Constitutions in the Global Financial Crisis

A Comparative Analysis

Edited by
Xenophon Contiades

Chapter 4
Financial Crisis and the Constitution in Latvia

Ringolds Balodis and Janis Pleps

Latvia is a unitary state based on the rule of law and the principles of proportionality, justice and legal certainty. It is a parliamentary republic with a pluralist system of political parties. There is a clear separation of powers with a system of checks and balances in place.[1] Fundamental rights are guaranteed and widely respected. The Constitution is a written, codified and single document which is quite brief and laconic. It is a flexible document in that it is quite easy to amend. International and non-Latvian legal norms (EU law) take priority over domestic legislation and can be regarded as being of the highest status. When there is conflict between such a legal norm on the one hand and a national legal norm on the other, the international or EU norm prevails.

Constitutional bodies include parliament, the President, the government, the National Audit Office and the courts. Parliament consists of 100 members who are elected for four-year terms. The President is elected by secret ballot by MPs for a term of four years. The Constitution does not mention economic matters in a direct sense, though it does secure the right to own property. The Constitutional Court has derived from the Constitution the ruling that every person is obliged to pay taxes and that the goal of tax revenues is to ensure public welfare.[2] Art. 66 of the Constitution also contains certain elements of fiscal discipline: 'Where parliament takes a decision involving expenditures that are not included in the budget, the said decision shall also allocate the funds which are necessary to cover such expenditures.'

After accession to the EU, Latvia experienced rapid economic growth for several years in a row. This was based on private consumption with loans that were provided by banks. Most of the money that was borrowed was invested in real estate and other sectors of non-exportable products. The economy could not effectively absorb such a large inflow of cash, and inflation increased. Powerful private consumption in the short term produced a positive fiscal effect in terms of rapidly increasing tax revenues. Budget expenditures expanded accordingly, and that stimulated consumption even further. Rapidly increasing wages in the

1 R. Balodis, 'Latvia', in G. Robbers (ed.), *Encyclopaedia of World Constitutions*, vol. II (U.S. Facts on File, 2007), p. 513.

2 Case No. 2011-03-01, 19 December 2011, para 25.

private and public sector occurred in parallel to comparatively slow increases in productivity, and this substantially harmed Latvia's competitiveness. The amount of loans issued by commercial banks rapidly increased the state's gross external debt, and in combination with declining competitiveness, this created the danger of insolvency among borrowers, because the new risk was that added value would not be sufficient to cover borrowing costs.

The first warnings about overheating in the economy and an approaching crisis were heard in 2007. Despite this, only in 2008 did indicators show that the crisis was approaching. Because of the global financial crisis and a decline in Latvia's credit rating, the availability of external financial resources collapsed during the latter half of 2008, which meant that Latvia required international financial assistance. At the end of the year, Eurostat and the Latvian Statistical Board released a report stating that even though inflation had declined by 0.9 per cent in August, it was still at a rate of 15.6 per cent. Latvian trade unions demanded that the government provide compensation for lost wages that were due to inflation at national budget institutions and that the government stop talking about the freezing of real wages in support of the economy.

It was in late 2008, after the government took over the Parex Bank, that it first suggested international aid was needed. The National Audit Office concluded that the collapse of the Parex Bank had had a serious effect on Latvia's financial situation. In audit reports, the Audit Office wrote about the effective use of money from international loans, concluding that the problems of the bank had substantially increased the country's external debt in 2009, because LVL265 million, or 17 per cent of the money received from the international lending programme, was used to provide term deposits so that the bank could repay its syndicated loans.[3] The Constitutional Court also expressed its views on the economic situation in the country, rejecting arguments that suggested that there was no financial crisis at all.[4] After analysing the economic situation in 2009, the Court ruled that 'during the second quarter of 2009, Latvia experienced the most rapid decline in economic activity in the EU. Thus, for instance, national consolidated budget revenues during the first six months of 2009 were 15 per cent lower than during the same period in 2008 … The decline in gross domestic product in comparison to the first six months of 2008 amounted to 18.7 per cent.'[5]

Budget cuts at various government institutions led to a situation in which the institutions had to sack people, force them to take unpaid holidays and reduce the number of their regional branches. This inevitably affected the quality of public services. In some cases, local governments financed processes which had once been financed by the national government so as to keep the range of public services from deteriorating. The financial crisis also caused a substantial decline in Latvia's

3 The Annual Report of the National Audit Office of the Republic of Latvia; available at www.lrvk.gov.lv/upload/GP_2010_1Jul2011_LV/pdf.

4 Case No. 2010-71-01, 19 October 2011, para 6.

5 Case No. 2009-44-01, 15March 2010, para 20.

population. According to census results there were 2,377,383 people in Latvia in 2010, but by 2011 that number had dropped to 2,067,887. This meant that it was very likely that more than 300,000 people from Latvia had emigrated abroad in pursuit of a better economic life. The census also showed that the death rate in Latvia was above the fertility rate.[6] This can be attributed to the fact that people of working age were leaving the country, but also to the fact that the government was reducing subsidies for young mothers and their children.[7]

Addressing parliament in 2011, Prime Minister Dombrovskis argued that the financial crisis had been successfully overcome.[8] There are experts, however, who have a critical view about the selected solutions aimed at overcoming the crisis. They have argued that the long-term model by which Latvia exited the crisis period was not a success story, because much of the labour force was lost, and small and medium companies have problems with capital to the extent that they cannot take out loans. The international loan that was taken out to overcome the crisis led to an increase in the number of Eurosceptics in Latvia. This is because of unfulfilled hopes that the EU would help to resolve social problems. Many residents in Latvia have lost all faith in economic development in the country in the future. The decline in trust, in relation to national values, has reduced growth potential and very much increased demographic risks, thus limiting the potential for further economic growth.

Aspects of Sovereignty

In late 2008, after encountering a financial crisis and a drop in national budget revenues, and facing the need to resolve stability-related problems in the banking sector, the government voted to accept an international loan. On 18 December, Latvia submitted a letter of intent to the director of the IMF, stating its desire to receive an international loan so as to stabilize Latvia's economy, promising to limit national budget expenditures to the level of 40 per cent of GDP.[9] Latvia promised to implement a series of political reforms and to ensure major amendments to various normative acts. This would involve a review of the structure of national governance, the system of pensions and social subsidies, and a reduction in national budget expenditures. The promises were not reviewed by parliament. This meant that the government, not parliament, decided to take part in the international lending programme and to make relevant political promises. In most cases, the need for such legal amendments and reforms was explained on the basis of the promises that were given to the international lenders – promises that related to

6 *Latvijas Vēstnesis*, No. 11(4614), 19 January 2012.

7 Case No. 2009-44-01, 15 March 2010, paras 8-24.

8 Transcript of 8 December 2011, Meeting of Parliament; available at saeima.lv/lv/transcripts/view/97.

9 Available at http://www.fm.gov.lv/files/files/Letter_of_Intent_2008-12-18.pdf.

success in completing the international lending programme and to the relevant international obligations.[10] This limited the ability of parliament to manoeuvre in terms of improving the draft laws that were submitted by the government. This largely turned parliament into an institution that simply accepts the proposals made by the government. After the international loan was received, however, there was no parliamentary or public debate about whether the relevant procedures were appropriate or whether the government had the authority to make political promises to the international lenders that would be dependent on parliament in terms of their implementation. Among other things, these promises included amendments to laws that were of public importance, as well as the adoption of new laws.

