



Kristīne Jarinovska

Dr. iur., Leading Researcher  
University of Latvia

# Popular Initiatives as Means of Altering the Core of the Republic of Latvia

## 1. Introduction

The Constitution of the Republic of Latvia (the *Satversme*) is the oldest Eastern or Central European constitution still in force and the sixth oldest still-functioning republican basic law in the world, having been adopted by the *Constitutional Assembly of Latvia (Satversmes sapulce)* on 15 February 1922.

The *Satversme* provides for various forms of direct popular participation. Besides the ordinary right to elect the Parliament, it sets forth rights

- to propose (Article 78 of the *Satversme*), adopt (Article 78 through Article 79, §1 of the *Satversme*), and repeal (articles 72 and 74 of the *Satversme*) ordinary law;
- to propose (Article 78 of the *Satversme*), adopt (Article 78 and Article 79, §1 of the *Satversme*), and repeal (articles 72 and 74 of the *Satversme*) amendments to the *Satversme*, which includes a right to approve amendments made by Parliament to the core articles—1, 2, 3, 4, 6, and 77—of the *Satversme* (Article 77 of the *Satversme*);
- to propose (articles 14 and 48 of the *Satversme*) and decide on recalling the Parliament (Article 48 of the *Satversme*);
- to decide on removing the President instead of recalling the Parliament, if the President proposes a recall (Article 50 of the *Satversme*); and
- to decide on participation in the European Union, including to discontinue participation (Article 68, §3 and Article 79, §2 of the *Satversme*), and on terms of participation in the European Union (Article 68, §4 and Article 79, §2 of the *Satversme*).

There are some limitations in respect of subjects of referenda and time for organising a referendum, yet they are few. Means of legislative referenda are not to be used for decision on matters related to ‘the Budget and laws concerning loans, taxes, customs duties, railroad tariffs, military conscription, declaration and commencement of war, peace treaties, declaration of a state of emergency and its termination, mobilisation and demobilisation, as well as agreements with other nations may not be submitted to national referendum’ (Article 73 of the *Satversme*), with the exception of certain questions of the European Union. As to confidence referenda, electors’ right to propose recalling Parliament ‘may not be exercised [for] one year after the convening of the Saeima [the Latvian Parliament] 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’ (Article 14 of the *Satversme*).

The most popularly disputed form of direct popular participation is the referendum on constitutional matters. Although the wording of the *Satversme* seems to limit legislative referendum in respect of certain matters, recent developments show that, in practice, there are no limitations on matters decided upon by legislative referendum. To illustrate this, the author will describe three initiatives for referendum on constitutional amendments—first, on limiting educational rights; second, on introduction of Russian as a second official language and thus making changes to the core of the Republic of Latvia; and, third, on affording of citizenship to as many as 280,584 non-citizens, accounting for 13.74% of all residents of Latvia.<sup>\*1</sup> Although those initiative failed—in the first case, during collection of signatures, the second as a result of a popular vote; and in the third case, after the Central Election Commission stopped further organising actions in respect of submission of a request by 10,000<sup>\*2</sup> people to—they reflect historically and theoretically ascertained<sup>\*3</sup> deficiencies of direct popular participation, which border on violation of human rights and reckless questioning of the state's sovereignty.

## 2. Language of education

The constitutional content of educational rights in the current Latvian legal framework was long neglected and regarded as self-evident. Although the content was altered through lower external normative acts, this was not carried out to such an extent as would significantly reduce the level of protection of educational rights achieved or come into contradiction with other norms of the *Satversme*. An initiative to organise a referendum to limit state funding for education on the basis of language of education with effect from 1 September 2012 was the first and, thus far, only constitutional development of Article 112 of the *Satversme*.<sup>\*4</sup> Whilst the initiative ended on 9 June 2011 with an insufficient number of signatures (120,433 out of the 153,232 necessary)<sup>\*5</sup>, it raised multiple questions as to how the resolution of conflicts of constitutional norms would have been handled if the initiative had resulted in amendment of the *Satversme* and as to determination of the margin of appreciation of the Central Election Commission for consenting to the initiative and starting to collect signatures for organising a referendum.

The initiative proposed that primary and secondary education in the state language be ensured within the space of a year.<sup>\*6</sup> The initiators planned by this means to put an end to bilingual education or at least to scale it down to a minimum<sup>\*7</sup>, thus leaving it to privately owned education institutions and their determination of tuition fees.<sup>\*8</sup>

<sup>1</sup> Centrālās statistikas pārvaldes datu bāzes, ISG09. Pastāvīgo iedzīvotāju valstiskā piederība 2012. gada sākumā [‘Database of the Central Statistical Bureau, ISG09: Residents by nationality at the beginning of 2012’]. Available at <http://data.csb.gov.lv/> (most recently accessed on 14.10.2012) (in Latvian).

