

The Preamble of the *Satversme*: the New Approach to Constitutional Self-Restraint

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Abstract. The Constitution of the Republic of Latvia (the *Satversme*) is the oldest East Central European constitution still in force and the sixth oldest still-functioning republican basic law in the world. Nevertheless, for a long time it was praised for its laconic wording, sufficiency and precision of norms and yet substantial regulatory coverage. Moreover, along with the status of being oldest and perfectly shaped the *Satversme* has been an object of praise for its friendliness towards exercise of direct democracy. As a replica of traditions of the 1919 German Constitution it provides multiple forms of direct popular participation. There are some limitations, yet they are few. Similarly to the 1919 German Constitution the norms of the *Satversme* on direct popular participation became a tool for widespread populism questioning the basic values and the very existence of the Republic of Latvia. The solution for further attempts to trigger off constitutional instability was found within constitutional theory. Consequently, the *Satversme* is supplemented by the descriptive preamble enumerating core values of the Republic of Latvia and their historical, cultural or legal sources. The article gives an insight to the situation and presents a material for further analysis of the new adopted preamble.

Keywords: constitution, *Satversme*, preamble, direct popular participation, public initiative, referendum

INTRODUCTION

The Constitution of the Republic of Latvia (the *Satversme*) is the oldest East Central European constitution still in force and the sixth oldest still-functioning republican basic law in the world.¹ Nevertheless, for a long time it was praised for its *légistique* manner–laconic wording, sufficiency and precision of norms and yet substantial regulatory coverage. For years all drafts of constitutional amendments were treated with regard to their compliance to previously mentioned requirements. For long time the *Satversme* by itself served as a reminder of the decision on formation of the Nation State, a vivid prove of the State continuity after occupation by the U.S.S.R. and a necessity to hold on to it. Unlike other Baltic States, Latvia did not have to adopt a new constitution after re-establishing a force of the pre-occupation one. Unsurprisingly, that all above mentioned aspects contributed to establishing the ‘dogma on perfection of the *Satversme*’ (Pleps 2010: 199).

Along with the status of being oldest and perfectly shaped another aspect of the *Satversme* makes it special. The *Satversme* as a replica of traditions of the 1919 German

¹ The *Satversme* has been adopted by the *Constitutional* Assembly of Latvia (*Satversmes sapulce*) on 15 February 1922.

Constitution provides multiple forms of direct popular participation. There are some limitations in respect of subjects of referenda and timing for organising referenda, yet they are few. Long enough it made Latvia to be an object of praise for its friendliness towards exercise of direct democracy. However, recently and similarly to the 1919 German Constitution the norms of the *Satversme* on direct popular participation became a tool for widespread populism questioning the basic values and the very existence of the Republic of Latvia.

Within a few past years, the constitutional system of Latvia was stroked several times by a most contradictory form of direct popular participation, i.e. the referendum on constitutional matters. In particular, the constitutional set of Latvia suffered great disturbance by three initiatives for referendum on constitutional amendments—first, on limiting educational rights; second, on introduction of Russian as a second official language and thus questioning one of the ultimate ideas of the existence of the Republic of Latvia; and, third, on affording of citizenship to anyone with the ‘non-citizen’ status who did not make in time to refuse this indiscriminate offer. Although those initiatives failed, they reflect historically and theoretically ascertained deficiencies of direct popular participation (see more in Jarinovska 2013). Moreover, the initiatives raised a strong concern as to ability of the constitution system to safeguard basic values and ultimate ideas, which form the Republic of Latvia, namely, core of the *Satversme*. Taking into account developments in Ukraine, arouse the claim for better safeguarding of the core of the *Satversme* by means of its positivation.

2. THE DEVELOPMENT OF AN IDEA ON POSITIVATION OF THE CORE OF THE SATVERSMĒ

Though the legal system of Latvia provides several ways to prevent misuse of popular will—administrative measures, judicature, constitutional justice and legislation –, yet neither of them was effectively used to solve ‘constitutional stroke’. In the first and the second case, the Central Election Commission did not bother itself to put a stop on the popular initiative, pointing to the evident deficiencies of the draft laws.² Furthermore, instead of using legislation for at least clarifying competences of the Central Election Commission, 30 members of the Parliament initially submitted awkward constitutional application to the Constitutional Court of Latvia challenging lack of the legal norm which would grant a right to put a stop to misuse of popular initiative (Case no. 2012-03-01). In the third case, the Central Election Commission took chance and put a stop to organisation of the third initiative. Yet due to an appeal, the action was questioned to the Department of Administrative Cases of the Senate of the Supreme Court of Latvia. The judiciary abstained from taking a decision, instead they questioned their normatively and explicitly set of competence to review such action to the Constitutional Court of Latvia, thus, unduly trying to hand over the responsibility for the popular initiative (Case no. 2013-06-01). The Constitutional Court of Latvia, on its turn, for several times missed an opportunity to mark a line for popular initiatives in time, therefore, refraining from fulfilling the associated

