification about the emergency situation (in ECHR- Secretary General of the Council of Europe must be notified[127]; in ICCPR- Secretary-General of the United Nations must be notified[128]).

The main difference between the Conventions, is that the ICCPR in Article 4(1) codified and emphasized the need for an emergency situation official proclamation.[129] Notwithstanding the fact, that the ECtHR in its decision in case *Greece* v. *United Kingdom*[130] emphasized the need of official emergency situation proclamation in order for the states to derogate, ICCPR went further and codified this issue in the text of the Convention leaving no room for interpretative misunderstandings. The necessity of the official proclamation in the ICCPR was assured in the ECtHR decision in case *Brannigan and McBride* v. *United Kingdom*[131] where the Court emphasized that:

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[121] Council of Europe*, supra* note 107.

[122] Council of Europe. *Complete list of the Council of Europe Treaties.* Available on: https://www.coe.int/en/web/conventions/full-list. Accessed March 2, 2022.

[123] International Covenant on Civil and Political Rights (23 March 1976), available on: https://www.ohchr.org/documents/professionalinterest/ccpr.pdf. Accessed April 3, 2022.

[124] *Ibid.*

[125] American Association for the International Comission of Jurists. *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights.* Available on: https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf. Accessed March 12, 2022.

[126] International Covenant on Civil and Political Rights, *supra* note 123.

[127] Council of Europe*, supra* note 107.

[128] International Covenant on Civil and Political Rights, *supra* note 123.

[129] United Nations Human Rights Office of the High Comissioner. *Reporting Under the International Covenant on Civil and Political Rights.* Available on: https://www.ohchr.org/sites/default/files/Documents/Publications/Reporting-ICCPR-Training-Guide.pdf. Accessed March 2, 2022.

[130] *Greece* v. *United Kingdom*, Application No. 176/56, Decision of the European Commission of Human Rights [1958].

[131] *Brannigan and McBride* v. *United Kingdom*,14553/89, App No 14554/89, A/258-B, IHRL 2592 (ECHR 1993)

> The official proclamation was a requirement for a valid derogation under Article 4 of the ICCPR and the absence of such proclamation meant the United Kingdom's derogation was not consistent with its obligations under international law.[132]

The text of Siracusa Principles went even further in describing the concept of an emergency situation, describing "a threat to nation" as:

> What threatens the physical integrity of the population, the political independence or the territorial integrity of the state or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognized in the Covenant. [133]

The Siracusa principles expanded and supplemented the ECtHR test for declaring an emergency (in *Greek* case), stating that the emergency situation shall:

- Be based on one of the grounds justifying limitations that are recognized by the relevant article of the Covenant;
- Respond to a pressing public or social need;
- Pursue a legitimate aim;
- Be proportionate to that aim; and
- Be terminated in the shortest time required to bring to an end the public emergency which threatens the life of the nation.[134]

It is critical to note that the ICCPR emphasized the "time frame" of emergency, which must be as brief as possible in order to restore "normalcy" and avoid any rule of law violations or governmental abuses of authority. This timeframe concept was widely accepted in the international legal community (and will be discussed further in Chapter 2.2).

Another document, that is not legally binding, but of extreme relevance, are The Paris Minimum Standards adopted in 1984 during the Paris Conference of the International Law Association.[135] The Paris Minimum Standards laid out important requirements for states to follow, as well as making important recommendations. For the first time, for example, the minimum standards detailed how a state of emergency would be established and ended; recommended that the procedure for declaring a state of emergency be defined in each state's Constitution; that the state of emergency should be strictly limited to the period required to restore normalcy; that the legislature should have the authority to revoke the decision to declare a state of emergency and change its duration; and each extension of the period should be approved by the legislature and declared before the end of the period; that if any emergency measure (legislative or executive) or act fails to meet the criteria of the Constitution or state of emergency legislation, the authority in charge of constitutional control should have broad powers to declare it unlawful.[136]

To summarize, the Chapter demonstrated how the emergency concept and its unmistakable ties to the IHRL evolved and grew through the adoption of globally enforceable legal instruments and ECtHR case law. It is also feasible to define an emergency concept as a living instrument. Let us examine Latvian legislation and Satversme in relation to emergency situations, as well as their level of compliance with both internationally binding and non-

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[132] Council of Europe, *supra* note 113.
[133] American Association for the International Comission of Jurists, *supra* note 125.
[134] *Ibid.*
[135] Richard B. Lillich, "The Paris Minimum Standards of Human Rights Norms in a State of Emergency," *American Journal of International Law* 79, no. 4 (1985), accessed March 10, 2022, doi:10.2307/2201848.
[136] *Ibid.*

binding legal documents, determine whether Satversme and emergency laws can be considered mirrors of the aforementioned provisions and determine the extent to which international legal acts have influenced the development of the Latvian legal system in the field of fundamental human rights and freedoms protection.

2.2. Latvian national legislation governing the observance of human rights in the Emergency Situation

Latvia is a parliamentary democracy and its Constitution was adopted on February 15, 1922.[137] Even before the ratification of the Satversme in 1922, human rights protection mechanisms were in place. The First and Second Provisional Satversme[138] defended basic rights by defining constitutional provisions, however, in rather broad terms. [139] On February 15, 1922, when Satversme was adopted, it already included numerous important legal concepts and certain political rights to be protected, however, the failure to adopt the Chapter on "Basic Regulations on Citizens' Rights and Duties" was considered to be a severe deficiency.[140]

Therefore, in 1998, Satversme was expanded with Chapter 8 "Fundamental Human Rights," a national catalogue of human rights that coincided with the ratification of the ECHR by Latvia.[141] The need to facilitate a smooth transition from socialist to modern Continental European law, and the lack of corresponding human rights traditions all set the stage for the ECHR, as well as direct application of other international human rights treaties, had to have a potentially profound influence.[142] The addition of Chapter 8 to the Satversme was a watershed moment for constitutional rights, as it integrated the regulation of individuals' fundamental rights in the normative act that was superior in terms of hierarchy - the Constitution.[143]

At the very least, Article 89 of the Constitution established a constitutional commitment to preserve human rights to the level of binding international standards[144], as well as confirmed the tight relationship between the Satversme's fundamental rights standards and the standards of international agreements. The Constitutional Court of Latvia stated:

> It is clear from Article 89 that the legislator's intention was not to oppose the Satversme's human rights standards to international human rights standards, but rather to establish mutual harmony. If there are any ambiguities about the content of the Satversme's human rights standards, they shall be interpreted as closely as feasible in accordance with the interpretation adopted in the practice of applying international human rights standards.[145]

The content of the provisions of Chapter 8 of Satversme leaves a certain impression on need for interpretation as human rights are formulated in a rather abstract way and wordings of Articles remain very laconic. The drafters of Chapter 8 themselves were aware of this

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[137] Arturs Kucs, "Protection of Fundamental Rights in the Constitution of the Republic of Latvia during the Interwar Period and after the Restoration of Independence", *Juridiskā zinātne* No.7 (2014): pp. 54-55.
[138] Authors' team under the scientific supervision of prof. R. Balodis, *Latvijas Republikas Satversmes komentāri. 8 nodaļa. Cilvēka pamattiesības. (Comments on the Constitution of the Republic of Latvia. Chapter 8. Human Rights.)* (Rīga: Latvijas Vēstnesis, 2011), p. 6.
[139] *Ibid.,* p. 7.
[140] *Ibid.,* p. 8.
[141] Martins Mits, "The European Convention on Human Rights and Democratisation of Latvia," *RGSL Research Paper No. 16*, p. 2. Available on: https://www.rgsl.edu.lv/uploads/research-papers-list/6/mits-4-final.pdf. Accessed March 15, 2022.
[142] *Ibid.,* p. 1.
[143] Latvijas Republikas Satversmes komentāri, *supra* note 138, p. 15.
[144] Martins Mits, *supra* note 141, p. 1.
[145] Latvijas Republikas Satversmes tiesas (The Constitutional Court of the Republic of Latvia) 2020. gada 30. augusta spriedums lietā Nr. 2000-03-01 "Par Saeimas vēlēšanu likuma 5. panta 5. un 6. punkta un Pilsētas domes un pagasta padomes vēlēšanu likuma 9. panta 5. un 6. punkta atbilstību Latvijas Republikas Satversmes 89. un 101. pantam, Eiropas Cilvēka tiesību un pamatbrīvību aizsardzības konvencijas 14. pantam un Starptautiskā pakta par pilsoņu un politiskajām tiesībām 25. pantam". Available (in Latvian) on: https://www.satv.tiesa.gov.lv/cases/?search[number]=2000-03-01. Accessed April 20, 2022.

