

# INFLUENCE OF LITHUANIAN CONSTITUTIONAL LAW ON LATVIAN CONSTITUTIONAL LAW

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## Summary

In the article the author analyses influence of Lithuanian Constitutional Law on Latvian Constitutional Law. The article is dedicated to the analyses of the some similar aspects of the Constitution (Satversme) of the Republic of Latvia and the Constitution of the Republic of Lithuania from 1922. Besides the main objective the article also considers the information of the Lithuanian influence on the Latvian constitutional praxis in general.

In the second section of the article the author describes in general the Lithuanian influence. This influence exists in constitutional legislation as well as in praxis of Latvian Constitutional Court. As the very important aspect in this influence the author mentioned the close cooperation of Latvian and Lithuanian Constitutional Courts nowadays.

The third section of the article related to the analyses of the Latvian Constitution (Satversme) from the perspective of the Lithuanian 1922 Constitution. The author in this section discusses content of some similar norms of the both Constitution. Three unclear norms of the Latvian Constitution and praxis of implementation of this norms are analysed in this section of the article. Author also shows similar norms of the Lithuanian 1922 Constitution in which disputed questions are written more clearly.

## INTRODUCTION

Often questions arise in constitutional law that cannot be answered unequivocally within framework of national constitutional law. In such situations, the solutions can be found more convincing through the comparative analysis – by identifying countries, where there are comparable constitutional controls and similar development problems of political system and by evaluating in what way the corresponding matters are solved in other places. The comparative analysis is particularly useful, considering that in the Western democracies, constitutions are mostly created by synthesizing the previous experience of the country with

the most recent achievements of other countries and of common principles of democratic law-based state.<sup>1</sup>

The created statehood of two Baltic nations – Latvian and Lithuanian – during the past and this century has had similar fate – since the beginning of independent statehood as a result of World War I until participation in the European Union. Considering the similar historic experience and the necessity to solve comparable matters in the constitutional policy, the constitutional experience of Latvia and Lithuania may often be useful also in constitutional law of the other country. Moreover, reciprocal influence of both neighboring countries in the development of constitutional matters is also a debatable matter.

This issue has not been examined very broadly in the constitutional law science of Latvia, therefore in this article conceptual forms of influence will be indicated, as well as influence of neighbor's Constitution<sup>2</sup> of August 1, 1922 on the Satversme (the Constitution)<sup>3</sup> of Latvia of February 15, 1922.

## I. INFLUENCE OF LITHUANIAN CONSTITUTIONAL LAW

Cognitions of Lithuanian constitutional law began to appear in Latvian constitutional law already in the inter-war period (1918 – 1940). Here, the fact of publication of translation of the August 1, 1922 Lithuanian Constitution into Latvian in the legal magazine "Tautas Tiesības"<sup>4</sup> can be mentioned, as well as references to Lithuanian experience in works of constitutional law scholars, among them in the fundamental Latvian constitutional law course by professor Kārlis Dišlers – "Introduction to the Latvian Constitutional Law Science" („Ievads Latvijas valststiesību zinātnē”).<sup>5</sup>

In the modern day, the effect of Lithuanian constitutional rights on Latvia can be expressed with several aspects, through which it is manifested.

**First**, the effective Latvian Constitution emerged at the same time, thus solving similar state formation problems, as Lithuanian Constitution of August 1, 1922. Formulations of Lithuanian Constitution norms and application of the norms into practice can ease creation of comprehension about the norms of the Satversme, which are grammatically formed in the same way.

**Second**, during the process of restoration of independence, the sought solutions of Lithuania (and also Estonia) affected the progress of regaining independence in Latvia. The solutions that were reached by the other two Baltic States<sup>6</sup> were considered in elaboration of the declaration of May 4, 1990 "On the

<sup>1</sup> For details, see: Balodis R. Pasaules konstitucionālisma attīstības galvenie posmi. *Likums un Tiesības*, volume 6, 2004, No. 1(53), p. 8.

<sup>2</sup> Lietuvos Valstybės Konstitucija. Book: Maksimaitis M. *Lietuvos valstybės konstitucijų istorija*. Vilnius: Justitia, 2005, p. 336. – 348.

<sup>3</sup> Constitution of the Republic of Latvia *Valdības Vēstnesis*, No. 141, June, 30, 1922

<sup>4</sup> Lithuanian Constitution (Lietuvos Valstybes Konstitucija). *Tautas Tiesības*, 1927, No. 11/12, No. 13/14, No. 15/16.

<sup>5</sup> Dišlers K. *Ievads Latvijas valststiesību zinātnē*. Rīga: A. Gulbis, 1930.

<sup>6</sup> For more details, see: Kusiņš G. 4. maija Deklarācijas tapšana – no idejas līdz balsojumam. Book: *4. maijs. Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju*. Jundzis T. (sc. red.) Rīga: Fonds Latvijas Vēsture, 2000, pp. 69 – 79.

Restoration of Independence of the Republic of Latvia”<sup>1</sup>, as well as in making other important decisions.