² Article of the law provides a right to the Central Election Commission to review a draft law on completeness. According to the Constitutional Court of Latvia this norm invests a right to review beyond formal compliance. See Case no. 2012-03-01.

responsibility and temporising for others to take steps before adjudicating an application (see more in Jarinovska 2013).

Since any article of the *Satversme*—as it was explicitly shown by the public initiative on the State language—can be altered by a public initiative, propositions to amend the *Satversme* limiting direct popular participation at least in respect of subject matters were dismissed. Instead the cure for the strokes because of misuse of popular will has been sought within constitutional theory, namely, by means of defining the core of the *Satversme*. Since the theoretical discussions on the ‘dogma on perfection of the *Satversme*’ did not speedily progress for forming legal doctrine on the subject matter, a judge with the European Court of Justice had come forwards with an idea on positivation of the core of the *Satversme*. He presented a draft of preamble to the *Satversme* and corresponding commentaries (Levits 2013). The draft of preamble to the *Satversme* follows:

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 nationstate 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,

– 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: [...] (Levits 2013).

Judge Egils Levits is well known for his non-traditional concepts and approaches in respect of resolving constitutional issues, e.g., due to Egils Levits the idea of Ģ. V. Kristovskis on Article 1 of the *Satversme* as a tool for solving a lack of constitutional regulation [Case no. 04-01(97)] was broadened, theoretically based and successfully promoted, thus, becoming a part of Latvian constitutional theory. Similar success is awaited for the idea on positivation of the core of the *Satversme* within the preamble.

Levit’s draft of the preamble had stimulated large-scale and passionate discussion (Jurista Vārds 22 October 2013, Latvijas Universitāte 25 October 2013), and, finally, was overtaken and redrafted for handing in to the Parliament by the group of volunteers led by ex-judge of the Constitutional Court of Justice and the chairperson of Legal Affairs Committee of the Parliament Ilma Čepāne (LETA 10 February 2013). The amendment of the preamble of the *Satversme*, replacing short statement on adoption of the *Satversme* by extensive description of the core of the *Satversme*, was speedily adopted. On 27 March 2014 the redrafted preamble was adopted by the *Saeima* at the first reading, on 5 June 2014 at the second reading and on 19 June 2014 at the last (the third) reading; it was promulgated on 8 July 2014 and, thus, in force starting from 22 July 2014.³ Although there were multiple propositions, one member of the Parliament even claimed that her proposition is drafted by electrician Ādolfs Gertneris (Leijējs 2014), yet the redrafted preamble did not experience major alterations. Mostly the changes are reasoned by an intention to correct grammar, improve style, provide better (in some case—just another) choice of words, terms and concepts, and to make wording more precise:

The people of Latvia, in freely elected Constitutional Assembly, have adopted the following State Constitution:

The State of Latvia, proclaimed on 18 November 1918, has been established by uniting historical Latvian lands and on the basis of the unwavering will of the Latvian nation to have its own State and its inalienable right of self-determination in order to guarantee the existence and development of the Latvian nation, its language and culture throughout the centuries, to ensure freedom and promote welfare of the people of Latvia and each individual.

The people of Latvia won their State in the War of Liberation. They consolidated the system of government and adopted the Constitution in a freely elected Constitutional Assembly.

The people of Latvia did not recognise the occupation regimes, resisted them and regained their freedom by restoring national independence on 4 May 1990 on the basis of

³ *Grozījums Latvijas Republikas Satversmē (Amendment to the Satversme of the Republic of Latvia)*. 8 July 2014.

continuity of the State. They honour their freedom fighters, commemorate victims of foreign powers, condemn the Communist and Nazi totalitarian regimes and their crimes.

Latvia as democratic, socially responsible and national state is based on the rule of law and on respect for human dignity and freedom; it recognises and protects fundamental human rights and respects ethnic minorities. The people of Latvia protect their sovereignty, national independence, territory, territorial integrity and democratic system of government of the State of Latvia.