shortcoming.[146] Satversme thus reflected the provisions of the ECHR, with a clear correlation between, for example, Article 1 of ECHR and Article 89 of Satversme in relation to obligation to respect fundamental human rights, Article 2 of ECHR and Article 93 of Satversme in relation to right to life, as well as introduced the "derogation clauses" from fundamental human rights both listed in Article 15 of the ECHR and Article 116 of Satversme, etc. [147,148] It is undeniable that the ECHR enjoyed constitutional status in Latvia. When it comes to the ICCPR, ICCPR provisions can be found in Satversme, for example, when Article 12,13 of the ICCPR corresponds to Articles 97, 98 of Satversme in terms of freedom of movement, and Article 27 of the ICCPR relates to Article 114 of Satversme in terms of ethnic minorities protection, etc. [149,150]

It is crucial to emphasise that Article 89 of the Satversme must be read in a systematic connection with Article 1 of the Satversme – "Latvia is an independent democratic republic".[151] In the case *Ždanoka v. Latvia*[152], the ECtHR, described the relationship between human rights and democracy in the following terms:

> Democracy is one of the cornerstones of European public policy. This follows, firstly, from the preamble to the Convention, which establishes a very clear link between the Convention and democracy, stating that respect for and observance of human rights and fundamental freedoms are best ensured by a genuine democratic political regime and a common understanding and respect for human rights, on the other hand.[153]

It is possible to conclude that the ECHR's constitutional status increased the level of constitutional order in Latvia and even strengthened constitutionalism because, as stated in Chapter 1.1, a high-level and transparent procedure for protecting fundamental human rights and freedoms not only at the legislative level but also at the constitutional level promotes democracy's flourishing and, as an inherent part of constitutionalism, promotes its deeper rotting in the Latvian legal system.

The cornerstone Article regarding the emergency concept in Satversme is Article 62. This Article partly reflects the provisional understanding of an emergency laid down in Article 15 ECHR and Article 4 ICCPR. The Article in question contains provisions guiding the procedure for declaring a state of emergency that are technically clear and unequivocal in defining the steps that must be performed and the time restrictions within which they must be taken.[154] On the other hand, the criteria for declaring a state of emergency are expressed in broad terms as imprecise legal notions that must be specified in more details.[155] Another issue is that the Article in question does not provide a specific and open-ended definition of state of emergency. It's worth noting that the state of emergency is not defined, providing a very narrow and insufficient understanding of the state of emergency concept that relates either to the war, or to the internal turbulences in the State territory. The reason for that might be that Satversme was drafted before the adoption of the ECHR in 1950, consequently before the broad concept of emergency situation arose on the international level. It is obvious that Article 62 recalls the

[146] Latvijas Republikas Satversmes komentāri, *supra* note 138, pp. 26-29.
[147] Council of Europe, *supra* note 107.
[148] Satversme, *supra* note 24.
[149] *Ibid.*
[150] International Covenant on Civil and Political Rights, *supra* note 123.
[151] Latvijas Republikas Satversmes komentāri, *supra* note 138, p. 24.
[152] *Ždanoka* v. *Latvia*, Application No. 58278/00, ECtHR Judgment, 16 March 2006.
[153] *Ibid.*
[154] Latvijas Republikas Satversmes komentāri, *supra* note 99, p. 615.
[155] *Ibid.*

Western European and liberal democratic traditions of the nineteenth century, when the "state of war" was the sole concern of legislative drafters in emergency situations.

It must be admitted that the laconism of Article 62 creates significant difficulties, particularly when it comes to the conditions for declaring a state of emergency. Taking into account the rapid development of the emergency concept during the twentieth and twenty-first centuries, as well as the abundance of legally binding and non-binding documents from which to supplement and clarify Article 62, it is possible to assert that Satversme has become out of date in terms of the emergency concept. To ensure constitutional clarity and to avoid involvement in "day-to-day" constitutional interpretation, some of the Siracusa Principles or Paris Minimum Standards provisions could be included in the Constitution by revising the relevant Article. As mentioned in Chapter 1.2, an emergency situation is unique in that it necessitates immediate action and response, consequently, the Constitution must include, at the very least, a minimum path to follow during an emergency. Article 62 could be supplemented with the relevant test reflected in the Siracusa Principles and Paris Minimum Standards, defining what constitutes a public emergency, providing implicit information about the duration of each particular emergency,[156] including a broader list of emergencies (not just wars or internal turbulences), and finally, outlining the overall and comprehensive procedure for declaring an emergency.[157]

Without these critical clauses, it appears as though a state of emergency can be declared exclusively in the event of war or internal state insurrections, disregarding other emergencies. Additionally, it appears as though the state of emergency proclamation is highly politicized, as all emergency powers are vested in Saeima as the supreme authority on this subject. Being extremely crucial, it may appear that the Saeima's political majority may proclaim a state of emergency whenever it deems necessary. Professor Juris Dreifelds clearly expressed his opinion about this subject, stating that: "Article 62 opens up opportunities for various blackmails of political power."[158] This assumption leaves open the possibility of future investigation to determine whether it is appropriate to empower Saeima to be responsible for emergency establishment or whether a far more comprehensive method involving the judiciary is required.

It should be noted that Article 62 was drafted with a view to further interpretation, both using the principle of legal interpretation and evolutionary interpretation. Article 62 in itself includes the Roman principle of *Salus populi suprema lex esto*, meaning that the needs of the state and the general good must be placed above the individual good, but it must be borne in mind that the state is not to be understood as the apparatus of state power, but as society, because what is bad for society is bad for the state.[159] This reflection brings us to Article 116 of the Satversme that lays down the possibility for the State to derogate from the list of fundamental rights enshrined in the Constitution. If we explore this Article through the lens of an emergency concept, we see that the Article is silent and does not specify that it is possible to derogate during an emergency situation. Human rights may be subject to restrictions if it is provided by law, however, for the sake of clarity and in order to exclude the necessity to interpret each situation in order to find out, for example, whether a situation constitutes a threat for public safety, the ECHR and ICCPR provisions could be taken into account to mention explicitly an emergency situation as a reason for a lawful derogation. For example, in the field of law, the

[156] Lillich, *supra* note 135.
[157] American Association for the International Comission of Jurists, *supra* note 125.
[158] Latvijas Republikas Satversmes komentāri, *supra* note 99, p. 637.
[159] *Ibid.,* p. 618.

opinion has been expressed that it may be necessary to *expressis verbis* in a separate norm in the Satversme to determine an "emergency situation" as the precondition for human rights lawful derogation, as well as determine the powers of the Cabinet of Ministers in restricting human rights in the circumstances of an exceptional situation.[160]

