Constitutional Law of the EU Member States

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(Eds)

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Preface

This book brings together a description of the 28 constitutions and constitutional systems of the present EU Member States. It allows scholars, students and practitioners to learn about the 28 different constitutional systems and compare them. Taking a fairly straightforward functional approach to constitutional law, a uniform format has been chosen, addressing the most important topics expressed in the constitutions of the EU Member States: sources of constitutional law, form of state, form of government and political system, government powers and their limits, vertical division of powers, the judiciary, fundamental rights.

On this basis, expert authors were invited to write a chapter on the constitutional system of one of the Member States. Each chapter starts with a brief historical introduction. The various chapters also take the case law, topical political debates and the major academic writings on board. The book's aim in collecting these chapters is to create the conditions for users to perform their own comparative analysis; the book does not make a comparative analysis itself, it *allows and enables* the user to make one.

Up until 2005, the chapters were written first in Dutch, mainly by Dutch experts. With a view to the English edition, the original editors, Lucas Prakke and Constantijn Kortmann, initiated a more systematic involvement of experts from outside the Netherlands, specifically domestic experts on the constitutional systems at hand. In 2006, an additional volume was published (this time without the editorship of Lucas Prakke) covering the constitutional law of the 10 new Member States of the Union, using the same format, and welcoming leading constitutional experts from the Member States that acceded to the European Union in the 2004 enlargement. The 2008 edition added another, third, volume to the collection: it dealt with the constitutional law and constitutional systems of Bulgaria and Romania, the two countries that joined the Union in 2007. The present volume constitutes the second edition of the series of constitutional studies dating from the 2005-2008 publications, and now also includes the newest Member State, Croatia. Most of the authors are national experts, dealing with their own domestic system. The underlying idea remains the same as in previous editions: a single format, yielding a great deal of information on a constitutional law system, its context, case law and scholarly literature, in order to allow readers to use this as a solid and rich basis for comparative analysis.

We wish to thank Lucas Prakke and Constantijn Kortmann for having taken the initiative to produce the original Dutch editions and for their decision to have a version prepared in English. It goes without saying that they bear no responsibility whatever for any of the shortcomings of the present edition; in their editorial work they set a high benchmark, which the present editors are aware they will be unable to meet. We would also like to thank Joseph Fleuren for his work on the enlargement editions of 2006 and 2008. Thirdly, we want to thank the authors: they have toiled on their chapters and had to exercise much patience and tolerance for the many reviews to which we subjected their

texts. We are very grateful to the wonderful team of lawyer-linguists who, under the direction of Alison McDonnell, worked on this sometimes very complicated project. Finally we would like to thank the the Montesquieu Institute in the Netherlands. Without their foresightful funding this second edition would never have succeeded.

The editorial team

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The Republic of Latvia

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I. History, territory, people

1. The development of the Constitution – The *Satversme*

The tribal communities of Latvians were moving towards unification and the establishment of a national state in the 13th century when this process was stopped by the German occupation. Conquerors imposed on the Latvian tribes their religion, but left them their language and national identity. So the different Latvian tribes, finding themselves in similar circumstances, became less distinct from each other over the course of time and, after seven centuries of being governed by knights, bishops and dukes, as well as Poland, Sweden and Russia, reached the 20th century as a united nation.

The First World War brought new changes in the political geography of Europe. Until the beginning of 1917, there was no real basis for the idea of complete independence for Latvia because Russia, despite huge losses during the war, still seemed to be strong militarily. The majority of the Latvian population dreamed only of autonomous status for Latvia. On the other hand, Germany, which at that time had occupied the Baltic region, wished to incorporate the Baltic countries with the colonial aim of transforming them into German countries. The situation was solved in the spring of 1918 by the Brest-Litovska Peace Treaty, in which the Russian government formally renounced authority over most of the Latvian territory. In addition, with the armistice treaty of 11 November 1918, the German occupation also came to a formal end. The resulting situation was used by the Latvian People's Council to achieve their long-coveted wish for an independent state.

The Republic of Latvia was proclaimed on 18 November 1918 and restored in 1991 after 50 years of Soviet occupation. From the very foundation of the country, the legislature of Latvia was the People's Council (also known as the *Pre-Parliament*); it was established as a body of 40 members on 17 November 1918. This was the result of an agreement between eight of Latvia's democratic political parties in co-operation with a representative from the *Latgale* Land Council. The political situation was such that elections could not be held at that time.

Mandates in the council were not granted to individual persons. Each party had a certain number of seats on the council, that were taken by members authorized by the parties. The members were often replaced. There were 183 seats in the Council, although the exact number of members is not known; historians cite two figures – 245 and 297. It had 22 standing committees and met in 57 plenary gatherings in 8 sessions. The council adopted several important statutes on local rural councils and elections for those councils, on the Latvian monetary system, on educational institutions and on citizenship.

The council developed a "political platform", which it adopted on 17 November 1918 at its founding meeting. This political platform can be thought of as the first provisional Constitution of the Republic of Latvia. The document consisted of seven chapters divided into articles. Among other things, it stated that Latvia was a state based on democracy which would join the League of Nations. It granted sovereign power in Latvia to the People's Council, which was to appoint the government. The issue of national minorities was regulated: the People's Council was also to include members from national

minorities. The platform also addressed human rights issues (freedom of speech, mass media), and touched upon citizenship, state defence and municipalities.

On 19 August 1919 the People's Council adopted the Act on the Election of a Latvian Constitutional Assembly. The basic duty of the constitutional assembly was to adopt a fundamental law of the state. In accordance with this act, the constitutional assembly of the Republic of Latvia was elected on 17 and 18 April 1920 and its first session was held on 1 May 1920.

The constitutional assembly was Latvia's first elected legislative body. 84.9% of those with the right to vote did so. There were 57 lists of candidates covering five constituencies, and 16 of the lists won seats in the assembly. A total of 150 members, including five women, were elected.

The main duty of the constitutional assembly was to draft the final version of the fundamental law of the state. However, this is not something that can be done in haste and so the assembly first adopted a provisional constitution. The constitutional assembly adopted the Declaration of the State of Latvia on 27 May. The declaration consisted only of two articles, proclaiming Latvia to be an *independent, sovereign republic with a democratic political system vested in the people of Latvia*. On 1 June 1920 the constitutional assembly adopted the Interim Regulations on a Political System for Latvia. Together, these two documents constituted the second provisional Constitution of Latvia, that provided for the functioning of the state from 1920 to 1922. The Interim Regulations on a Political System for Latvia consisted of twelve articles providing that the constitutional assembly held the sovereign power of the state in the name of the people of Latvia, and that one of the main functions of the assembly was to draft the Constitution (*Satversme*). The legislative function was to be fulfilled by the constitutional assembly; executive power was vested in the cabinet, which was responsible to the assembly; the president of the constitutional assembly was to be the speaker and chair the meetings of the assembly, and as the head of state was to represent the state internationally.

The constitutional assembly drafted the Constitution. The draft was elaborated by a commission of 26 people, divided into sub-commissions working on the sections concerning state powers and the sections concerning human rights. These parts of the draft were completed in the winter of 1922, and the vote on the draft took place on February 15. Only the first part of the draft Constitution was adopted. The second part was rejected: 62 deputies voted in favour, 62 against, and 6 deputies abstained.

The constitutional assembly also adopted important statutes such as the Agrarian Reform Act, the *Saeima* (parliament) Elections Act, and the Citizenship Act. It also ratified the peace agreement with the Russian Soviet Socialist Federative Republic of 11 August 1920, in which, among other things, the latter renounced all claims to the Baltic territories in perpetuity. The constitutional assembly had 21 standing committees, held 213 plenary sessions and adopted 205 statutes and 291 regulations with the force of statute.

The assembly functioned until 7 November 1922, when the period of office of the parliament elected under the new Constitution began. The elections for the first parliament took place on 7 and 8 October 1922. 82.2% of the eligible voters participated. Eighty-eight candidate lists were submitted, and 46 lists won seats. These figures show that the *Saeima* Elections Act was incomplete in that it did not provide adequate obstacles to prevent small parties being elected to parliament. The first *Saeima* continued the legislative work that had been started by the constitutional assembly. Among the most important statutes adopted were those on the structure of the cabinet, on associations, unions and political organizations, and on meetings.

Three more parliaments were elected in 1925, 1928 and 1931. The situation relating to the number of candidate lists was repeated. In the elections to the second *Saeima*, 48 of

the 141 lists of candidates won seats; in the elections to the third *Saeima*, 54 of the 120 lists of candidates won seats; and in the elections to the fourth *Saeima*, 57 of the 103 lists won seats. Starting with the elections to the third *Saeima*, there was an attempt to impose at least some limitations on the number of lists of candidates – those submitting a list had to pay a deposit of 1,000 lats. The money was returned if at least one candidate from the list was elected in at least one of the constituencies.

The fourth *Saeima* was dissolved after the coup of 15 May 1934. There were several reasons why the coup took place but the most important was the poorly drafted *Saeima* Elections Act, which allowed "excessive parliamentarism" and did not throw up enough obstacles to prevent small parties being elected. This meant that the work of the parliament suffered from the difficulty of trying to reach the necessary quorums to adopt decisions. At the same time, the Farmers' Union party had been proposing the amendment of the Constitution for some time with the idea of transferring the powers of the parliament to the State President, who would be elected directly by the people. Finally, the parliament was dissolved and its functions were taken over by the cabinet led by Prime Minister Kārlis Ulmanis, thereby establishing an authoritarian regime. When the term of the legally elected State President Alberts Kviesis ceased on 11 April 1936 in accordance with the Constitution, he handed over his powers to Kārlis Ulmanis. Ulmanis became the head of the government and was known as the President and Prime Minister of Latvia until the Soviet occupation.

On 16 June 1940, the government of the USSR issued an ultimatum asking the Latvian government to resign. In violation of international law, the USSR entered Latvia on 17 June 1940 and occupied the country for more than 50 years.

Elections to the Supreme Council of the Republic of Latvia took place on 18 March 1990. For the first time since the Soviet occupation, candidates from various political movements were allowed to run for parliament. The turnout was 81.25% (1,593,019 eligible voters).

On 4 May 1990 the Supreme Council adopted the Declaration on the Renewal of the Independence of the Republic of Latvia. This signalled the beginning of the dismantling of the Soviet legal system. The declaration stipulated that *de jure*, the Constitution of the Republic of Latvia adopted in 1922 was still in effect, that the state had not ceased to exist and that the principle of continuity (state succession) applied. The declaration reviewed the historical and legal facts, and stated that:

1) the ultimatum of 16 June 1940 from the Stalinist Government of the USSR to the Latvian government asking for its resignation, and the subsequent military aggression of the USSR on 17 June 1940, constituted international crimes, resulting in the occupation of Latvia and the liquidation of its statehood. The new government of Latvia was formed by the dictate of the government of the USSR. Under international law, this government did not represent the executive authority of the sovereign Republic of Latvia, since it represented the interests of the USSR rather than those of Latvia;
2) the elections of 14 and 15 July 1940 to the *Saeima* of occupied Latvia were held under conditions of political terror after the adoption of an illegal and unconstitutional election law. The illegally and fraudulently formed *Saeima* did not therefore represent the will of the people of Latvia. It had no constitutional powers to change the state system and liquidate the sovereignty of the state of Latvia. Only the people had the right to decide on these matters, but no free referendum was held;
3) accordingly, under international law, the incorporation of the Republic of Latvia into the Soviet Union was invalid. The Republic of Latvia thus continues to exist *de jure* as a subject of international law and is recognized as such by more than 50 nations of the world.

In order to restore *de facto* the free, democratic and independent Republic of Latvia, the Supreme Council of the Latvian SSR took a number of important decisions. It recognized the supremacy of the fundamental principles of international law over national law. It declared null and void from the moment of adoption the Decision of 21 July 1940 of the *Saeima* of Latvia "On the Republic of Latvia's Joining the USSR". It renewed the authority of the Constitution of the Republic of Latvia adopted by the constitutional assembly on 15 February 1992 for the entire territory of Latvia and, at the same time, pending the adoption of the new wording of the Constitution, suspended the Constitution with the exception of Articles 1, 2, 3 and 6 setting out the constitutional and legal foundations of the State of Latvia (under Art. 77 of the Constitution, these articles can be amended only by referendum). It set a transition period for the renewal of the *de facto* independence of the Republic of Latvia and it allowed the implementation of those constitutional and other legislative acts of the Latvian SSR which were in effect in Latvia when the declaration of these decisions was adopted, insofar as they did not contradict Articles 1, 2, 3 and 6 of the Constitution of the Republic of Latvia. Finally, the Supreme Council decided to develop relations between the Republic of Latvia and the USSR in accordance with the Peace Treaty between Latvia and Russia of 11 August 1920, which it considered to be still in force and which recognizes the independence of Latvia forever.

On 21 August 1991 the Supreme Council adopted the constitutional law on the Statehood of the Republic of Latvia, stating that:

1) Latvia is an independent, democratic republic where the sovereign power of the State of Latvia belongs to the people of Latvia, the statehood of which is determined by the 15 February 1922 Constitution of the Republic of Latvia;
2) paragraph 5 of the Declaration On the Restoration of the Independence of the Republic of Latvia of 4 May 1990, which determined a transition period for the *de facto* restoration of the state authority of the Republic of Latvia, was repealed;
3) until such time as occupation and annexation were abrogated and the *Saeima* had been convened, supreme state power in the Republic of Latvia was to be exercised in full by the Supreme Council of the Republic of Latvia. Only the laws and the resolutions of the supreme state power and state administrative institutions were applicable in the territory of the Republic of Latvia.

Elections for the fifth *Saeima*, which now took over the parliamentary role played by the Supreme Council, were held on 5 and 6 June 1993. The legal basis for the elections was the Act on the Elections for the Fifth Saeima adopted on 20 October 1992. This was a slightly amended and modified version of the 1922 *Saeima* Election Act. The turnout was 89.9 percent (1,118,316 eligible voters); 18,413 citizens living abroad took part in the elections. Twenty-three candidate lists were submitted, and eight won seats in the new parliament. The others did not pass the 4 percent vote threshold. The fifth *Saeima* reinstated the Constitution and the 1925 Cabinet Structure Act, adopted the Citizenship Act and the Anti-Corruption Act, implemented local government reform, and ratified the agreement on the complete withdrawal of the Russian armed forces from Latvia.

The elections for the sixth *Saeima* were held on 30 September and 1 October 1995 and the achievement of this parliament with respect to the Constitution was that it approved significant amendments to the Constitution, providing that parliamentary elections henceforth would be held on one day only. It also determined that, starting with the seventh *Saeima*, the term of office of parliament would be four years instead of three. It also added to the Constitution a chapter on fundamental human rights.

The elections for the seventh and eighth *Saeima* took place on 3 October 1998 and 5 October 2002 respectively; both passed amendments to the Constitution stating, among other things, that the Latvian language is the official language of the Republic of Latvia

and that Latvian membership of the European Union was to be decided by a national referendum. Article 68 of the Constitution states that the substantial changes in the terms regarding the membership of Latvia in the European Union are to be decided by a national referendum if such referendum is requested by at least one-half of the members of the *Saeima*. The amendments also granted European Union citizens permanently residing in Latvia the right to participate in local elections and in the work of the local authorities.

The elections for the ninth *Saeima* took place on 7 October 2006, for the tenth *Saeima* – on 2 October 2010. The ninth *Saeima* adopted important amendments to Article 14 of the Constitution granting the right to the people to recall the *Saeima*.

The elections of the eleventh *Saeima* took place on 17 September 2011 after the referendum on the dissolution of the tenth *Saeima* proposed by the State President according to Article 48 of the Constitution.

2. THE TERRITORY

The Republic of Latvia is a unitary state and Article 3 of the Constitution states that the territory of the State of Latvia, within the borders established by international agreements, consists of Vidzeme, Latgale, Kurzeme and Zemgale – the four ancient historical districts of Latvia. The size of the territory is 64,589 square kilometres or 24,937 square miles.

Latvia borders Estonia, Russia, Belarus and Lithuania and is the central country of the Baltic States (Estonia, Latvia and Lithuania). On the world map, Latvia is to be found in North-Eastern Europe, on the east coast of the Baltic Sea. Latvia is situated on a trading crossroads and has long served as a bridge between Western Europe and Russia. The famous "route from the Vikings to the Greeks" mentioned in ancient chronicles stretched from Scandinavia through Latvian territory along the Daugava River to the ancient Russian and Byzantine Empires.

From the legal point of view, there are still problems with the border agreements as Latvia has agreements on the restoration of the borders with Estonia dating from 1992 and on that in the Baltic Sea dating from 1996, on the border with Lithuania from 1993, and on the border with Belarus from 1994. However, no agreement has yet been reached with Lithuania about the border in the Baltic Sea – agreement is still awaiting ratification by a reluctant parliament because of the possible presence of oil.

The agreement with Russia was ready for signing on 10 May 2005 but it was suspended by the Russian government because of the Declaration on the Border Agreement between the Republic of Latvia and the Russian Federation approved by the Latvian Government on 26 April 2005. The Declaration stated that the Latvian side saw the agreement as a purely technical description of the *de facto* demarcation line and that Latvia does not accept any link between the agreement and the wider issue of the winding-up of the consequences of the illegal occupation of Latvia.

On 8 February 2007 the *Saeima* passed the Law "On Authorization to the Cabinet of Ministers to Sign the Draft Agreement between the Republic of Latvia and the Russian Federation on the State Border between Latvia and Russia Initialled on August 7, 1997". The Law provides: "According to the Constitutional Law of the Republic of Latvia 'On the Statehood of the Republic of Latvia' passed by the Supreme Council of the Republic of Latvia on 21 August 1991, as well as taking into account the internationally recognized continuity of the Republic of Latvia, the Cabinet of Ministers shall be authorized to sign the draft treaty initialled on 7 August 1997 between the Republic of Latvia and the Russian

Federation on the State border of Latvia and Russia". The Latvian-Russian border treaty was signed on 27 March 2007 and the *Saeima* ratified the treaty on 17 May; it entered into force 30 May 2007. Meanwhile, the Constitutional Court of the Republic of Latvia received an application to rule that this Law on Authorization was invalid. The judgment of the Court, which is regarded as one of the longest and most deeply reasoned judgments, came to the conclusion that the Law on Authorization complies with higher legal rules, except for some particular wording.