Since ancient times, the identity of Latvia in the European cultural space has been shaped by Latvian and Liv traditions, Latvian folk wisdom, the Latvian language, universal human and Christian values. Loyalty to Latvia, the Latvian language as the only official language, freedom, equality, solidarity, justice, honesty, work ethic and family are the foundations of a cohesive society. Each individual takes care of oneself, one's relatives and the common good of society by acting responsibly toward other people, future generations, the environment and nature.

While acknowledging its equal status in the international community, Latvia protects its national interests and promotes sustainable and democratic development of a united Europe and the world.

God, bless Latvia!⁴

Čepane publicly has been insisting that the adopted preamble of the *Satversme* fully reflects Levits ideas and that the adopted preamble is presented in more laconic and precise way, thus, the preamble has to be regarded as Levits' work. Therefore, interpreting the preamble have to be considered both documents—the Levits' draft and the preamble as adopted.

3. THE CONTENT OF THE CORE OF THE *SATVERSME*

3.1. Levits' draft of the preamble

General remarks

Drafting the preamble, E. Levits follows a new approach to the preamble newly developed by the constitutional practice. For example, the preamble of the Constitution of the Republic of Estonia (the *Põhiseaduse*)⁵ was amended on 12 April 2007, including Estonian as an object for preservation 'through the ages', although there were several articles on Estonian as an official language.⁶ It illustrates that along with various purposes to which may serve a preamble of the constitution, e.g., being a tool for raising public awareness of important statehood issues or a dependent source of law (Gavison 2002: 97–99), the preamble may also become a self-contained source of law and claim higher rank than other norms of the constitution. In this way the preamble of the Constitution of the Republic of Estonia (the *Põhiseaduse*) is treated by the Supreme Court of Estonia (Kortmann *et al.* 2006: III-9, see Case no. 3-4-1-6-12). By this new approach seems Levits were guided in drafting the preamble. Otherwise it rather unclear why the preamble mentions issues which are covered

⁴ *Grozījums Latvijas Republikas Satversmē (Amendment to the Satversme of the Republic of Latvia)*. 8 July 2014.

⁵ The current (fourth) Constitution of the Republic of Estonia was passed on a referendum held on 28 June 1992.

⁶ Article 6 (on Estonian as the official language), Article 37, §4 (on education), Article 52 (on use of official language).

by the *Satversme*, which constitutional status never has been challenged and which never caused significant public frustration.

Analysing the Levits's draft of the preamble some flaws have to be acknowledged.

Firstly, the draft obviously oversteps previous principles for drafting amendments to the *Satversme*. It does not meet requirements to be laconic and precisely worded. Moreover, some language problems due to compilation and transplantation of foreign constitutional norms consequently are a source for misconception of concepts and unnecessary repetition. Therefore, some critique to the text should be observe before using it for interpretation of the *Satversme*.

Secondly, the Levits's draft raises several historical and legal issues, which normally either are presumed before drafting the constitution or discussed for years by scholars before incorporating within the constitution. Since neither has been done the draft mirrors vagueness of knowledge of the society on issues of history of statehood of the Republic of Latvia. Thus, although the *Satversme* may serve as a point of reference and mere vague illustration of the matter, not a dogma.

Detailed analysis

Thus, as admits Levits, the *Põhiseaduse* served as an inspiration for the draft (Levits 2013). The introduction is a combination of the introduction and fourth paragraph of the *Põhiseaduse*. E. Levits underlines importance of the line 'through the ages' (in Latvian 'caur gadsimtiem'), insisting that this would grant sustained and unhindered development of people of Latvia (in Latvian 'Latvijas tauta') (Levits 2013). Therefore, following the constitutional practice of Estonia, it would disperse any doubts over the core issues of the Republic of Latvia, e.g. it would explicitly state what is already known that there are no legal ways to change the scope of the core like an attempt to introduce Russian as a second official language (Zirnīs 2013).

The first, fourth and eighth paragraphs of the preamble are extensive interpretation of the first ('the inextinguishable right of the people of Estonia to national self-determination'), third ('social progress and welfare') and second ('liberty, justice and law') paragraph of the *Põhiseaduse*. All of those values, however, are found to be a part of the *Satversme*, e.g., within the Article 1 on democracy, Article 2 on sovereignty, Article 89 on protection of fundamental rights and freedoms, Article 91 and 92 on justice and rule of law and Article 109 on social welfare. Consequently, it raises questions as to an intent of the author—to strengthen those values or create a basis to bring about new content.