As a result, prior to the emergence of exceptional situations, a law should be drafted that governs the operations of state agencies and specifies the additional powers to be granted to the executive to avert state dangers.[161] Such a law, which may be regarded as a guide for interpreting and comprehending Article 62 of the Satversme, and is necessary to close theoretical and procedural loopholes in the aforementioned Article, as well as their union must be regarded as complementary genesis, is the "Law on Emergency Situation and State of exception"[162] (Further "Law"). The Law adopted a groundbreaking approach by distinguishing between two sorts of emergency situations: "emergency situation" and "state of exception." Let's take a closer look at each of these ideas. According to Section 4(2) of the Law, an emergency situation is defined as:

> Case of such threat to national security, which is related to a disaster, danger thereof or threat to the critical infrastructure, if safety of the State, society, environment, economic activity or health and life of human beings is significantly endangered. [163]

According to the Siracusa Principles, the description used in Latvian legislation is similar to the idea of a threat to the nation's life as the basis for establishing a state of emergency.[164] Section 4 of the Law expanded and clarified the sorts of "hazards" that can trigger the emergency regime, such as sociological, environmental, economic, or health dangers, as well as threats to state and key infrastructure operations. In turn, Section 11 defined state of exception as "danger emanating from an external enemy; and internal problems endangering the State's democratic system", [165] mirroring the understanding of state of emergency laid out in Article 62 of Satversme. The Law adopted a concept of emergency "timeframe" that was mentioned in the ECHR, but more clearly described in the Siracusa Principles, stating that each emergency must have a beginning and an end, with the end of the emergency being declared as quickly as possible to restore the "state of normalcy."[166] For an emergency situation, Section 5(1) stipulated a period no longer than 3 months, but for the state of exception, Section 12(2) stipulated a period not longer than 6 months.[167]

Another important consideration is the possibility of limitations on fundamental human rights and freedoms enshrined in Section 4(1) as well as Section 11(2).[168] The Law is notable for providing a list of which rights and freedoms may be restricted in both emergency situation and states of exception. It's important to note that Section 19(4)[169] contains an important caveat any measures for the provision of emergency situations and states of exception may not be in conflict with international human rights norms binding on the Republic of Latvia, offering a reference to ECHR and ICCPR. Moreover, Section 9(2) and Section 13(2) echoes the ECHR

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[160] *Ibid.,* p. 620.
[161] *Ibid.,* p. 619.
[162] Par ārkārtējo situāciju un izņēmuma stāvokli (On Emergency Situation and State of Exception)(10.04.2013). Available on: https://likumi.lv/ta/en/en/id/255713-on-emergency-situation-and-state-of-exception. Accessed March 18, 2022.
[163] *Ibid.*
[164] American Association for the International Comission of Jurists, *supra* note 125.
[165] Par ārkārtējo situāciju un izņēmuma stāvokli, *supra* note 162.
[166] American Association for the International Comission of Jurists, *supra* note 125.
[167] Par ārkārtējo situāciju un izņēmuma stāvokli, *supra* note 162.
[168] *Ibid.*
[169] *Ibid.*

Article 15 and ICCPR Article 4 in regards the "notification" procedure.[170] It can be concluded that the Law complies fully with the UN Commission on Human Rights' standards of good practice, as well as similar examples in EU and NATO countries, and fully meets the criteria that restrictions and additional obligations imposed during a declared emergency must be legitimate, proportionate, non-discriminatory, justified, and necessary in each case.[171]

As for the non-binding international documents, such as the Paris Minimum Standards, these also found their place in Law. The recommendation given by Paris Minimum Standards in relation to the procedure for declaring a state of emergency was incorporated in Section 13 and Section 9[172], that clearly stipulated what information has to be included in emergency situation or state of exception declaration, as well as what procedure has to be maintained.[173] Moreover, the Law took into account the recommendation that the legislature should have the authority to revoke the decision to declare an emergency and change its duration in Sections 5(2,3), as well as Section 12(5,6).[174] Concerns rises the following wording of Section 8(2) and Section 17(2) : "(...) Cabinet has the right to determine measures necessary in the particular state of exception."[175]

The wording of these paragraphs is not clear in its essence. The Law does not provide an explicit list of "additional measures and restrictions" that can be considered a considerable omission. The Cabinet is obliged to apply the additional restrictions on fundamental rights in good faith. This means that the assessment of a restriction of fundamental rights in each specific case must not be purely formal - the Cabinet must examine all the circumstances of the case and determine whether the restriction will actually be used for the exact purpose for which it is intended.[176] Satversme safeguards the possible situation that might arise from the wording of Section 8(2) and Section 17(2) of a possible unacceptable goal behind the formally correct and impeccable motivation to additionally restrict human rights.[177]

It must be borne in mind that the Cabinet of Ministers may in no case impose wider restrictions on fundamental rights than the Satversme allows or implicitly allows. The Cabinet must follow such a scheme from a methodological point of view to answering the following questions:[178]

- Do the additional restrictions of rights have a legitimate aim;
- Are the restrictions of rights proportionate to the legitimate aim.[179]

Moreover, additional restrictions must be in compliance with the ECHR and ICCPR standards, as well as these additional restrictions have to pass in Chapter 2.1 described ECtHR tests. The Latvian Constitutional Court has to serve as a constitutional and legitimate safeguard of "additional restrictions" mentioned, using the ECtHR's jurisprudence, and findings expressed in the ECHR.

The Chapter established strong ties between international law and Satversme, as well as between international law and the Latvian legal order in general. The research confirmed that

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[170] *Ibid.*
[171] Laganovskis, *supra* note 3.
[172] Par ārkārtējo situāciju un izņēmuma stāvokli, *supra* note 162.
[173] Lillich, *supra* note 135.
[174] Par ārkārtējo situāciju un izņēmuma stāvokli, *supra* note 162.
[175] *Ibid.*
[176] Latvijas Republikas Satversmes komentāri, *supra* note 138, pp. 51-52.
[177] *Ibid.*
[178] *Ibid.*
[179] *Ibid.*

Satversme is a living document open to interpretation; yet, several provisions of Satversme lack clarity on emergency and human rights protection concept-related concerns. It was shown how to supplement Satversme in order to provide the essential legal clarity consistent with international standards and agreements. Additionally, it was decided that the emergency concept is deeply ingrained and well understood by the Latvian legal system, as evidenced by the "Law on Emergency Situations and States of Exception". This Chapter advanced the argument that, despite a high degree of awareness of emergency concepts and human rights protection norms and procedures in the Latvian legal system, there are still gaps that must be examined and addressed with required clarifications and additions. The aim of the third chapter is to analyse Latvian legal responses to the most "atypical emergency" the Europe has ever dealt with- Covid-19 pandemics, as well as to discuss growing concerns about domestic preparedness to protect fundamental human rights and freedoms during the Covid-19 emergency.

CHAPTER 3: CONSTITUTIONAL SYSTEM AND LEGAL ORDER IN THE COVID-19 EMERGENCY SITUATION

3.1. Restrictions on human rights and freedoms in the Emergency Situation during the Covid-19 pandemics: Latvian Legal Framework

In the scientific community, there is a widespread opinion that the EU MS lack practical experience in implementing “emergency situations" and "states of exception." Latvia is not an exception, because in Latvia the Cabinet of Ministers has only declared an emergency situation in five cases until 2020, but the state of exception was never declared on the Latvian territory.[180] Additionally, it is critical to highlight that the scale and substance of emergency situations Latvia experienced (for example, the African swine fever outbreak[181]) has little in comparison with the Covid-19 pandemics. One could argue that the Covid-19 bears no resemblance to previous emergencies, because the legal strategy that the Latvian government was required to devise had never been invoked previously- there were no analogues or templates for determining the appropriate legal path to address the Covid-19.