<sup>2</sup> Article 23 (1) of the law ‘On popular referendum, law initiative, and initiative of citizens of the European Union’. Par tautas nobalsošanu, likumu ierosināšanu un Eiropas pilsoņu iniciatīvu. – *Latvijas Vēstnesis*, 20 April 1994, No. 47 (178) (in Latvian).

<sup>3</sup> M. Suksi. Bringing in the people. *A Comparison of Constitutional Forms and Practices of the Referendum*. Dordrecht: Martinus Nijhoff Publishers 1993, pp. 40–125, with the most notorious examples being given on pp. 93–103.

<sup>4</sup> Article 112 of the *Satversme* provides that ‘[e]veryone has the right to education. The State shall ensure that everyone may acquire primary and secondary education without charge. Primary education shall be compulsory’.

<sup>5</sup> Par parakstu vākšanas likuma “Grozījumi Latvijas Republikas Satversmē” ierosināšanai rezultātu: Centrālās vēlēšanu komisijas 2011. gada 21. jūlija lēmums Nr. 34 [‘On the results of collection of signatures for initiating the law “Amendments to the *Satversme* of the Republic of Latvia”: Decision of the Central Election Commission of 21 July 2011, No. 34’]. Available at <http://web.cvk.lv/pub/public/30044.html> (most recently accessed on 14.10.2012) (in Latvian).

<sup>6</sup> The draft amendment to Article 112 of the *Satversme* provided: ‘Everyone has the right to education. The state shall ensure that everyone may acquire primary and secondary education without charge in the state language. Primary education shall be compulsory.’ The draft of the amendment to the *Satversme* provided also this transition provision: ‘From 1 September 2012, all education institutions of the state and local governments ensure education, starting with the first year of primary education, in the state language’. See Grozījumi Latvijas Republikas Satversmē: likumprojekts Centrālajai vēlēšanu komisijai parakstu vākšanai [‘Amendments to the *Satversme* of the Republic of Latvia, draft submitted to the Central Election Commission for collection of signatures’]. Available at <http://web.cvk.lv/pub/public/29883.html> (most recently accessed on 9.12.2011) (author’s translation from Latvian).

<sup>7</sup> Saruna ar Raivi Dzintaru [‘Interview with Raivis Dzintars’]. – *Latvijas Avīze*, 11 May 2011 (in Latvian).

<sup>8</sup> On state subsidies to private education, see ‘On the compliance of Section 59 (second paragraph, second sentence in the part on participation in financing private education institutions if the programs are implemented in the official language) of the Education Law with Article 91 of the Republic of Latvia *Satversme* (Constitution) and Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (as being read in conjunction with Article 2 of the First Protocol)’ (judgement of the Constitutional Court of Latvia of 14 September 2005 in case 2005-02-0106). – *Latvijas Vēstnesis*,

According to the Constitutional Court of Latvia, the intent of initiators to organise a referendum cannot entail repeal of ‘the principle of wholeness of the *Satversme*’ that ‘prohibits interpretation of separate norms of the *Satversme* as isolated from the other *Satversme* norms, because the *Satversme* as a document, which is a cohesive whole, influences the contents and sense of the norm’<sup>9</sup>. This means that at least the basic human rights and general principles of law listed in the *Satversme*—such as the right of minorities to preserve and develop their language and their ethnic and cultural identity<sup>10</sup>, the rights of a child<sup>11</sup>, and the right to equality and non-discrimination<sup>12</sup>, not to mention the principles of proportionality<sup>13</sup>, legal certainty, and legitimate expectations<sup>14</sup>—have to be honoured in the interpretation of all proposed amendments. Additionally, the state is obliged to maintain, if not increase, the level of protection of basic human rights.<sup>15</sup> Therefore, even if the above-mentioned referendum had been organised and the *Satversme* had been amended, the result would not have been compliant with the initial intent of its initiators, on account of the necessity to ensure basic human rights and the level of protection of those rights achieved. In fact, there would have been no change at all in primary and secondary education.

The proposal to specify the terms of Article 112 separately would not have expanded the scope of the state’s obligations, because the obligation to provide free education in the state language derives from Article 4 of the *Satversme*.<sup>16</sup> Moreover, it could not have prevented the state from ensuring free education in other languages too, at least proceeding from the basic human rights and general principles of law listed by the *Satversme*. Therefore, the wording proposed for Article 112 of the *Satversme* could not have influenced the currently constitutionally protected content of educational rights.

In its turn, the transition provision constitutes a peculiar challenge to ideas about the ‘fathers of the *Satversme* as the rational constitutional legislator’<sup>17</sup> and ‘dogma on perfection of the *Satversme*’<sup>18</sup>. Namely, it lacks a formal link with a legal norm to which it was designed. Moreover, the obligation to provide education in the state language applies to any education institution established by the state or local government, except in provision of pre-school education. Therefore, the transitional norm would, in fact, have been applicable to all levels of education, except pre-school education; all types of education; all forms of acquisition of education; and all education activities at education institutions established either by the state or local-government.