Another source inspiration for the draft was Federal Constitution of the Swiss Confederation,⁷ in particular, the introduction of the preamble: 'In the name of Almighty God!' (Levits 2013). Levits, in his commentaries, concludes that although the Swiss Confederation is a secular State, yet it does not deprive it from relying on the Christian values. Therefore, he proposes to remind that these values are similarly significant to people of Latvia, referring to them explicitly in the eighth paragraph and naming the title of the national anthem 'God Bless Latvia!' in the last paragraph. Obviously, this proposition has been inspired by the discussions over European Constitution, in particular, over a reference to the 'Christian values'. Yet it also related to the past developments. Christian values had a major impact on shaping the legal system of Latvia after of the end of the occupation by the

⁷ The Federal Constitution of the Swiss Confederation adopted by popular vote on 18 April 1999.

U.S.S.R. Their importance is unquestioned up to date. However, vagueness of this concept and unpredictable influence on the legal system should not be underestimated. The reference being inserted in the preamble of the constitution may affect application Article 99 of the *Satversme* on respect of freedom of thought. Therefore, whether and how it will serve for keeping previous achievements as to guaranteeing this basic freedom and promote it in future.

The implied reference to the national anthem is more than a tool to strengthening Christian values. The *Satversme* before the recent amendments to the preamble did not have a reference to the national anthem, yet a possibility to change the national anthem has never been officially discussed.⁸ The actual national anthem has become a part of unwritten constitutional tradition, and as such is respected. Obviously, the reference to the national anthem any future discussions on possible changing of the national anthem would make pointless or troublesome.

Alongside with mentioning the Christian values, the eighth paragraph of the draft refers to Latvian ethno-cultural *Weltanschauung* (*dzīvesziņa* in Latvian), literally ‘wisdom of existence’. There are at least two meanings of this concept. One derives from works of Zenta Mauriņa. It is a philosophical idea on self-made way of life. Second relates to the romantic perception of mythological and esoteric ideas of the beginning of 20th century proposed by so called ‘dievturi’, literally ‘gods possessors’—new religious movement at that time, whose adepts believe that they have restored ancient religion with pagan Baltic tribe gods (‘latviešu dievības’ in Latvian, literally ‘Latvian gods’). Third may relate to folkloric traditions, derived manners and customs, which surprisingly had been survived in Latvian people everyday life in 20th and even 21st century contrary to most European countries. E. Levits did not make clear which one of these perceptions of the concept has been chosen. Moreover, taking into account that the draft states that both Christian values and *Weltanschauung* shaped Latvian identity, also confusing what legal consequences are awaited from combination of world perception.

As an inspiration for the Levits’s preamble served also the Constitution of the Italian Republic.⁹ Although the Constitution of the Italian Republic does not have a preamble, yet it suggested some ideas for the draft, in particular, Article 1 of the Constitution of the Italian Republic provides, *inter alia*, that Italy is ‘founded on labour’ (Levits 2013). Wording of the eighth paragraph—‘work is a foundation for growth and prosperity of everyone and the nation as a whole’—is an extensive interpretation of this idea. The *Satversme* has already four articles directly related to the employment issues—Articles 106–109. Until present the constitutional protection of employment issues have never been challenged. Moreover, there has never been serious public frustration over employment issues that would ask for such a measure as to constitutional strengthening of them. Therefore, this statement is another reference to one of the perceptions of the Latvian ethno-cultural *Weltanschauung*, namely, folkloric traditions, derived manners and customs, which praise work as an upper value.

Proposing to describe Latvia as a social state Levits has been obviously inspired by the examples of Germany and France. Although this concept has a great influence on both legal

⁸ There were some initiatives to adopt a new national anthem or to modernize the old one, yet all of them did not receive a due attention of the public and officials. (FOCUS.LV 9 December 9 2013, Vilmārs 2012, Barkāns 2011).

⁹ The Constitution of the Italian Republic was enacted by the Constituent Assembly on 22 December 1947.

systems, though, it is needless in Latvian. The *Satversme* have several articles which directly or implicitly indicate that Latvia is a social state. Article 109 of the *Satversme* provides a right to social guarantees. Moreover, the Constitution Court of Latvia has acknowledged that the *Satversme* obliges Latvia to follow an idea on social state while shaping its legal system (Case no. 2011-03-01). It shows that the author inserting an *expressis verbis* reference to the concept of ‘social state’ is more attempting to provide complete insight into the constitutional system rather to solve particular issues. Consequently, no added value would be awaited from this reference.