The World Health Organization confirmed Covid-19 as a pandemic on March 11, 2020[182], and in light of the significant threat Covid-19 posed to public health, the Government of the Republic of Latvia was fast and strict in declaring an emergency situation on the entire territory of Latvia on March 12, 2020, by Cabinet Order No. 103.[183] In times of emergency, the legal doctrine distinguishes between three types of emergency powers: 1) declaration of a constitutional "state of emergency" (as in Hungary and Spain); 2) application of existing or new legislation specifically to crisis governance (as in the United States and Ireland); and 3) recourse to more ambiguous legal groundings, such as expansive interpretations of ordinary laws.[184] The constitutional emergency rule seeks to clarify the procedural and material preconditions for the suspension of rights and declaration of an emergency situation within the constitutional system itself.[185] Furthermore, a constitutional emergency entails the Constitution to stress:

- conditions for emergency declaration;
- a delegation of power (usually to the executive);

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[180] Edite Brikmane, “Ārkārtējā situācija - īpašs tiesiskais režīms krīzes apstākļos” (Emergency: special legal regime in times of crisis), *LV portals* (15.09.2019), available on: https://lvportals.lv/skaidrojumi/289759-arkarteja-situacija-ipass-tiesiskais-rezims-krizes-apstaklos-2017, accessed March 12, 2022.

[181] Epizootiju uzliesmojuma likvidēšanas un draudu novēršanas kārtība (Procedures for Liquidation and Prevention of Danger of Epizootic Outbreaks)(19.03.2002.). Available on: https://likumi.lv/ta/en/en/id/60594-procedures-for-liquidation-and-prevention-of-danger-of-epizootic-outbreaks. Accessed March 23, 2022.

[182] World Health Organisation. *WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020*. Available on: https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020. Accessed March 1, 2022.

[183] Par ārkārtējās situācijas izsludināšanu (Regarding Declaration of the Emergency Situation) (12.03.2020.). Available on: https://likumi.lv/ta/en/en/id/313191-regarding-declaration-of-the-emergency-situation. Accessed March 12, 2022.

[184] Institute for Democracy and Electoral Assistance. *Emergency Law Responses and the Covid-19 Pandemic.* Available on: https://www.idea.int/gsod/sites/default/files/2021-11/emergency-law-responses-covid19-pandemic-gsod2021.pdf?fbclid=IwAR1BqQf_oPYcdIzrpp4ix19UmwzQb-RcWH8qYhbxAOXMMhQjz4-_oC1-qfc. Accessed March 28, 2022.

[185] Keith Linda. Camp and Steven C. Poe, “Are Constitutional State of Emergency Clauses Effective? An Empirical Exploration,” *Human Rights Quarterly*, vol. 26, no. 4 (2004): p. 1073, accessed April 1, 2022, url:http://www.jstor.org/stable/20069773.

- limitations on the use of emergency powers;
- temporal limitations on duration (and renewal); and
- provisions for oversight.[186]

Finally, in order to avoid leaving the issue of permitted human rights restrictions up to interpretation, the constitutional emergency rule must describe constitutional right limitations in detail and without ambiguity.[187]

Despite the existence of certain elements that qualify it as such, the proclamation of an emergency situation in Latvia can hardly be labelled a constitutional emergency rule. As it was discussed in Chapter 2.1, the majority of world Constitutions contain an emergency clause, but, for example, a lesser number of them contain provisions that allow authorities—primarily, but not always, the executive—to take the appropriate acts in emergency situations.[188] Satversme in Section 62 makes a passing reference to the Cabinet's ability to declare a state of emergency [189], however, is silent on mentioning and defining the powers of the Cabinet in times of emergency, the procedures necessary to trigger an emergency mode, the actions the state of emergency permits the government to take, and the degree to which normal democratic checks and balances may be set aside.[190] It is obvious, that Satversme does not satisfy the "test" of being able to invoke the "constitutional emergency rule". Another vital point raised in Chapter 2.2 is that the Satversme in Article 62 directly refers only to a state of exception that is linked to military threats or insurrections.[191] The challenge of connecting and comprehending the aforementioned emergencies in light of the Covid-19 health crisis arises since the emergencies outlined in Satversme do not preclude the "Covid19 health crisis" to be considered as an emergency. Only a few Constitutions, excluding Satversme, expressly recognize health emergencies, for example, Ethiopia (Article 93)[192] and Nepal (Article 273)[193], but other advanced Constitutions, such as the Spanish, distinguish between states of alarm, exception, and siege (Article 116)[194]—leaving room for the aforementioned term interpretation, as well as leaving space for legislation to determine the preconditions for each type of declaration.[195] As public health crises are not covered by Latvia's constitutional emergency provisions, the Latvian government has been forced to rely on pre-existing legislation. In Latvia, the emergency situation is more likely to be described as a "legislative model of emergency," which was utilized instead of a constitutional state of emergency.[196]

While a constitutional emergency rule provision would normally be accompanied by implementing legislation (sometimes an organic law), in the legislative emergency model legislation may also be used as the primary basis for emergency powers without a constitutional emergency being declared.[197] As an emergency situation in Latvia is a statutory legal

[186] Institute for Democracy and Electoral Assistance, *supra* note 184.
[187] Camp and Poe, *supra* note 185, pp. 1070-1074.
[188] Institute for Democracy and Electoral Assistance, *supra* note 184.
[189] Satversme, *supra* note 24.
[190] Institute for Democracy and Electoral Assistance, *supra* note 184.
[191] Satversme, *supra* note 24.
[192] Constitution of the Federal Democratic Republic of Ethiopia (21 August 1995). Available on: https://www.refworld.org/docid/3ae6b5a84.html. Accessed April 29, 2022.
[193] Constitution of Nepal (20 September 2015). Available on: https://www.refworld.org/docid/561625364.html. Accessed April 29, 2022.
[194] Constitution of Spain (27 December 1978). Available on: https://www.refworld.org/docid/3dbd6e7d7.html. Accessed April 29, 2022.
[195] Institute for Democracy and Electoral Assistance, *supra* note 184.
[196] *Ibid.*
[197] *Ibid.*

condition[198], the Cabinet of Ministers is entitled to declare an emergency situation in accordance with the 2013 "Law on Emergency Situation and State of Exception".[199]

The fact that the Latvian response to the Covid-19 pandemic can be considered to be a legislative emergency model is backed up by the fact that both the 2016 "Civil Protection and Disaster Management Law"[200], which determines the competence of the system of civil protection and disaster management subjects, and the 1997 "Epidemiological Safety Law"[201], which empowers the Cabinet to establish epidemiological safety measures to contain the spread of specific infectious diseases, comprehending each other, were used as a basis to support the decision to declare the emergency situation in Latvia.[202] It is apparent that under this arrangement, the legislative granted specialized new authorities to the executive through regular laws. This allowed the executive to exercise authorities it would not typically have in ordinary circumstances, such as restricting rights and freedoms of state administration and local government authorities, natural persons, and legal persons, as well as to imposing additional duties on them.[203] The biggest advantage of the legislative emergency model is that it has the feature and advantage of preserving the existing constitutional framework. It means, that throughout pandemics regulations and Cabinet orders were subject to certain constitutional limitations—they were not able to conflict with higher norms, such as primary legislation and the Satversme.[204] Let us move to a more detailed analysis of the Latvian government's legal response to the Covid-19 emergency.