The Constitutional Court examined the extent to which the government's promises were constitutional in several cases, because parliament and the government usually made reference to the promises that were made to the international lenders in relation to such cases. The Constitutional Court ruled that 'the fact that the aforementioned documents include a promise from the government to adopt the disputed norms does not in and of itself mean that these are the specific conditions that were determined by the international lenders. The international lenders define the main goals for the state in accordance with their areas of competence … The decision on the most appropriate and commensurate resources in achieving these goals, as well as the choice of possible alternatives, is left up to the country itself.'[11]

This ruling means that the Constitutional Court was rejecting the arguments of parliament and the government in relation to limitations on their freedom of action in adopting crisis-era regulations. The Constitutional Court strictly stated that the government had made specific promises and could evaluate the constitutionality and necessity of the specific steps that were taken. It is also true that parliament had to evaluate solutions proposed by the government just as is the case with any other draft laws. Among other things, parliament had to evaluate the constitutionality and permissibility of such steps in a democratic country where the rule of law prevails. This, in turn, means that the international lenders did not limit the state's freedom of action and sovereignty in formal terms. The legislature and government were allowed to make decisions about specific reforms so as to achieve a national budget balance and to avoid the risk of insolvency. In this context, however, it is also necessary to take into account the conditions under which the loan was provided: 'No government in the world asks other countries or international organizations to provide it with a massive loan just because the government is bored. Only those countries facing bankruptcy are forced to do so.'[12] If it is clear that 'Latvia would not receive loans if it did not give the lenders the promise of fairly radical steps aimed at the stabilization and future improvement

10 Case No. 2009-110-01, para 24.3.

11 Case No. 2009-43-01, para 30.1.

12 M. Lejnieks, *Jurista Vārds* 5 (600) (2 February 2010): 10.

of the country's economic situation',[13] in turn, then the actual freedom of the state in terms of what it does under such circumstances is limited quite substantially.

The ruling from the Constitutional Court included the *obiter dictum* determination that in taking out an international loan and making promises related to political reforms, the government had ignored the separation of powers enshrined in the Constitution: 'A conceptual decision on receiving the international loan and on its conditions must be seen as an important and significant issue in national and public life. In accordance with the procedures specified in the Constitution, these decisions should have been taken by the legislature.'[14] Although parliament approved an economic stabilization programme, amended the 2009 national budget and approved the 2010 national budget, these decisions cannot replace the constitutional competence and obligation to take decisions on all essential issues that relate to the aforementioned loans, not least in terms of possible authorization for the Cabinet.[15] The Constitutional Court explained its ruling on the basis of previous legislative practices during the interwar period and after the restoration of independence: international loans were received only with the approval of the legislature. The Constitution also dictates a model of separation of powers, and the Court argued that parliament must first debate the need and conditions of such an international loan, also authorizing the Cabinet to take out the loan. 'Issues which the Cabinet resolved by concluding the relevant agreements with the international lenders must be seen as adequately important issues in terms of state and public life to ensure that they are debated via the legislative process at the parliament', the Court ruled.[16]

This ruling from the Constitutional Court created political instability in that it questioned the correctness of the political course the government was pursuing, as well as the constitutionality of the international loan. Some political parties represented in parliament wished to utilize this situation to try to change the parliamentary majority and to increase their political influence. That is why Prime Minister Dombrovskis asked the constitutional law experts from the Presidential Commission on Constitutional Law to offer recommendations to the government with respect to an appropriate resolution to the issue. The Commission agreed with the arguments of the Constitutional Court, indicating that agreements on specific international loans that substantially influence Latvia's economic situation in the long term must be confirmed by parliament. The Commission also, however, spoke to a greater opportunity for the parliamentary majority to engage in political manoeuvring than was the case with the Constitutional Court's ruling. That ruling clearly stated that the agreement of parliament as the legislature is needed in such cases, and that agreement must involve a separate law. The Commission, in turn, concluded that parliament can offer its agreement via various formats – a law, a

13 Ibid., 9.
14 Case No. 2009-43-01, para 30.1.
15 Ibid.
16 Ibid.

parliamentary resolution or conclusive activities before the loan is received, or else approving the process after the government takes the relevant decision.[17]

The flexible model proposed by the Commission allowed parliament to approve the decisions of two previous governments, without any political upheaval, by approving a specific resolution in this regard. On 21 January 2010, MPs from the parliamentary majority tabled a draft resolution on 'instructing the government to borrow financial resources as part of the international lending programme'. The resolution won the approval of parliament. The resolution formulated two limitations on what the government could do. One stated that the total loan could not exceed €7.5bn. The other stated that the money must be used to finance the national budget deficit, to ensure stability in the country's financial sector, to refinance national debt and to loan money to the national budget.[18]

This decision provided parliamentary cover for the international lending programme, clearly expressing agreement in terms of the authorization given to the government to continue to take out loans under the auspices of the programme. At the relevant parliamentary meeting, Prime Minister Dombrovskis insisted that

> in its ruling, the Constitutional Court stated that a decision on international loans that have a fundamental effect on the economy requires conceptual support from parliament. The draft resolution speaks to this instruction for the Cabinet – to continue the international lending programme … In its decision of 18 January, the Commission on Constitutional Law clearly stated that of decisive importance here is the will of parliament, not the form in which that will is expressed. This means that, from this perspective, this debate about whether this requires a resolution or law is fairly artificial. The will is important here, not the form in which the will is expressed.[19]

On 10 November 2010, parliament amended the law on budgetary and financial management to set out precise procedures for future international loans. Art. 35.2[1] of the Law states that a loan that exceeds 20 per cent of the amount of GDP that is defined in the annual national budget law for the relevant fiscal year, or a loan and relevant conditions that are declared to be of importance to the state and society and affect tax policies, the social security system or other issues related to legislative procedure, may be taken out by the Minister of Finance on behalf of the state only after the Prime Minister or the Minister of Finance has delivered a report about the loan to parliament and a law concerning the loan has been adopted and has taken effect.

---

17 The view stated by the Presidential Commission on Constitutional Law on 18 January 2010, *Latvijas Vēstnesis* (2011): 59-66.

18 See *Latvijas Vēstnesis*, 13 (26 January 2010).

19 Minutes of the Emergency Meeting of Parliament on 21 January 2010 [in Latvian]; available at: http://saeima.lv/steno/Saeima9/100121/st100121a.htm.