By appealing to rationality and ascribing to the constitutional legislator an understanding of the content of the term ‘institution’ (‘iestāde’) as defined by the State Administration Structure Law<sup>19</sup>, not by the

16 September 2005, No. 148 (3306). English text available via <http://www.satv.tiesa.gov.lv/upload/2005-02-0106E.rtf> (most recently accessed on 28.10.2013); K. Jarinovska. Komentārs Satversmes 112. pantam [‘Commentary on Article 112 of the Constitution’]. – *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Rīga: Latvijas Vēstnesis 2011, p. 667, §73 (in Latvian); K. Jarinovska. *Izglītības tiesības: konstitucionālie aspekti Satversmes 112. panta kontekstā* [‘Education Law: Constitutional Aspects in the Context of Article 112 of the Constitution’]. Rīga: Latvijas Universitāte 2011, pp. 63–64 (in Latvian).

<sup>9</sup> Par Radio un televīzijas likuma 46. panta sestās, septītās, astotās un devītās daļas atbilstību Latvijas Republikas Satversmes 58. un 91. pantam [‘On the compliance of Section 46, paragraphs 6, 7, 8, and 9 of the Radio and Television Law with Sections 58 and 91 of the Republic of Latvia *Satversme* (Constitution)’] (judgement of the Constitutional Court of Latvia of 16 October 2006 in case 2006-05-01). – *Latvijas Vēstnesis*, 24 October 2006, No. 169 (3537), §16. Available at <http://www.satv.tiesa.gov.lv/upload/2006-05-01.rtf> (most recently accessed on 9.12.2011) (in Latvian).

<sup>10</sup> Article 114 of the *Satversme*.

<sup>11</sup> Article 110 of the *Satversme*.

<sup>12</sup> Article 91 of the *Satversme*.

<sup>13</sup> Article 116 of the *Satversme*.

<sup>14</sup> Article 90 of the *Satversme*.

<sup>15</sup> K. Jarinovska. *Informācijas atklātības princips un tā galējā robeža: teorijas īstenošana praksē (promocijas darbs)* [‘Freedom of Information and Its Ultimate Margin: Translating Theory to Reality—a Dissertation’]. Rīga: Latvijas Universitāte 2009, pp. 72–73. Available at <https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F1573561408/Kristine%20Jarinovska%202010.pdf> (most recently accessed on 21.12.2012) (in Latvian).

<sup>16</sup> Article 4 of the *Satversme* provides: ‘The Latvian language is the official language in the Republic of Latvia. The national flag of Latvia shall be red with a band of white.’

<sup>17</sup> J. Pleps. *Satversmes iztulkošanas konstitucionāli tiesiskie un metodoloģiskie problēmējautājumi (promocijas darbs)* [‘Problems of Constitutional, Legal and Methodological Interpretation of the *Satversme*: A Dissertation’]. Rīga: Latvijas Universitāte 2010, p. 158. Available at <https://luis.lu.lv/pls/pub/luj.fprnt?l=1&fn=F130724837/Janis%20Pleps%202010.pdf> (most recently accessed on 24.10.2013) (in Latvian).

<sup>18</sup> *Ibid.*, p. 199.

<sup>19</sup> Valsts pārvaldes iekārtas likums [‘State Administration Structure Law’]. – *Latvijas Vēstnesis*, 21 June 2000, No. 94 (2669) (in Latvian). English text available via <http://www.vvc.gov.lv/> (most recently accessed on 23.3.2013).

Educational Law<sup>\*20</sup>, one can assume that the content of the legal norm could be limited, with institutions of higher education, e.g. universities, which are derived public persons, being excluded from its application. Moreover, through invocation of a rationality argument, it is possible to assume that the content of the legal norm could be limited, so as to exclude from its content language learning—a native language (one's first language) and a foreign language. However, such reduction does not resolve several other issues—*inter alia*, that of the destiny of such an education institution established by either the state or local government as ensures only a programme of education that cannot be implemented in the state language. Questions include whether the education institution has to be liquidated or reorganised. Another is whether, in the case of liquidation or reorganisation, the necessary means are in place to ensure meeting of all legal requirements. In the case of liquidation, shall a principle of equality and non-discrimination be observed? Yet another question is whether international treaties would have to be renounced and, if so, how many. Furthermore, reduction does not resolve issues related to the legitimate expectations of a person who has started but not yet completed an education programme that cannot be implemented in the state language; whether the state has to allocate aid for education at private education institutions in the event that continuation of the education programme in the state language is impossible; and whether, and to what extent, the state has to allocate aid for continuing education further in the state language. The problems mentioned could have been rationally resolved via norms of external normative acts, though, in account of the time limit set by the transition provision, an optimal—in terms of *légistique*—solution was unlikely. Rather, the transition provision, if it had been adopted, could have become evidence of imperfection of the *Satversme* as a document and an interesting deviation from the concept of 'the *Satversme* as an ideal form'<sup>\*21</sup>.