The Russian Parliament ratified the Latvian-Russian border treaty on 5 September 2007, and the Russian Federation Council ratified the border agreement on 19 September 2007. The Russian President Vladimir Putin signed the law on the ratification of the border treaty on 3 October 2007. On 9 June 2011, the demarcation of the Latvian–Russian border in natural areas was launched, with signs and boundary-marks; this is expected to be completed in 2015.

3. THE PEOPLE

Latvians are the indigenous people of Latvia. The ethnic mix of the population of Latvia is largely the result of massive post-war immigration, which resulted in a decline in the share of ethnic Latvians from 77% in 1935 to 52% in 1989. The population in 2011 was 2,067,887, at which time the ethnic composition of the country was as follows: 62.1% Latvian, 26.9% Russian, 3.3% Belo-Russian, 2.2% Ukrainian, 2.2% Polish, 1.2% Lithuanian, 0.3% Jewish, 1.8% other nationalities.

3.1. *Official language*

Article 4 of the Constitution was amended in 1998, granting constitutional status to the Latvian language and stating that the Latvian language is the official language of the Republic of Latvia. Further amendments in 2002 bolstered the role of the Latvian language in state and municipal institutions, making membership of parliament subject to a solemn promise to support the Latvian language as the only official language (Art. 18). In addition, the working language of the parliament is Latvian (Art. 21), the working language of local governments is Latvian (Art. 101), and everyone has the right to receive a reply from state or local government institutions in Latvian (Art. 104).

Latvian is a Baltic language and it belongs to the Indo-European family of languages. Latvian is considered to be one of the oldest of the Indo-European languages. It is a non-slavic and a non-germanic language, similar only to Lithuanian.

The Official Language Act adopted in 1999 by the seventh *Saeima* further regulates language issues. The history of the recognition of Latvian as the official language of the Republic of Latvia after the Soviet occupation started in 1989 when the Supreme Council of the Republic of Latvia adopted a Language Act that introduced a practical bilingualism of Latvian and Russian.

The law envisaged a three-year transition period during which non-Latvians working in the state sector would have to learn varying degrees of Latvian, taking into account their positions, in order to communicate in Latvian. One example is that doctors were required to learn Latvian in order to communicate with their patients.

When the transition period stipulated by the law ended in 1992 and it became obvious that legal equality between the two languages did not guarantee practical equality because

most Latvians were able to communicate in Russian and the majority of Russians were unable to understand Latvian, several amendments were made to the Language Act of 1989. As a result, Latvian was given a leading role in government and administrative bodies, and other laws and regulations were adopted about the use of languages. The amendments to the Language Act also guaranteed minority rights. For example, residents of other nationalities living in Latvia had the right to be educated in their native language (Section 10), state-financed universities were required to teach primarily in Latvian starting in the second year of studies (Section 11), thereby giving students who had not mastered Latvian the time to improve their language skills.

From 1989 onwards, Latvian language proficiency among minorities improved and a psychological change in attitudes towards Latvian had taken place. A subsequent step was then taken in order to raise the status of the official language. Taking into account international standards and conventions (for example, the Framework Convention for the Protection of National Minorities signed by Latvia in 1995) the *Saeima* adopted the Official Language Act in 1999. The main features of this law are: 1) the use of the official language in private business is regulated only if it affects legitimate public interests and if the degree of regulation is proportional to the rights and interests of the private entities, organizations and enterprises, 2) all other languages in the territory of Latvia are considered to be foreign languages – in effect, this means that the Russian language no longer has official status in Latvia, 3) in communications with the state, Latvian is the principal language and the Russian language is no longer required in communications with the state.

The Education Act adopted in 1998 also affects language issues and it has become very topical recently since Section 9 of the transitional provisions of the act states that, with effect from 1 September 2004, studies in the tenth class at state and local general educational institutions, where the study programmes of the ethnic minorities are carried out, and studies in the first academic year of state and local professional educational institutions will be conducted only in the official language. In addition, the state educational standard states that the studies in the official language must account for at least 3/5 of the total number of hours per year, including foreign languages, at the same time providing that the study of material relating to the language, culture and identity of the ethnic minorities is to be conducted in the language of the ethnic minority in question.

The language policy of the early 1990s encouraged the public use of minority languages in schools and in other institutions. It could be argued that since more than 30% of the population uses Russian as its native tongue, Russian should be the second official language. However, this argument does not seem appropriate for the Latvian situation. Equal rights for the public use of Russian and Latvian would benefit Russian speakers, who would continue to be monolingual. The Latvian language would not be used generally, and it would not regain its lost position as the main living language of the state.

3.2. *Citizenship*

For legal and symbolic reasons, it was very important after the restoration of independence to stress the continuity of the state by returning to the original principles applying to citizenship. Granting automatic citizenship to Soviet-era immigrants would have been in conflict with this legal continuity. There were three citizenship models in circulation that were discussed at the time: 1) granting citizenship on the basis of quotas so that

ethnic Latvians do not make up less than 75 percent of the citizens; 2) granting citizenship to everyone who has resided in Latvia for a certain period of time, knows Latvian and is loyal to Latvia; 3) granting citizenship to all permanent residents without any restrictions. More than half of all ethnic Latvians, as well as one third of the minorities, supported the second alternative. The radical alternatives received support only from single ethnic groups. The first alternative was supported by 42% of the entire population, the third by 64% of residents, and the second alternative received the support of 84% of Latvia's population.

Nevertheless, on 15 October 1991, the Supreme Council passed a resolution *On the Renewal of the Republic of Latvia's Citizens' Rights and Fundamental Principles of Naturalization*. It argued that, despite the long-standing illegal annexation of Latvia by the USSR, a body of Latvian citizens had continued to exist. Pursuant to the resolution, all the pre-war citizens of Latvia and their descendants automatically became citizens of the restored state. For persons with no claim to a legal relation with the previous body of Latvian citizens, the Supreme Council established several fundamental principles of naturalization and stated that naturalization would begin no sooner than 1 July 1992 – the date by which all the residents of Latvia were supposed to have registered. In fact, this was tantamount to the adoption of the first of the models described above, demonstrating that the Latvian majority was afraid that granting the full scope of political and civil rights to Soviet immigrants would threaten Latvian ethnic identity and pose a challenge to the recent restoration of political independence. In reality, naturalization began only in 1995 since the Citizenship Act enabling former Soviet immigrants to naturalize was passed only in July 1994.

Under the Citizenship Act, Latvian citizens are:

1) persons who were Latvian citizens on 17 June 1940, and their descendants who have registered in accordance with the procedures set out in law, except persons who have acquired the citizenship (nationality) of another state after 4 May 1990;
   - 1.1) Latvians and Livs[1] whose permanent place of residence is Latvia, who have registered in accordance with the procedures set out in law and who do not have the citizenship (nationality) of another state, or who have received an expatriation permit from the state where they previously had citizenship (nationality), where such a permit is provided for by the laws of that state;
   - 1.2) women whose permanent place of residence is Latvia and who, under Section 7 of the Nationality Act of the Republic of Latvia of 23 August 1919, had lost their Latvian citizenship (nationality), and their descendants if they have registered in accordance with the procedures set out in law, with the exception of persons who have acquired the citizenship (nationality) of another state after 4 May 1990;
   - 1.3) persons whose permanent place of residence is Latvia, who have registered in accordance with the procedures set out in law, and who have completed a full educational course in general education schools where the language of instruction is Latvian or people who have completed primary or general secondary education in the Latvian stream of twin-stream general education schools, if these persons do not have the citizenship (nationality) of another state, or if they have received an expatriation permit from the state of their former citizenship (nationality), where such a permit is provided for by the laws of that state. Their minor children up to

1. The Livs and Latvians are the two basic nations of Latvia. The Livs are Fenno-Ugrian peoples of the Baltic Sea Region. The Livs language is very different from the Latvian language, resembling Estonian and Finnish. The Livs lived in the large territory of Vidzeme and Kurzeme. Prior to the mid-19th century most of the Livs were assimilated by the Latvians. At present, there are approximately 200 Livs resident in Latvia.

the age of fifteen who permanently reside in Latvia also acquire citizenship at the same time as these persons;

2) persons who have acquired Latvian citizenship by naturalization or otherwise in accordance with the procedures set out in law;
3) children found in the territory of Latvia whose parents are unknown;
4) children with no parents who live in an orphanage or a boarding school in Latvia; and
5) children born of two parents who were citizens of Latvia at the time of the birth of the child, irrespective of the place of birth. (Section 2)

The act grants Latvian citizenship to children if one of the parents is a Latvian citizen and if the child is born in Latvia or is born outside Latvia but the permanent place of residence of the parents is Latvia. The 1998 amendments to the act grant citizenship automatically to children born in Latvia after 21 August 1991 if the parents are stateless persons or non-citizens. Children are entitled to Latvian citizenship if their permanent place of residence is Latvia and if they have not been sentenced to more than five years' imprisonment in Latvia or in any other state for committing a crime; and if they have previously always been stateless or non-citizens.

The act excludes dual citizenship for Latvian citizens (Section 9). The act recognizes three types of status: aliens – citizens (nationals) of foreign states; stateless persons – persons not considered to be citizens (nationals) under the laws of any state; and non-citizens – persons who, pursuant to the *Act on the Status of those Former USSR Citizens who do not have the Citizenship of Latvia or that of any Other State*, are entitled to non-citizen status, thereby indicating the special status of these persons in the state. These are persons who 1) were registered residents of Latvia on 1 July 1992 or who have been found to be resident in Latvia for no less than ten years by a court decision; 2) are not Latvian citizens and 3) are not and have not been citizens of other states (Section 1). In addition to the rights set out in the Constitution, non-citizens have additional rights such as the right to preserve their native language, culture and traditions if they are not in conflict with Latvian law, as well as the right not to be expelled from Latvia (Section 2).

For the purposes of naturalization, the new Citizenship Act required language skills and a knowledge of the basics of Latvian history and Constitution. Potential applicants were divided into two groups according to age and status. However, the naturalization process proceeded quite slowly. Between 1995 and 1998, about 200,000 Soviet immigrants were eligible to apply for citizenship, but fewer than 17,000 had done so by the end of 1996. On 22 June 1998, parliament adopted sixteen amendments to the Citizenship Act, granting every resident the right to apply for citizenship without restrictions. Although there was a referendum about this issue on 3 October 1998 that was initiated by the nationalist members of parliament, more than 53% of the voters supported the liberal Citizenship Act.

After the amendments went into effect, the number of naturalization applications rose almost fourfold. The act requires citizenship to be granted within one year. In practice, the procedure takes no more than three to six months. The examination takes place orally and in writing: oral examination means that the applicant must answer one question about the basic principles of the Constitution and another about the history of Latvia. The written examination consists of eighteen questions. In both forms of this examination, applicants are required to write or recite the text of the national anthem.

The act also imposes restrictions on naturalization, refusing it to those who have, for example, acted by unconstitutional methods against the independence of the Republic of Latvia, the democratic parliamentary structure of the state or the existing state power in Latvia, if this has been established by a court judgment. Naturalization is also refused to those who, after 4 May 1990, have propagated fascist, chauvinist, national-socialist,

communist or other totalitarian ideas or incited ethnic or racial hatred or discord, if such has been established by a judgment of a court; to state officials or those who have served in the armed forces, internal military forces, security services or the police (or militia) of any foreign state; to those who have been employees, informers, agents or safehouse keepers of the U.S.S.R. (or L.S.S.R. [Latvian Soviet Socialist Republic]), the K.G.B. [*Komitet Gosudarstvennoi Bezopasnosti* (Committee of State Security)], or of the security service, intelligence service or other special service of any other foreign state, if this fact has been established in accordance with the procedures prescribed by law; to those who, after 13 January 1991, have worked against the Republic of Latvia in the C.P.S.U. [Communist Party of the Soviet Union] or the L.C.P. [Latvian Communist Party], the Working People's International Front of the Latvian S.S.R., the United Council of Labour Collectives, the Organization of War and Labour Veterans, the All-Latvia Salvation of Society Committee or their regional committees or the Union of Communists of Latvia and others (Section 11).

Interest in naturalization and the rate at which citizenship was granted remained consistently high until 2005. Since September 2003, the number of applications for naturalization has doubled (2,422 applications during the period from September to December 2002; 5,159 applications during the same period in 2003). In November 2004, there were 2,440 applications for naturalization – the highest number of applications received during one month in the history of the Naturalization Board. The number of applications remained high in 2005, but started to decrease dramatically from 2006-2007. In 2006 only 10,581 applications were submitted which was half the number in 2004. Several reasons have been mentioned for that but the most convincing ones are that many of those who wanted to become naturalized did so just before Latvia joined the European Union, and that since 2006 non-citizens have been allowed to travel to the European Union without visas; the economic crisis which hit Latvia played some role in the decrease of the naturalization rate as well. From the start of the naturalization process until 31 December 2012, 139,176 naturalization applications were received for 152,434 people in total, and 139,886 persons were granted Latvian citizenship, including 14,171 under-age children.

As the result of economic crisis, several hundred thousand Latvians left Latvia looking for better living opportunities in other European Union countries, which was the main reason for the debate which arose on the necessity to amend the Citizenship Law providing for a dual citizenship. During 2012 the amendments to the Citizenship Law started to go through the readings in parliament. The amendments provide for the acquisition of dual citizenship for those Latvians living abroad, retention of the citizenship for Latvian exiles and their descendants, as well as granting citizenship for Latvians and Livs, whose permanent residence is not Latvia. Similarly, the draft law grants citizenship to children born of non-citizens within the country, as well as children of Latvian citizens born abroad. Tentatively it was agreed that the amendments should take effect on 1 January 2013, letting the government adopt the necessary regulations of the Cabinet of Ministers for the law to be applied in practice.

II. The Sources of Constitutional Law

I. THE *SATVERSME*

The Constitution – *Satversme* – drafted by the constitutional assembly and adopted on 15 February 1922 is quite short and laconic. Given the procedures for its amendment, it can be classified as flexible. Given the administrative structure, the country can be defined as an expressly parliamentary republic.

The political system established by the 1922 Constitution is inspired by the Westminster model and provides for a strong parliament, an executive body (the cabinet) responsible to the parliament, and a figurehead president. There are also important instruments of direct democracy inspired by the Weimar constitution.

The Constitution consists of 116 articles in eight chapters.

There have been eleven amendments to the Constitution.[2] The Constitution can be amended in two ways:

1) as stated in Article 76 of the Constitution – by the *Saeima* in sittings at which at least two-thirds of the members participate; in this case the amendments must go through three readings of the legislature and they must receive at least a two-thirds majority of the members present; or
2) by national referendum if:
   a) parliament has amended the first, second, third, fourth, sixth or seventy-seventh Article of the Constitution or
   b) if parliament does not adopt, without changing the substance, a fully elaborated draft of an amendment to the Constitution submitted by not less than one tenth of the electorate. An amendment to the Constitution submitted for national referendum is adopted if at least half of the electorate votes in favour (Arts. 78 and 79).

2. 1) on 21 March 1933 – amending Articles 74 and 79 relating to referendums;
   2) on 27 January 1994 – rewording Article 8 regarding the age requirement for the right to vote;
   3) on 5 June 1996 – amending Article 85 establishing the Constitutional Court of Latvia;
   4) on 4 December 1997 – amending Articles 10, 11, 13, 30, 35, 37, 39, 45, 81, 84; these amendments extended the term of the parliament and the State President from three to four years, reduced the time needed for elections from two days to one day, and imposed additional requirements for candidates for State President;
   5) on 15 October 1998 – these were the most extensive amendments to the Constitution, the main change being the addition of Chapter VIII on Fundamental Human Rights, together with the amendment to Article 4 granting constitutional status to Latvian as the official state language and providing that amendments to this Article are subject to a referendum in accordance with Article 77;
   6) on 30 April 2002 – amending Articles 18, 21, 101, 104, further strengthening the role of Latvian in the state and municipal institutions;
   7) on 8 May 2003 – amending Articles 68 and 79 relating to the procedure for membership of the European Union and changes to the terms of membership;
   8) on 23 September 2004 – amending Articles 69, 71, 72, 98, 101 specifying the powers of the State President relating to the proclamation of laws and the suspensive veto, as well as granting the right to carriers of Latvia passports to return and allowing European Union citizens permanently residing in Latvia to participate in municipal elections and to work for municipalities;
   9) on 15 December 2005 – amending Article 110 stating that marriage is the legal institution between man and woman;
   10) on 3 May 2007 – amending Article 40 as regards to the wording of the oath of the State President and deleting Article 81 which provided for delegated legislative power for cabinet of ministers;
   11) on 8 April 2009 – amending Articles 14 and 49 giving the right to the people to recall the parliament.

Apart from the Constitution in the formal sense, a substantial part of constitutional law in the material sense is found in ordinary statutes, which implement and elaborate the Constitution in concrete terms and provide detailed rules for the operation of the organs provided by the Constitution. These include the Rules of Procedure of parliament, the *Saeima* Election Act, the Central Election Commission Act, the Cabinet Structure Act, the State Administration Structure Act, the Act on the Constitutional Court of the Republic of Latvia, the Judicial Power Act, the Local Government Act, etc.

2. General principles of law

The Constitution adopts democracy as the basic principle governing the state and opts for representative democracy. Article 1 of the Constitution states that Latvia is an independent democratic republic. The Constitutional Court of the Republic of Latvia has developed this article further, deriving from it other general principles of law governing the state (c.f. the section relating to case law).