Case Law of the Constitutional Court

The Crucial Role of the Constitutional Court in the Crisis

The financial crisis had a substantial effect on the agenda of the Constitutional Court. The first cases that were accepted by the Constitutional Court in this regard related to a halt to the indexation of public pensions and to a freeze on wage increases for judges. Discussions about these cases occurred in the context of the financial crisis, and the Constitutional Court was still looking for the correct approach towards rulings related to 'crisis cases'. Justice Viktors Skudra later declared that

> during a difficult time for the country, when parliament had to approve so-called crisis laws that were complicated and unfavourable for individuals, the Constitutional Court became something of a lightning rod. The Court had to deal with unjustified or, in some cases, justified negative emotions from the widest possible variety of strata and groups in society. Other countries later had to take similar decisions. In Greece, for instance, that led to extensive protests and riots. People in Latvia are far more constructive – they wrote to the Constitutional Court. They trusted the Court before the 'crisis rulings', and they have continued to trust it since then.[20]

On the one hand, the need to take steps to overcome the consequences of the financial crisis placed pressure on the Constitutional Court to provide greater freedom of action to the legislative and executive branch of the government. There were those who expected that the Constitutional Court would lower standards related to self-limitation or protection of basic rights. On the other hand, during the financial crisis, politicians, civil servants and members of the public at large believed that these were only short-term difficulties, which would soon be overcome so that people could return to their previous lifestyles. This was proven by initial legislative decisions that did not lead to fundamental changes in normative acts, instead halting the provision of specific social guarantees or services for a certain period of time. Accordingly, quite some time had to pass before people came to understand that the financial crisis was not a short-term phenomenon that could be resolved simply via frugality and without any substantial reforms in many areas of governance.

The Constitutional Court first sent a clear signal to show that even during a financial crisis, fundamental rights must be respected by the legislature. In the case related to pension cuts, the Constitutional Court ruled that the disputed norms were unconstitutional and declared them to be null and void from the moment when

20 V. Skudra, 'A Review of the Work of the Constitutional Court between Conferences', 2009 and 2010 [in Latvian]; available at www.satv.tiesa.gov.lv/upload/Skudra_parskats_10_09_2010.pdf.

they were first approved. The Constitutional Court also instructed the legislature to determine a procedure by which unpaid pensions lost during the period that was disputed would be paid to pensioners by 1 July 2015.[21]

At the same time, however, the Constitutional Court did not choose a mechanical position that would ensure merely a formal view of the effects of the financial crisis and the legislative efforts to reform certain areas. The Constitutional Court marked out a pragmatic approach which respected public interests in relation to certain steps taken by the legislature. The ruling related to the child care subsidy stated that the existing system was not socially responsible or in line with public interests as such. Because the legislature's amendments were aimed at reversing these shortcomings, the Constitutional Court declared them to be constitutional.[22] This meant that the Constitutional Court was giving its blessing to legislative attempts to reform areas in which fundamental reforms were needed, so as to protect public interests. It is interesting that in some cases the Constitutional Court called on the legislature to implement even more important reforms, indicating in its rulings that existing regulations were not fully functional or were not sustainable. For instance, the Court clearly stated that the legislature must consider serious reforms to the pension system.[23] In those cases in which the legislature clearly violated the fundamental rights of individuals and often affected the less protected strata of society, the Court did not permit any compromises with the Constitution in response to the financial crisis.

Analysis of Constitutional Court rulings on 'crisis cases' requires a separate mention of statistical data. The number of complaints filed with the Constitutional Court and the number of cases accepted by the Constitutional Court show that disputes related to what the legislature did to overcome the crisis were important at the Constitutional Court in 2009, when individual complaints rose from 300 in the previous year to 4,030, and dropped to 593 in 2010 and to 488 in 2011. In this context, 2008 could be seen as a pre-crisis year, while 2011 was the first post-crisis year.

During the course of these years, the Constitutional Court handed down 21 rulings that dealt with issues related to the financial crisis. Justices extensively criticized parliament and the government, claiming that politicians were unable to take political responsibility for the reforms that they implemented, leaving the final responsibility for such issues with the Constitutional Court. Analysis of rulings, however, shows that the Constitutional Court found disputed norms to be unconstitutional only in approximately 25 per cent of cases. Most of the steps taken by the legislature to cut national budget spending and to increase national revenues were accepted by the Constitutional Court as being constitutional. The rulings from the Constitutional Court cover a wide range of issues. The most important ones relate to an interpretation of the socially responsible state and legal

21 Case No. 2009-43-01, 21 December 2009, paras 33-35.
22 Case No. 2011-03-01, 19 December 2011, para 22.
23 Ibid.

certainty principles, as well as to the Constitutional Court's views about ensuring social and economic rights.

The Principle of a Socially Responsible State

The Constitutional Court did not define the principle of a socially responsible state in *expressis verbis* terms for a long time. It was only in 2006 that the Constitutional Court ruled that the Constitution includes this principle.[24] The practice of the Constitutional Court indicates that the principle of a socially responsible state means the following: the state is obliged to ensure a standard of living worthy of human beings; this includes ensuring social assistance and fundamental services, as well as the accessibility of educational, health care, social care and cultural institutions; the state is obliged to protect people against social risks; the state is obliged to be concerned about social justice, including concern about evening out social differences, protecting the weak and ensuring equal opportunities; the country's residents must be linked to society, which means that people have obligations vis-à-vis other people.[25] The *expressis verbis* definition of the principle of a socially responsible state in Constitutional Court rulings was of deep symbolic importance on the eve of the financial crisis. The definition set out a precise framework for the freedom of action of the legislature, limiting the economic, social and cultural rights of individuals.

In its crisis rulings, the Constitutional Court did not view the principle of a socially responsible state as an additional instrument to protect fundamental individual rights. Instead, the Constitutional Court viewed the principle as an objective guideline in defining the state's obligations in implementing social, economic and cultural rights. The Constitutional Court has ruled that the principle of a socially responsible state is broader than any of the social, economic or cultural rights that are enshrined in the Constitution, and this means that in practice it did not expand guarantees related to the protection of fundamental individual rights.[26]

The principle of a socially responsible state was the decisive argument for the Constitutional Court in criticizing thoughtless legislative decisions concerning special budget spending related to social insurance, and in calling for considered reforms that would ensure the sustainability of that budget. For instance, the Court ruled that by refusing to increase social insurance contributions, the legislature did not provide for a new type of social insurance.[27] The Court has particularly emphasized the fact that

> the social insurance system in Latvia is sensitive, and any careless decision can create serious consequences in terms of the system's long-term stability.

24 Case No. 2006-07-01, 2 November 2006, para 18.
25 A. Kovaļevska, *Jurista Vārds* 32 (537) (26 August 2008): 10-13.
26 Case No. 2009-08-01, 26 November 2009, para 14.
27 Case No. 2009-43-01, 21 December 2009, para 31.1.2.