The preamble of the Constitution of the Republic of Poland is another source of inspiration for the draft. Thus, wording—‘Beholden to our ancestors for their labours, their struggle for independence achieved at great sacrifice, for our culture rooted in the Christian heritage of the Nation and in universal human values’—inspired to include a reference to the ‘state’s founders’, ‘freedom-fighters’, and the ‘victims of retaliations by invaders’ forces’ within the third paragraph of the preamble (Levits 2013). The outcome of previously mentioned inspiration and transplantation is most disputable since it is historically imprecise. It is unsurprisingly so, because transplants, which relates to history, are rarely suitable to another state. If at all some references have to be made, then the norms have to be precise, concepts have to correspond to existing ones and highlighted events should be of the utmost importance.

Latvian War of Liberation (5 December 1918–11 August 1920), on the one hand, was a war against the Bolshevik Russia¹⁰ (Peniķis 2006) and the German Empire (Böttcher 2009: 35–38, Paluszyński 1999, Łossowski 1976, Bischoff 1935), both were defeated by the Republic of Latvia, both were among the first one to recognize the Republic of Latvia *de iure* as it follows from the agreements on 11 August 1920 and 15 July 1920, with the remarkable exception of Haiti on 30 January 1919 (Vīgrabs 1938: 569–570). On the other hand, it was a civil war because although *de facto* created by Joseph Stalin¹¹ formally the Peteris Stučka’s Soviet Latvia¹² was an independent state¹³ and not *de iure* a part of Bolshevik Russia. Proclamation of independence of the Republic of Latvia was not a secession from Russia, but the republican secession from the United Baltic Duchy (Rauch 1974: 48; Anepaio 2007: 15) (initially—the Duchy of Courland (*Herzogtum Kurland*), restored on 8 March 1918 by *Kurländische Landesrat* (Lulvès 1918: 2), and *Baltischer Staat*, restored by *Vereinigter Landesrat* in territories of former Duchy of Livonia and Estonia on 12 April 1918, also known as Grand Duchy of Livonia (Bīlmanis 1945: 161)] that [after the Treaty of Brest-Litovsk in 3 March 1918 and Berlin agreements on 27 August 1918 (Hiden 2002: 4–5)] was recognised in 15 March and 22 September (Rimscha 1938b: 9) 1918 subsequently by the Emperor of the German Empire as an independent state (Rimscha 1938a: 9, *Libausche Zeitung* April 22, 1918: 1).¹⁴ The United Baltic Duchy after

¹⁰ *Peace Treaty between Latvia and Russia*, ratified by the *Saeima* on 2 September 1920, consensus on 9 September 1920.

¹¹ *Latvijas Sociāldemokrātijas Centrālās komitejas Krievijas biroja ārkārtējās sēdes protokols par revolucionārās pagaidu valdības dibināšanu Latvijai* (*The protocol of an extraordinary meeting of the Russian bureau of the Central Committee of Latvian Social-Democrat on establishment of the interim government for Latvia*). 23 November 1918.

¹² Latvijas Sociālistiskā Padomju Republika, LSPR, 1918–1920.

¹³ *Latvijas Sociālistiskās Padomju Republikas Satversme* (*The Constitution of the Latvian Socialist Soviet Republic*). 15 January 1919.

¹⁴ *Des Kaisers Antwort an Kurland: Telegramm des Kaisers an Baron von Rahden* (18 March 1918);

the Brest-Litovsk was an heiress of both of the Duchy of Courland and Semigalia and the Duchy of Livonia (*Liefland*); formally the Emperor of the Russian Empire was also the Duke of Livonia and Duke of Courland and Semigalia (*in Livonia, Curlandiae et Semigalliae Dux*¹⁵) (Успенский 1818: 229). The Republic of Latvia had acknowledged continuity of law of the previous state formation, e.g. it has been demonstrated by accepting until 1938 the autonomous set of law—the Piltene's Law (Valdības Vēstnesis 17 October 1930: 2), which takes roots in Medieval Livonia and Latvian medieval legal culture (Ducmanis 1938: 2, 7)—for the territory of the previous District of Piltene (*Districtus Regii Piltensis*). This was annexed around 1795 by the Russian Empire, however, incorporated within the Governorate of Curland only around 1818 (Blaese 1851: 105–106).