3. Case law

The Constitutional Court of the Republic of Latvia plays a major role in the interpretation of the Constitution (cf. the section on the Constitutional Court). The court reviews the constitutionality of laws and international agreements signed or entered into by Latvia, as well as the constitutionality of other acts (with the exception of administrative acts) of parliament, the cabinet, the State President, the speaker of the *Saeima* and the prime minister. It also reviews the compliance with the law of regulations by which ministers, as authorized by the cabinet, rescind binding regulations issued by the *Dome* (Council) of a municipality. Finally, it reviews the national legal norms of Latvia in the light of international agreements entered into by Latvia which are not contrary to the Constitution.

The Constitutional Court of the Republic of Latvia has concluded in its judgements that Article 1 of the Constitution includes such general principles of law as the principle of the rule of law, the principle of proportionality, the principle of justice, the principle of legal certainty, the principle of the separation of the powers and others. In one such decision, in case no. 03-05 (99) *On Conformity of Items 1 and 4 of the Saeima April 29, 1999 Resolution on Telecommunications Tariff Council with Articles 1 and 57 of the Constitution of the Republic of Latvia and Other Laws*, the Constitutional Court stated:

"Article 1 of the Constitution determines that 'Latvia is an independent democratic republic'. Several principles of a law-based state, including the principle of separation of power, follow from the Article.

The principle of separation of power manifests itself in the division of the state power into legislative, executive and judicial power, which are realized by independent and autonomous institutions. The above principle guarantees balance and mutual control among them. It favours moderation of power.[..]

Latvia is a parliamentary republic and, in compliance with Article 59 of the Constitution, the government is accountable to parliament.

The fact that parliament with its decision has assigned a task to the cabinet does not contradict Article 1 of the Constitution as long as relations of mutual control and moderation are in balance and other principles of a law-based state are observed.

One of the principles, rule of law, determines that the law and justice are binding on every state institution as well as on the legislature itself. Persons exercising the power of legislation after they had assembled and passed laws under a certain procedure are subject to the effect of the laws. [See Two Treatises of Government. J. Locke, Collected Works in 3 volumes. Volume 3. Moscow, 1988, page 347.] "In a democratic republic the parliament has to observe the Constitution and other laws, including those the parliament has passed itself."

4. INTERNATIONAL AGREEMENTS

Latvia has a monist system with respect to the operation of international agreements in the national legal system.

Latvia is a signatory to several important international conventions in the human rights field. These are regarded as sources of constitutional law in Latvia and they include: 1) the General Pact for Civil and Political Rights of the UN (which came into force on 14 July 1992); 2) the International Covenant on Economic, Social and Cultural Rights of the UN (which came into force on 14 July 1992); 3) the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (which came into force on 13 June 1997 – the courts can apply ECHR to cases dating from 13 June 1997 onwards but the international liability of Latvia under the convention begins on 27 June 1997 with the submission of the ratification act). Latvia is also a signatory to other international agreements affecting constitutional issues such as the Treaties Establishing the European Communities, the Treaty on European Union and the Treaty concerning the Accession of Latvia to the European Union. These treaties are also considered to be sources of Latvian constitutional law.

III. System and form of government

1. The State President

1.1. *The organ*

Parliament elects the State President for a term of four years by secret ballot. A majority – no fewer than fifty-one members – must vote in favour. The term of office was extended from three to four years in 1997. The same person cannot hold office as president for more than eight consecutive years.

Article 37 of the Constitution lists the following requirements: 1) the candidate must enjoy full rights of citizenship; 2) the candidate must have attained the age of forty years; 3) the candidate cannot have dual citizenship. The office of president cannot be held concurrently with any other office and any person elected president who is a member of parliament must resign from parliament.

Article 40 of the Constitution requires the president to take the solemn oath at the first sitting of parliament held after the election of the president.[3]

If the president resigns, dies or is removed from office before the end of the term of office, the speaker assumes the duties of the president until parliament elects a new president. Similarly, the speaker assumes the duties of the president if the latter is away from Latvia or is, for any other reason, unable to fulfil the duties of office.

The president can be subject to criminal liability if a majority of not less than two-thirds of parliament gives its consent.

1.2. *Powers*

The State President is not politically responsible for the fulfilment of presidential duties. All orders of the president are jointly signed by the prime minister or by the appropriate minister, whereby the latter assumes full responsibility for the orders, except in the case of the dissolution of parliament and an invitation to form a cabinet (Arts. 48, 53, 56).

It should be noted that the Constitution uses the term "orders", which are jointly signed, and does not include every legal act. An "order" is therefore a narrower concept than an "act". So not every legal act can be regarded as an order. For example, a simple executive act determined by the law such as the promulgation of a statute is not considered, in Latvian legal doctrine, to be an "order". The latter involves some kind of freedom in the legal will of the person issuing the "order".

The content of the order must be some sort of command, permission or prohibition relating to an administrative institution, state official or person. No act submitted by the

3. The text of the solemn oath is as follows: "I swear that all of my work will be dedicated to the welfare of the people of Latvia. I will do everything in my power to promote the prosperity of the Republic of Latvia and all who live here. I will hold sacred and will observe the Constitution of Latvia and the laws of the State. I will act justly towards all and will fulfil my duties conscientiously."

State President to parliament can be regarded as an order because the State President does not have competence to give orders to parliament. The dissolution of parliament by the State President is an order not because it tells parliament to take a particular action, but because it orders the relevant administrative institutions to organize the appropriate referendum. On the other hand, the expression of the will of the State President – a reasoned request to the speaker requiring a statute to be reconsidered (Art. 71) is formally a public legal act. However, it is not an order and that is why it does not need to be co-signed. The same applies, for example, to such acts of the State President as the initiation of legislation, the proclamation of statutes, the suspension of the proclamation of a statute if so requested by not less than one-third of the members of parliament, the presentation to parliament of the draft of an amendment to the Constitution or of a law submitted by not less than one-tenth of the electorate, or granting clemency. The reasoning is that these acts do not involve the freedom of the will of State President. The president simply has to carry out the activity described by the law. That is why these acts are not orders but only executive acts. However, the act by which the State President suspends the proclamation of a statute at his/her own initiative, for example, needs to be co-signed, as do acts regarding the defence duties of the State President, the implementation of decisions of parliament concerning the ratification of international agreements, the appointment of diplomatic representatives of Latvia, and also receiving diplomatic representatives of other states.

Despite the procedure of co-signing, the legal literature has still argued that the State President is politically responsible. The example of the dismissal of ministers is adduced in support of this conclusion: the essence of the political liability of ministers is that they can be dismissed by a decision of parliament in an open sitting by a majority vote of no confidence. The State President can be relieved of office by parliament in accordance with Article 51 in a closed sitting by a majority of no less than two-thirds of all members. The difference between the two procedures is one of form, not of substance. In addition, according to Article 50 of the Constitution, the State President can be relieved of office on the basis of the referendum regarding the dissolution of parliament.

Generally speaking, the powers of the president are representative. Nevertheless, in reality, the personality of the State President can mean that the political elite and society as such will take the views and attitudes of the president towards different areas of social life quite seriously.

The president has competence in the field of defence as the Commander-in-Chief of the armed forces of Latvia. The president appoints a Supreme Commander during wartime and has the right to take whatever steps are necessary for the military defence of the state if another state declares war on Latvia or an enemy invades its borders. In these cases, the president convenes parliament, which decides about whether to declare and commence war. The president declares war in accordance with the decision of parliament.

The president has the right to initiate legislation; he/she promulgates the statutes adopted by parliament and also has a suspensive right of veto: the suspension of the proclamation of the statute within ten days after the adoption of a statute by parliament and a request to parliament to reconsider it; or the suspension of the statute for a period of two months pending the request of one-tenth of the electorate to submit it to a national referendum.

Article 46 of the Constitution grants the president the right to convene and preside over extraordinary meetings of the cabinet and to determine the agenda of such meetings. Theoretically, the State President convenes meetings of this kind in extraordinary circumstances, for example those described in Articles 44 and 62 of the Constitution,

when another state declares war on Latvia or an enemy invades its borders or if there is an internal insurrection which endangers the existing political system arises or a threat of this happening. It is assumed in the Latvian legal system that if, under these circumstances, the State President convenes an extraordinary session of the cabinet of this kind, the relevant order should be co-signed by the prime minister.

The list of the functions of the State President in the Constitution is absolute in the sense that state competences are allocated to state organs. However, the procedural competences can also be specified by ordinary legislation since the Constitution is limited to guidelines about the procedures for implementing powers (for example, ordinary legislation states that the State President has the duty to accept the solemn promises of judges and justices).

2. THE GOVERNMENT

2.1. *The prime minister*

The State President invites the prime minister to form a cabinet. Usually, the State President invites the representatives from the parties making up the ruling coalition in parliament and discusses the possible candidates for the post of prime minister. In order to fulfil their duties, the prime minister and other ministers must have the confidence of parliament and they are accountable to parliament for their actions – they are collectively accountable to parliament for the collective activities of the cabinet, and all ministers are accountable individually for their separate activities. It would therefore make no sense for the State President to invite someone to form a cabinet if they do not have the confidence of parliament.

The prime minister chairs cabinet meetings. In the absence of the prime minister, a minister authorized by the prime minister chairs the meetings. In addition to his/her direct duties, the prime minister can also manage a ministry (Section 6 of the Cabinet Structure Act). Since 1990, there have been 16 governments in Latvia.

2.2. *The cabinet*

a. Composition

The cabinet consists of the prime minister and the ministers chosen by the prime minister (Art. 55). The cabinet is the highest executive body of the state. The composition and activities of the cabinet are regulated by the Cabinet Structure Act of 15 May 2008. The act states that the prime minister should form a cabinet that includes the following ministers: 1) minister of defence; 2) minister of foreign affairs; 3) minister of economics; 4) minister of finance; 5) minister of the interior; 6) minister of education and science; 7) minister of agriculture; 8) minister of transport; 9) minister of welfare; 10) minister of justice; 11) minister of the environment and regional development; 12) minister of culture; 13) minister of health.

In addition to the above ministers, the prime minister can appoint, as full members of cabinet, one deputy prime minister and one or more ministers for special assignments, or he may appoint one or more of the ministers listed as deputy prime ministers.

The person who has formed the cabinet upon the invitation of the president reports to the president and the speaker of parliament regarding its composition; the latter presents

this report to parliament at its next sitting. The cabinet assumes office once parliament, having heard the prime minister's report about the formation of the cabinet and declaration of the proposed programme of the cabinet, has expressed its confidence in the cabinet, in the form of a decision. Individual ministers must receive a special vote of confidence from parliament.

Meetings of the cabinet are public. The cabinet has the right to declare particular meetings or parts of them closed. The quorum for meetings of the cabinet is more than a half of the members of the cabinet. The auditor general has the right to participate in meetings of the cabinet in an advisory capacity. The prime minister can invite experts to provide explanations at a meeting of the cabinet.

The cabinet takes decisions by a majority vote of the cabinet members present. If a vote is tied, the prime minister or the acting prime minister has the deciding vote. The prime minister or a minister with more than one office have only one vote in cabinet meetings. The State President presides at extraordinary meetings convened by him or her but does not take part in voting.

b. Powers

The cabinet deliberates bills prepared by individual ministries as well as matters pertaining to the activities of more than one ministry, and issues of state policy raised by individual members of cabinet. If an external enemy threatens the state, or if there is an actual or possible internal insurrection in the state or in any part of the state, the cabinet is empowered to proclaim a state of emergency, about which it informs the Presidium of parliament within twenty-four hours.

The cabinet works out and submits to parliament the annual draft of the State Revenue and Expenditures Budget.

Ministers, even if they are not members of parliament, and responsible government officials authorized by a minister, have the right to attend sittings of parliament and its committees and to submit additions and amendments to bills.

The cabinet has the right to issue regulatory enactments – regulations – but only in the limited number of cases stated in Section 31 of the Cabinet Structure Act.

The cabinet and individual ministers have the right to issue legal acts – binding instructions for their subordinate institutions – if: 1) the statute or regulations specifically authorize the cabinet or an individual minister to do so; or 2) the particular matter is not regulated by statute or regulations. The cabinet or individual minister has the right to issue legal acts – recommendations to their subordinate institutions – if statutes or regulations grant the institution discretion when taking specific decisions. Instructions and recommendations are published in the same manner as statutes and regulations, except in cases where the cabinet or a minister, by a separate decision in accordance with a specific statute or by the consent of parliament, declares such instructions and recommendations to be secret or confidential. By analogy with regulations, the instructions and recommendations must include a reference to the statute or regulations pursuant to which they have been issued. Instructions are binding on the institutions to which they are addressed. The specific actions of a state institution with external effect on the rights and duties of the third persons, especially when issuing administrative acts, can be based only on the Constitution, statutes or regulations, but not on instructions or recommendations.

The prime minister, deputy prime ministers and ministers are entitled to issue orders – single administrative acts that applies to specific state institutions and officials, in cases provided for by statute and cabinet regulations.

2.3. *The administration*

a. General principles

Article 58 of the Constitution states that public institutions are subject to the authority of the cabinet. A discussion has started about the necessary amendments to the Constitution because of the existence of quasi-autonomous governmental organizations (QUANGOs). In a democratic state based on the rule of law, these should be – and in Latvian practice they already are – independent in their decision making from any other state authority. These institutions include, for example, the Central Bank of Latvia, the Central Election Commission, the Public Utilities Commission, etc. The cabinet has asked for the draft amendment to the Constitution to be submitted to the cabinet in the autumn of 2005.

At present, the Constitution provides for only one independent institution in the administrative structure of the state. Chapter VII is devoted to the State Audit Office. This chapter consists of two articles stating that the State Audit Office is an independent collegial institution and that auditors general are appointed and confirmed in office in the same way as judges, but only for a fixed period of time, during which they can be removed from office only by a judgment of a court. A specific statute sets out the organization and responsibilities of the State Audit Office. This specific State Audit Office Act was adopted on 9 May 2002. The State Audit Office performs audits and examines: 1) revenues and expenditures of the state budget and local government budget resources; 2) the utilization of the resources of the European Union and other international organizations or institutions, when those resources have been included in the state budget or local government budgets; and 3) actions involving state and local government property. The objective of the activities of the State Audit Office is to ascertain whether the resources are used lawfully, correctly, economically and efficiently. One of the most positive features in the work of the State Audit Office from the point of view of the development of the legal system is that, since the Constitutional Court began to operate, this institution, by fulfilling its direct responsibilities, was one of the institutions able to identify inconsistencies between norms, and to elaborate and submit applications to the Constitutional Court.

The number of ministries and the scope of their responsibilities, as well as the relations between state institutions, are provided by the State Administration Structure Act, which was adopted on 6 June 2002 and came into force on 1 January 2003. It is regarded as one of the most progressive items of legislation since the restoration of independence. The act states general principles of law governing the state administration and its purpose is to ensure a democratic, lawful, effective, open and publicly accessible state administration. The act determines the institutional system of state administration and sets out basic provisions for the operation of the state administration.

Section 10 of the State Administration Structure Act lists the principles of state administration: state administration is governed by law and justice; it acts within the scope of the competence prescribed by regulatory enactments; the state administration can use its powers only in conformity with the meaning and purpose of the relevant authority; state administration respects human rights; state administration acts in the public interest; state administration observes the principles of good administration; state administration is organized in a manner that is as convenient and accessible to private individuals as possible; state administration observes the principles of law not referred to in the act which have been discovered, derived and developed in institutional or court practice, as well as in jurisprudence, etc.

The act establishes a system of direct and indirect administration. The direct administration consists of institutions and officials of the Republic of Latvia as the principal public entity. The indirect administration consists of institutions and officials of

derived public entities, which by definition are local governments or other public entities established by law or on the basis of law. These public entities have their own autonomous competence in law and this includes establishing and approving their own budgets. These entities may also own property.

b. Ministries

A ministry is the leading institution in the relevant sector of state administration. Ministries organize and coordinate the implementation of statutes and other regulatory enactments, and they participate in the development of policy for the sector. Ministries are subject to the direct control of a minister.

c. Ministers

The main function of ministers is to manage the work of ministries. Section 19 of the State Administration Structure Act determines the powers of ministers: 1) to represent the ministry without special empowerment; 2) to issue orders to state secretaries; 3) to issue orders to the administrative officials and employees of ministries; 4) to revoke internal regulatory enactments, decisions and orders, except administrative acts, issued by the parliamentary secretary, state secretary and other administrative officials of the ministry; and 5) to assume the competence of the administrative manager of the ministry (state secretary) himself/herself.

The ministry provides the minister with a report regarding the implementation of the sector policy, the performance of the ministry and the utilization of budget resources not less than once a year, and also prepares a public report regarding the implementation of the sectoral policy. The minister has the right to request at any time a report regarding the implementation of the sectoral policy or the policy in a specific field, or a report about the operation of the state administrative institutions accountable to the ministry.

d. Parliamentary secretary

The link between the minister and parliament is the parliamentary secretary.

The functions of the parliamentary secretary are to: 1) issue orders to the state secretary or other state administrative officials; 2) issue orders to the head of the institution subject to control of the member of the cabinet and – in specific cases – to other administrative officials; and 3) perform other duties prescribed by regulatory enactments. The parliamentary secretary participates at the state secretaries' meetings in an advisory capacity as well as in the meetings of parliamentary secretaries, which are organized at the state chancellery and chaired by the prime minister or the prime minister's representative.

e. State secretary

A state secretary is the administrative head of a ministry and is subject to the control of a minister. A state secretary is a civil servant who ensures the continuity of the work of the ministry, organizing the transfer of the records and documents from ministers to their successors.