It is well known that States have positive obligations to protect their populations, both under international and domestic legal frameworks. Latvia demonstrated good governance and a high level of responsibility by being one of the first countries in the world to transmit a *Note Verbale* to the Secretary General of the CoE on March 16, 2020, formally notifying that Latvia was exercising the right of derogation from its obligations under the ECHR in the entire territory of Latvia.[205] The standard for calling the Covid-19 pandemic an emergency raises no doubts regarding its legitimacy, as according to the in ECtHR jurisprudence adopted test: 1) Covid-19 was a real and imminent threat; 2) Covid-19 consequences affected the entire Latvian nation, because the virus's spread was an uncontrolled process that affected people of all nationalities, ages, and genders; 3) Covid-19 posed a threat to the Latvian nation's organized existence, as death rates were steadily growing ; 4) Covid-19 crisis was exceptional in nature (the world had never faced such a disease), and the normal measures and restrictions permitted by the ECHR for the maintenance of public health, safety, and order were insufficient during the Covid-19 pandemic (additional measures and restrictions were required to combat the disease).[206] With

[198] S. Olsena , M. Birģelis, and L. Kadile. "Latvia: Legal Response to Covid-19," in *The Oxford Compendium of National Legal Responses to Covid-19* (Oxford: Oxford University Press, 2021), accessed April 5, 2022, doi: 10.1093/law-occ19/e31.013.31.

[199] Par ārkārtējo situāciju un izņēmuma stāvokli, *supra* note 162.

[200] Civilās aizsardzības un katastrofas pārvaldīšanas likums (Civil Protection and Disaster Management Law) (05.05.2016.). Available on: https://likumi.lv/ta/en/en/id/282333-civil-protection-and-disaster-management-law. Accessed March 10, 2022.

[201] Epidemioloģiskās drošības likums (Epidemiological Safety Law) (11.12.1997.). Available on: https://likumi.lv/ta/en/en/id/52951-epidemiological-safety-law. Accessed March 10, 2022.

[202] Olsena , Birģelis and Kadile, *supra* note 198.

[203] *Ibid.*

[204] *Ibid.*

[205] Council of Europe. *Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5). Notifications under Article 15 of the Convention in the context of the COVID-19 pandemic.* Last amended January 3, 2022. Available on: https://www.coe.int/en/web/conventions/derogations-covid-19. Accessed March 26, 2022.

[206] Council of Europe. *Opinion on the Protection of Human Rights in Emergency Situations adopted by the Venice Commission at its 66th Plenary Session.* Available on: https://www.venice.coe.int/webforms/documents/CDL-AD(2006)015.aspx. Accessed April 12, 2022.

due diligence and a strong commitment to international law, the Permanent Representation of Latvia to the CoE followed the procedure outlined in Article 15 of the ECHR and kept the Secretary General of the CoE fully informed of the measures Latvia had taken to combat pandemics, as well as the reasons for these measures, justifications for decisions, and the date these measures ceased to operate.[207]

Between March 16, 2020 and November 18, 2021 Latvia submitted to the CoE three Withdrawal, three Communication and four Partial/Full Withdrawal documents related to the ECHR[208], showing a high level of commitment to the IHRL. In the first *Note Verbale* dated March 16, 2020 Latvia notified the Council of Europe that in-class learning at schools has been suspended, access of third persons to hospitals, social care institutions and places of detention has been restricted, all public events, meetings and gatherings have been cancelled and prohibited, as well as movement of persons has been restricted.[209] Consequently, the application of these measures gave reasons for the necessity to derogate from certain obligations of Latvia under Articles 8 (Right to respect for private and family life) and 11 (Freedom of assembly and association) of the ECHR, Article 2 of Protocol to the ECHR, and Article 2 of Protocol No.4 to the ECHR (freedom of movement).[210] These derogations were made because individual assessment of "limits" was practically impossible during an unexpected Covid-19 crisis, which was seen to be antithetical to the ECHR standards.

Due to the novelty of the virus and the lack of prior (similar) experience, restrictions on rights can be regarded necessary and proportionate, because individual liberties were successfully weighed against the collective rights of the people in democratic society. The derogations from the ECHR were perfectly compatible with the possible constitutional restrictions on human rights set forth in Article 116 of Satversme[211] and corresponded to the list of rights that can be lawfully suspended in accordance with Satversme Articles 96, 97, 102, and 103.[212] Later on, in light of effective response to the Covid-19 pandemics, Latvian government slightly seased restrictions and on May 15, 2020 withdrew its derogation from Article 11[213], on June 3, 2020 from Article 2 of Protocol to the Convention[214], on June 10, 2020 totally withdrew from all the derogations.[215] It can be considered to be the first "emergency situation period" in Latvia that longed from March 12, 2020 until June 9, 2020[216] was clear and understandable from the legal perspective.

Notwithstanding the smoothness of the first "emergency situation period", a lot of concerns rose the decision of the Saeima adopted on April 3, 2020.[217] Until the Covid-19 pandemic, the Law[218] allowed only one extension of the emergency situation, however Saeima on the initiative of political opposition members, amended the Law unanimously to allow for an unlimited number of extensions. It was considered that the possibility of only one extension

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[207] *Ibid.*
[208] Council of Europe, *supra* note 205.
[209] Permanent Representation of the Republic of Latvia in the Council of Europe. *Note Verbale JJ9012C dated March 16, 2020.* Available on: https://rm.coe.int/16809ce9f2. Accessed March 20, 2022.
[210] *Ibid.*
[211] Satversme, *supra* note 24.
[212] *Ibid.*
[213] Council of Europe, *supra* note 205.
[214] *Ibid.*
[215] *Ibid.*
[216] Olsena ,Birģelis, and Kadile, *supra* note 198.
[217] Grozījums likumā "Par ārkārtējo situāciju un izņēmuma stāvokli" (Amendment to the Law "On Emergency Situation and State of exception") (03.04.2020.). Available on: https://www.vestnesis.lv/op/2020/67B.3. Accessed April 12, 2022.
[218] Par ārkārtējo situāciju un izņēmuma stāvokli, *supra* note 162.

might not be sufficient in the case of the Covid-19 pandemic.[219] Such a decision appears to weaken Latvian legal order and international law. As it was discussed previously, ECtHR jurisprudence, as well as Paris Minimum Standards clearly stress the need to precisely identify the duration and the number of possible emergency situation extensions. It must be legally clear how many times an emergency situation can be extended, otherwise, there might occur several problems of 1) overwhelming power concentration in the hands of the Cabinet and lack of constitutional control; 2) use of unlimited emergency extensions as a safeguard to "lawfully" restrict human rights in order to supress the population to achieve certain political aims; 3) threat to the constitutional and democratic order of the state. Due to the nature of Covid-19, which is meant to be uncontrolled for years, such a decision by the Saeima theoretically allows for years of living in an emergency situation, which is yet another violation of international law requirements. As the ECtHR jurisprudence makes it abundantly obvious that an emergency situation must remain until "normalcy" is restored, such a decision by the Saeima theoretically set a moment at which the emergency-normalcy paradigm is fundamentally challenged.[220]

The second "emergency situation period" took place in the period from November 9, 2020 until April 6, 2021.[221] During this period Latvia notified the CoE that it only restricts the right to freedom of assembly, consequently necessitating a derogation from Article 11 of the Convention.[222] If we look in the Cabinet of Ministers order No. 655, we can find a legally interesting paragraph, namely paragraph 5.1 that states that:

> From January 29 to January 31 and from February 5 to February 7, 2021, to prohibit the movement of the population from 22.00 to 5.00, imposing an obligation on residents to stay at their place of residence, including reducing direct contacts with other people - not to accept guests, not to go on private visits.[223]

When interpreting this text, one can conclude that the Cabinet of Ministers is exercising its powers according to the Law[224] and subject to constitutional limitations with no conflict with Satversme. The Cabinet restricts Latvian residents' freedom of movement during the aforementioned time and date periods, as people are unable to move freely on the streets during the lockdown. Furthermore, the Cabinet tends to restrict citizens freedom of private and family life, because citizens are unable to meet with their relatives and friends (private life), as well as move to their family members and attend company meetings together during the aforementioned time periods. Based on the aforementioned Latvian government imposing such restrictions had to notify the CoE of the derogation from the Article 2 of Protocol No.4 to the ECHR, as well as Article 8. It appears that the Latvian government has disregarded the IHRL procedure for legitimate derogation from Article 15 of the ECHR. As there is a potential by the governments to abuse escape clauses of the ECHR, strict international standards and monitoring mechanisms are required.[225] Derogations serve as hallmarks of respect for IHRL by states that take human rights seriously, consequently, the non-action of Latvia in this scenario might be viewed as a decision not to disclose possible "repressive" policies during the emergency situation publicly, and, consequently, not to conform actions of Latvian government to