### 3. The state language

In an echo to the above-mentioned initiative to organise a referendum, there followed another contradiction-entailing initiative. It proposed several constitutional amendments for introducing Russian as Latvia's second official language—i.e., amendments to the *Satversme*'s Articles 4 (on Latvian as the state language), 18 (on the solemn promise of a member of Parliament to strengthen the Latvian language), 21 (on Latvian as the working language of the Parliament), 101 (on Latvian as the working language of local governments), and 104 (on the right to receive a reply to a petition in Latvian). Obviously, the proposed amendments would have influenced other constitutional norms as well. Moreover, since Article 4 of the *Satversme* alike norms of independence, democracy, sovereignty, territorial wholeness, and basic principles of elections that form the core of the *Satversme* (according to Article 77 of the *Satversme*), the initiative, in fact, proposed discontinuing an existing state and establishing a new one that is no longer a nation-state wherein Latvians exercise their rights to self-determination, enjoying and maintaining their cultural uniqueness.

Beside statehood elements, the initiative would have influenced multiple basic human rights and general principles of law protected by the *Satversme*, such as the right to preserve and develop the Latvian language and Latvian ethnic and cultural identity<sup>\*22</sup>, to participate in the work of the state and of local government, and to hold a position in the civil service<sup>\*23</sup>; the right to choose one's employment and workplace freely<sup>\*24</sup>; the right to education<sup>\*25</sup>; the rights of a child<sup>\*26</sup>; and the right to equality and non-discrimination<sup>\*27</sup>, not

<sup>20</sup> Izglītības likums [‘Educational Law’]. – *Latvijas Vēstnesis*, 17 November 1998, No. 343/344 (1404/1405) (in Latvian). English text available at <http://www.vvc.gov.lv/> (most recently accessed on 23.3.2013).

<sup>21</sup> J. Pleps (see Note 17), p. 199.

<sup>22</sup> Articles 4 and 114 of the *Satversme*. Par Valsts valodas likuma 19. panta un Ministru kabineta 2000. gada 22. augusta noteikumu Nr. 295 “Noteikumi par vārdu un uzvārdu rakstību un identifikāciju” atbilstību Latvijas Republikas Satversmes 96. un 116. pantam [‘On compliance of Article 19 of the Language Law and the Cabinet of Ministers August 22, 2000 regulations No. 295 “Regulations on Spelling and Identification of Names and Surnames”, with articles 96 and 116 of the *Satversme* (Constitution)'] (judgement of the Constitutional Court of Latvia of 21 December 2001 in case 2001-04-0103). – *Latvijas Vēstnesis*, 22 December 2001, No. 187 (2574). Available at <http://www.satv.tiesa.gov.lv/?lang=2&mid=19/upload/2001-04-01-3E.rtf> (most recently accessed on 24.10.2013) (in English); European Court of Human Rights, decision of 7 December 2004, case 71074/01, *Mentzen alias Mencena v. Latvia* (in English).

<sup>23</sup> Article 101 of the *Satversme*.

<sup>24</sup> Article 106 of the *Satversme*.

<sup>25</sup> Article 112 of the *Satversme*.

<sup>26</sup> Article 110 of the *Satversme*.

<sup>27</sup> Article 91 of the *Satversme*.

to mention the principles of proportionality<sup>\*28</sup>, legal certainty, and legitimate expectations.<sup>\*29</sup> To illustrate what has been mentioned above, the right to education is taken as an example here. Although the initiative did not propose amendments to Article 112 (on education-related rights), it obviously would have had an influence on the content of that article if the outcome of the referendum had been in favour of the proposed amendments: 229,039 pupils at primary and secondary general education institutions, 35,767 pupils at vocation secondary education (ISCED-97 3 level) institutions, and 103,856 students at higher education institutions<sup>\*30</sup> suddenly would have had an obligation to know Russian as their first language, and 151,912 pupils at primary and secondary general education institutions (or 2/3 of all pupils at primary and secondary general education institutions) to acquire an education in Latvian<sup>\*31</sup>, whereas only 81,753 pupils at these education institutions chose to learn Russian as a foreign language<sup>\*32</sup> (54% of the total number of pupils learning in Latvian). In comparison, 188,357 pupils at primary and secondary general education institutions chose to learn English as a foreign language<sup>\*33</sup> (82% of all pupils at these education institutions). Moreover, the 20 years since the end of the occupation by the USSR have bred a new generation, without any knowledge of Russian. Thus, again an initiative to organise a referendum raises a host of questions with respect to the core of educational law, including several of resolution of conflict of constitutional norms.