The state secretary organizes the work of the ministry and is liable for it, and manages the administration of the ministry by monitoring continuity, efficacy and lawfulness. This includes the management of the financial, personnel and other resources of the institution, ensuring the development of the annual operational plan and budget application, determining the duties of the administrative officials and employees of the institution, appointments and dismissals etc.

The state secretary is responsible for the establishment and operation of a system of scrutiny for administrative decisions. The state secretary is empowered to repeal decisions and the internal regulatory enactments of the administrative officials of the ministry and can decide on administrative acts taken by an administrative official of the ministry contested by a private individual. A private individual can appeal to a court against the administrative acts issued by the state secretary.

f. Civil service

The State Civil Service Act was adopted on 7 September 2000. The act establishes two types of civil service: the ordinary and specialized civil services.

Under Section 3 of the Act, a civil servant is a person who draws up the policy or development strategy of a sector, coordinates the activity of a sector, distributes or controls financial resources, formulates regulatory enactments or monitors compliance with those enactments, prepares or issues administrative documents and prepares or takes other decisions related to the rights of individuals in the state chancellery, a ministry, the secretariat of a deputy prime minister, the secretariat of a minister of special assignments, and in a state administrative institution subject to the control of or supervised by a ministry, a minister of special assignments, or a deputy prime minister.

A civil servant in the specialized civil service is a person who performs the above functions in the diplomatic and consular service, the state revenue service, the police, the border guard, the state fire-fighting and rescue service, or the prison administration. The prime minister, ministers, ministers for special assignments, deputy prime ministers, office employees of the aforementioned officials (assistants, advisers, press secretaries) and parliamentary secretaries are not civil servants.

The civil service administration manages the general civil service. The main functions of the administration are to: 1) control the application of the regulatory enactments related to the field of the civil service to the activities of administrative institutions; 2) formulate draft regulatory enactments of the cabinet in the field of the civil service; 3) formulate unified principles for the management of personnel in administrative institutions and to facilitate their implementation; 4) establish, improve, develop and update a unified record system in regard to state administrative institutions; 5) analyse the training needs of civil servants and prepare an annual training remit for the School of Public Administration; 6) organize candidate competitions in the cases prescribed by law and grant the status of civil servant; 7) initiate and investigate disciplinary matters, etc.

The School of Public Administration manages the further education of the civil servants. It formulates civil service training programmes, coordinates and provides for the training of civil servants; and formulates drafts of regulatory enactments, conceptual issues, reports, programmes and other documents related to the training of civil servants.

The Act also determines the mandatory requirements for candidates for civil service positions and they are: 1) citizenship of the Republic of Latvia; 2) fluency in the Latvian language; 3) higher education; 4) person has not reached the age of retirement determined by law; 5) person has not been convicted of deliberate criminal offences, or has been rehabilitated, or their conviction has been set aside or quashed; 6) person has not been dismissed from a civil service position by a court judgment in a criminal matter; 7) person has not been found to lack the capacity to act in accordance with the procedures prescribed by law; 8) person is not or has not been in a permanent staff position in the state security service, intelligence or counter-intelligence service of the U.S.S.R., the Latvian SSR or some foreign state; 9) person is not or has not been a participant in organizations prohibited by law or by an adjudication of a court; and 10) person is not a

relative (a person who is married to, or in kinship or affinity of the first degree with, or a brother or sister of, a civil servant) of the head of an institution or a direct supervisor. The cabinet can determine exceptional cases if a relevant institution cannot otherwise ensure the fulfilling of prescribed functions.

Upon taking up the duties of a civil servant, a candidate who is appointed to a civil service position for the first time gives and signs the pledge to be honest and fair, loyal to the independent and democratic Republic of Latvia, to perform the duties of the position in accordance with the Constitution, international agreements, statutes and the decisions of the Government and to serve the general interests of the public in order to ensure that the activities of state administration are lawful, efficient and transparent.

3. PARLIAMENT – THE *SAEIMA*

3.1. *The Saeima as an organ of the state*

a. Election

The Constitution provides that the *Saeima* consists of one hundred representatives who are elected in general, equal and direct elections, and by secret ballot based on proportional representation. Latvia is divided into separate electoral districts, and the number of members of parliament to be elected from each district is determined in proportion to the number of electors in each district. All citizens of Latvia who enjoy full rights of citizenship and who are aged eighteen on election day may vote, but the right to be elected to parliament is reserved to Latvian citizens with full rights of citizenship aged twenty-one years or older. Electors cannot recall any individual member of parliament.

On 9 June 1922, the Constitutional Assembly of the Republic of Latvia adopted the *Saeima* Elections Act. On 20 October 1992, the Supreme Council of the Republic of Latvia adopted the Act on the Elections for the Fifth *Saeima*. The preamble stressed that the Supreme Council decided to apply the *Saeima* Elections Act of 9 June 1992 in a new wording for the elections of the fifth *Saeima*. On 25 May 1995, the *Saeima* passed the Saeima Elections Act, which further regulates the election of the *Saeima*. The Act states that the persons who are recognized as not being in full possession of their faculties according to the procedure provided by law do not have the right to vote (Section 2 of the Act).

Originally, this section provided for two more cases: it deprived people of the active right to vote if they were suspected or accused of a crime, or if they were being tried and arrested for security reasons and if they were serving a court sentence in penitentiaries. A petition was submitted to the Constitutional Court claiming that the particular norm was incompatible with Articles 6, 8 and 91 of the Constitution. During the elections for the seventh *Saeima* in 1998, the person submitting the petition had been accused; he was being tried during the elections for the eighth *Saeima* in 2002. He had been arrested for security reasons. In accordance with the challenged norm, he had been denied the active right to vote in both elections. It was argued that the norm was at variance with the principle of general elections contained in Article 6 of the Constitution. The argument was that arrest may not result in restrictions of rights identical to restrictions associated with the loss of full citizenship. Furthermore, given the presumption of innocence, people arrested as a security measure must be considered innocent until a court finds them guilty.

In case No. 2002-18-01 *On the Compliance of Section 2(2) of the Saeima Election Act with Articles 6, 8 and 91 of the Republic of Latvia Constitution* of 5 March 2003, the Constitutional Court concluded that election rights are considered to be the most important political rights.

The court reviewed the disputed norm in the light of binding international documents, for example Article 3 of the first Protocol of the ECHR, which requires free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature. Even though the formulation of the article indicates that the signatories to the convention are required to organize free and secret elections, the European Court of Human Rights has pointed out that the convention also guarantees subjective election rights (see the European Court of Human Rights, 2 March 1987, case *Mathieu-Mohin* and *Clerfayt*). The Constitutional Court concluded that international legal norms determine c the basic principles of electoral rights in signatory states: electi .1, must be general, equ.., free, secret and direct. However, the establishment of a specific electoral system and the associated organization is within the competence of the legislature of individual states. In other words, constitutions and statutes regulate the basic principles of the elections. In addition, states enjoy a certain latitude in how they implement the right to vote.

On the other hand, the Court stated that restrictions on individuals' rights must be justified by legitimate aims: the rights of others, a democratic state system, public security, welfare, morality. However, the verbatim proceedings of the *Saeima* show that, during the debate of the Saeima Election Bill, the challenged norm was adopted from the wording of the preceding act without analysing its suitability for a democratic society and without taking into consideration the development of the right to vote in a democratic state. The legislature, when maintaining the challenged legal norm in the *Saeima* Election Act, has not sufficiently justified the necessity for the above restriction in a modern democratic society or stated the legitimate aim of the restriction. In addition, no Member State of the European Union restricts the right to vote of persons arrested as a security measure. The court therefore declared the norm null and void. Accordingly the second case was deleted from the article, as well after a person who was serving a sentence in a penitentiary submitted a petition to the Constitutional Court; the *Saeima* hastened to delete the wording before the judgment was reached so the case was dismissed.

Any legally registered political organization (party) or association of political organizations (parties) has the right to submit a list of candidates for election to parliament. The basic principles for the foundation of political organizations are regulated by the Political Parties Act adopted on 22 June 2006. Section 12 of the act states that no fewer than 200 Latvian citizens can establish a political party. At present, there are about 40 political organizations in Latvia. Particular attention has been paid in recent years to the issue of party financing, concentrating on liability in the provisions of the Administrative Offence Code and in the Criminal Act relating to infringements in procedures for financing parties, as well as reporting on financial operations.

Any citizen of Latvia who has reached the age of 21 by election day can be nominated as a candidate, unless any of the relevant restrictions apply. The restrictions on the right to stand for parliament are listed in Section 5 of the *Saeima* Election Act: persons may not be included on an electoral list and they will not be eligible for election to parliament if they: 1) have been legally recognized as incapacitated; 2) are serving a court sentence in a penitentiary; 3) have been sentenced for a deliberate crime and if their previous criminal record has not been expunged or annulled, unless the persons have been pardoned; 4) have committed a criminal offence when not responsible for their actions or if, after having committed a crime, they have become mentally ill and are incapable of taking

conscious action or controlling it and as a result have been subjected to compulsory treatment, or if their case has been dismissed without a compulsory measure of this kind being taken; 5) belong or have belonged to the salaried staff of the USSR, the Latvian SSR or another country's state security, intelligence or counterintelligence services; 6) have been active in the CPSU (the CP of Latvia), the Working People's International Front of the Latvian SSR, the United Board of Working Bodies, the Organization of War and Labour Veterans, the All-Latvia Salvation of Society Committee or its regional committees after 13 January 1991; 7) have been sentenced by prohibition to participate in the elections of the *Saeima*, European Parliament or municipalities and if their previous criminal record has not been expunged or annulled, unless the persons have been pardoned.

With respect to the right of former communists to stand for parliament, the Constitutional Court passed a judgment on 30 August 2000 developing the notion of the "warring" or "self-defending" democracy as opposed to unlimited pluralism. The Constitutional Court concluded that

"[..] although the democratic state had been renewed the principle of parliamentarism was alien to the conservative leaders of the Latvian Communist Party. It was not going to give up the role of the 'leading and ruling force'. [..] As activities of this organization were directed towards the destruction of the existing state power, its essence was anti-constitutional.

[..] Thus the aim of the restrictions on passive election rights is to protect the democratic state system, national security and the territorial unity of Latvia. The disputed norms are not directed against the pluralism of ideas in Latvia or the political opinion of a person, but against persons whose activities constitute an attempts to destroy the democratic state system and who therefore oppose Article 1 of the *Constitution*. Human rights must not be used against the essence of democracy.

[..] The state should be protected from persons who have worked in the apparatus implementing occupation and repression and persons who, after the restoration of independence in the Republic of Latvia, attempted to restore the anti- democratic totalitarian regime and resisted the legitimate state power. [..]"

However, the Constitutional Court also stated that the legislature, during periodical evaluations of the political situation in the state, as well as of the necessity and validity of the restrictions, should determine the duration of the restrictions in the disputed norms since such restrictions on passive election rights should last only for a certain period of time.

The term of office of parliament was changed from three to four years starting in the elections for the seventh *Saeima* in 1998. The *Satversme* was amended in 2009 providing that not less than one tenth of electors has the right to initiate a national referendum regarding recalling of the *Saeima*. This right cannot be exercised one year after the convening of the *Saeima* and one year before the end of the term of office of the *Saeima*, during the last six months of the term of office of the President, as well as earlier than six months after the previous national referendum regarding recalling of the *Saeima*.

The parliament can be dissolved by the people on the proposal of the State President before the four years term expires as well. The new elections are held no later than two months after the date of the dissolution of the *Saeima*.

In order to support and optimise the work of parliament, the electoral threshold was raised from 4% to 5% in the new *Saeima* Elections Act of 1995.

The *Saeima* elections take place on the first Saturday of October in five constituencies: Riga, Vidzeme, Latgale, Zemgale and Kurzeme. By contrast with local elections, parliamentary elections are also held in those foreign countries where a substantial number of Latvian citizens reside. The Riga constituency therefore also includes the electorate

residing outside Latvia. Four months before election day, the Central Election Commission determines the number of *Saeima* seats for each of the five constituencies on the basis of statistics from the population register.[4]

On the ground of the results of the national referendum on dissolution of the 10th Saeima (held on 23 July 2011) the 11th Saeima elections took place on 17 September 2011.

In the 11th *Saeima* elections five lists of candidates[5] received more than 5% of the total number of votes cast. Voter turnout in the 11th *Saeima* elections was 59.45 %.

b. Organization

The *Saeima* sits in Riga, the capital of Latvia. The *Saeima* holds regular and extraordinary sessions. There are in the course of one year, three regular sessions – autumn, winter and spring sessions – of the *Saeima*. An extraordinary session can be convened at any time during the recess between regular sessions. The sittings of the *Saeima* are public unless no fewer than two-thirds of the members present decide to sit in closed session in response to a proposal from ten members of the *Saeima*, or from the president, the prime minister or a minister. Sittings of the *Saeima* can take place if at least half of the members attend. This means that the quorum is 50 members. The *Saeima* arrives at decisions by an absolute majority of votes of the members present at a session (abstentions are counted as "no" votes), except in cases specifically set out in the Constitution.

In order to provide for its internal operations and order according to the Constitution the *Saeima* adopts Rules of Procedure in the form of statute. The *Saeima* has a presidium which includes the speaker, two deputy speakers, a secretary and a deputy secretary. The *Saeima* elects standing committees and determines the number of members and their duties.[6] It also has the right to form *ad hoc* committees to undertake specific legislative assignments.

At least five members of the same political party or from the same electoral list can form a parliamentary group. Five parliamentary groups were formed after the elections for the 11th *Saeima*. Parliamentary groups can form political blocs. Members of parliament who are not affiliated to any parliamentary group can join these blocs. The presidium, parliamentary groups and political blocs form the Council of Parliamentary Groups. The Council of Parliamentary Groups specifies and coordinates the activities and strategies of parliamentary groups and political blocs within the *Saeima* and its committees. Each parliamentary group or political bloc has one representative on the Council of Parliamentary Groups. Decisions of the Council of Parliamentary Groups are of an advisory nature. However, those parliamentary groups or political blocs that do not agree with the views voiced by their representative at a meeting of the Council of Parliamentary Groups must inform the presidium accordingly by the beginning of the next sitting of parliament.

Article 26 of the Constitution requires parliament to appoint parliamentary investigation committees for specified matters if not less than one-third of its members make a

4. The Central Election Commission determined that the seats for the 11th *Saeima* should be distributed as follows: 30 seats for the Riga constituency, 27 seats for the Vidzeme constituency, 15 seats for the Latgale constituency, 15 seats for the Zemgale constituency and 13 seats for the Kurzeme constituency.

5. The following five electoral lists won seats in the 11th *Saeima*: 1) Association of Political Parties "Harmony Center" – 31 seats; 2) Zatlers' Reform Party – 22 seats; 3) "Unity" – 20 seats; 4) National Association "All For Latvia!" – "For Fatherland and Freedom/LNNK" – 14 seats; 5) the Union of Greens and Farmers – 13 seats.

6. The rules of procedure provide for the following standing committees: 1) foreign affairs committee; 2) budget and finance (taxation) committee; 3) legal affairs committee; 4) human rights and public affairs committee; 5) education, culture and science committee; 6) defence and internal affairs committee; 7) public administration and local government committee; 8) economic, agricultural, environmental and regional policy committee; 9) social and employment matters committee; 10) mandate and submissions committee; 11) government review committee; 12) public expenditure and audit committee; 13) national security committee; 14) citizenship law implementation committee; 15) European affairs committee; 16) committee on supervising the prevention and combating of corruption, contraband and organized crime (Art. 149).

request to that effect. The Parliamentary Investigation Committees Act was adopted on 8 May 2003 after a major public debate about whether these institutions violate the principle of the separation of powers.

Under the act, the members of the parliamentary investigation committee are appointed in equal number from the deputies of each parliamentary group in the *Saeima*. The committee is established for a certain period of time stated in the request for establishment or for the term of three months if the request does not specify the term; the term can be prolonged by the parliament. The meetings of the committee are open if not decided otherwise by the parliament or the committee itself.

A parliamentary investigation committee is empowered to request, when necessary for its work, information and explanations from the members of the cabinet and institutions answering to them, as well as from local authorities and other public institutions; to invite the responsible state officials from ministries, local authorities and other public institutions to meetings of the committee to provide explanations and to invite to is meetings any other person to provide explanations; to assign audits of state and local government institutions, agencies, companies, non-governmental institutions and investigations of physical persons if they deal with or possess state or local resources, if they are financed by the state or municipality, or if they procure or participate in the privatization of state or local property. The act also requires state and local officials to submit the information necessary for the parliamentary investigation committees to carry out their tasks.

The act states that the final report of the parliamentary investigation committee, which must be presented to parliament and published within seven days in the official gazette *Latvijas Vēstnesis*, and the interim report, are not binding on the courts or officials of the judiciary and that they are free in the examination and evaluation of the facts under investigation.

However, there are no provisions regulating the kinds of decisions parliament can adopt in view of the results of the committee's work. The investigation committee is "parliamentary" and parliament can use the results of its work to adopt "parliamentary" acts – amendments to existing statutes or new statutes, expressions of no confidence in the government as a whole, or in the prime minister or individual ministers, statements relating to particular issues etc. In other words, when fulfilling its control function, which includes the appointment of the investigation committees and other functions, parliament must still act in accordance with the Constitution and other laws. For example, in its decision of 1 October 1999 in case no. 03-05(99) *On Conformity of Items 1 and 4 of the Saeima April 29, 1999 Resolution on Telecommunications Tariff Council with Articles 1 and 57 of the Constitution of the Republic of Latvia and Other Laws*, the Constitutional Court stated that Article 26 of the Constitution must be interpreted in accordance with the principle of the rule of law. This meant that parliament was not able, on the basis of the proposal of the parliamentary investigation committee, to force the cabinet to dismiss the Telecommunications Tariff Council. The relations between the cabinet and the council are regulated by law and parliament does not have the right to intervene since such interference violates the principle of the separation of powers.