> Accordingly, the state is obliged to take the greatest care in implementing social policies and managing special social insurance budget resources. Excessively speedy and insufficiently considered decisions have, along with the financial condition of the state, led to the current unfavourable situation in the special social insurance budget.[28]

Despite several instructions from the Constitutional Court, the legislature failed to launch reforms of the special social insurance budget. 'The excessive delay in a legislative decision on how to ensure the financial sustainability of the special budget creates risks related to the violation of public interests and fundamental rights', the Court declared. 'Steps taken in relation to the short-term arrangement of the social insurance system do not address the causes of the financial problems of the special budget. The absence of considered, balanced and long-term policies, as well as the absence of adequate and economically justified processes, indicates that the existence of the pension system and social budget can be endangered.'[29] The principle of a socially responsible state does not keep the state from reviewing the scope of social security. The state can limit the payment of subsidies if this is in line with public interests and the rights of others to receive financial support from the state. At the same time, however, the state must, under all circumstances, ensure a minimal volume of the individual's social, economic and cultural rights, and it cannot step back from this by referring to a lack of financing resources.[30]

The Constitutional Court has also reviewed legislative reforms in the context of the principle of a socially responsible state: 'The principle of a socially responsible state means that the state is obliged to establish sustainable and balanced policies to ensure public welfare. The country must ensure a balance between its financial capabilities and not just personal rights in the social area, but also the need to ensure the welfare of the entire society, creating legal regulations that are aimed at the country's sustainable development.'[31] The Constitutional Court has also set up a mechanism to ensure special examinations of the reform goals of the legislature. This means that the Constitutional Court investigates the issue of whether the legislature has chosen socially responsible solutions.[32]

> Under conditions of economic decline, the criterion that is used to evaluate disputed norms in relation to constitutionality and overall legal principles is whether the solution chosen by the legislature is socially responsible. A socially responsible solution is one that ensures that the legal interests of individuals are harmonized with public interests. That's why it is necessary to evaluate the resources the legislature has chosen to ensure a gentle transitional period in

28 Ibid.
29 Case No. 2011-03-01, 19 December 2011, para 22.
30 Case No. 2009-44-01, 15 March 2010, para 16.
31 Ibid., para 22.
32 Case No. 2011-03-01, 19 December 2011, para 24.

terms of ensuring a balance between the country's economic capabilities and the welfare of the public.[33]

The Principle of Legal Certainty

The principle of legal certainty does not exclude the possibility that the state can amend existing legal regulations. An opposite approach would mean that the state could not react to changing circumstances. At the same time, however, when amending legal regulations, the state must take into account the rights that individuals hope to preserve and implement on the basis of lawful, justified and sensible certainty. The principle of legal certainty demands that when the state amends legal regulations, it keeps in mind a sensible balance between the certainty of individuals and the interests on behalf of which the regulations are being changed.[34] Although the principle of legal certainty has been one of the most often applied legal principles in the practice of the Constitutional Court, it is also true that it took on fundamental meaning only during the financial crisis. Under normal circumstances, the practices of the Constitutional Court involved much greater meaning for the principle of commensurability, while during the crisis the principle of legal certainty attracted the greatest attention.

Initially, the legislature tried to convince the Constitutional Court that the principle of legal certainty must be limited under conditions of financial crisis and that the Constitutional Court should grant the legislature greater freedom of action to take steps against the crisis. The Court responded by saying that parliament was wrong in believing that the principle of legal certainty should be changed under conditions of economic decline or other extraordinary circumstances. In such cases, the principle of legal certainty demands a balance between the legal certainty of individuals and public interests.[35] At the same time, however, the Constitutional Court has accepted a few steps back from the principle of legal certainty. It must first be noted that the Court began a careful evaluation of whether normative regulations are really ones upon which people can rely. In this context, the Court also ruled that if normative regulations have not been typically stable, then the principle of legal certainty does not protect individuals from unfavourable changes in normative regulations, particularly in relation to national budget spending.[36]

The Constitutional Court has also, in some cases, accepted the possibility of not awarding decisive meaning in protecting the principle of legal certainty if the legislature implements the necessary reforms of legal regulations so as to prevent previous mistakes in legal policies: 'In order to prevent harm related to important

33 Case No. 2009-44-01, 15 March 2010, para 22.

34 Case No. 2002-12-01, 25 March 2003, para 2; see also Case No. 2005-12-0103, 16 December 2005, para 24.

35 Case No. 2009-08-01, 26 November 2009, para 23.

36 Ibid., para 24.

public interests, priority should be given to them in comparison to the principle of legal certainty. When government institutions see essential violations of public interests, they have not just the right, but also the obligation to act.'[37] In such cases, a gentle approach to new regulations can be ensured not just by ensuring a sensible transition period or compensation, but also by other techniques:

> In certain cases, when the scope of limitations related to legal certainty is balanced with the need and urgency of amendments to legal regulations, steps back from the rights that are guaranteed to individuals are permissible even without a transition period. What is more, the existence of a gentle transitional period cannot be the only criterion in deciding whether a sensible balance is being observed.[38]

The Legislature's Freedom of Action during a Financial Crisis

The Constitutional Court has devoted a lot of attention in its rulings to ways of overcoming the financial crisis, particularly evaluating the limits on the legislature's freedom of action. This means that the Court makes sure that the steps taken by the legislature to overcome the crisis are in line with the Constitution.

In the area of social, economic and cultural rights, the Constitutional Court has accepted a general position which says that in implementing these rights, the state is obliged to create an effective, just and sustainable system, and it is also free to choose those methods and mechanisms that will lead to the implementation of such rights.[39] This is because when it comes to the implementation of the rights, the political considerations and priorities of the legislature are of great importance. The Constitutional Court cannot take the place of the legislature and identify the most appropriate political decisions or determine the way in which national budget resources are to be spent. The Constitutional Court's duty instead is to determine whether disputed norms are sensible and harmonized, whether the state has the resources that are necessary for the implementation of the norms, whether the norms are balanced and flexible, whether they speak to short-term and long-term satisfaction of needs, and whether the norms have been reviewed and presented to the public.[40]

The Constitutional Court has also, however, clearly ruled that the country's financial situation and the need to reduce the budget deficit at a time when other legitimate goals do not exist cannot serve as a general excuse for the state stepping back from rights that have been granted to people previously.[41] In commenting on the state's plan to implement the euro, the chief justice of the Court has said that

37 Case No. 2009-44-01, 15 March 2010, para 19.
38 Case No. 2010-21-01, 1 December 2010, para 21.
39 Case No. 2009-08-01, 26 November 2009, para 15.
40 Case No. 2009-43-01, 21 December 2009, para 29.2.
41 Ibid., para 27.2.

the implementation of the euro is not a legitimate goal that would justify possible offences against fundamental human rights:

> If, for instance, an economist says that our goal is to join the eurozone in 2014, then I will say that it is not a legitimate or constitutional goal. In the sense of the Constitution, the goal is the welfare of the people. It is not constitutional for us to rush toward the implementation of the euro while ensuring that the people of Latvia will live below the survival level.[42]

The Constitutional Court has, however, ruled that 'in specific cases the financial crisis can reach a level at which the legislature must be given freedom to take adjusting steps even if they violate the fundamental rights that are enshrined in the Constitution. At a time when the state's financial resources are very limited, the state is free to change rules on pensions so as to ensure a just social insurance system.'[43] It has to be said, however, that the Constitutional Court has never declared that the scope of the financial crisis has reached the level at which the constitutional limitations on the legislature's freedom of action should be reviewed.