Although the initiative to introduce Russian as a second official language was wound up on 18 February 2012 on account of an insufficient number of ballots (82.3%, or 1,271,657 against the initiative, with 821,722 of these by active participation and 449,935 through passive participation, including 3,524 invalid votes; 17.7%, or 273,347 in favour of the initiative)<sup>\*34</sup>, even this political defeat of pro-Soviet ideology may in the long run turn into an effective tool for destruction of the nation-state in which Latvians exercise their right to self-determination and to enjoy and maintain their cultural uniqueness.

There was an opportunity for the Constitutional Court of Latvia to mark a line for popular initiatives in time; however, it refrained from fulfilling the associated responsibility. For almost 11 months, the Constitutional Court of Latvia did not review an application by members of Parliament challenging the constitutionality of normative incapacity of authorities involved in organising popular referenda such as the one for introduction of a second official language, to stop further organising actions, if necessary, in respect of a popular initiative. As a result, a popular referendum did take place and the question of conflict of constitutional norms and the right of creation of such a conflict through a popular initiative escalated. On 19 December 2012, the Constitutional Court of Latvia dismissed the application, indicating that authorities involved in organising popular referenda have a right to review the constitutionality of a popular initiative and a right to stop further organising actions, if this should be necessary. However, any authority bringing a popular initiative to a halt has to be aware that its action may be reviewed by either the Department of Administrative Cases of the Senate of the Supreme Court of Latvia or the Constitutional Court of Latvia, depending on authority.<sup>\*35</sup>

<sup>28</sup> Article 116 of the *Satversme*.

<sup>29</sup> Article 90 of the *Satversme*.

<sup>30</sup> Centrālās statistikas pārvaldes datu bāzes, IZG01. Izglītības iestādes un izglītojamo skaits (mācību gada sākumā) [‘Database of the Central Statistical Bureau, IZG01: Education institutions and the number of enrolled (at the beginning of the school year)’]. Available at <http://data.csb.gov.lv/> (most recently accessed on 9.12.2011) (in Latvian).

<sup>31</sup> Centrālās statistikas pārvaldes datu bāzes, IZG01. Izglītības iestādes un izglītojamo skaits (mācību gada sākumā), IZG10. Vispārīzglītojošo dienas skolu skolēnu sadalījums pa mācību valodas (mācību gada sākumā; bez speciālajām skolām un klasēm) [‘Database of the Central Statistical Bureau, IZG01: Education institutions and the number of enrolled (at the beginning of the school year); IZG10: Distribution of pupils at primary and secondary general education (daytime) institutions by language of education (at the beginning of the school year, excluding special-education schools and classes)’]. Available at <http://data.csb.gov.lv/> (most recently accessed on 9.12.2011) (in Latvian).

<sup>32</sup> Centrālās statistikas pārvaldes datu bāzes, IZG01. Izglītības iestādes un izglītojamo skaits (mācību gada sākumā), IZG11. Svešvalodu apguve vispārīzglītošajās skolās (mācību gada sākumā) [‘Database of the Central Statistical Bureau, IZG01: Education institutions and the number of enrolled (at the beginning of the school year); IZG11: Languages of learning at the primary and secondary general education institutions (at the beginning of the school year)’]. Available at <http://data.csb.gov.lv/> (most recently accessed on 9.12.2011) (in Latvian).

<sup>33</sup> *Ibid.*

<sup>34</sup> 2012. gada 18. februāra tautas nobalsošanas par likumprojekta “Grozījumi Latvijas Republikas Satversmē” pieņemšanu rezultāti [‘Results of the referendum of 18 February 2012 on the law “Amendments to the *Satversme* of the Republic of Latvia”’]. Available at <http://www.tn2012.cvk.lv/> (most recently accessed on 20.11.2012) (in Latvian).

<sup>35</sup> Par likuma “Par tautas nobalsošanu un likumu ierosināšanu” 11. panta pirmās daļas un 25. panta pirmās daļas atbilstību Latvijas Republikas Satversmes 1., 77. un 78. pantam [‘On compliance of Section 11 (1) and Section 25 (1) of the law “On

## 4. Latvian citizenship

On 2 September 2012, the Central Election Commission received a draft for amendments to the Citizenship Law, providing that, from 1 January 2014, all non-citizens (a status held by former USSR citizens who do not possess citizenship of Latvia or any other state and who do not apply for citizenship while residing in Latvia<sup>\*36</sup>) who by 30 November 2013 had not applied, under the rules of the Cabinet of Ministers, to retain the status of non-citizen shall be considered to be citizens of Latvia.<sup>\*37</sup> In fact, these amendments would have automatically granted citizenship to any person who might have the status of non-citizen, without regard for place of residence, interest in acquiring citizenship of Latvia, and awareness of the amendments. Therefore, if the amendments had been made, they would have called into question the sovereignty of the Republic of Latvia. The core component of the state would be formed of a decision of the type made on casual matters, a decision disregarding the political and legal consequences of such an act and, in essence, stating that the regaining of independence for the Republic of Latvia in 1990 and the acknowledgement of the continuity of the republic established in 1918 have been faulty.<sup>\*38</sup> Moreover, automatic and forced acquisition of citizenship after more than 20 years of reinstatement of the Republic of Latvia and dissolution of the USSR comes into strong conflict with general principles of international law on citizenship<sup>\*39</sup> and disregards multiple legal issues that would arise from people unwillingly acquiring citizenship—such as questioning a right to other citizenship, putting an end to any naturalisation process, burdening one with unpredictable legal liabilities and consequences, and raising questions of cession of citizenship.