In response to a reasoned application from a parliamentary investigation committee, the Prosecutor General appoints a prosecutor to participate in the work of the committee. The prosecutor participates in the meetings of the committee and has the right to put questions, with the consent of the chairman of the committee, to the persons invited. The prosecutor checks whether there is any proof that a criminal act has been committed or whether there has been an attempt to do so and operates in accordance with the *Act on the Office of the Prosecutor General*. The prosecutor can provide the committee with as much information about the investigation as he/she considers necessary.

Several parliamentary investigation committees were established during the period after the restoration of independence. They included the parliamentary investigation committee that investigated the reasons for the bankruptcy of the "Baltija" Bank and the evaluation of the reorganization projects, the committee on the evaluation of the legality and conformity with the interests of the state and society of the operation of the National Council of Radio and Television, the committee on the issues connected with the G-24 Loan, committees dealing with the fairness and transparency of processes of privatization, the committee on paedophilia, the committee on the examination of the financial dealings of Einārs Repše, the former prime minister and the leader of the New Era party, and the committee for investigating the impact of the supervision, suspension of operation, and insolvency of Latvijas Krājbanka on the Financial System of the Republic of Latvia.

c. Members of parliament

A person elected to parliament acquires a mandate as a member upon giving the solemn promise.[7] The mandate of a member expires upon the convening of a newly elected parliament. The mandate also expires if the member submits notice of resignation (members of parliament have the right to relinquish their mandate during their term of office as prime minister, deputy prime minister or minister) and the mandate of a replacement has been approved, if the member has been expelled from parliament or if the member has died. In these cases, the presidium, in accordance with the *Saeima* Elections Act, invites the next candidate on the list to enter parliament.

A member who has been convicted of a criminal offence is considered to be expelled from parliament as of the date when the sentence comes into force. Members can also be expelled from parliament by a decision of parliament if it is established that they have been elected in violation of the provisions of the *Saeima* Elections Act; if they lack a command of the official language at the level necessary for the performance of their professional duties; if they hold a position which is incompatible with the mandate of a member of parliament according to the Act on the Prevention of the Conflicts of Interests in the Operation of State Officials; if, during the current session, they have been absent from more than half of all sittings without a valid reason; if they have committed crimes in a state of diminished responsibility or, after committing the crime, have become mentally ill and therefore incapable of taking responsibility for, or controlling, their own actions or if they have been legally recognized as not being in full possession of their faculties.

Members of parliament have immunity: they are exempt from judicial, administrative and disciplinary prosecution with respect to how they vote and the expression of ideas when fulfilling their duties. However, court proceedings can be instigated against members of parliament if they, even in the course of performing parliamentary duties, disseminate: 1) defamatory statements which they know to be false or 2) defamatory statements about private or family life.

Members of parliament also have immunity in the sense that they can be arrested, their premises searched, or their personal liberty restricted only with the consent of parliament. The consent of parliament is also required for the initiation of criminal prosecution and the levying of administrative fines. Members of parliament can be arrested if apprehended *in flagrante delicto*. In this case, the presidium must be notified within twenty-four hours of the arrest of any member. At the next sitting of parliament,

7. The text of the solemn promise is as follows: "I, upon assuming the duties of a Member of the *Saeima*, before the people of Latvia, do swear (solemnly promise) to be loyal to Latvia, to strengthen its sovereignty and the Latvian language as the only official language, to defend Latvia as an independent and democratic State, and to fulfil my duties honestly and conscientiously. I undertake to observe the Constitution and laws of Latvia."

the presidium asks whether the member should continue to be held in detention or be released. When parliament is not in session, the presidium decides, pending the next session, whether the member will remain in detention.

Members of parliament have the right to refuse to give evidence: 1) concerning persons who have entrusted to them, as representatives of the people, certain facts or information; 2) concerning persons to whom they, as representatives of the people, have entrusted certain facts or information; or 3) concerning such facts or information itself.

Members of parliament (and ministers) cannot, either personally or in the name of another person, receive government contracts or concessions.

3.2. *Powers*

Parliament:

1) passes legislation and ratifies treaties (for more on legislation, see the next sub-section) (Arts. 64, 68, 75, 76 of the Constitution);
2) establishes rules of procedure to provide for its internal operations and order (Art. 21 of the Constitution);
3) establishes standing and *ad hoc* committees, determines the number of members and their duties (Art. 25 of the Constitution, Art. 150 Rules of Procedure);
4) appoints parliamentary investigation committees for specific matters (Art. 26 of the Constitution);
5) submits to the prime minister or to an individual minister requests and questions which either they, or a responsible government official duly authorized by them, must answer (Art. 27 of the Constitution);
6) decides on the removal of the president from office (Art. 51 of the Constitution);
7) decides on an expression of no confidence in the prime minister or individual minister (Art. 59 of the Constitution);
8) determines the State Revenues and Expenditures Budget annually (Art. 66 of the Constitution);
9) determines the size of the armed forces of the state during peacetime (Art. 67 of the Constitution).

Under Latvian legal doctrine, the functions of the *Saeima* break down into constitutional, legislative, administrative-economic, control, elective, defence, procedural and regulatory functions.

The constitutional function involves the amendment of the Constitution, with the exception of those articles which can be amended only by referendum (Art. 77 of the Constitution).

The legislative function of parliament relates to the process of legislation, which consists of four stages: 1) initiation; 2) elaboration of the text of bills; 3) adoption; 4) promulgation.

If parliament receives only an initiative from the State President for legislation but not the elaborated text of a bill, it decides whether to instruct the particular ministry or its own committee to draft the text of the bill. On the basis of the report of the presidium, parliament also decides about initiatives submitted in the form of drafted texts, rejecting them or passing them on to parliament's committees.

Most of the *Saeima's* work consists of drafting texts of legislation. The final versions of texts of bills are drafted in the corresponding parliamentary committees and in the plenary sessions. No bill can be put on the agenda or considered by parliament before the responsible committee has considered it. Every committee that receives a bill from

parliament can prepare an alternative bill to be considered at the first reading. If the bill is drafted and initiated by the parliamentary committee that is also designated as the responsible committee by parliament, the bill goes on to a first reading without a second review in the responsible committee. If the committee concludes that a bill submitted by the cabinet requires revision, parliament can return the bill to the cabinet and set a time for submitting the revised bill to parliament.

The adoption of a bill is subject to the suspensive veto of the State President and the absolute veto of the citizens of the country. The State President proclaims bills passed by parliament, thereby finalizing the process of the adoption of the statute. However, the State President can use the suspensive veto in order not to promulgate the bill within ten days after parliament passes it. To do so, the president submits a written and reasoned request to the speaker for the bill to be reconsidered (Art. 71 of the Constitution). At its next sitting, parliament, without debate, forwards the request to the responsible committee and to other committees and sets the deadline by which proposals can be submitted and the bill reconsidered. The *Saeima* is required to repeat only the third reading, but it must take into account only the objections from the State President and the proposals related to these objections. The absolute veto of the citizens of the country can be exercised in accordance with Article 72 of the Constitution. If the promulgation of the bill is suspended by the State President for two months, the bill is put to a national referendum if so requested by not less than one-tenth of the electorate. The bill is rejected if the number of voters is at least half of the number of electors that participated in the previous *Saeima* elections and if the majority has voted for the rejection of the bill.

The administrative-economic function of parliament involves the adoption of the state budget in accordance with Article 66 of the Constitution. During the process of the adoption of the budget, parliament takes the opportunity to scrutinize the activities and operation of the separate institutions. For the exercise of its control function, it can use 1) questions; 2) interpellations; and 3) investigation committees. Interpellations are more forceful control measures than questions because they can lead to an expression of no confidence in individual members of the cabinet or in the entire cabinet.

The elective function of parliament on the positive side can involve for example 1) the election of the State President); 2) the approval of judges and appointment of auditor general; 3) the expression of confidence in the cabinet. On the negative side, parliament can remove the State President from office after a proposal from not less than half of all of its members in closed session and after a majority vote of not less than two-thirds of all members. Parliament can also express no confidence in the cabinet.

In the area of defence, parliament can determine the size of the armed forces of the state during peacetime, and decide to declare and commence war.

The procedural function of parliament involves reviewing the qualifications of its members and consent to criminal prosecutions of members of parliament or of the State President. The regulatory function means that parliament not only controls the government but also sets out the guidelines and general political directions relating to the operation of the separate state institutions.

The organization of parliament is managed by the presidium, which convenes sessions of parliament and schedules regular and extraordinary sittings upon the request of the president, the prime minister, or not less than one third of the members of parliament. The presidium also prepares the agenda for *Saeima* sittings, determines the internal rules and the working procedures of the parliamentary chancellery and other organizational units of parliament, appoints and dismisses the heads of the parliament's organizational units, gives opinions on the documents submitted and forwards these documents as prescribed by the rules of procedure, resolves issues in coordination with

the Council of Parliamentary Groups when they cannot be settled on the basis of the rules of procedure and parliamentary decisions, and decides about business journeys and the associated expenses.

The speaker of parliament represents it. One of the main duties of the speaker is to chair and maintain order during sittings of parliament. During the speaker's absence and subject to mutual consent, the speaker can be replaced by one of the deputy speakers of parliament. The speaker and the deputy speakers divide the ongoing responsibilities among themselves, including the duty of chairing parliamentary sittings.

The speaker promulgates decisions of general significance adopted by parliament in *Latvijas Vēstnesis*, the official gazette.

Article 52 of the Constitution requires the speaker to assume the duties of the State President until parliament has elected a new president if the president resigns from office, dies or is removed from office prematurely. Similarly, the speaker assumes the duties of the president if the latter is away from Latvia or unable for any other reason to fulfil the duties of office.

The secretary and the deputy secretary of the *Saeima* ensure that minutes are taken during parliamentary sittings. They also check the transcripts and supervise the work of the parliamentary chancellery.

The standing committees of parliament may require individual ministers or local government authorities to provide information and explanations necessary for the work of the committees. They can also invite to their sittings representatives from the relevant ministries or local authorities to furnish explanations. Committees can also carry on their work between sessions of parliament. The parliamentary investigation committees have the same powers as the standing committees and can also order investigations of state or municipal institutions and agencies, as well as of other establishments and of physical persons controlling state or municipal funds or similar resources, and they can invite to their meetings anybody they wish and question them, etc.

3.3. *Legislation*

a. Legislative competence

Article 64 of the Constitution states that legislative competence is vested in parliament and also that the people have the right to legislate in accordance with the procedures, and to the extent, provided for by the Constitution.

b. Right to initiate

The right to submit legislative proposals to parliament is granted to: 1) the State President, 2) the cabinet, 3) parliamentary committees, 4) not less than five members of parliament or 5) one-tenth of the electorate. With the exception of legislative initiatives from the State President, they must be drawn up in the form of bills. The State President has the right to undertake an initiative to legislate without submitting the draft of a bill.

c. The procedure

The process for passing statutes consists of the three readings unless parliament decides by not less than a two-thirds majority that a law is urgent. In that case, the bill must be adopted in two readings. Each of the readings has a different aim. The first reading is devoted to determining whether the law is necessary. The second reading is devoted to the drafting of various sections of the bill and the third reading is devoted to the finalization

of the bill. The procedure with three readings therefore serves, in a sense, to ensure that a bill is developed as far as possible. Only two readings are required for the adoption of a budget bill, and for amendments to the state budget and bills for the ratification of international agreements.

Amendments to the Constitution go through three readings and they must receive a majority of no fewer than two-thirds of the members present (at each reading) during sittings attended by at least two-thirds of the members.

All international agreements dealing with matters that can be decided by the legislative process require ratification by parliament. Upon entering into international agreements, Latvia can, in order to strengthen democracy, delegate some of the powers of its state institutions to international institutions. International agreements involving the delegation of state institution powers to international institutions can be ratified by parliament in sittings at which at least two-thirds of the members participate. A two-thirds majority vote of the members present is necessary for ratification.

After bills are received by parliament, the presidium reports on them and on its opinion regarding subsequent handling. Parliament decides whether bills will be forwarded to the committees and whether to appoint a responsible committee. It may also reject the bill. No bill can be put on the agenda or considered at a *Saeima* sitting before the responsible committee has considered it. The responsible committee submits its opinion to the presidium, together with an explanatory note concerning the bill.

The parliamentary rules of procedure determine the legislative process. Before the first reading can be held: 1) the bill, the responsible committee's opinion on it and an explanatory note concerning this bill must be made available to members of parliament at least seven days before the first reading; 2) the comments of the minister of finance must accompany the bill if it requires additional expenditure or changes in revenue compared to the budget. This provision does not apply to bills submitted by the cabinet or if the minister of finance fails to provide his/her comments by the deadline set by law.

The first reading of a bill begins with a report from the rapporteur appointed by the responsible committee, followed by a debate on the provisions of the bill. If a bill passes the first reading, parliament sets a deadline for the submission of proposals. The responsible committee, together with parliament's legal service and experts in the official language, prepares the bill for the second and the third readings. The committee states its opinion on the submitted proposals and, if necessary, adds its own proposals.

The second reading of a bill again begins with a report from the rapporteur, followed by the consideration of the bill section by section. During the second reading, debate must be restricted to specific sections or parts of them. Proposals rejected when put to a vote separately during the second reading cannot be resubmitted after the second reading.

Only those sections for which proposals have been submitted after the second reading are considered and put to a vote during the third reading. During the third reading, voting is restricted to proposals from the responsible committee (including proposals about transitional provisions) and proposals submitted to the responsible committee or to the parliamentary chancellery by the relevant deadline that have not been recalled before voting. After all proposals have been considered, the person chairing the sitting puts the bill to a vote in its entirety, together with the adopted proposals. If parliament does not adopt a bill at the third reading, the bill is returned to the responsible committee, and it can be resubmitted for the third reading once the new proposals have been collected.

The State President proclaims statutes passed by parliament in the official gazette *Latvijas Vēstnesis* (or, in cases of emergency, on TV or radio) not earlier than the tenth day and not later than the twenty-first day after the adoption of the statute. A statute comes

into force fourteen days after its proclamation (not counting the proclamation day) unless the statute specifies differently.

d. Referendum

The people legislate through referendums. Some issues may not be submitted to a referendum: the budget and statutes relating to loans, taxes, custom duties, railway tariffs, military conscription, declaration and commencement of war, peace treaties, declaration of a state of emergency and its termination, mobilization and demobilization, agreements with other nations and statutes which are determined to be urgent by at least two-thirds of the *Saeima*.

The Constitution makes referendums compulsory in six cases: 1) if parliament has amended Articles 1, 2, 3, 4, 6 or 77 of the Constitution, the amendments must be submitted to a national referendum in order to become law (Art. 77); 2) if the State President has proposed the dissolution of parliament (Art. 48); 3) if not less than one-tenth of the electorate requests a referendum on a statute when proclamation of the statute has been suspended by the State President under Article 72. A referendum will not take place, however, if parliament again votes on the law and no fewer than three-quarters of all members vote for the adoption of the law; 4) if parliament does not adopt, without changing the content, a bill or draft amendment to the Constitution submitted by not less than one-tenth of the electorate (Art. 78); 5) if a decision must be taken about the issue of Latvian membership of the European Union or if a decision must be taken about substantial changes to the terms of Latvian membership of the European Union; there will be a referendum in the second case only if it is requested by at least half of the members of the *Saeima* (Art. 68); and 6) if not less than one tenth of electors initiates a national referendum regarding recalling of the *Saeima* (Art. 14) (See also Section 1 of the Referendums, Legislative Proposals and Initiative of European Citizens Act).

All Latvian citizens with the right to vote in parliamentary elections may participate in national referendums. Pursuant to the Constitution, the quorum in the referendum can be counted in two ways. For the amendment of the Constitution and recalling of the *Saeima*, the quorum is half of the entire electorate. Secondly, in cases 3) and 4) regarding ordinary bills and case 5) as described above, the quorum is half of the number of electors participating in the previous parliamentary elections. A quorum is not required in a referendum instigated after the State President has proposed the dissolution of parliament and the question is simply settled by the majority of the citizens voting.

Decisions are adopted if at least half of the electorate votes in favour in referendums on amendments to the Constitution or at least two thirds of the number of electors participating in the previous parliamentary elections vote in favour in referendums for recalling the *Saeima* and by a majority vote in other cases.

The Referendum, Legislative Proposals and Initiative of European Citizens Act adopted by the *Saeima* on 31 March 1994 on the basis of Article 65 of the Constitution regulates the procedure for the initiation of legislation or amendments to the Constitution by one-tenth of the electors. The latest amendments to the Act, adopted on 8 November 2012, provide for relinquishing the two stage collection of the signatures as it was previously stated, when 10,000 eligible voters whose signatures were ascertained by a sworn notary or a local government institution not more than 12 months previously could submit a fully elaborated bill to the Central Election Commission. Then the Central Election Commission announced the commencement of the collection of signatures for the initiation of the procedure for the statute or constitutional amendment and provided information and lists to the election commissions at the local level. Starting from 1 January

2015, the signatures of one-tenth of the electors will have to be collected in order for the Central Election Commission to accept the draft law or the amendments to the Constitution. The Central Election Commission will then count the signatures, record the result and notify the State President within three days. The bill or draft constitutional amendment is sent to the State President, who submits it to parliament.