[219] Olsena ,Birģelis, and Kadile, *supra* note 198.
[220] Stuart Wallace, "Derogations from the European Convention on Human Rights: The Case for Reform," *Human Rights Law Review*, Volume 20, Issue 4 (2020): pp. 769–796, accessed May 1, 2022, https://doi.org/10.1093/hrlr/ngaa036.
[221] Par ārkārtējās situācijas izsludināšanu (Regarding Declaration of the Emergency Situation) (06.11.2020.). Available on: https://likumi.lv/ta/id/318517-par-arkartejas-situacijas-izsludinasanu. Accessed March 22, 2022.
[222] Permanent Representation of the Republic of Latvia in the Council of Europe. *Note Verbale JJ9157C dated December 31,2020.* Available on: https://rm.coe.int/1680a0d467. Accessed April 1, 2022.
[223] Par ārkārtējās situācijas izsludināšanu, *supra* note 221.
[224] Par ārkārtējo situāciju un izņēmuma stāvokli, *supra* note 162.
[225] Hafner Burton, *supra* note 106.

international safeguards and monitoring procedures- requirements that reduce the incidence and extent of potential human rights violations.[226] Furthermore, the legitimate aim, proportionality, and need of the restrictions imposed under paragraph 5.1 of Cabinet Order No. 655[227] are debatable. Whether such limits on freedom of movement during the night hours are effective in combating the virus, important to enhance public health, and assist the nation in combating the Covid-19 pandemics raises problems that require additional investigation or judicial review. It is difficult to analyze each "border" instance entrenched in emergency documents for the purpose of research, but it is conceivable to draw the line and chart a course for further investigation.

The third "emergency situation period" lasted from the October 11, 2021 until February 28, 2022.[228] During this period, Latvia notified the CoE about the derogation from the Article 11 of the Convention restricting all public events and gatherings.[229] Despite the proportionality and necessity of restricting certain rights and freedoms in light of the new Covid-19 stamm's rapid spread across the country, the Cabinet decision to declare a lockdown and carfew from October 21 to November 15, 2021, as well as to shift the study process at schools from the 4th to 12th grade online from November 1, 2021, rose a lot of questions and debates.[230] The declaration of lockdown, as previously noted, is a restriction of freedom of movement, and the shift of the study process to the website is a restriction of the right to acquire education. If the Latvian government successfully notified the CoE about the derogations enshrined in Article 8 of the ECHR and Article 2 of the Protocol to the ECHR during the first "emergency situation period", then the Latvian government remained silent about these derogations during the third "emergency situation period". The same problem as identified during the second wave can be mentioned here as well, because the primary benefit of derogations is that they establish a contrast between normalcy and emergency, while also tending to strengthen human rights protection systems, consequently Latvia might be accused of being non-compliant with IHRL. As a result, as Article 89 of Satversme demands that the interpretation of fundamental rights be done in compliance with norms of international law, especially the ECHR[231], such a decision by the Latvian government might pose a significant threat to the constitutional and democratic order, as well as the constitutionalism level in Latvia as a whole.

The emergency situation must have a beginning and an end, and the state of "normalcy" must be restored as soon as feasible after the emergency situation has expired, as determined in Chapter 2.2. We can see from the previous study that the emergency situation expired three times in two years, as the Cabinet orders regarding the emergency situation and provisions therein are in force only as long as there is an emergency situation in the country. Once the emergency situation ceases to exist, the Cabinet order automatically loses its legal force.[232] The most pressing concern is whether the "normalcy" has ever been restored during the Covid-19 pandemics. Here it is crucial to take into consideration on June 5, 2020[233], with the aim of

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[226] *Ibid.*
[227] Par ārkārtējās situācijas izsludināšanu, *supra* note 221.
[228] Par ārkārtējās situācijas izsludināšanu (Regarding Declaration of the Emergency Situation) (09.10.2021.). Available on: https://likumi.lv/ta/id/326729-par-arkartejas-situacijas-izsludinasanu. Accessed April 12, 2022.
[229] Permanent Representation of the Republic of Latvia in the Council of Europe. *Note Verbale JJ9288C dated October 25, 2021.* Available on: https://rm.coe.int/1680a44998 . Accessed April 1, 2022.
[230] Par ārkārtējās situācijas izsludināšanu, *supra* note 228.
[231] Olsena , Birģelis, and Kadile, *supra* note 198.
[232] *Ibid.*
[233] Covid-19 infekcijas izplatības pārvaldības likums (Law on the Management of the Spread of COVID-19 Infection) (05.06.2020.). Available on: https://likumi.lv/ta/en/en/id/315278-law-on-the-management-of-the-spread-of-covid-19-infection. Accessed April 22, 2022.

restoring the general legal order and specifying epidemiological safety measures after the end of the "emergency situation", the "Law on the Management of the Spread of Covid-19 Infection" was adopted by the Saeima.[234] This Law can be considered to be an *ad hoc* legislation, as the law was tailored to the post-emergency situation needs, as well as included provisions introduced during the emergency situation and granted the Cabinet the power to introduce special requirements and restrictions in case of Covid-19 infections in circumstances including gatherings, cultural and religious activities, educational processes, etc.[235] It did not include any sunset clauses and therefore remained in force indefinitely until the Saeima takes legislative action to abolish the law.[236] However, the Law[237] stipulates that restrictions on the rights of private individuals can be imposed only as long as such a necessity can be justified by the spread of Covid-19 infections, and the risks cannot be effectively eliminated by applying the legal means specified under the general legal procedures.[238] Such a definition can be construed as ambiguous and broad, allowing the Cabinet of Ministers to limit freedoms and rights without having to adhere to specific standards or principles. Speaking about the *cart blanche*, we see that the Section 4[239] grants the Cabinet of Ministers additional (22) rights that are not bound to the Cabinet during the "normalcy" situation. According to international standards laid down in Chapter 2.2 when an emergency expires, the executive has to get back to those powers prescribed by law and Constitution attributable to the times of "normalcy". When the emergency situation expired, namely in the period of normalcy that lasted from June 9, 2020 until November 9, 2020 and from April 6, 2021 until October 11, 2021, the aforementioned Law was in force. Here we can clearly identify the conflict- even in the "normalcy times" the Cabinet is granted the vast majority of extra powers similar to those delegated during the emergency situation. This type of language enshrined in Law further erodes the valuable, theoretical distinction between the normal and the exceptional and even stretches the exceptional to become the norm.[240] It rises the question of whether the emergency powers delegated to the Cabinet of Ministers during the emergency situation period became part of "ordinary/day-to-day" legislation. It is quite unclear as to whether the validity of emergency measures or emergency decrees lost their legal effect with the expiration of the emergency situation in Latvia during the Covid-19 pandemics. It seems that in the periods between the emergency situation declarations, in times of "theoretical normalcy" we saw an expansion and concentration of power in the executive, including the use of permanent legislation with an emergency favour[241], moreover, it is obvious, that the Law normalised the exercise of these exceptional rights by the executive to restrict human rights and, possibly, created "de facto state of qualified Covid-19 emergency in ordinary Latvian law."[242]