When it comes to national budget cuts, in turn, the Constitutional Court has emphasized the importance of the principle of solidarity, which means that compensation for various government officials must be reduced at the same level, and it is not permissible to have a situation in which the consequences of the financial crisis are borne by individual social groups at a time when other social groups do not experience any cuts in income.[44]

There were several cases that the Constitutional Court heard in terms of evaluating the changes made by the legislature in the area of taxes. The issue was the application of the individual income tax to revenues with respect to which no taxes had to be paid in advance of the crisis. In this context, the Court first wrote about the importance of taxes in pursuing the overall goals of society:

> The collection of the individual income tax has been determined in pursuit of the interests of public welfare … These revenues can finance priorities in relation to social and economic projects, and they can also reduce inequality between the income and level of welfare of individuals. For that reason, the state uses tax policies in pursuit of social policy goals.[45]

The Constitutional Court also accepted the idea that a review of tax rates affects certain segments of society – those in which people receive sufficiently high levels of income:

---

42 V. Avotiņš , *Neatkarīgā*, 24 May 2011.
43 Case No. 2009-43-01, 21 December 2009, para 29.2.
44 Case No. 2009-76-01, 31 March 2010, para 6.2.3.
45 Case No. 2010-25-01, 6 December 2010, para 9.

> In evaluating the commensurability of the disputed limitation, the Constitutional Court takes into account the answer given by parliament to say that interest-based revenues are mostly concentrated in the more wealthy segment of society … The disputed norms are mostly not focused on the income of those social groups that require particular protection from the state.[46]

The Dialogue between the Constitutional Court and the Legislature

The financial crisis led to harsher exchanges of views between the Constitutional Court and political elites. This focused on the confirmation of knowledge about constitutional law in terms of the impossibility of evaluating the constitutionality of laws without political considerations and discussions about the priorities of the country's development. It is no accident that it has been recognized that the ability of the judicial branch to evaluate the constitutionality of laws also simultaneously means that the judicial branch intervenes in issues that have been considered by legislators.[47]

When the government was drafting laws on reducing pensions, justices of the Constitutional Court told the media that this solution would not be permissible. They recalled an earlier ruling which had declared a similar solution to be unconstitutional.[48] The Court also did not avoid expressing criticisms of the quality of the prepared draft laws, the speed at which they were drafted or the professionalism of those who did so.[49] The active expression of the Court's position led some politicians to criticize the Chief Justice for becoming involved in political debates. Particularly harsh communications occurred when the Court handed down several rulings related to the compensation of judges, as well as budget procedures. The debates between the Court and politicians sometimes became so harsh that after handing down a ruling on the compensation of judges, the Court made claims that politicians were placing pressure on the Court and that debates about how possible it was to implement the relevant rulings could be seen as a type of revenge against the Court.[50]

---

46 Ibid., para 10.5.

47 J. Žilys, *The Constitutional Court: Legal and Historical Preconditions* [in Latvian] (Teisinės informacijos centras, 2001), p. 132.

48 L. Šupstika and K. Tropiņa, 'Kūtris: Pensions are Personal Property Which Must be Preserved' [in Latvian]; available at www.diena.lv/sabiedriba/politika/kutris-pensija-ir-personas-ipasums-uz-kuru-tiesibas-jasaglaba-673497.

49 G. Kūtris, *Jurista Vārds* 3(598) (19 January 2010): 4-6.

50 'Is Pressure Being Placed Upon the Constitutional Court?' [in Latvian], *Jurista Vārds* 8(603) (23 February 2010): 5-9.

The Role of the President in Overcoming the Crisis

A Presidential Ultimatum for Parliament

The Latvian Constitution defines Latvia as a parliamentary republic in which the President largely has ceremonial functions.[51] In terms of constitutional practices since the restoration of Latvia's independence, however, the country's presidents have increased their political influence and authority. Particularly under the circumstances of a financial crisis, President Valdis Zatlers and President Andris Bērziņš took several essential steps that strengthened the role of the Latvian President in the country's constitutional system.

When the financial crisis began in 2008, President Zatlers actively involved himself in efforts to overcome the crisis and to improve the political system. Later Zatlers went so far as to say that he was a 'crisis President'. Early in December 2008, Zatlers engaged in negotiations with the political parties represented in parliament to reach agreement on how to overcome the crisis. On 10 December 2008, representatives of all of the political parties signed the so-called Advent Agreement on supporting efforts to stabilize Latvia's financial situation. The document stated the promise of these representatives to overcome the financial crisis and to support steps proposed by the government in terms of doing so. That allowed the government of Prime Minister Godmanis to gain convincing support from parliament when it came to the first steps that were taken to overcome the crisis.

From then on, the activities of Zatlers involved a far clearer confrontation with the parliamentary majority. On 13 January 2009, a protest was held in Rīga against the policies of the government, and it turned into a riot during which people demolished buildings and cars and tried to attack the parliamentary building. The next day President Zatlers delivered a conceptual speech which was later described as 'Zatlers' ultimatum'. 'Parliament and the government have lost their links to the electorate,' the President declared.

> I have said several times in the past that trust can only be regained with concrete steps. We must not engage in further confrontation. We must do things that the public demands, including constitutional amendments, a plan to stimulate the economy, and reforms in the system of national governance. For that reason, as the President of Latvia and as a man who represents the interests of the Latvian people, I insist on three specific instructions for parliament and the Cabinet of Ministers.[52]

---

51 D. Iļjanova, 'The Governmental System of the Republic of Latvia', in N. Chronowski, T. Drinóczi and T. Takácz (eds), *The Governmental Systems of Central and Eastern European States* (Wolters Kluwer Business, 2011), pp. 367-429, at pp. 419-421.

52 See *Latvijas Vēstnesis* 8 (15 January 2009).

The President formulated several demands in his speech. He called for amendments to the Constitution and the law on parliamentary elections, as well as for a reorganization of the government. Zatlers set a deadline of 31 March 2009, by which time the work had to be completed. 'I will give a categorical answer to the question of what will happen if the work is not done by March 31,' he announced. 'I will propose a national referendum on the dissolution of the Parliament.'[53]

Although some politicians harshly criticized the 'Zatlers ultimatum', arguing that the President could not issue specific instructions to parliament and set a deadline for the implementation thereof, parliament and the government basically yielded before the ultimatum. Among the most important political changes was the resignation of the Godmanis government. The government of Dombrovskis was approved, and factions that had previously been in opposition became part of the governing coalition.

In an address on 31 March 2009, President Zatlers summarized what parliament and the government had done, arguing that the establishment of the Dombrovskis government and other steps taken by parliament and the government showed that necessary changes to overcome the financial crisis could be seen in the political system. At the same time, however, President Zatlers also formulated future tasks for parliament and the government.[54] The President also used his constitutional competence to convene emergency meetings of the Cabinet of Ministers and to set their agenda.

Dissolution of Parliament

On 28 May 2011, less than a month before the expiration of his term in office, President Zatlers made use of the authority given to him in Art. 48 of the Constitution to propose the dissolution of parliament, doing so for the first time since the Constitution took effect.[55]

President Zatlers appeared on live television on 28 May 2011 to announce his decision to propose the dissolution of parliament: 'I have decided to act radically,' he said. 'This decision on the eve of the presidential election was personally difficult for me, and it is also complicated in constitutional terms. I clearly understand that my decision may draw a line across my prospect of being re-elected to the presidency.'[56] The President also discussed the reasons for his decision. He pointed to several decisions taken by parliament that led him to make the decision. The dissolution of parliament gained the support of broad swathes of society, and it was no surprise that when the referendum on dissolution was held

53 Ibid.
54 See *Latvijas Vēstnesis* 51 (1 April 2009).
55 See *Latvijas Vēstnesis* 83 (29 May 2011).
56 Ibid.

on 23 July 2011, 650,518 citizens voted in favour of dissolution and only 37,829 voted against it.[57]

Art. 49 of the Constitution states that if parliament has been dissolved or recalled, MPs retain their authority until such time as the newly elected parliament takes office. The existing parliament, however, can only convene meetings if the President convenes them. The President sets the agenda for such meetings. Because this was the first time in terms of constitutional practice that parliament had been dissolved, the procedures enshrined in Art. 49 had to be applied for the first time by the new President, Bērziņš. He took office after Zatlers' term in office expired.