Disregarding the nuances of the historical issues brought by mentioning Freedom fighting, it is unclear why the author misses other equally important historical legal issues that formed proclamation of independence, e.g., there is nothing on the forerunner of the Republic of Latvia, its pre-parliament (Līgotņu 1925)—Latvian Provisional National Council (LPNC),¹⁶ established on 2 December 1917 in Valka, which declared the aim to proclaim an independent and democratic republic on 30 January, 1918 (Vīgrabs 1938: 569–570) based on an inextinguishable right to self-determination of Latvian nation in historical and ethnographic borders of Kurzeme (Courland), Vidzeme (Livonia) and Latgale, there is nothing on the pre-parliament like Latvian Refugee Central Committee, organized by Vilis Olavs, Democratic Block, leaded by Miķelis Valters. There is even nothing on the People's Council of Latvia, a temporary parliament, which declared an independence, and nothing on the fact of proclamation of independence *per se*, neither on the National awakening. There are no sound arguments, why 770 years of Latvian statehood has been passed over in silence—Latvians existed from at least 17th century, statehood of Livonia—from 13th century. If at all the Constitution of the Republic of Poland has been used as a source of inspiration, it is confusing that the author does not follow the same pattern in describing the history of Latvian statehood. In particular, the Constitution of the Republic of Poland draws links to Polish–Lithuanian Commonwealth similarly as the Constitution of Lithuania does. Moreover, the Constitution of Lithuania by wording ‘creating State of Lithuania many centuries ago’ refers even farther back in history of its statehood. It obviously relates itself to King Mindaugas—first Christian king of Baltic tribes of Lithuania in 13th century. One can ask—is there a significant difference between two pairs of state legal continuity cases: Ancient Lithuania and Republic of Lithuania, on the one hand, and Livonia and Republic of Latvia, on the other.

There is no doubt that the United Kingdom and Czech Republic regard themselves to be true heirs respectively of England and Bohemia. Thailand and Ethiopia link their statehood to the Siamese and the Abyssinian Empires (the same state). Apparently, it is a matter of history, which determines a base for continuity, not a similarity of names.

Making choice to describe history of statehood, there would be sound reasons along with mentioning crucial historical events to list also at least ‘contemporary constitutional acts’, declarations of 18 November 1918 and 4 May 1990.

Previously mentioned deficiency, however, should be evaluated with unambiguous statement of Egils Levits that this is the rough and very initial draft of the preamble intended

¹⁵ *Oratio ablegati Oth. Grothusen ad praestanda homagia pro Illri Duce Friderico. Anno 1633.*

¹⁶ Zigfrīds Anna Meierovics presented a case of Latvia's independence to the British Foreign Minister Balfour and gained commitment that the United Kingdom recognizes the Republic of Latvia *de facto*, exactly, on behalf of Latvian Provisional National Council.

to provoke discussion and that it needs, if at all accepted, perfection as to the content, wording and style. Yet instead of profound, deliberate and large-scale public redrafting and perfection of the Levits's draft, the group of volunteers hastily and secretly prepared a shortened version of the draft and organised its submitting, on 12 February 2014, to the Parliament by gathering six signatures of the deputies,¹⁷ representing every coalition party and Ilma Čepāne as a leader of the group and a representative of responsible Parliamentary committee (DELFI 13 February 2014). For this reason further discussing redrafted preamble it will be also called 'Čepāne's draft'.

3.2. Redrafted preamble

The Čepāne's draft has been presented to the public as the slight redraft of the Levits's draft. It has been maintained that the only significant changes relates to the first paragraph. Taking into account above mentioned Latvian constitutional traditions such statement is rather untrue. The Čepāne's draft is as follows:

'Introduction

The Republic of Latvia that has been proclaimed on 18 November 1918 is established, unifying the lands historically belonging to Latvians, leaning on the immutable state will of the Latvian nation and its inextinguishable right to self-determination in order to guarantee existence and development through ages of Latvian nation, its language and culture, to ensure liberty of everyone and of all people and to promote prosperity.

The people of Latvia have obtained its state through War of Liberation [Brīvības cīņas, or, literally, 'the struggles for freedom']. By freely elected *Constitutional* Assembly of Latvia (*Satversmes sapulce*) it strengthened constitution order and ruled for itself the *Satversme*. The people of Latvia did not recognise the occupation authorities, resisted them, and on the basis of state continuity, restoring state independence, regained its freedom. It honours its freedom-fighters, commemorates the victims of retaliations by invaders' forces, condemns crimes of [both] Nazi authorities and Soviet occupation regime.

Latvia as a democratic, law abiding, socially responsible and national state relies on human dignity and freedom, recognizes human rights, right of minorities as well. The people of Latvia protect their sovereignty, independence, territory and democratic set of Latvian state.

Our identity in European cultural space has been formed, in particular, by Latvian ethno-cultural traditions and *Weltanschauung* [*dzīvesziņa*, literally 'wisdom of existence'], Latvian language, universal human and Christian values. Latvian language is a basis for democratic participation and united society. The basic values of our society are freedom, honesty, justice, solidarity, equality, family and work. Everyone according to their capacity takes care of themselves, their kinsmen and the common good of society, behaves responsibly toward their fellow human beings, society, the state, the environment, nature, and future generations.