Taking into account outcry from society in general and previous experience, the Central Election Commission sought opinions from legal experts before itself making any decision on the admissibility and sufficiency of the popular initiative. Since the majority of the acknowledged legal minds were inclined to consider there to have been sound arguments for ceasing organisation of the popular initiative, the Central Election Commission went along with their opinion.<sup>\*40</sup> The very fact that the Constitutional Court of Latvia had missed an opportunity to take the lead in handling the constitutional dispute on whether the Central Election Commission has a right to stop the organisation of a popular initiative on grounds of its unconstitutionality, adopting the decision on the normative capacity of the authorities involved in organising popular referenda a month after the Central Election Commission had issued its own, illustrates the reluctance to address constitutional justice in Latvia. The question of the constitutionality of this popular initiative is still to be decided, on account of an appeal of the decision of the Central Election Commission, and it remains unclear how quickly a decision will be reached, and by whom. Because of the amendments to the law called ‘On Popular Referendum, Law Initiative and Initiative of Citizens of the European Union’, adopted on 8 November 2012<sup>\*41</sup>, any appeal of a decision of the Central Election Commission on a popular initiative has to be decided by the Department of Administrative Cases of the Senate of the Supreme Court

---

National Referendum and Legislative Initiatives” with Article 1, Article 77 and Article 78 of the *Satversme* of the Republic of Latvia]—decision on termination of the Constitutional Court of Latvia of 19 December 2012 in case 2012-03-01, §19.3, 20, and 21. Available at [http://www.satv.tiesa.gov.lv/upload/2012-03-01\\_tiesv\\_izb\\_lem\\_ENG.pdf](http://www.satv.tiesa.gov.lv/upload/2012-03-01_tiesv_izb_lem_ENG.pdf) (most recently accessed on 11.3.2013) (in English).

<sup>36</sup> Par to bijušās PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības [‘On the status of those former USSR citizens who do not have citizenship of Latvia or of any other state’]. – *Latvijas Vēstnesis*, 25 April 1995, No. 63 (346) (in Latvian). English text available at <http://www.vvc.gov.lv/> (most recently accessed on 23.3.2013).

<sup>37</sup> Likumprojekts “Grozījumi Pilsonības likumā” [‘Draft of amendments to the Citizenship Law’]. Available at <http://web.cvk.lv/pub/public/30419.html> (most recently accessed on 20.11.2012) (in Latvian).

<sup>38</sup> See I. Ziemeļe. Latvijas prasība par valstiskuma turpināšanās atzīšanu 1990. gada 4. maija Deklarācijā un tās starptautiski tiesiskās sekas [‘Latvian claim for recognition of state continuity in the declaration of 4 May 1990 and its international consequences’]. – 4. maijs. *Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju. Dr. iur. hab. T. Jundža redakcijā*. Rīga: Latvija Zinātņu akadēmija, Fonds Latvijas Vēsture 2000, pp. 80–89 (in Latvian); I. Ziemeļe. Latvijas valsts nepārtrauktība un mūsdienu politiskā realitāte [‘Latvian state continuity and today’s political reality’]. – *Diena*, 24 September 1997, p. 2 (in Latvian); I. Ziemeļe. Pilsonība un cilvēktiesības valstu pēctecības kontekstā [‘Citizenship and human rights in the context of state continuity’]. – *Likums un Tiesības* 2002 (4)/8 (36), pp. 228–239 (in Latvian).

<sup>39</sup> *Ibid.*

<sup>40</sup> Par parakstu vākšanu likuma “Grozījumi Pilsonības likumā” ierosināšanai”: Centrālās vēlēšanu komisijas 2012. gada 1. novembra lēmums Nr. 6” [‘On collecting of signatures for initiating the law “Amendments to the Citizenship Law”: Decision of the Central Election Commission of 1 November 2012, No. 6’]. Available at <http://web.cvk.lv/pub/public/30441.html> (most recently accessed on 23.3.2013) (in Latvian).