The opportunities for direct popular participation in legislation and decision-making have not been used frequently. In modern Latvian history, there have been nine referendums: 1) a population poll on the independence of the Republic of Latvia on 3 March 1991; 2) a referendum on the repeal of the amendments to the Citizenship Act on 3 October 1998; 3) a referendum on the repeal of the amendments to the State Pensions Act on 13 November 1999; 4) a referendum on Latvian membership of the European Union on 20 September 2003; 5) a referendum on amendments to the National Security Law and State's Security Institutions Law on 7 July 2007; 6) a referendum on amendments to the *Satversme* providing for the citizens' right to recall the *Saeima* on 2 August 2008; 7) a referendum on amendments to the State Pensions' Law on 23 August 2008; 8) a referendum on recall of the 10th *Saeima* on 23 July 2011; 9) a referendum on amendments to the *Satversme* to determine the Russian language as the second official language on 18 February 2012. Voter participation in the referendums was as follows: 87.56% in 1991; 69.16% in 1998; 25.1% in 1999; 71.49% in 2003; 37.3% in 2007; 42.0% and 38.2% in 2008 consequently; 44.7% in 2011 and 70.7% in 2012. By contrast with later referendums, in the population poll on the independence of the Republic of Latvia in 1991, all the permanent residents of Latvia aged 18 years or over were entitled to vote and all 1,902,802 residents were included in the polling list. The referendums in 1999, 2007 and 2008 were invalid because no quorum was reached. During the pre-war period, four referendums were deemed invalid for the same reason.

4. The Relationship between the *Saeima*, the State President and the Cabinet

4.1. *The Saeima and the cabinet*

Article 59 of the Constitution states the basic principle regarding the relationship between parliament and the cabinet: in order to fulfil their duties, the prime minister and other ministers must have the confidence of parliament and they are accountable to parliament for their actions. If parliament expresses no confidence in the prime minister, the entire cabinet resigns. If there is an expression of no confidence in an individual minister, then the minister resigns and a replacement is invited by the prime minister.

Parliament must express a lack of confidence in the cabinet by a decision to that effect, or by rejecting the annual state budget proposal submitted by the cabinet. Lack of confidence in an individual minister must be expressed by parliament by a decision to that effect. The expression of no confidence in an individual minister also applies to parliamentary secretaries in the ministry in question.

The cabinet is responsible for the drafting of the annual State Revenues and Expenditures Budget and must submit it to parliament before the commencement of each financial year. After the end of the budgetary year, the cabinet submits an account of budgetary expenditures for the approval of parliament.

Ministers, even if they are not members of parliament, and responsible government officials authorized by a minister, have the right to attend sittings of parliament and its

committees and to submit additions and amendments to bills. The prime minister or any minister has to provide parliament or any of its committees with the relevant information upon request.

Under Article 27 of the Constitution, parliament has the right to submit to the prime minister or to an individual minister questions and interpellations which either they, or a responsible government official duly authorized by them, must answer. Interpellations are a weightier instrument for control of the cabinet than questions since they can lead to an expression of no confidence in the individual member of the cabinet or in the whole cabinet.

At least five members of the *Saeima* have the right to submit questions in writing to the prime minister, a deputy prime minister, a minister, or the president of the Bank of Latvia concerning matters which fall within the competence of these officials. All questions submitted are registered in the questions register and the time limit for an answer to be given is stated by the Presidium of the *Saeima*. Officials can answer questions in writing or orally. No debates or votes take place when the answer is given. So the aim of the questions is simply to make issues clear when necessary. On the other hand, the cabinet can interpret a question as a warning and, at the same time, an occasion to explain the reasons for its activities to society.

Interpellations may be submitted to the members of the cabinet by a minimum of ten members of parliament. The Government Review Committee examines the interpellation and gives its opinion to the Presidium within two weeks of its being forwarded to the Committee, if the interpellation is not regarded as urgent by the submitters. Parliament must rule on whether to accept or reject an interpellation. If parliament has recognized an interpellation as urgent upon the proposal of the submitters, it immediately starts the debate on its substance and votes whether to accept it or not. Members of the cabinet respond to an interpellation in writing within seven days of the date upon which the interpellation is received. The answers are distributed to the members of parliament and are placed on the agenda of the next sitting; the debate on the interpellation then takes place. Draft resolutions in connection with an interpellation, including a draft resolution on a vote of no confidence in the cabinet, a deputy prime minister or a minister may be submitted by a minimum of ten members of the Government Review Committee.

4.2. *The Saeima and the State President*

The *Saeima* is the main institution associated with the State Presidency as it elects the president and also has the right to remove the president from office. Article 51 of the Constitution states several preconditions that must be met if the president is to be removed from office: 1) not less than half of all of the members of parliament must submit a proposal to this effect; 2) the decision is taken in a closed session; 3) a majority vote of not less than two-thirds of all of members is required.

The president may propose the dissolution of parliament. A national referendum must be held on the proposed dissolution. If more than half of the votes are in favour of dissolution, parliament is dissolved, and new elections must take place no more than two months after the date of the dissolution of parliament. If parliament is dissolved, the mandate of the members continues until the newly elected parliament convenes, but the dissolved parliament can only hold sittings at the request of the president. The president determines the agenda for those sittings. However, if more than half of the votes in the referendum are against the dissolution of parliament, the president is removed from

office, and parliament elects a new president to serve for the remaining term of office of the president so removed.

The literature concerning this procedure suggests that it may seem somewhat strange to submit a decision of the president to dissolve parliament to a referendum rather than proclaiming extraordinary parliamentary elections. The construction indicates over-confidence in what can be expected from the people in terms of their interest and willingness to participate in politics. It also renders the political process time-consuming and is close to the limit of what should be tolerated in terms of effectiveness and political action. It is not surprising that this procedure has never been used since the Constitution started to function in the 1920s. It could be argued in favour of this construction that it is intended to prevent an authoritarian presidency in which the president can dismiss parliament unconditionally.

Another component of the relationship between parliament and the president is the president's suspensive veto: within ten days of the adoption of a bill by parliament, the president has the right to ask once for the reconsideration of the legislative act. The president also has the right to suspend the proclamation of a legislative act for a period of two months, and must suspend the proclamation if so requested by not less than one-third of the members of parliament. Acts suspended in this way must be submitted to a national referendum if a minimum of one-tenth of the electorate makes a proposal to that effect. Alternatively, the act has to be proclaimed if such a request is not received in the given time. However, parliament may vote on the legislative act again and, if not less than three-quarters of all members of parliament vote for its adoption, no national referendum takes place. Furthermore, the president cannot request the reconsideration of a bill and the bill cannot be submitted to a national referendum if parliament decides, by no less than a two-thirds majority, that a bill is urgent.

4.3. *The State President and the cabinet*

The Constitution regulates the relationship between the State President and the cabinet in three places. Firstly, the cabinet is formed by the person whom the president invites to do so (Art. 56). In practice, the State President takes the views of the coalition parties in parliament into account and tries to find a person who will enjoy the confidence of parliament.

Secondly, Article 46 of the Constitution states that the president has the right to convene and to preside over extraordinary meetings of the cabinet and to determine the agenda of such meetings. This can happen only in extraordinary circumstances such as those described, for example, in Articles 44 and 62 of the Constitution.

Thirdly, since the president is not politically responsible for the fulfilment of presidential duties, all orders of the president are co-signed by the prime minister or by the appropriate minister, who thereby assumes full responsibility for such orders except in the cases of proposal to dismiss parliament and of the invitation to a person to form a government (see also 1.2 above). In practice, however, we cannot recall a case in which the prime minister or appropriate minister has refused to sign an order of the State President.

5. EMERGENCY STATE POWERS

The Constitution mentions the state of emergency only three times. The first occasion is in Article 62, which establishes the notion of the state of emergency. It stipulates that, if the state is threatened by an external enemy or if there is an internal insurrection (or a threat of such) which endangers the existing political system, the cabinet has the right to proclaim a state of emergency. It must inform the Presidium accordingly within twenty-four hours and the Presidium, without delay, must present the cabinet decision to parliament. Secondly, Article 73 of the Constitution states, among other things, that laws relating to the declaration and commencement of war, peace treaties, the declaration of a state of emergency and its termination cannot be submitted to national referendum. Thirdly, Article 82 of the Constitution requires court cases to be heard by district or city courts, regional courts and the Supreme Court but, in the event of war or a state of emergency, also by military courts.

The Constitution provides some control, stating that the final decision about the state of emergency cannot be adopted by the institution which carries out the decision, thereby giving the final word to parliament. The state of emergency is usually an instrument that allows the executive to take action which, in normal circumstances, is the prerogative of the parliament.

The State of Emergency Act was adopted on 2 December 1992. It states that a state of emergency is a special legal regime in which the state authority and administrative institutions can restrict the rights and freedoms of natural persons and legal persons, and impose additional duties thereon to the extent and in accordance with the procedures prescribed by the Act. If parliament does not pass a statute approving the cabinet declaration of a state of emergency within 48 hours, the declaration ceases to be in force with effect from its proclamation. However, the termination of the state of emergency is declared by a cabinet decision. This decision specifies the procedures by which the normal operations of enterprises, institutions and organizations and the normal way of life of the population will be restored.

A state of emergency can only be declared for a particular length of time not exceeding six months. The Secretary General of the United Nations must be informed of the reasons for declaring the state of emergency and the length of time for which it is declared. A state of emergency can be declared in the entire state, separate localities, districts or cities. The declaration of a state of emergency must be proclaimed through the mass media, and forwarded to state administrative and local government authorities and displayed in clearly visible places. The state of emergency comes into force on the date of the proclamation unless the decision itself prescribes otherwise.

Section 13 of the State of Emergency Act states the possible restrictions during the state of emergency. The cabinet, upon declaring a state of emergency, can impose the following restrictions: 1) a special entry and departure regime, as well as restrictions on movement; 2) additional precautions to safeguard public order and the protection of private property; 3) a prohibition on meetings, rallies, street marches and demonstrations, as well as other public events; 4) a prohibition on strikes; and 5) restrictions on the movement of vehicles and inspection of vehicles.

If the state of emergency has been declared because of internal disturbances, the following restrictions can also be imposed: 1) a curfew prohibiting people from being on the streets and in other public places at a particular time without special permits and personal identification documents; 2) the censoring of the mass media or the suspension of the mass media; 3) the suspension of the activities of political parties and other public

organizations if they create obstacles for the implementation of the state of emergency; 4) the examination of personal documents, 5) the prohibition or limitation of the sale of weapons, powerfully acting chemical and poisonous substances and alcoholic beverages, as well as the temporary removal thereof from a person's possession; 6) the expulsion from a locality, district or city where a state of emergency has been declared of violators of public order who are not permanent residents of this locality, district or city.

The Constitution itself does not regulate possible restrictions on human rights during a state of emergency. Various commentators believe this is a quite fundamental deficiency of the Constitution since it means there is no constitutionally determined difference between the human rights regime in ordinary circumstances and the regime during a state of emergency. Establishing a distinction of this kind would make it possible to assess the restrictions required during a state of emergency. However, the main human rights safeguard during a state of emergency provided by the State of Emergency Act is that the measures applied must comply with international agreements and international instruments in the area of human rights entered into or acceded to by the Republic of Latvia and that the declaration of a state of emergency cannot repeal the laws governing the use of physical force, special means and firearms against natural persons.

The most important international human rights documents – the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Economic, Social and Cultural Rights of the UN – both include separate articles (Article 15 and Article 4 respectively) on possible restrictions during a state of emergency, dealing specifically with those restrictions which are not permitted, even during a crisis: the right to life, prohibition of torture, prohibition of slavery, prohibition of the retrospective effect of criminal law.

IV. The judiciary

1. General

Chapter VI of the Constitution is devoted to the courts. It states that, in Latvia, court cases are heard by district or city courts, regional courts and the Supreme Court and, in the event of war or a state of emergency, also by military courts. The principle of the independence of the judiciary is provided in Article 83 stating that judges are independent and subject only to the law.

Parliament grants approval to judicial appointments, which are irrevocable. Parliament is empowered to remove judges from office against their will only in the cases provided by statute and on the basis of a decision by the Judicial Disciplinary Board or a court judgment in a criminal case.

The Constitution also provides for a Constitutional Court which, within its jurisdiction, reviews the compliance of legal acts with the Constitution. The Constitutional Court has the right to declare statutes, other enactments or parts thereof invalid. Parliament confirms the appointment of judges to the Constitutional Court for the term provided by law. It does so in a secret ballot, with no fewer than fifty-one members of parliament voting in favour.

Article 86 provides that only those institutions stated by law have the right to administer justice, and that they may do so only in accordance with procedures provided by law. The same article also provides for military courts, stating that these courts shall act on the basis of a specific statute. However, no such statute has yet been adopted.

2. Administrative courts

On 1 February 2004, the Administrative Procedure Act came into force, regulating administrative procedure both in institutions and in the courts, thereby allowing the administrative courts to start to function in Latvia. The main purpose of the principles for administrative procedures determined by the act is to safeguard as much as possible the equality of individuals and authorities involved in legal disputes. Important principles of administrative procedure in this respect are the ways in which the procedures apply to individuals and the principle of objective investigation introduced by the act.

Every legally capable natural person or private legal person has the right of recourse to the administrative court if a state institution has infringed the subjective rights of the person as provided by the law by adopting an administrative act or carrying out any activity. Third persons may also initiate proceedings if their rights or legal interests are affected by the decision of the institution. Applications may be made to the administrative court only after appeal to the highest institution or institution determined by the law, or if there is no such institution.

Administrative proceedings can be dealt with orally or in a written procedure. The administrative procedure, as well as the civil and criminal procedures, are organized in

three levels: an administrative district court, a regional administrative court and the department for administrative matters of the senate of the Supreme Court. All the administrative courts are located in Riga.

Despite the fact that the administrative courts have not been operating for long, these courts have become important tools in strengthening the legal system of Latvia. They have already asked the Constitutional Court on several occasions to review the constitutionality of various legal norms. This was seen as a new step in the work of the Constitutional Court because, even though courts of general jurisdiction had had the right to apply to the Constitutional Court since 2000, this had in fact happened only rarely. In 2004, more than one-third of all proceedings initiated in the Constitutional Court were submitted by the courts. In addition, many people have started to defend their rights in the newly established administrative courts, rather than making unreasonable attempts to apply directly to the Constitutional Court for rulings on matters outside its jurisdiction.

3. COURTS OF GENERAL JURISDICTION

The Judicial Power Act was adopted by the *Saeima* on 15 December 1992. There have been several attempts to draft a new statute without visible results. However, the existing statute has been amended continuously.

Section 1 of the Judicial Power Act states that an independent judicial power exists in the Republic of Latvia, alongside the legislative and the executive power. Judicial power in the Republic of Latvia is vested in district or city courts, regional courts, the Supreme Court and the Constitutional Court. In adjudging trials, judges and lay judges are independent and subject only to law.

Judges and lay judges have immunity when fulfilling their duties in relation to adjudication in a court. Criminal proceedings against a judge can be initiated only by the Prosecutor General of the Republic of Latvia. A judge cannot be detained or be subjected to criminal liability without the consent of parliament.

The act also states the basic principles of adjudication, such as the duty to ascertain the objective truth, principles of legality, openness, presumption of innocence, equality etc.

The district or city courts are the courts of first instance for all civil and criminal cases except those which procedural legislative acts assign to the jurisdiction of the regional courts as courts of the first instance. There are 35 district or city courts in Latvia. In the district or city court, civil matters and administrative matters are adjudicated by a single judge, but criminal matters are adjudicated collegially by a court panel comprising one judge and two lay judges in cases concerning particularly grave crimes or grave crimes if the prosecutor, accused or the attorney ask for the panel. In other cases, a single judge can adjudicate criminal matters. The judge can also determine that a panel is necessary in particularly complex cases.

There are six regional courts in the Republic of Latvia: the Riga Regional Court, the Kurzeme Regional Court, the Latgale Regional Court, the Vidzeme Regional Court, the Zemgale Regional Court and the Administrative Regional Court.

The regional courts are the courts of first instance for crimes against humanity, peace, war crimes, genocide, crimes against the state and other particularly grave crimes. They are the courts of first instance for civil matters relating to property rights on immovable property, cases where the amount of the claim exceeds 30,000 lats, patent rights and trademarks, and insolvency of enterprises, and credit institutions. The regional courts are courts of appeal for civil, criminal and administrative matters adjudicated by a district or

city court, or by a single judge. For the supervision of the Land Registers, regional courts have Land Registry Offices, which are judicial institutions.

Regional courts as courts of first instance adjudicate civil matters and criminal matters collegially with a regional court judge and two lay judges. Regional courts sitting as appeal courts adjudicate civil matters, criminal matters and administrative matters collegially with a panel of three regional court judges.

The Supreme Court of the Republic of Latvia consists of: 1) the senate and 2) two judicial panels: the Civil Matters Panel and the Criminal Matters Panel. A court panel is the court of appeal for matters adjudicated by regional courts as courts of first instance. A court panel of three judges adjudicates matters collegially.

The Senate of the Supreme Court is the court of cassation for all matters adjudicated by district or city courts and regional courts. An appeal can be lodged against the judgement of an appeal court under the cassation procedure if the court has breached norms of substantive or procedural law or acted outside its competence. All cassation complaints and protests submitted to the senate have to be examined at assignment sittings or by a referral judge in order to decide whether they comply with the above requirements and, if so, whether they are subject to the cassation procedure. The Senate of the Supreme Court is the court of first instance for matters concerning decisions of the Council of the State Audit Office. The Senate is composed of four departments: the Civil Matters Department, the Criminal Matters Department, the Administrative Matters Department and the Disciplinary Matters Department. The Senate of the Supreme Court adjudicates matters in a collegiate manner, in panels composed of three senators.

The Plenum is a general meeting of the judges of the panels of the Supreme Court and the judges of the Senate. It discusses topical issues relating to the interpretation of normative acts, establishes court panels and departments of the Senate, and gives an opinion about whether there is a basis for the removal of the Chief Justice of the Supreme Court, or the dismissal of the prosecutor general, from office.