The main supporter of the idea that some of the restrictions of freedom of movement, right to acquire education and right for private life adopted by the Cabinet during the three "emergency situation periods" are debatable, subject to the additional necessity and proportionality tests, as well as judicial review, is the public opinion on the matter (voice of people is the cornerstone of the democratic foundation of the state). Surveys show that during the first "emergency situation period" the measures adopted by the government were supported

[234] Olsena ,Birģelis, and Kadile, *supra* note 198.
[235] *Ibid.*
[236] *Ibid.*
[237] Covid-19 infekcijas izplatības pārvaldības likums, *supra* note 233.
[238] *Ibid.*
[239] *Ibid.*
[240] Wallace, *supra* note 220.
[241] Institute for Democracy and Electoral Assistance, *supra* note 184.
[242] Wallace, *supra* note 220.

by approximately 80% of respondents. During the second "emergency situation period" it is possible to observe a sharp decline in numbers- only 31% of respondents considered restrictions to be relevant to the situation 28% considered that they were not sufficiently strict, and 29% considered that they were too strict. During the third "emergency period", higher number of respondents (70-80%) said that the Government did not know what to do to limit the spread of Covid-19.[243] The response to the pandemic has not changed the basic constitutional structure of the state. However, as we can clearly see, it has created tensions regarding the division of powers.

During the pandemics Latvia showed a successful implementation of necessary "democratic safeguards". The regular democratic checks and balances system has been kept to a large extent by the Latvian administration. The government operated under delegated powers, and all of the government's activities, such as those of the Cabinet of Ministers, were subject to normal judicial review and balancing tests in accordance with the Constitution and existing laws.[244] The legislature (Saeima) continued its work without interruption using the E-Saeima online platform, the executive (Cabinet of Ministers) stayed on website during the emergency meetings, the judiciary (courts) moved hearings partly online[245], partly in premises non-violating the principle that "(…) everyone has the right to defend his or her rights and lawful interests in a fair court" enshrined in Article 92 of Satversme.[246]For the purpose of the research, it is crucial to stress out, that both the regulations of the Cabinet and the measures included in the Cabinet order were challenged before the courts. External regulatory enactments, like regulations of the Cabinet, were challenged before the Constitutional Court, however, general administrative acts included in the Cabinet have been challenged before the Administrative Courts.[247]

For the sake of the research, a fundamental case *Nr.2021-33-0103*[248] that is still pending before the Constitutional Court of Latvia must be taken into account. First of all, the existence of this case assures the fact that regulations of the Cabinet were subject to the judicial review throughout the three "emergency situation periods". Secondly, the awaited decision could be considered to be a landmark one, as the decision will either confirm or deny the idea that even after the expiration of the emergency, the state of "normalcy" was not practically restored and the executive continued to exercise emergency powers, use permanent legislation with an emergency favour while restricting fundamental rights unconstitutionally and disproportionally to the exigencies of the situation. The Constitutional Court will have to find out whether the contested norms (enshrined in Law on the Management of Spread of Covid-19 Infection and Cabinet Regulation Nr.360), envisaging distance learning also after the end of emergency

[243] Olsena , Birģelis, and Kadile, *supra* note 198.
[244] Institute for Democracy and Electoral Assistance, *supra* note 184.
[245] Olsena , Birģelis, and Kadile, *supra* note 198.
[246] Satversme, *supra* note 24.
[247] Olsena , Birģelis, and Kadile, *supra* note 198.
[248] Latvijas Republikas Satversmes tiesas (The Constitutional Court of the Republic of Latvia) 2022. gada 26. aprīļa spriedums lietā Nr. 2021-33-0103 "Par Covid-19 infekcijas izplatības pārvaldības likuma 4. panta pirmās daļas 8. punkta, Izglītības likuma 1. panta 1.1 un 12.4 punkta, 14. panta 45. punkta, kā arī Ministru kabineta 2020. gada 9. jūnija noteikumu Nr. 360 „Epidemioloģiskās drošības pasākumi Covid-19 infekcijas izplatības ierobežošanai" 27.1.3. apakšpunkta, 32.7 punkta 2. apakšpunkta un 32.7 punkta 3. apakšpunkta atbilstību Latvijas Republikas Satversmes 112. pantam". Available (in Latvian) on: https://www.satv.tiesa.gov.lv/cases/?case-filter-years=&case-filter-status=&case-filter-types=&case-filter-result=&searchtext=2021-33-0103. Accessed April 26, 2022.

situation, restricted the opportunity and the availability of education, this violating Article 112 of Satversme.[249]

Another decision, that can be considered a proof of effective judicial review process throughout the Covid-19 pandemics, is the decision of the Constitutional Court of Latvia in the case *Nr.2021-24-03*[250], where it was found out that some of the contested norms enshrined in Cabinet Regulation No.360 were incompatible with the first sentence of Article 91 and the first and third sentences of Article 105 of Satversme in regards prohibiting traders whose shops were located in the premises of a large shopping centre, to which a separate external access may be provided, to provide services.[251]

In conclusion, it is critical to emphasize that Satversme was viewed as the highest legal guarantee of people's well-being and interests, as well as a critical tool for shaping society's life and organizing the state during the Covid-19 pandemics maintaining constitutional order at a normal level.[252] When Latvian government exercised its right to derogate from certain human rights according to the procedure laid out under Article 15 ECHR, the only tool not to dive in the "legal vacuum" with the absence of certain human rights protection mechanisms and chaos full of certain human rights abuses in relation to rights Latvia derogated from, was Satversme. Satversme served as a "last frontier" of human right protection, because all the existing and new laws adopted to tackle the Covid-19 pandemics, each regulation of the Cabinet was subject to constitutional limitations and could not be in contrast to constitutionally protected fundamental human rights. Satversme safeguarded the Latvian legal order from several severe deficiencies of the ECHR. Firstly, that is the absence of robust international norms and monitoring procedures, such as the availability of advisory judgments on whether emergency measures are compatible with the Convention before they are enacted by a state. This lack of clarity is the result of states not deviating when they should and deviating when they should not.[253] One of the primary concerns is that states tend to utilize derogations as a "shield" to avoid significant legal and economic sanctions or to embrace entrenched emergencies that are kept in place beyond the declared emergency and, as a result, are accepted into the state's normal laws.[254] Secondly, exists a problem of absence of in ECHR Article 15 included "sunset clauses", which would "(…) terminate the emergency measures after a specified time and not allow government *carte blanche* "[255] to vest itself with a huge discretionary authority in the limitation of fundamental rights.[256]

Satversme stipulated that the existence and sustainability of the Latvian State, society, and each person within a democratic system of the state must be protected in any circumstances

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[249] *Ibid.*
[250] Latvijas Republikas Satversmes tiesas (The Constitutional Court of the Republic of Latvia) 2022. gada 10. marta spriedums lietā Nr. 2021-24-03 "Par Ministru kabineta 2020.gada 9.jūnija noteikumu Nr.360 „Epidemioloģiskās drošības pasākumi Covid-19 infekcijas izplatības ierobežošanai" 24.18 punkta (redakcijā, kas bija spēkā no 2021.gada 7.aprīļa līdz 1.jūnijam) atbilstību Latvijas Republikas Satversmes 91.panta pirmajam teikumam, kā arī 105.panta pirmajam un trešajam teikumam". Available (in Latvian) on: https://www.satv.tiesa.gov.lv/cases/?search[number]=2021-24-03. Accessed April 26, 2022.
[251] *Ibid.*
[252] United Nations Human Rights Office of the High Commissioner. *Human rights and Constitution Making*. Available on: https://www.ohchr.org/sites/default/files/Documents/Publications/ConstitutionMaking_EN.pdf . Accessed March 12, 2022.
[253] Wallace, *supra* note 220.
[254] *Ibid.*
[255] *Ibid.*
[256] *Ibid.*

inclusding emergency situations.[257] As noted in the preceding analysis, the pandemic had only a small impact on the level of constitutionalism in Latvia. The vast majority of laws previously examined, as well as the behaviour of the state and its agents, were predicated on the ideas of the Satversme. The main problem that the analysis points out is that some laws and actions by the government were hard to predict and didn't give people a sense of security in their relationships with the state. This is because the constitutionalism theory says that the government needs to clearly define its powers, any limits it might put on those powers, its obligations, and how it will act in advance.[258] As a result, various flaws in governmental actions during the Covid-19 pandemic were found, especially their compliance with international and constitutional law foundations. With a few exceptions, Latvia demonstrated a good level of procedural commitment to the ECHR, high level of understanding how to "employ" and maintain emergency situation, as well as a high level of Latvian legal order's "constitutional dedication" while showing the high quality of human rights protection mechanisms throughout the pandemics.