<sup>41</sup> Grozījumi likumā “Par tautas nobalsošanu, likumu ierosināšanu un Eiropas pilsoņu iniciatīvu” [‘Amendments to the law “On Popular Referendum, Law Initiative, and Initiative of Citizens of the European Union”’]. – *Latvijas Vēstnesis*, 27 November 2012, No. 186 (4789) (in Latvian).

of Latvia as the first and the last instance within a month or two, if necessary (Article 23.1). Regardless of this definite term, the Department of Administrative Cases suspended the administrative process in court and submitted an application to the Constitutional Court of Latvia challenging the norm specifying the competence for administrative courts to decide on issues of the constitutionality of the substance of popular initiatives, arguing that it seems to be in conflict with the doctrine of separation of powers.<sup>\*42</sup> In its turn, the Constitutional Court of Latvia accepted this application and set its review for 12 August 2013<sup>\*43</sup>, yet afterward it postponed that review to 19 November 2013 and set 19 December 2013 as a deadline for reaching a judgement.<sup>\*44</sup> Accordingly, the issues of constitutionality of a popular initiative and the normative capacity of authorities involved in organising popular referenda are again in dispute, with clear answers postponed. Furthermore, new questions with regard to the constitutionality of popular initiatives arise.<sup>\*45</sup>

Multiple state institutions are in a rush to solve problem of misuse of the popular initiative. Worth noting is one of these attempts, presented by a judge with the European Court of Justice, to feature a preamble to the *Satversme* in particular.<sup>\*46</sup> Judge Egils Levits is well known for his non-traditional concepts and approaches in respect of resolving constitutional issues. For example, during discussions of the

<sup>42</sup> Decision SA-1/2013 of the Department of Administrative Cases of the Senate of the Supreme Court of Latvia of 11 February 2013 in case A420577912. Available at <http://at.gov.lv/files/uploads/files/archive/departments3/2013/1-sa-2013.doc> (most recently accessed on 1.11.2013) (in Latvian).

<sup>43</sup> Par likuma "Par tautas nobalsošanu, likumu ierosināšanu un Eiropas pilsoņu iniciatīvu" 23. panta piektās daļas 2. punkta un 23.1 panta pirmās daļas atbilstību Latvijas Republikas Satversmes 1. pantam ["On compliance of para 2 of Section 23 (5) and Section 231 (1) of Law on national referendums, legislative initiatives and European citizens' initiative with Article 1 of the *Satversme* of the Republic of Latvia"]. – Press release of the Constitutional Court of Latvia of 12 March 2013 on a case 2013-06-01 initiation. Available at [http://www.satv.tiesa.gov.lv/upload/2013-06-01\\_PR\\_par\\_ierosinasanu\\_ENG.pdf](http://www.satv.tiesa.gov.lv/upload/2013-06-01_PR_par_ierosinasanu_ENG.pdf) (most recently accessed on 1.11.2013).

<sup>44</sup> The Constitutional Court of Latvia. Material available at <http://www.satv.tiesa.gov.lv/?lang=1&mid=19> (most recently accessed on 24.10.2013) (in Latvian).

<sup>45</sup> For example, on 20 December 2012, the Central Election Commission received a request to organise signing for popular initiative on the draft law 'On Popular Participation with Regard to the Date of Introduction of the Euro'. Par tautas līdzdalību eiro ieviešanas termiņa izlemšanā: likumprojekts Centrālajai vēlēšanu komisijai parakstu vākšanai. Available at <http://web.cvk.lv/pub/public/30456.html> (most recently accessed on 23.3.2013) (in Latvian).

<sup>46</sup> Izvērstas Satversmes preambulas iespējamā teksta piedāvājums un komentārs ['Proposition for probable text for an extended preamble to the *Satversme* and its commentary']. – *Jurista Vārds*, 24 September 2013, No. 39 (790). Available at <http://www.juristavards.lv/index.php?menu=DOC&id=260080> (most recently accessed on 24.10.2013) (in Latvian). The draft of preamble to the *Satversme* states the following, in the author's translation from Latvian:

In order to ensure the existence of the Latvian nation through the ages [*cauri gadsimtiem*, literally 'over the centuries'], preservation and development of the Latvian language and culture, [and] prosperity of every human being and people [of Latvia] as a whole, the Latvian people