For a long time – until the amendments of 2002 – Section 49 of the Judicial Power Act empowered the Plenum to issue "opinions, which are binding on the courts, concerning the application of laws". This was a legacy of the Soviet legal system. A natural person applied to the Constitutional Court claiming that his rights to a fair court pursuant to Articles 1 and 83 of the Constitution had been violated since the courts of general jurisdiction had motivated their decision in a labour dispute by reference to an opinion of the Plenum. The Constitutional Court decided, in case no. 2002-06-01 *On the Compliance of Article 49 (its second part) of the Law "On Judicial Power" with Articles 1 and 83 of the Constitution* stating that

> "the right to a fair court includes several mutually interconnected aspects. As concerns the particular case, two of them are of importance: First of all – 'a fair court' as an independent and objective institution of the judicial power, which reviews a case. In this aspect the above concept has to be read together both with the principle of separation of power and the principle of independence of judges (courts), fixed in Article 83 of the Constitution. Secondly – 'fair court' as the appropriate process in a law-based state in which the case is being reviewed. In this aspect the concept 'a fair court' has to be read together with the principle of justice, which follows from Article 1 of the Constitution (*see Constitutional Court 5 March, 2002 Judgment in case No. 2001-10-01*). [..]
>
> The Latvian court practice confirms the mandatory nature of the binding interpretations of the Plenum Decisions. The courts, when reaching judgments, rather often apply the instructions (directions) of the Plenum Decisions as generally binding legal norms (*see the Collection of the Republic of Latvia Appellate Instance Judgments in Civil Matters. 1999 -2000. Riga,*

Agency of the Court Houses, 2001, pp. 31, 51 -52, 102, 286, 291, 306 – 308). Sometimes a higher instance court amends or repeals decisions by the courts of lower instance, if they are not inconformity with the interpretations of the Plenum Decisions. [..]

Thus in practice the Plenum Decisions have been applied not only as a legal supplementary source but – like the generally binding normative acts – have also acquired the status of an independent legal source.

[..] Thus the challenged norm, which authorized the Supreme Court Plenum to pass decisions on application of laws, which are binding on the courts, is at variance with the principle of separation of law and limits independence of judges (courts)."

When the Constitutional Court reached the decision in this case, the new wording of Section 49(2) of the Judicial Power Act already was in force. However, when the challenged norm was in effect, the courts decided on the claim of the plaintiff to restore him to the post by strictly observing the requirements of the Plenum's decision. The challenged norm had therefore violated the constitutional right of the plaintiff to a fair court. To ensure the protection of his rights and to give him the opportunity to initiate proceedings as a result of the new circumstances, the challenged legal norm was declared – as concerns the plaintiff – to be invalid at the time when the courts of general jurisdiction reviewed his application for restoration to the post.

Requirements for the candidates for the office of judge are set out in Section 51 of the act, providing that only Latvian citizens who are highly qualified and fair lawyers can work as judges.

A candidate for the position of judge may not, *inter alia*, be a person who has been previously convicted of committing a crime (irrespective of whether the conviction has been extinguished or set aside); against whom a criminal matter has been initiated and against whom an investigation is being conducted; who is or has been employed in staff positions or as a supernumerary of the State Security Committee of the U.S.S.R. or the Latvian S.S.R., the ministry of defence of the U.S.S.R., or the state security service, army intelligence service or counter-intelligence service of Russia or another state, or as an agent, resident or safehouse keeper of the aforementioned institutions; or who are or have been participants (members) of organizations which are prohibited by the laws of the Republic of Latvia, decisions of the Supreme Council, or adjudications of a court, after the prohibition of such organizations. The same restrictions apply also to candidates for the position of judge of the Constitutional Court.

The minister of justice nominates candidates to be appointed to or confirmed in the office of a judge of the district or city court or of a judge of a regional court on the basis of the opinion of the Judicial Qualification Board. A candidate for an appointment to the position of judge of the Supreme Court is nominated by the Chief Justice of the Supreme Court on the basis of an opinion of the Judicial Qualification Board.

The Judicial Qualification Board is a self-governing judicial institution intended to strengthen the professional independence of judges. It is composed of two judges from the Senate of the Supreme Court, one judge from the Civil Matters Panel of the Supreme Court, one judge from the Criminal Matters Panel of the Supreme Court, two judges from regional courts, two judges from district or city courts and two judges from Land Registry Offices. The Judicial Qualification Board evaluates the suitability for the office of a judge of each candidate who has been nominated for the first time, and conducts the qualification examinations for candidates for the position of judge; gives opinions concerning the nominations of judges for district or city courts, regional courts, the Supreme Court and Land Registry Offices; certifies judges and grants them a qualification category, etc.

Judges of a district or city court are appointed to office by parliament, upon the recommendation of the minister of justice, for three years. After a judge of a district or city court has held office for three years, parliament, upon the recommendation of the minister of justice, and on the basis of an opinion of the Judicial Qualification Board, can confirm that judge in office for an unlimited term or re-appoint the judge for a period of up to two years. At the end of the second term of office, parliament can confirm the appointment of a judge of a district or city court for an unlimited term. However, if the work of a judge is unsatisfactory, the minister of justice will, having heard the opinion of the Judicial Qualification Board, not nominate a judge as a candidate for a second appointment to, or for confirmation in, office.

Appointments of judges of regional courts are confirmed by parliament, upon a recommendation of the minister of justice, for an unlimited term of office. Judges of the Supreme Court, upon the recommendation of the Chief Justice of the Supreme Court, are confirmed in office by parliament for an unlimited term of office. The maximum age for judges of district or city courts and regional courts is 65 years and 70 years for judges of the Supreme Court.

A judge of a district or city court or of a regional court can be removed from office by parliament upon the recommendation of the minister of justice. A judge of the Supreme Court can be removed from office by parliament upon the recommendation of the Chief Justice of the Supreme Court. The Chief Justice of the Supreme Court can be removed from office by parliament upon the recommendation of the cabinet.

A judge of a district or city court, a regional court or the Supreme Court can be dismissed by parliament upon the recommendation of the Judicial Disciplinary Board, but a Chief Justice of the Supreme Court can be dismissed by parliament upon the recommendation of the Judicial Disciplinary Board on the basis of an opinion of the Plenum of the Supreme Court. If a judge has been convicted and the judgment of the court has entered into legal effect, the judge can be dismissed by parliament upon the recommendation of the minister of justice. The legal grounds for dismissal are provided in Sections 82 and 83 of the Judicial Power Act.

The conference of judges is a self-governing judicial institution. All the judges of Latvia participate in its work. The conference of judges examines current issues of court practice; discusses issues of financial and social security, and other significant issues concerning the work of judges; elects by secret ballot the Judicial Qualification Board and its chairperson and the Judicial Disciplinary Board for the term of four years, etc. The Disciplinary Responsibility of Judges Act adopted on 27 October 1994 regulates the disciplinary responsibility of judges.

The latest amendments to the Judicial Power Act introduced the new organizational unit, the Court Administration, which took over some functions from the ministry of justice relating to the organizational management of the courts. The ministry of justice remained the main state administrative institution with the following functions: to nominate candidates as judges for regional courts, district or city courts and Land Registry Offices; to formulate regulations for the organization of the work of the regional courts, district or city courts and Land Registry Offices; to provide the organizational management of the above institutions. The Court Administration is an institution answering to the ministry of justice and its functions are: to regulate the selection of the candidates for the office of judges of regional courts, district or city courts and Land Registry Offices; to prepare recommendations concerning the election of lay judges; to supervise the working organization of the regional courts, the district or city courts and the Land Registry Offices; to organize and perform the statistical data collection for the work of the regional courts, district or city courts and the Land Registry Offices; to

manage and operate financial resources so as to safeguard the activities of the regional courts, the district or city courts and the Judicial Qualifications Board, and to supply the courts with the necessary materials and technical facilities, etc.

Turning to the independence and the needs of the judiciary of Latvia, there have been several studies. Most of these listed deficiencies in the system, such as the unfavourable political environment, undue executive involvement, insufficient funding and inadequate working conditions, poor funding for the training of judges and corruption, which is generally perceived by society to be widespread in the judiciary, as in other segments of public life. It should be pointed out that the judiciary has made progress and that, for example, the Court Administration proposed by international experts has been established in order to minimize executive involvement, and working conditions have been normalized as new court buildings have been built.

4. Constitutional Court

a. History

The necessity of a Constitutional Court was advocated in parliament as early as 8 May 1934, just a week before the coup that was followed by the dissolution of parliament. Unfortunately, parliament rejected the proposal, which did not receive the necessary two-thirds majority.

Many years later, the Supreme Council of the Latvian SSR established a special committee, which by 16 March 1990 had drafted the bill on the *Constitutional Court of the Latvian SSR*. Section 10 of the bill provided that "the Constitutional Court of the Latvian SSR shall review cases involving the violation of rights and freedoms of the citizens of the Latvian SSR guaranteed by the Constitution of the Latvian SSR when that violation results from the adoption of normative acts issued by State institutions of the Latvian SSR if the laws of the Latvian SSR do not provide another procedure for such a review."

The *Declaration on the Renewal of the Independence of the Republic of Latvia* of 1990 swept away Soviet Latvia and its bills. Yet the idea of the necessity for a Constitutional Court was retained in Article 6.2 of the Declaration. Unfortunately, the process of elaborating a new bill was delayed because of the large number of other tasks that required attention and the absence of clear priorities for the programme of legislative enactment. In 1993, a programme was drawn up indicating the most important tasks for the legislature. It envisaged the adoption of the bill on the Constitutional Court and the establishment of the court, even though the Judicial Power Act adopted on 15 December 1992 had vested the power of constitutional review in the Supreme Court of the Republic of Latvia.

At the time, it was suggested that the Constitutional Court should also review complaints submitted by individuals about the constitutionality of regulations and administrative acts that violate the rights of citizens and individuals. The idea was that this could be done only after all applicable remedies had been exhausted. General courts reviewing certain cases were among the state institutions with the right to refer to the Constitutional Court for decisions about legislative compliance with the Constitution.

In early 1994, on the basis of these notions, the ministry of justice drafted the Constitutional Court Bill and the bill on Amendments and Supplements to the Judicial Power Act. These amendments and supplements were adopted by the fifth *Saeima* on 15 June 1994, but discussion about the adoption of the Draft Project on the Constitutional Court dragged on even though the parliamentary legal committee had done its work. The

legal committee came to the conclusion that amendments to the Constitution were necessary and submitted a bill. The legal committee of the sixth *Saeima* revised these bills and submitted them to parliament in January 1996. On 5 June 1996, parliament drew up amendments to Article 85 of the Constitution, providing that: "In Latvia, there shall be a Constitutional Court, which, within its jurisdiction as provided for by law, shall review cases concerning the compliance of laws with the Constitution, as well as other matters regarding which jurisdiction is conferred upon it by law. The Constitutional Court shall have the right to declare laws or other enactments or parts thereof invalid. The appointment of judges to the Constitutional Court shall be confirmed by the *Saeima* for the term provided for by law, by secret ballot with a majority of the votes of not less than fifty-one members of the *Saeima*."

The Constitutional Court Act was passed and took effect on 28 June 1996. Natural persons and general courts were not listed among those with the right to submit an application to the Constitutional Court. It took until 30 November 2000 for parliament to adopt the Amendments to the Constitutional Court Act, extending the right to apply to the Constitutional Court to courts of general jurisdiction in cases heard by them and to persons whose fundamental constitutional rights are violated by the application of a normative act.

b. Composition and organization

The Constitutional Court of the Republic of Latvia consists of seven judges approved by parliament for a single term of ten years. Three judges of the Constitutional Court must be approved after their nomination by no fewer than ten members of parliament; two are appointed after nomination by the cabinet, and two are nominated by the Plenum of the Supreme Court. The Plenum of the Supreme Court may select candidates for the office of a judge of the Constitutional Court only from judges of the Republic of Latvia.

Constitutional Court judges must meet the following requirements laid down in Section 4 of the Constitutional Court Act: they must be citizens of the Republic of Latvia with a university-level legal education and at least ten years' working experience in the legal profession, or in a scientific or educational field in a legal speciality in a research or higher educational establishment. The act requires lists of nominees for the office of a judge of the Constitutional Court to be published in the Official Gazette, *Latvijas Vēstnesis*, no later than five days after their submission to Presidium of parliament.

Once approved by parliament, judges of the Constitutional Court assume office after swearing the oath before the State President.

There are restrictions on the extracurricular and political activities of the judges of the Constitutional Court. Judges cannot occupy another office or have other paid employment except in a teaching, scientific and creative capacity. A judge must not be a member of parliament or a municipal council. The office of a judge of the Constitutional Court is incompatible with membership of a political organization or association. Judges of the Constitutional Court can be members of other public organizations or associations. However, they must not use this right in such a way as to infringe their dignity and reputation as a judge, the independence of the court or impartiality.

The Constitutional Court and judges act independently in the fulfilment of their duties and are bound only by the law. There must be no direct or indirect interference with the activities of judges of the Constitutional Court. They are inviolable: they may not be arrested or prosecuted on criminal charges without the consent of the Constitutional Court, and they can only be detained, forcibly held and subjected to a search with the consent of the Constitutional Court. They may be subject to disciplinary proceedings for

administrative violations (set out in the Administrative Offences Code), failure to perform their duties, inappropriate conduct, etc. The Chairperson of the Constitutional Court, his/her Deputy or not less than three judges of the Constitutional Court may initiate a disciplinary case. A disciplinary case is reviewed by the entire Constitutional Court with all the judges of the Constitutional Court who are not excused for health or other justified reasons, participating. The judge against whom the disciplinary case is initiated, is not part of the court: In this case the court must consist of not less than four judges. The Constitutional Court adopts decisions in disciplinary cases by a majority vote. Disciplinary punishment which the Constitutional Court may impose on a judge can be: 1) reproof; 2) admonition; 3) reduction of basic salary for a period of one year, withholding up to 20% of the basic salary; 4) removal from the office.

If the Constitutional Court agrees to the criminal prosecution of a judge of the Constitutional Court, the authority of the judge is suspended until the judgment in the relevant case comes into legal effect or until the relevant criminal case is dismissed. If a judge of the Constitutional Court is charged with disciplinary liability because that judge has committed an act incompatible with the office of a judge, the Constitutional Court can suspend the authority of that judge until completion of the investigation, but not for more than one month.

Constitutional Court judges retire upon reaching the age of 70. They can be released from office by a decision of the Constitutional Court if they are unable to continue working for health reasons. An absolute majority (abstentions are considered to be votes against) of all the judges of the Constitutional Court is required here. Constitutional Court judges will be removed from office if they are convicted of a crime and the judgment comes into legal effect. Constitutional Court judges can be released from office by a decision of the Constitutional Court if they have committed a shameful act which is incompatible with the status of a judge, or regularly fail to perform their duties of office and have been charged with disciplinary liability in this regard. An absolute majority of all the judges of the Constitutional Court is required to reach this decision.

c. Powers

Section 16 of the Constitutional Court Act requires the Constitutional Court to review legislative constitutionality; the constitutionality of international agreements signed or entered into by Latvia (even before parliament has ratified the agreement); the compliance of other normative acts or parts thereof with legal norms (acts) of higher legal force; the compliance of other acts (with the exception of administrative acts) of parliament, the cabinet, the president, the speaker of parliament and the prime minister with statutes; compliance with statutes of regulations in which the minister, authorized by the cabinet, has rescinded binding regulations issued by the Dome (Council) of a municipality; compliance of the national legal norms of Latvia with international agreements entered into by Latvia that are not contrary to the Constitution.

The act allows applications to be submitted by parliament, the State President, no fewer than twenty members of parliament, the cabinet, the prosecutor general, the council of the State Audit Office, municipal council (Dome), the National Human Rights Bureau, court of general jurisdiction reviewing civil, criminal or administrative case, judge of the Land Registry when entering real estate – or confirming property rights to it – in the Land Book, and a person whose fundamental constitutional rights may have been violated.

d. Procedure

The procedures of the Constitutional Court can be divided into two groups: preparatory procedures and trial procedures. The procedure is laid down in the Constitutional Court Act and the Rules of Procedure of the Constitutional Court of the Republic of Latvia. A separate law on the procedures of the Constitutional Court will need to be adopted in future in which the procedural norms are separate from the substantive norms.

Preparatory procedures include issues such as submission of applications, opening a case or a refusal to open a case; preparing a case for review, etc. Sessions of the Constitutional Court are public, except when state secrets must be protected. When the documents attached to the case suffice, it is possible to hold court proceedings in writing, without the participants in the case attending the court.

e. Applications to the Constitutional Court

Since the establishment of the Constitutional Court, commentators argued that it is not possible to support the fact that individuals would be deprived of the right to petition the court. There were two reasons for depriving individuals of this right: the catalogue of human rights did not acquire constitutional status until 1998, and the legislature did not want to overcrowd the court in the early days by imposing too many duties on it since it was not easy to foresee how many applications would be submitted to the court once it started work. Finally, amendments were passed in 2000 stating that any person can apply to the Constitutional Court who holds that his/her fundamental rights as established by the Constitution have been violated by the application of a normative act that is not in compliance with a legal norm of higher legal force.

Before an application to the court, the ordinary legal remedies must have been exhausted (appeals to higher institutions or officials, applications to courts of general jurisdiction etc.) or an application can be submitted if there are no other means of redress. However, the Constitutional Court can decide to review a case before all the other legal means have been exhausted if the review of the constitutional claim is of general importance or if legal protection of the rights with general legal means cannot avert material injury to the applicant.

A constitutional claim can be submitted to the Constitutional Court within six months after a decision of the last institution comes into effect.

f. Nature and effects of decisions

Judgments of the Constitutional Court are final. They come into legal effect at the time of announcement. Judgments of the Constitutional Court are binding on all state and municipal institutions, offices and officials, including the courts, and natural and legal persons. Any legal norm (act), which the Constitutional Court finds to be incompatible with a legal norm of higher force is considered invalid as of the date of publication of the judgment of the Constitutional Court, unless the Constitutional Court rules otherwise.