The new President published the procedure whereby he would convene parliamentary meetings so as to clearly explain the way in which the work of parliament would be organized until the new parliament was in place. The Presidential Chancery announced that issues for parliament meetings would be put on the agenda not automatically, but only after an evaluation, a request for additional information and a series of consultations and meetings. Thus the President hoped to control the issues parliament would consider.[58] The President also took on responsibility for political stability when parliament was dissolved. For instance, he did not put on the parliament agenda the issue of a vote of no confidence in the Minister of Justice, leaving that matter up to the Prime Minister and the electorate.

Constitutional and Institutional Reform Proposals Triggered by the Crisis

The Experience and Necessity of Policy Planning

The law on development planning defines the country's national development planning system. The law applies to state and local government institutions and covers plans related to policies and territorial development. There are 12 fundamental principles that are enshrined in Art. 5 of the statute.[59] Among the most important principles is the principle of harmonizing financial opportunities and documents, which has been of importance because of the crisis. During the years of fiscal consolidation, the most often discussed principle of legal certainty had not been cited as a separate principle; instead, it is derived from the principle of harmonizing documents. The financial crisis forced Latvia to review its policy

57 Decision 36 of the Latvian Central Election Commission, 26 July 2011, *Latvijas Vēstnesis* 116 (27 July 2011).

58 See *Latvijas Vēstnesis* 117 (28 July 2011).

59 These are sustainable development, harmonization of interests, participation, cooperation, financial capabilities, transparency, supervision and prevention, subsidiarity, links between developmental planning and the drafting of normative acts, balanced development, timely issues and harmonization of documents.

planning documents, and those officials responsible for them have admitted that the time has come to get a clear sense of the usefulness of the many plans that have been drafted. Planning should ensure linkage with financial planning and should be harmonized between state and local government entities so that decisions are not mutually contradictory, but in the event, the theory in this area has not been translated into reality.

The law on development planning defines types of planning documents and their hierarchy. There are three types of planning documents in Latvia – those that apply to policy, those that apply to management of institutions and those that apply to territorial development. These are divided up in terms of short-term, medium-term and long-term importance. At the top of the long-term hierarchy is Latvia's sustainable development strategy, while the national development plan is at the top of the list of medium-term importance. It appears that since the onset of the financial crisis, politicians have come to understand the meaning of planning. The government's social partners and members of the public have been actively involved in debates about the national development plan. The plan has attracted attention specifically because members of the public want to see a clear plan on how to deal with the consequence of the crisis. Public scepticism about the government's capabilities and its far-sighted policies – something that is clearly based on experience – is seen in statements about the draft document that have been presented in the media.

The director of the Chamber of Commerce and Industry has even argued that the biggest problem with the plan can be found in the constitutional system, because governments change far too often in Latvia, and that also means frequent changes in planning. Indeed, frequent changes in government and unstable coalitions with contradictory goals that require a great deal of compromise are more likely to hinder implementation of plans then stabilize the processes. Social partners have also been critical of what the government did during the years of the crisis, arguing that this was due to poor planning. The Association of Local Unions, for instance, has argued very directly that during the crisis the government appeared to be more chaotic than planned in its work, with some major decisions being taken at the very last possible moment. The Association of Local Governments, for its part, has recommended that the government review its role in these processes. It is clear that previous national planning documents have been duplications of effort, and they have also been contradictory within themselves. What is clear is that without a serious evaluation of mistakes and failures, as well as long-term planning, Latvia will not recover.

Crisis Legislation

The legislature and the executive branch at first saw the financial crisis as a short-term difficulty that would require a review of specific functions and a reduction in national budget spending. This was mostly done via temporary regulations that set out special rules for the period of the crisis. One law spoke to compensation

for officials and employees from state and local government institutions in 2009, while another spoke to the payment of public pensions and subsidies between 2010 and 2012.

Some experts proposed the drafting of a special law to overcome the crisis – one that would set out special regulations aimed to resolve the crisis.[60] The same proposal came from the Association of Local Unions, which suggested a special crisis law to define all of the ways in which the country would step back from existing legal norms, and to ensure that this process would be monitored more easily and more transparently. The government sent to parliament a draft law on local government operations between 2009 and 2012, but parliament rejected this approach towards existing laws that regulated local government operations, instead proposing that a special law be adopted in relation to consolidation of the national budget. A separate law was not drafted, however, because steps aimed at overcoming the financial crisis were instead organized on the basis of amending the relevant normative acts.

It was the government that took the main decisions on what should be done, and submitted the necessary draft laws for parliamentary consideration. Usually, the government submitted reform-related draft laws together with the draft law on the national budget or amendments to that law, including all of the proposals in a single packet. The aim was to ensure that the draft laws could be approved quickly and that the government could maintain control over improvements to the laws being discussed by parliament.

The packet of budget laws included laws accompanying the budget – ones that amended other laws to make it possible to trim the budget and to engage in structural reforms (structural at least in the sense of the government's understanding). The law on budget and financial administration set out the procedure and procedural movement of packets of budget-related draft laws. The law stated that the budget was a resource for implementing national policies with financial methods. The goal of the budget would be to identify and justify the resources that were needed by the government, other state institutions and local governments in terms of implementing their obligations in relation to those areas in which financing was dictated in normative acts. This would ensure that revenues would cover costs during the period of time to which the law applied.

The chief justice of the Constitutional Court criticized the process of implementation of reforms via budget-related draft laws. He argued that the packets of such laws often included issues that had nothing to do with the national budget, but did have a substantial influence on the rule of law in terms of making decisions on publicly important issues while debating the budget – a process that required rapid decisions by the legislature.[61] It must be noted, however, that

60 A. Stucka, *Jurista Vārds* 17 (570) (28 April 2009): 12-14.

61 'When Laws Unrelated to the National Budget are Adopted in a Package of Budget Laws, Budgetary Procedures are Mixed Up' [in Latvian], *LETA News Agency*, 17 January 2011.

the Constitutional Court did, in general terms, accept the legislative practice of implementing reforms urgently and with the help of the packet of budget laws.[62] This essentially meant acceptance of the existing practice of implementing substantial reforms in the packet of budget laws. Nor did the Constitutional Court oppose the urgent review of draft laws, ruling that the 15 minutes given to MPs who wished to submit amendment proposals between readings of laws were a constitutional period of time.[63]

The scope of reforms proposed by the government in the packet of budget laws can be determined by comparing the number of draft laws in each packet of budget-related laws. In 2009, the packet of draft budgetary laws was more or less in line with the accustomed scope, but amendments to the 2009 national budget and the draft budget laws for the 2010 and 2011 national budget involved the necessary consolidation of budgetary spending by the government, substantially restructuring many aspects of life in the country. Experts who have reviewed the steps that were taken by the government and the legislature have quite frequently emphasized the fact that the reforms were implemented in a great hurry. Former Ministry of Finance state secretary Bičevskis, for instance, has said that during the years of the crisis, the government and parliament were forced to work very quickly on solutions that created much better prerequisites for government and oversight institutions in terms of acting quickly to stabilize the financial sector, thus strengthening the trust that the international community, ratings agencies, lenders and shareholders in the financial sector had in the stability of Latvia's financial sector. The Association of Local Unions, for its part, has said that during the initial phase of the crisis, when the government had to take quick steps to prevent insolvency of the state, decisions taken by the government were often incomprehensible, adopted too quickly and approved without much thought.