- having regard for the fact that, as a result of the consolidation of nation and the formation of national consciousness on 18 November 1918, the Republic of Latvia that has been proclaimed on the lands historically belonging to Latvians has been established upon the immutable will of the Latvian nation and its inextinguishable right to self-determination in order freely to self-determine and as a nation-state to build the future in its own state;
- bearing in mind that the people won their state during the Latvian War of Liberation [*Latvijas Brīvības cīņas*, or, literally, 'the struggles for Latvia's freedom'], that it did not recognise the occupation authorities, and that it resisted them, and on the basis of state continuity, restoring state independence, it regained its freedom;
- expressing gratitude to the state's founders, honouring its freedom-fighters, and commemorating the victims of retaliations by invaders' forces;
- in awareness that the Latvian state's basic task is to promote the spiritual, social, cultural, and material welfare, ensuring legal order, safety, environmental protection, and conservation of nature and reconciling economic development with human values and necessities;
- recognising that the traditions of Latvian democracy are the citizens' direct participation in the conduct of public affairs and the parliamentary republic, and providing that the Latvian state in its activities especially respects principles of democracy and the rule of law and principles of a national and social state, [and that Latvian state] recognise and protect human rights, including minority rights;
- recognising the inviolability of the independence of the Latvian state, its territory, its territorial integrity, the sovereignty of the people, the Latvian language as the only state language, [and] the democratic set-up of the state, and that it is the responsibility of everyone to protect these values;
- pointing out that all have a duty to take care of themselves, their kinsmen, and the common good of society and to behave responsibly toward their fellow human beings, society, the state, the environment, nature, and future generations;
- being aware that Latvian ethno-cultural *Weltanschauung* [*dzīvesziņa*, literally 'wisdom of existence'] and Christian values significantly shaped our identity; that the values of the society are freedom, honesty, justice, and solidarity; that family is the basic unit of the society; and that work is a foundation for growth and prosperity of everyone and the nation as a whole;
- emphasising that Latvia is actively participating in international affairs; protecting its interests; and contributing to the human, sustainable, democratic, and responsible development of Europe and the world at large,

constitutional issues surrounding accession to the European Union, he proposed granting a portion of the state's sovereignty to the European Union and, for this, including a further article on state sovereignty (2a), providing that Latvia is a member state of the European Union.<sup>47</sup> However, this approach did not gain the necessary agreement; therefore, it was not applied. The idea he has proposed recently is to describe all basic values of the Republic of Latvia in order to put a stop to misuse of popular will. Such a declaratory part of a constitution usually is drafted first, not last. Yet, in view of the constitutional controversies that have continued for several years now with regard to direct popular participation, it may bring some useful certainty<sup>48</sup> as to the future of direct popular participation within the Latvian legal system. The draft for a preamble has already stimulated passionate discussion and, unfortunately, encouraged marginalisation of some opinions.<sup>49</sup> Some regard the proposed preamble to constitute a 'business card of Latvia'<sup>50</sup> as a part of nation branding while some radical intellectuals link it to 'the ideas of the pre-Holocaust era'<sup>51</sup>. At present, it remains unclear whether the preamble will be a panacea for resolving the issue of 'constitutional extremism'. In the author's opinion, the first order of business is to become aware that the *Satversme* is a replica of traditions from the 1919 German Constitution; only from this starting point is to start looking for a proper cure to misuses of popular initiatives. As long as the lessons taught by the 1919 German Constitution and the historical examples of twisting around with popular will remain overlooked, consensus on resolving conflicts of constitutional norms and imposition of conflicts by means of direct democracy will not be found. Eliminating elements of direct democracy does no more good than misuse of popular will.

---

– in line with the national anthem 'God Bless Latvia!', which expresses the idea of a free nation-state in its freely elected *Constitutional* Assembly, have strengthened the Latvian national constitutional order and adopted the following *Satversme* of the state: [...]

<sup>47</sup> E. Levits. *Satversme un Eiropas Savienība* ['The *Satversme* and the European Union']. – *Jurista Vārds*, 8 June 2000, No. 23 (176) (in Latvian).

<sup>48</sup> On the role of the declaratory part of a constitution, see R. Gavison. What belongs in a constitution? – *Constitutional Political Economy* 2002/13, pp. 97–99.

<sup>49</sup> See *Jurista Vārds*, 22 October 2013, No. 43 (794) (in Latvian).

<sup>50</sup> M. Zālīte. *Satversmes preambula ir Latvijas vizītkarte* ['Preamble of the *Satversme* is a business card of Latvia']. – IR.lv. Available at <http://www.ir.lv/2013/10/24/mara-zalite-satversmes-preambula-ir-latvijas-vizitkarte> (most recently accessed on 24.10.2013) (in Latvian).

<sup>51</sup> See S. Veinberga. *Vai Latvijā tiešām iestāsies holokausts?* ['Whether, in deed, in Latvia, there will be the holocaust?'] – TVNET, 18 October 2013. Available at [http://www.tvnet.lv/zinas/viedokli/483039-vai\\_latvija\\_tiesam\\_iestasies\\_holokausts](http://www.tvnet.lv/zinas/viedokli/483039-vai_latvija_tiesam_iestasies_holokausts) (most recently accessed on 24.10.2013) (portions in English); K. Sedlenieks. *Par pirmsholokausta laikmeta domāšanu uc komentāri pie preambulas teksta* ['On the pre-Holocaust-era thinking and other comments on the text for the preamble']. – *Klāva domas*, 16 October 2013. Available at <http://sedlenieks.wordpress.com/2013/10/> (most recently accessed on 24.10.2013) (in Latvian).