If the Constitutional Court finds any international agreement signed or entered into by Latvia to be unconstitutional, the cabinet is immediately obliged to see that the agreement is amended, denounced, or suspended or to recall accession to that agreement.

V. The state and its subdivisions

1. Composition

At present, there are 119 municipalities – 110 counties and nine cities: Riga, Jurmala, Valmiera, Liepaja, Ventspils, Rezekne, Daugavpils, Jekabpils and Jelgava. The Latvian government includes the ministry of environmental protection and regional development as an independent ministry with responsibility for the development of state regional policy. The aim of policy is to ensure balanced development throughout the territory.

The Local Government Act was adopted on 19 May 1994. The Act states that local government is the citizens' elected representation – council – and its established institutions providing statutory functions, as well as that prescribed by law and the mandate given by the Cabinet and the implementation of local voluntary initiatives in accordance with national and relevant administrative interests of residents.

The City Councils and County Councils Elections Act adopted on 13 January 1994 regulates local government elections. Local elections are held every four years and the local government is elected in equal, democratic, direct, secret and proportional elections. The Central Election Commission announces each local election no later than three months before the election day and supervises them. Preparations and organization for the elections are the responsibility of the election commissions of cities and counties. In local elections, the administrative territory of each city and county makes up a single electoral district. Local elections are organized by the election commissions of cities and counties and financed from the budget of the corresponding local government.

The following have the right to vote in local government elections: 1) citizens of Latvia; 2) citizens of the European Union who are not citizens of Latvia but are registered as residents; 3) persons who have reached the age of 18 on the date of the election, have been registered as voters at a place of residence in the administrative territory of the respective local government at least 90 days before the date of the election, or persons who own real estate in the territory of the local government in question.

The requirements for candidates in council elections are set out in Section 8 of the act. Candidates must: be citizens of Latvia or citizens of the European Union who are not citizens of Latvia but are registered as residents; have reached the age of 18; and have a definite affiliation with the particular administrative territory.

Persons serving court sentences in penitentiaries or recognized as incapacitated in accordance with the procedure set by law or who have been sentenced previously for intentional, severe crimes and whose sentences have not been expunged or annulled, except those pardoned, as well as those who after 13 January 1991 have been active in the CPSU (the CP of Latvia), the Working People's International Front of the Latvian SSR, the United Board of Working Bodies, the Organization of War and Labour Veterans, the All-Latvia Salvation Committee or its regional committees and who belong or have belonged to the salaried staff of the USSR, the Latvian SSR or another country's state security, intelligence or counterintelligence services, cannot be nominated as candidates for the council election and cannot be elected to the councils.

Last local elections for city and county councils took place in Latvia on 6 June 2009. The turnout was 53.75%.

2. POWERS

In the field of public law, local governments have competence in: 1) the territorial, district, and regional administrative and socio-economic fields, and in the fields of culture and education; 2) state administration, the performance of which is transferred to the relevant local government; 3) functions that are within the competence of other local governments, the performance of which has been transferred to the relevant local government by mutual agreement; 4) one-off tasks, the performance of which has been assigned to local governments by state administrative institutions; and 5) voluntary initiatives: local governments may, in the interests of the residents of the relevant administrative territory, voluntarily deploy initiatives with respect to any matter not within the competence of the *Saeima*, the cabinet, ministries, other state administrative institutions, the courts or other local governments, and if such an activity is not prohibited by law.

The autonomous functions of local governments are set out in Section 15 of the Local Government Act. The main ones are: 1) to organize the provision of utilities for residents (water supply and sewerage system; heating; management of municipal waste; collection, removal and treatment of wastewater), irrespective of the ownership of the residence; 2) to provide public services and facilities, and to safeguard the sanitary cleanliness of the administrative territory (building, reconstruction and maintenance of streets, roads and public squares; lighting of streets, public squares and other areas designated for public use; development and maintenance of parks, public squares and green zones; control of collection and removal of industrial waste; flood control measures; establishment and maintenance of cemeteries and places for burial of dead animals); 3) to determine procedures for the utilization of public forests and waters; 4) to provide for the education of residents (ensuring the specified rights of residents to enjoy primary and general secondary education; providing children of pre-school and school age with places in educational institutions; organizational and financial assistance for extracurricular training, educational institutions and education support institutions, and others); 5) to ensure access to health care, as well as to promote a healthy lifestyle of residents; 6) to maintain public order and to combat drunkenness and immorality; 7) in accordance with the territorial planning of the relevant local government, to determine land utilization and procedures for its development; 8) to implement the protection of the rights of children in the relevant administrative territory, etc.

In carrying out their functions, local governments have the right to: 1) establish local government institutions and enterprises and, with their own resources, to participate in companies; 2) acquire and dispose of movable and immovable property, privatize facilities owned by local governments, conclude transactions, as well as perform other activities of a private-law nature; 3) introduce local fees and in cases prescribed by law determine the levies and the amount of taxes (the Taxes and Levies Act, for example, determines the fields in which local government can impose levies. These include trade in public places, having pets, building permits etc.); 4) initiate court proceedings and submit complaints to administrative institutions; and 5) receive information from state institutions.

In order to perform their functions, local governments are required to draw up a development programme for their territory, to draw up and approve the local government budget; to collect taxes and fees; to provide information to the cabinet and ministers on

issues related to activities of the relevant local government etc. In the performance of their functions, local governments have the right to issue normative acts in cases prescribed by law: these are binding regulations applying to the respective administrative territories. These acts must comply with other normative acts of higher legal force (including cabinet regulations).

VI. Fundamental rights

On 4 May 1990, the Declaration on the Accession of the Republic of Latvia to International Instruments relating to Human Rights was adopted by which Latvia agreed to the provisions of 51 international legal documents. Importantly, this declaration stated that the documents of the Council of Europe and the European Parliament relating to human rights would guide subsequent legislative activities. However, Latvia was not yet independent and the international documents did not, in formal terms, have any binding effect. Nevertheless, this step constituted the manifestation of a political aim: the wish to introduce a legal system based on respect for human rights and freedoms. The declaration declared the resumption of the operation of the Constitution throughout the territory of Latvia but also its suspension until the adoption of the new wording of the Constitution. The declaration made an exception with regard to Articles 1, 2, 3 and 6 – these articles were not suspended, and since Article 1 states that Latvia is an independent democratic republic, Latvia has the obligation to observe human rights with effect from 4 May 1990 since the state cannot be "democratic" if it does not provide for the effective realization and defence of human rights.

As the original version of the Constitution did not include a chapter on fundamental human rights, reinstating the Constitution implied that this part of the Constitution had to be written in the 1990s. However, this matter was not resolved until 1998, when the amendment to the Constitution was adopted introducing Chapter VIII on fundamental human rights. Meanwhile, two important steps were taken with the adoption in 1991 of the constitutional statute, The Rights and Obligations of a Citizen and a Person, and the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1997, as a result of which the ECHR has the status of domestic law.

In order to rectify the shortcomings of the Constitution, a bill of rights was adopted by the Supreme Council in late 1991: The Rights and Obligations of a Citizen and a Person (known as "the constitutional statute"). Notwithstanding its title, this statute did not have constitutional status, as it was not adopted by the required two-thirds majority necessary to amend the Constitution.

In the legal literature, there are several views about whether the statute was "constitutional" or not. Some authors have argued that, even if the required majority had approved the statute, it would not have gained constitutional status since the Constitution does not allow for the existence of constitutional statutes and that this bill of rights therefore had the same value as any other statute adopted by the parliament. Other authors have argued the very opposite on more solid grounds. In their opinion, the statute certainly had constitutional force since: 1) the norms of human rights can fulfil their main purpose – to protect the individual from excesses of state power – only if these norms have priority over other legal norms; 2) an integral component of the democratic state order is to safeguard human rights; 3) human rights are an objective reality to which all persons are entitled from the moment of birth; 4) the constitutional statute does not create any new law; it records naturally existing rights and adds to this core of natural law

provisions which are specific to Latvia; 5) the legal basis for the guarantee of human rights in Latvia is Article 1 of the Constitution and every right stated in the constitutional statute should be applied in connection with this article; this means that, in practice, human rights norms have priority over other legal norms of ordinary statutes.

The constitutional statute was divided into two parts. The first part defined citizenship (Sections 4-5) and indicated the rights and obligations of citizens. These were: the right to vote, the right to be elected, the right to hold public office and to found political parties (Section 8), the right to own land and natural resources (Section 9), to enjoy freedom of movement (Section 10), the right to possess licensed weapons (Section 11) and the duty of citizens to be loyal to and defend the Republic of Latvia.

The second part contained a list of rights and obligations (Sections 12-44). The introductory article stated that all persons were equal before the law regardless of race, nationality, sex, language, party affiliation, political and religious conviction, and social, material and professional status and origin (Section 12).

The provisions on procedural rights referred to the procedures established by law: detention, confinement, searches and other restrictions on personal freedoms, maximum terms for detention, confinement and pre-trial investigation. Of the social and economic rights, the right to remuneration no lower than the minimum wage determined by the state (Section 24) and the right to material security in old age and during illness (Section 27) should both be mentioned.

The constitutional statute had a provisional character and there was obviously an intention to replace it. The fifth *Saeima* initiated the drafting of a new bill of rights in 1993. The intention was to produce a second part of the Constitution similar to the original idea in the 1920s. The Constitution would then have consisted of two parts – one on state authority and one on basic rights and freedoms. A working group was set up to produce a draft. The sources used by the working group were the interwar draft of a bill of rights, the ECHR and the constitutions of other countries, such as the United States of America, Canada and Sweden. After the parliamentary elections of 1995, a new drafting commission continued this work. The final version was adopted in October 1998 and, when it went into effect, the constitutional statute became null and void.

The new list of rights and freedoms is to be found in Chapter VIII, Fundamental Human Rights (Arts. 89-116) of the Constitution and not in the second part of it as it was intended. The linguistic style of Chapter VIII is similar to the rest of the Constitution and these articles are laconic and open to interpretation. It has been emphasized by the Constitutional Court that these articles must be understood and interpreted in the light of the ECHR.[8]

The opening article states that fundamental human rights in the Constitution, laws and international agreements binding upon Latvia are recognized and protected by the State (Art. 89). This therefore emphasizes the role of the ECHR and the aim is to understand the Constitution in the light of this obligation. Everyone is equal before the law and the courts, and human rights are exercised without any kind of discrimination (Art. 91).

Although the provisions of the constitutional statute of 1991 relating to procedural rights were rather detailed (Sections 15-19), the articles in the Constitution on these issues are short: everyone should be able to protect their rights and lawful interests in a fair court, and there is a presumption of innocence. Unreasonable infringement of rights

8. The Constitutional Court of the Republic of Latvia does the lion's share of the work in the interpretation of Chapter VIII of the Constitution. Since 1998, most of the articles relating to fundamental rights have been interpreted by the Court.

entitles the person in question to commensurate compensation. The right to legal aid is also prescribed (Art. 92); the right to life of everyone is protected by law (Art. 93); everyone has the right to liberty and security of the person, and no one can be deprived or restricted of their liberty except in accordance with the procedure prescribed by law (Art. 94). The state protects human honour and dignity. Torture or other cruel or degrading treatment of human beings are prohibited. No one may be subjected to inhuman or degrading punishment (Art. 95). Everyone has the right to the inviolability of private life, home and correspondence (Art. 96).

The political rights and freedoms are of special interest because of the discussion about citizenship and its relevance to the democratic process in Latvia. Citizenship is a precondition for the right to vote and stand in parliamentary and local elections, as well as for appointment to a post in state service (Art. 101). Amendments in 2004 expanded the article, stating that the citizens of the European Union permanently resident in Latvia also have the right to vote in local elections and to work for local authorities. Everyone has the right to form and join associations, political parties and other public organizations (Art. 102).

Freedom of opinion is universal (Art. 99), as is freedom of expression, including the right to receive, hold and impart information freely, and to make known one's views (Art. 100). The same article prohibits censorship. With regard to freedom of assembly, the Constitution states that peaceful meetings, street marches and picketing will be protected by the state, provided that prior notification has been given (Art. 103).

Article 105 of the Constitution states that everyone has the right to own property, that property must not be used contrary to the interests of the public and that property rights can be restricted only by law, and expropriation of property for public purposes is allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.

Social, economic and cultural rights are also covered by Chapter VIII. For example, everyone has the right to social security in old age, during incapacity for work, during unemployment and in other cases provided by law; the state protects and supports marriage, the family, the rights of parents and rights of the child. The state provides special support for disabled children, children left without parental care or who have suffered from violence; the state protects human health and guarantees a basic level of medical assistance for everyone; everyone has the right to education. The state ensures that everyone receives primary and secondary education free of charge. Primary education is compulsory; the state recognizes the freedom of scientific research, artistic and other creative activity, and protects copyright and patent rights; persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity; the state protects the right of everyone to live in a "benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment" (Arts. 109-115).

Restrictions on human rights on the basis of the Constitution are determined in two ways. The possibility of restrictions is provided in separate articles such as Articles 94, 101, 104, and 105. Article 116 provides jointly for the possibility of restrictions on some other articles. This article provides that restrictions can be imposed on the right to privacy (Art. 96), freedom of movement (Arts. 97-98), freedom of expression, association and assembly (Arts. 100, 102, 103), freedom to choose one's profession and the prohibition of forced labour (Art. 106) and the right to strike (Art. 108). Restrictions must be prescribed by law and be necessary for the protection of the rights of others, the democratic state structure, public safety, welfare and morals. In particular, restrictions on the right to practise one's religion can also be imposed. Restrictions during a state of emergency are

further regulated by a special State of Emergency Act, which emphasizes that restrictions are to be imposed only to the extent necessary for a normalization of the situation.

The Constitution also includes several rights for which there are no provisions relating to restriction. For example, Article 91 on equality before the law and the courts, and Article 93 on the right to life etc. are considered to be integral and absolute. Although the Constitution does not state the absolute status of these rights, this can be concluded by interpreting Chapter VIII in connection with the practice of the European Court of Human Rights and the ECHR. The conclusion is that restrictions on these rights are, ordinarily, not admitted at all. However, the Constitution also provides other rights for which the text provides no restrictions. Examples are to be found in Articles 110, 111, 112, 113, 114, and 115 (the protection of the family and marriage, the rights of the parents and children, the protection of health, the right to education, the right to the creativity, the rights of ethnic minorities, the right to environmental protection). This issue was interpreted by the Constitutional Court in the 22 October 2002 judgment of the case no. 2002-04-03 *On the Compliance of Items 59.1.6, 66 and 68 of the "Regulations of the Internal Order of the Investigatory Prisons" with Articles 89, 95 and 111 of the Constitution*, that looked at the protection of health and the right to minimum medical assistance stated in Article 111. The Constitutional Court concluded that Article 116 does not cover Article 111. However, this does not mean that these rights are absolute or that they cannot be restricted. Firstly, these norms must be interpreted in the context of the other norms of the Constitution, taking into account the rights guaranteed for other persons, for example the right to health. In addition, restrictions on these rights must also be interpreted in the light of international documents. For example, Article 4 of the International Covenant on Economic, Social and Cultural Rights of the UN provides that the state can impose restrictions on the above rights only in so far as this may be compatible with the nature of these rights. The conclusion is that restrictions on rights are possible in all cases when, viewed in impartial terms, it is not possible to implement these rights in an absolute manner or when, by implementing these rights, the rights of other persons would be substantially violated.

Article 89 of the Constitution provides for the priority of international law over national law. It states that the state has to recognize and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia.

One of the first institutions devoted to the protection of human rights in Latvia was an ombudsman-like institution: the National Human Rights Office. It did not have constitutional status, but the office was independent in its decisions and activities. The status, functions, duties and responsibilities of the office were set out in the Act on the Latvian National Human Rights Office of 5 December 1996. The office was established as early as 18 July 1995 under cabinet regulations on the Latvian National Human Rights Office, passed in accordance with Article 81 of the Constitution.

A common criticism of the office related the lack of real instruments for influencing institutions which violate rights. The law provided that, when investigating a complaint about the violation of human rights, the office was entitled to resolve the conflict by conciliation. The conciliation agreement was signed by the parties involved in the complaint and approved by the director of the office. If agreement could not be reached, the office informed the parties in writing of its opinion and proposals in the form of recommendations. The office could also present its suggestions and recommendations for the prevention of violations of human rights and forward them to the relevant

institution or official. The official to whom the proposal was forwarded had to reply to the office in writing within one month.

In 2003, a working group was established with the aim of drafting a bill for the establishment of a new ombudsman institution based on the existing National Human Rights Office, expanding its legal mandate and scope as well as increasing the financial support in order to allow it to fulfil its additional duties and functions.

The Law on Ombudsman was adopted on 6 April 2006. By comparison with the Act On the Latvian National Human Rights Office, the competence of the ombudsman is extended to include the following tasks: 1) to promote respect for people's rights and lawful interests; 2) to promote the protection of the rights of the child; 3) to promote safeguards for the principle of equal treatment and the prevention of any form of discrimination; 4) to monitor compliance with the principle of good government in state administration; 5) to identify shortcomings and difficulties with legislation and its application and to encourage their rectification; 6) to encourage public information and understanding of human rights and the work of the ombudsman.

As is the case with respect to competence, the functions of the Ombudsman's Office are also more extensive than those of the National Human Rights Office. They include: asking state institutions and local authorities to conduct the investigations required to clarify the circumstances of the case at issue and to report to the office on the findings of those investigations; to submit conclusions and recommendations about the lawfulness and validity of adopted administrative acts to state or local authorities or officials or other subjects of public law. The powers of the Ombudsman's Office are also significantly more wide-ranging. For example, it may ask for and receive, free of charge, explanations and information relevant to any particular case from state and local authorities; it may visit any company, institution (even of a closed type) or organization in order to study the materials necessary for a particular inspection; it may hear children in the absence of their parents or guardians if the child so wishes.

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