Acknowledging ourselves as an equally worthy part of international community, Latvia protects its interests and contributes world's at large and Europe's human, sustainable and democratic development.

God Bless Latvia!¹⁸

¹⁷ Article 65 of the *Satversme* enlists those who have the right to hand in a draft law, including 'at least five members of the *Saeima*'.

¹⁸ *Grozījums Latvijas Republikas Satversmē (Amendment to the Satversme of the Republic of Latvia)*.

Firstly, it is rather vivid that the second draft is more like a recital of the content of the first draft. It sums up the main ideas, avoiding explanations and detailed descriptions of the norms and concepts. The first draft was extensive and obviously guided by the idea to describe the main issues in detail. Due to summing up the second draft loses the link between the main ideas, on the one hand, and their explaining and detailing factors, on the other hand. For example, it is rather unclear why it is necessary to enlist basic values like freedom, honesty, justice, solidarity, equality, family and work within the fourth paragraph of the second draft. In fact, the second draft lost the thread of the idea that those values derive from the ethno-cultural traditions not only from democracy. Similarly, mentioning responsibility issues in the next sentence is confusing because, initially, they were placed as a part of ethno-cultural, not as the legal factor.

Secondly, summing up has resulted in misplacement of emphases. It is self-evident that while drafting a preamble one has to take into consideration common perception of what a preamble has to consist of and what proportions have to be followed in mentioning different issues. Therefore, giving up explanations and detailed descriptions and shortening the text, one has to keep in mind the main ideas and be ready mentioning issues, which are rather self-evident and would create rather misleading impression of intent of drafters. In the first sentence of the third paragraph of the redraft, the authors tried, in essence, to state main elements of the main elements of legal system of Latvia. Although the rights of ethnic minorities is an important issue of legal system, yet it is confusing what makes ethnic minority rights in the legal system of Latvia so special that they have to be mentioned alongside with democracy, law abidingness, socially responsibility, human dignity and freedom, and human rights. It would be rather justifiable to mention the protection of the rights of all minorities, thus, including, e.g., racial, class, religious or sexual. In this way, the preamble would point to one of the aspects of contemporary meaning of democracy, i.e., obligation of majority to respect rights of minorities. However, there is no sound reason to point only on to the necessity to protect the rights of ethnic minorities because they are already protected by Article 114 of the *Satversme*. Moreover, taking into account that on 26 May 2005 the parliament ratified the Framework Convention for the Protection of National Minorities of the Council of Europe, these rights are protected under Article 89 of the *Satversme*, too. Furthermore, there is a case-law of the Constitutional Court of Latvia on application of certain rights of ethnic minorities. Therefore, marking out a small aspect of these particular human rights within a preamble makes the wrong impression that Latvia encounters serious problems on this issue.

Proposition to draft a preamble is mainly related to necessity mentioning the issues of utmost importance for Latvia, those, which determine the statehood and legal and political set of Latvia. The redraft of the preamble does not make more precise the enumeration of most important issues of historical and legal background of statehood of Latvia than it is in the first draft. Instead, these issues are overshadowed by list of various Latvian values and references to ideas which are already safeguarded by the *Satversme*.

As to the wording the redraft similarly to the first one does not correspond to Latvian constitutional tradition on *légistique*. It is much shorter, yet it has been achieved at expense of sense and clarity of the content. Furthermore, the Čepāne's draft instead of following Levit's example chose to write the preamble in mixed literary style—some sentences from the first-person point of view, some from the third-person. First-person writing style would be more appropriate, if the *Satversme* in whole would be a result of popular referendum. However, this is not the case. The *Satversme* has been adopted by the *Constitutional Assembly* of Latvia, and most of amendments, including the chapter on fundamental human

rights, are adopted by the parliament. Therefore, it seems inappropriate to draft wording as spoken by the public and looks like an attempt to create unnecessary mystification. There is no shame in the fact that the constitution in the representative democracy is adopted by the legitimate representatives of the people. Moreover, the existing preamble—adopted in 1922—refers to people of Latvia, mentioning them in the third-person, not the first, and to their legitimate representatives: “The People of Latvia have adopted, through their freely elected Constitutional (*Satversme*’s) Assembly, the following Constitution.”