[257] Valsts konstitucionālo orgānu darbības pamatprincipi ārkārtējā situācijā (Basic Principles of Activity of State Constitutional Bodies in an Emergency Situation) (23.03.2020.). Available on:https://likumi.lv/ta/en/en/id/313400-basic-principles-of-activity-of-state-constitutional-bodies-in-an-emergency-situation. Accessed April 12, 2022.
[258] Institute for Democracy and Electoral Assistance, *supra* note 184.

CONCLUSION

In the context of the protection of human rights, the research explored the operation of the constitutional system and analysed a legal framework in emergency situations.

The research undertaken enabled the conclusion that the constitutional system is a set of constitutional standards that establish the basis of the state's social structure. The constitutional architecture of Latvia, a modern democratic state, is largely founded on the protection of human rights and liberties, which are of the utmost importance, as well as on democracy, the separation of powers, etc. In turn, constitutionalism necessitates adherence to the rules outlined in a modern democratic Constitution, thereby safeguarding the constitutional order. The high degree of constitutionalism and the maximum stability of the constitutional order of modern democracies as a whole are the result of strict adherence to the democratic foundations enshrined in the Constitution, laws based on a democratic Constitution, protection of the rights and freedoms of citizens, the effectiveness of power in general, non-observance of which can affect a state's degree of constitutionalism and, on a critical scale, threaten the state's constitutional order in its entirety, according to the research.

The analysis of scholarly works contributed to establishing that an "emergency idea" is a "complex novelty" of the international law system. It was abundantly demonstrated by the Greek response to the financial crisis of 2008. Using an interdisciplinary economic approach based on the case law of the Greek Constitutional Court and the ECtHR, it was determined that every emergency situation, including a "economic emergency," poses a significant risk to the constitutional order of the state. It has been demonstrated that an emergency scenario invariably poses challenges to the state's human rights protection procedures. In addition, the investigation revealed a lack of legal readiness among EU Member States for a "financial crisis emergency" in 2008. Evidently, the paper provided a clear understanding of the emergency concept and drew the conclusion that the primary characteristics of an emergency are unpredictability, atypicality, and the fact that during an emergency situation, human rights and freedoms cannot be exercised to the extent guaranteed under normal circumstances.

In addition to the direct challenges to the constitutional order posed by the emergency circumstances themselves, there is also the risk that asymetrical measures will be taken to eliminate the emergency circumstances. Despite the fact that the emergency concept is an integral part of the constitutional systems and legal orders of EU MS, the practical examples of EU MS demonstrated that the emergency concept is not uniform on the European level, as numerous flaws in the understanding, implementation, and codification of the emergency situation concept were identified in the constitutional and legal systems of EU MS. The research emphasized the need to codify the "emergency notion" in order to address the aforementioned problems. In order to eliminate the problem of the unwillingness of EU MS to in detail separate each emergency situation and establish a comprehensive procedure/test for emergency declarations in their Constitutions and laws, in order to increase the clarity of legal provisions to be as exact as possible in order to be applicable to each unique case with a clear direction, an “emergency constitution” is incredibly demanded.

The findings for the first research question are as follows. IHRL statutes, especially the ECHR, enjoy constitutional status in Latvia, as the vast majority of Satversme provisions, particularly Chapter 8 "Human rights and freedoms," were designed in the image and likeness of ECHR provisions. It was also demonstrated that Latvia's emergency legislation is fully consistent with IHRL norms and standards, matching both international legally-binding texts

such as the ICCPR and the ECHR and non-legally-binding publications such as the Siracusa Principles and the Paris Minimum Standards. Despite the fact that Satversme can be considered a "living instrument" subject to a high degree of possible interpretation in accordance with the ECHR tests, practices, standards, and ECtHR case law, an analysis revealed that Satversme could be considered out of date in relation to the mechanisms for introducing, maintaining, and lifting an emergency situation in order to restore the normal functioning of the state, taking into account the need to ensure observance of human rights and freedoms in an emergency situation. Article 62 of Satversme appeared to be silent on the term emergency situation, and Article 116 does not even have an emergency situation as a prerequisite for derogating from constitutionally protected human rights. Since the ratification of the ECHR, the international community and the relevant international legal treaties, as well as the ECtHR's jurisprudence, have methodically created mechanisms for the protection of human rights in emergency situations. These international mechanisms are cornerstone in achieving clarity of Satversme consistent with IHRL standards. Despite the fact that the research identified gaps that must be examined and filled with necessary clarifications and additions, it is reliable to say that the current Latvian legislation regarding emergency situation issues, and most importantly, the restrictions on human rights and fundamental freedoms in emergency situation in general, is fully consistent with international legal norms, thereby allowing to positively answer the first research question.

Regarding the second research question, the following are the key findings. During the Covid-19 emergency situation in Latvia the behaviour of the state agents, more precisely, the executive, was predicated on the ideas of the Satversme in the context of human rights protection and power separation. The research aided in the identification of the inadequacies in the derogation procedure under Article 15 of the ECHR, which Latvia utilized extensively during the pandemics. Throughout the pandemics, Satversme served as the "last frontier" of human rights protection, preventing the legal system from operating in a "vacuum" of human rights protection while deviating from key ECHR Articles. In addition, there was no significant threat to the constitutional order of Latvia during the Covid-19 emergency, despite the fact that the executive's actions raised many questions regarding the clear definition of its powers during an emergency situation and possible human rights restrictions imposed, as well as the executive's obligation to establish a clear path of behaviour in advance. In addition, it was determined that there was an issue with separation of powers during the Covid-19 emergency, since the executive continued to exercise further emergency powers in the framework of human rights restrictions after the emergency situation had ended, which is against IHRL norms. The high level of engagement of the judiciary in the oversight of executive acts served to eliminate the danger of a severe abuse of authority during an emergency situation. The analysis emphasized the need for a deeper involvement of the Constitutional Court of Latvia in the examination of emergency circumstances in each particular case to ensure compliance with the criteria of an emergency that could serve as a safeguard against "excesses of the organizer." In spite of the identified Covid-19 emergency problems, and due to the novelty of the Covid-19 emergency, some problems with human rights protection, with necessity and proportionality tests of human rights restrictions adopted by the government are understandable. Thus, in comparison to other EU Member States, during the Covid-19 emergency situation, Latvia displayed a high level of readiness and legal clarity of fundamental human rights and freedoms protection mechanisms, allowing the Author to answer the second study question positively.

For further research, it is suggested to examine upcoming judgments and decisions of the ECtHR in relation to Latvia regarding possible violations of the ECHR during the Covid-19 pandemics, as well as decisions by the Constitutional Court of Latvia regarding the analysis

of the executive's legal actions during the Covid-19 emergency. In order to provide well-grounded recommendations for Constitutional and legal changes pertaining to the protection of human rights in emergency situations, the Author believes that future research should focus on a more in-depth analysis of Satversme and Latvian emergency laws.

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