It must be said, however, that the legislature did implement several major reforms during the financial crisis that had been delayed in the past. On 18 December 2008, for instance, a new law on administrative territories and populated areas was approved. This implemented major reforms to the system of local government, moving from two levels of local governance to just one, merging local governments into larger territorial units and reducing the number of local governments. On 3 June 2010, the legislature amended the law on the courts to establish a Judicial Council which helps to draft policies and strategies for the judicial system and also works to improve the way in which the relevant work is organized. The need for an institution that represents the judicial branch was understood even before Latvia joined the EU in 2004, but it was only in 2010 that the legislature established the Council.

62 Case No. 2011-03-01, 19 December 2011, para 18.

63 Case No. 2009-08-01, 26 November 2009, para 17.1.

The Law on Compensation

One of the most important laws to be approved during the financial crisis was the one regarding compensation for officials and employees of state and local government institutions. Prior to Latvia's Soviet occupation, the wages of all public employees were regulated via a single normative act – regulations on wages for state employees which were approved in 1929. The government was instructed to draft the new law in the transitional rules of a law on compensation for the officials and employees of state and local government institutions in 2009. The authors of the draft law argued that it would bring greater order to the compensation system so that it would become more transparent, that all regulations concerning the wages and social guarantees of public sector workers would be placed under a single 'umbrella', that the number of systems related to wages would be reduced substantially, and that the overall system in the country would become more simple and understandable.[64] In commenting on the conceptual version of the law on compensation, constitutional law expert Pastars concluded that the law, which took effect on 1 January 2010, 'had a very ambitious goal – correlating all of the guarantees from other laws in a single law and substantially limiting the freedom of action of the relevant institutions'.[65] It is also very important in this context that the draft law was prepared as an independent regulation, as opposed to a step aimed at overcoming the financial crisis: 'The compensation law is not just a crisis law, even though the transitional rules do speak to several transitional periods.'[66]

After the compensation law was approved, it was amended several times to expand its scope by directly or indirectly covering nearly all people who were employed in the public sector. One of the most extensive reforms in this regard was the integration into the law of the compensation system for judges and prosecutors so as to ensure comparable and balanced development in all branches of government. It was specifically the reform of the system of compensation for judges and prosecutors that pointed to several shortcomings in previous regulations that were addressed by the law on compensation.

It is only natural that the government's social partners are not satisfied with the law on compensation, because they believe that the only result of this is an elimination of resources of motivation, making it impossible to ensure normal personnel management. The compensation law has also created a peculiar situation in the wages of the national governance system. Motivation of employees has been replaced by fear of being sacked under the crisis conditions. The Association of Local Unions, for its part, argues that the state is still interfering in the conclusion of joint labour agreements, thus limiting the constitutional rights of workers to engage in collective bargaining and violating the principle of autonomy for local

64 Annotation to the Draft Law. Available at www.titania.saeima.lv/LIVS/SaeimaLIVS.nsf/ 0/971F0E7A788C9469C225766200358B2B?OpenDocument.

65 E. Pastars, *Jurista Vārds* 6 (601) (9 February 2010): 6.

66 Ibid.

governments, in terms of state and local government capital enterprises being limited in their ability to do their work freely.

Irrespective of criticism about the compensation law, the Constitutional Court accepted its principles. It also accepted the approach the legislature chose in terms of regulating the compensation of state and local government officials and employees.[67] It would have been peculiar if someone had praised the compensation law, because the wages of every single person involved in the system of national governance have shrunk in practical terms.

At a time when Latvia was forced to review its spending and to borrow money so as to avoid bankruptcy, budget consolidation was implemented, and the preferred option was to increase the tax burden substantially while also implementing linear cuts in all areas of spending. The role of social partners increased during the financial crisis when it came to budgetary planning; the government involved them in planning structural reforms. An audit was conducted for governmental functions with the aim of increasing the effectiveness of the process, reducing budget expenditures, ensuring the utility of budget spending and preserving or improving the quality of the relevant services. The audit was supposed to make note of functions or jobs that the state could eliminate or delegate to the private sector. The functional audit commission which evaluated the preservation, reorganization or elimination of certain institutions and structural units involved representatives of the National Chancery, several Ministries and the social partners. The representatives of these organizations were also included in a reform management group which discussed financial and administrative reforms in national governance, as well as options for budget cuts.

The government has undertaken to continue with the rationalization of the number and structure of government institutions, and it has declared that it will implement the results of the functional audit so as to avoid any duplication of functions. The government declaration also includes the promise to get rid of functions that are atypical for the public sector, delegating some of them to the private sector and to NGOs while also monitoring the quality and availability of the relevant services.

Proposals on Constitutional Amendments

Reform of the Political System

Aspects of improvements to the Constitution attracted additional attention during the financial crisis as several political parties tried to reform the Constitution to introduce the popular election of the President and to expand the President's authority. President Zatlers, in particular, devoted attention to such amendments. On 16 March 2011, the President submitted major proposals on constitutional

67 Case No. 2011-10-01, 28 March 2012, para 27.

amendments to parliament. These spoke to the review of a series of elements in the President's authority. He proposed that the President be able to nominate two members of the Constitutional Court, the national auditor, the Ombudsman and the President of the Bank of Latvia for parliamentary approval. He also called for the ability of the President to control the make-up and activities of the government, adding once again that Art. 48 of the Constitution should be amended. The President also proposed the introduction of an impeachment procedure to protect the President against the risk of losing his job. Finally, he proposed the establishment of a system for the popular election of the President.[68]

Also, several political parties have regularly proposed amending the Constitution to institute a system for popular election of the President. None of the amendments were approved, however. In a speech dedicated to the restoration of Latvia's independence, Parliament Speaker Āboltiņa particularly focused on ways of improving the structure of state: 'The founders of the Republic of Latvia had no doubt that the new country must be a parliamentary republic,' she said. 'The path of parliamentarianism is not an easy one. It does not provide ready-made answers and does not point to a single smart person who knows all of the correct choices. No single leader takes decisions on issues that are important for the country. This is entrusted to the people and to us as representatives of the people.'[69]

After taking office, President Andris Bērziņš also focused on reforms to the Constitution. On 8 February 2012, he announced that over the next several years Latvia would draft a new constitution in line with the modern-day situation. He also said that he would be prepared to take the initiative in proposing reforms to the Constitution so that the process would be finished before the beginning of the term in office of a new parliament.[70] A little later the Presidential Chancery issued a more extensive explanation as to why a new Constitution was needed:

> If Latvia is to survive and develop not just in economic but also in political terms under conditions of globalization, it is necessary to implement qualitative changes to the model of national governance. These changes must facilitate responsibility and ensure a clearer distribution of responsibility among the branches of government, also ensuring that decisions are taken at the level that is closest to the population, thus ensuring a more compact system of national governance. The upcoming referendum and the vast social and economic problems which exist in our country confirm that such changes are needed.[71]

---

68 Available at http://www.president.lv/images/modules/items/PDF/iniciativa-satversmes-grozijumiem.pdf.

69 Available at http://www.saeima.lv/lv/transcripts/view/117.

70 L. Grundule, 'Bērziņš Prepared to Initiate New Constitution for Latvia' [in Latvian], *LETA News Agency*, 8 February 2012.