The changes made to the first draft of the preamble mostly reflect the disputes over the first draft of the preamble and quest for finding compromise with marginal groups, at least by softening wording and making preamble more alike a timid credo, not a worthy material for further interpretation and application of the *Satversme*. The Čepāne’s draft does not clearly correspond to the idea why drafting of the preamble was proposed and, therefore, if not significantly improved is on its path to other constitutional doubts.

3.3. Adopted amendments of the preamble

Analysing the content of the preamble after the last reading, one may find that there are at least three major changes. Firstly, the preamble mentions Livs—highly endangered indigenous Finno-Ugric ethnoses of Latvia.¹⁹ Secondly, it drops a clear reference to occupation by U.S.S.R. and precise wording describing regime, instead of Soviet, now is reference to communist regime.²⁰ Lastly, as a result of attempt to shape a wording the preamble, in fact, presents a dubious statement that in 1918 was established Latvian state. It seems that Legal Committee that is responsible for this amendment is convinced that there is no difference between concept of ‘state’ and ‘republic’. Hopefully, this misunderstanding will be adequately treated, in particular, understanding it as particular phenomena, not a dogma on historical issues of the statehood of Latvia.

As to the wording mixed literary style has been eliminated in the final version of the preamble. Now all sentences are written from the third-person point of view. The preamble does not pretend anymore that it is adopted by the referendum. Moreover, due to rephrasing the wording of the preamble lost its normative nature, returning to the initial idea—to state

¹⁹ The first written sources on Livs (in Latvian—līvi, lībieši) are dated starting from 11th century. According to the written sources of 13th century livs lived lower of rivers Daugava and Gauja, as well as Metsepole and Idumea. Archaeological evidences of Livs living lower of river Daugava come from 10th century. However, Livs’ predecessors inhabited the territory of Latvia almost 5000 years ago. Through the centuries Livs have been assimilated. The last native speaker of Livonian—Grizelda Kristiņa (born 1910)—passed away in 2013 aged 103. Thus, although, in Latvia, there are around 250 Livs, which makes 0,01% of all population of Latvia, there is no native speaker of Livonian (Vilcāne 2013: 105, Auns 2013: 135, Šuvcāne 2003, Charter 2013, Database of Central Statistical Bureau of Latvia).

²⁰ It is common misunderstanding in Latvia to make equation between words ‘Soviet’ and ‘communism’, forgetting that although Soviet regime was constructed using ideas of communist ideology, yet the communist ideology does not provide a single way for organising state affairs. In fact, this misunderstanding is part of the Soviet regime. Soviet regime is one of the ways how communist ideology was implemented, not the only one. Therefore, this text of preamble refers to the utmost to totalitarian and *bureaucratic* authoritarian regime present in U.S.S.R., its occupied and satellite territories under the Warsaw Pact. Obviously, Latvian legislators did not have in mind by this reference to deny the Lao People’s Democratic Republic or to condemn parliaments, which consists, *inter alia*, of communist parties.

values. Thus, legal concepts are presented more like a part of virtue of the state and their citizens, not like an attempt to place a new content within the previously existing norms of the *Satversme*. Final version of the preamble avoids unnecessary repetitions within its text and dubious wording. Rephrasing and correction brought some noticeable changes to the content as well.

CONCLUSION

As to the purpose of the preamble—the last version combines two of them. It raises public awareness of important statehood issues and it provides a dependent source of law for solving ambiguities of present constitution regulation. However, comparing to the first draft and initial version of the second, there is no more clear indications that the preamble could be used as a self-contained source of law. Therefore, those concerns that the amendments will reshape previous constitutional order and especially settled constitutional tradition are unfounded.

Whether, however, the preamble will be a panacea for resolving the issue of ‘constitutional extremism’, with which Latvian constitutional legal system had been confronted, it depends on further application. Similarly, it is hard to predict, what impact it will have on the future constitutional order of Latvia because of a great interest and expectations related to it. There are already some indications that at least public is ready to demand application of the preamble for solving issues previously ignored like unfairness of the pension system.²¹ Moreover, the reference to the preamble has been made for making stronger argument for achieving greater responsibility of the State for scientific research of the crimes against the Latvian nation by the totalitarian and *bureaucratic* authoritarian regime present in U.S.S.R. This was one of the reasons for the Government to establish the Government Commission for KGB Research on 5 August 2014 (Jarinovska 2014). However, there is no indications on how Latvian way of dealing with the misuse of popular will work and whether it will become notorious example of constitutional law. Certainly, it will have an impact on theoretical ideas of constitutional issues in respect of constitutional self-restraint by defining a core of a constitution within a preamble.

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²¹ *Communication of Ilmārs Drēziņš to the State Social Security Insurance Agency.*

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