71 For the text of the announcement, see http://www.president.lv/pk/content/?cat_id=603&art_id=19098.

The only constitutional amendments that were approved during the financial crisis related to the right of the people of Latvia to propose the dissolution of parliament. Art. 14 of the Constitution was amended to say that one-tenth of the electorate could propose a national referendum on recalling parliament. Parliament would be dissolved if the majority of voters in the referendum supported the dissolution and if at least two-thirds of the number of people who had voted in the previous parliament election took part in the vote. The right to propose the referendum on a recall would not exist during the first year after a new parliament had taken office or during the last year before the end of the relevant term in office, during the last six months of the term in office of the President or sooner than six months after the previous national referendum on recalling parliament.

Fiscal Discipline

As the EU seeks to overcome the financial crisis, fiscal discipline has been seen as something of a panacea. Nearly all of the things that member states do to ensure fiscal discipline are seen as a solution for all economic problems. Nearly all EU member states signed a Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. This agreement states that after it takes effect, signatory countries would be obliged to approve norms that would guarantee the absorption of rules related to fiscal discipline that are enshrined in Art. 3.1 of the agreement, preferably at the constitutional level.

Implementation of principles of fiscal discipline is not just something that relates to the new agreement; this has also been a conscious choice for Latvia as it has sought to overcome the financial crisis. That is why the government began to work on the relevant constitutional amendments and on a law on fiscal discipline even before the Treaty was signed. A draft law on fiscal discipline was submitted to parliament by the government on 6 December 2011, and consideration of the proposal has continued in parallel to the ratification of the agreement.

The fiscal discipline law speaks to the implementation of medium-term budgetary planning. The intention is to ensure that the fiscal policy planning instrument is a framework law on medium-term budgetary planning. This law would be prepared each year to cover the next three years, defining the maximum spending of the consolidated national budget during the first and second year of the medium-term budgetary framework law period, as inherited from the second and third year of the previous period of the medium-term budgetary framework.

The government has also drafted constitutional amendments to make sure that the new fiscal policy initiatives are in line with the Constitution. Art. 66.1 would be amended to say that parliament is responsible for a frugal budget and for the establishment of savings aimed at the development of the country and its financial stability. In advance of the beginning of each fiscal year, parliament would take a decision on national revenues and spending under the framework of a multi-year budgetary plan. Draft budgets would be submitted to parliament by

the government, which would ensure a balanced approach to financial affairs in the country.

These amendments to Art. 66.1 would initially ensure a constitutional strengthening of parliament's responsibility for a frugal budget and for savings related to national development and financial stability. It would instruct parliament to consider the state's revenues and expenditures each year in advance of the beginning of the new fiscal year, with proposals on this submitted by the government. It would also insist that the government take a balanced approach to financial affairs in the country. The enshrining of these principles at the constitutional level, according to the authors of the proposed amendments, would help to avoid a situation in which, during an upswing in the economic cycle, the government and parliament do not have sufficient motivation to cut the national budget deficit, as well as a situation in which, during a period of economic decline, they do not have financial opportunities to stimulate economic development. Parliament has not yet begun a review of the proposed constitutional amendments because experts in the area of constitutional law have said that principles of fiscal discipline can be ensured via the ratification of the European agreement and the approval of the law on fiscal discipline, without any need at this time to amend the Constitution.[72]

Essential in the context of the constitutional amendments is that current constitutional regulations in this area can be determined not just at the level of Art. 66 of the Constitution, but also by a review of materials related to the drafting of the Constitution, as well as interpretations offered by the Constitutional Court. The use of these materials suggests that an interpretation of the Constitution can make it possible to develop necessary guidelines in the area of fiscal discipline without actually amending the Constitution itself. First, parliament approved the agreement in accordance with the constitutional procedures that are referred to in Art. 68.2 of the Constitution. The chairman of the Parliament Foreign Relations Committee, Kalniņš, said in debate about the agreement that 'the Foreign Relations Committee reviewed this agreement on 9 May, and the first thing that we did was discuss the procedure for confirming it. We … agreed that this agreement might delegate some of the competences of our government institutions to the institutions of the EU, which means that approval of this agreement by parliament requires a constitutional majority.'[73] This means that after its ratification, the agreement became an Act at the constitutional level, and its regulations are comparable to those that are enshrined in the Constitution. The principles of fiscal discipline that are found in the agreement, in other words, have become a part of constitutional regulations. The Constitutional Court has ruled on several occasions that international agreements ratified in accordance with Art. 68.2 of the Constitution do achieve the constitutional level.[74]

72 *Jurista Vārds* 20(719) (15 May 2012): 5-11.

73 Available at http://www.saeima.lv/lv/transcripts/view/119.

74 See, for example, Case No. 2007-10-0102, 29 November 2007, para 56.3; Case No. 2008-35-01, 7 April 2009, para 10.4.

Second, Art. 66.2 of the Constitution also states that when parliament approves a decision that involves unexpected budgetary expenditures, it must simultaneously allocate the funds that are needed to cover such expenditures. One of the authors of the Constitution explained the need for the principle as a member of the Constitutional Convention:

> If an owner does not wish his business to collapse, then he must act in accordance with his resources. Clearly that also applies to the state, and so when we decide on expenditures, we must speak to the sources from which resources to cover the expenditures shall come … This supplement is needed to ensure propriety in finances, because our financial circumstances are very dire.[75]

Prior to the global financial crisis, these constitutional regulations had not been thoroughly evaluated or analysed by legal scholars. Today, however, it is possible to declare that principles of fiscal discipline were enshrined in the Constitution on 15 February 1922, 90 years ago, and all that is necessary today is to find an appropriate interpretation thereof. It can be declared that the Constitution strictly demands that the country's financial resources be utilized in a sensible and commensurate way, and that expenditures be in line with the resources that are available. It is from this demand that we can derive the principle of fiscal responsibility among constitutional institutions, noting that this principle includes two elements: the principle of balance in the national budget and the duty to observe fiscal discipline.[76]

75 Minutes of the Constitutional Convention meeting of 15 February 1922.

76 D. Amolina, *Jurista Vārds* 33 (680) (16 August 2011): 11-12.