**Third**, an important aspect is the close cooperation of the Constitutional Court of the Republic of Lithuania and the Satversme Court of the Republic of Latvia. For several years now, the justices of the constitutional courts of both countries meet in seminars and discuss topical matters of constitutional practice, thus trying to seek solutions to the topical problems.<sup>2</sup>

The Satversme Court of the Republic of Latvia has made references to the formulated findings of the Constitutional Court of the Republic of Lithuania multiple times, in order to substantiate its own conclusions about contents of corresponding norms of the Satversme and about functioning of modern state. For instance, the Satversme Court has made references to Lithuanian case-law when assessing the concept of judge’s independence<sup>3</sup>, the rights of the legislator to delegate rights to other entities for issuing external normative acts<sup>4</sup>, as well as legislator’s actions in the implementing of the social rights.<sup>5</sup>

**Fourth**, the dialogue of constitutional law scholars of both countries would be significant, thus forming a common view on basic concepts of constitutional law and by collective search of solutions to the present problems. A more active cooperation would be beneficial here, because when comparing cooperation of constitutional courts of both countries, the cooperation amongst rights scientists is not that close.

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<sup>1</sup> Declaration of the Supreme Council of the Soviet Republic of Latvia on “Reinstatement of Independence of the Republic of Latvia”. *Latvijas Republikas Augstākās padomes un Valdības Ziņotājs*, May 17, 1990, No.20.

<sup>2</sup> For more details, see: Rinkevičius V. Ievadvārds. Book: *Konstitucinių teismų vaidmuo Europos Sąjungos narystės kontekste. Satversmes tiesu loma dalības Eiropas Savienībā kontekstā*. Vilnius: Lietuvos Respublikos Konstitucinis Teismas, 2004, P.4.; Pededze Dz. Sestā kaimiņvalstu konstitucionālo tiesu tikšanās. *Jurista Vārds*, October 17, 2006, No. 41(444).

<sup>3</sup> Par likuma “Par tiesu varu” 75. pantā ietvertās normas vārdu “vai tiesas piesēdētājam” atbilstību Latvijas Republikas Satversmes 84. un 92. pantam: Satversmes tiesas 2004. gada 5. novembra spriedums lietā Nr. 2004-04-01. *Latvijas Vēstnesis*, November 9, 2004, No. 177.

<sup>4</sup> Par Ministru kabineta 2005. gada 11. janvāra noteikumu Nr. 17 “Grozījumi likumā “Par nekustamā īpašuma piespiedu atsavināšanu valsts vai sabiedriskajām vajadzībām”” un 2005. gada 9. jūnija likuma “Grozījumi likumā “Par nekustamā īpašuma piespiedu atsavināšanu valsts vai sabiedriskajām vajadzībām”” atbilstību Latvijas Republikas Satversmes 1. un 105. pantam: Satversmes tiesas 2005. gada 16. decembra spriedums lietā Nr. 2005-12-0103. *Latvijas Vēstnesis*, December 20, 2005, No.203.

<sup>5</sup> Par likuma „Par valsts pensijām” pārejas noteikumu 16. punkta 12. apakšpunkta atbilstību Latvijas Republikas Satversmes 1., 91. un 109. pantam: Satversmes tiesas 2006. gada 8. novembra spriedums lietā Nr. 2006-04-01. *Latvijas Vēstnesis*, November 15, 2006, No. 183.

## II. THE SATVERSME FROM THE PERSPECTIVE OF THE LITHUANIAN CONSTITUTION

On February 15, 1922, the Constitutional Assembly (*Satversmes Sapulce*) of Latvia adopted the Satversme, which is still in force without basic amendments to the norms, which establish state power organization and the procedure of its implementation. However on August 1, 1922, the Constitutional Assembly (*Steigiamasis Seimas*) of Lithuania adopted the Lithuanian State Constitution.

Elaboration of both constitutions occurred in close connection with the common development of Western constitutionalism theory. The Constitution was elaborated considering Germany's Weimar Constitution, as well as constitutional experience of France, Switzerland, Finland, the United Kingdom, and the USA. Moreover, influence of Polish, Czechoslovakian, Estonian, and Japanese constitutions can be detected.<sup>1</sup> Lithuanian constitutional law scientists have marked the influence of constitutionalism of France, Switzerland, Belgium, the United Kingdom, and the USA, Germany, and Scandinavian countries on the content of the 1922 Lithuanian Constitution.<sup>2</sup>

Neither Latvian, nor Lithuanian scientists have researched reciprocal influence of 1922 constitutions of both countries. Furthermore, it is not acknowledged that these laws have had reciprocal influence on each other. However both constitutions are rather similar in the section regulating the state power organization and the procedure of implementation thereof. Both countries established parliamentary republics with weak presidential power, which is indicative of similar understanding of state power division. Also, numerous norms have been formulated identically or very similarly. In such situations, it can be concluded that in several cases, the formulations of Lithuanian constitutional norms are more precise and clearer, although in other cases, the formulation of regulations is clearer and more detailed in Satversme. The similarity of both constitutions could have been affected by two factors.

**First**, when elaborating the constitutions both in Latvia and Lithuania, the same constitutional experience of countries was used.

**Second**, an assumption can be made that there was also reciprocal influence. However, wider research would be required for confirming this assumption.

In either case, the similarity of constitutional norms of both countries enables to set forth a version about interpretation options of several unclearly formulated norms of the Satversme. In several cases, Latvian constitutional practice has moved into different direction, however knowledge about the formulations of norms of the Lithuanian Constitution of 1922 would have eased quests for the right solution.

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<sup>1</sup> Šilde Ā. *Latvijas vēsture. 1914. – 1940.* Stockholm: Apgāds Daugava, 1976, p. 363; Cielēns F. *Laikmetu maiņā. Atmiņas un atziņas.* Volume 3. Stockholm: Apgāds Memento, 1998, p. 113.

<sup>2</sup> For more details, see: Maksimaitis M. *Lietuvos valstybės konstitucijų istorija.* Vilnius: Justitia, 2005, p. 122.

### (a) Requirements for the President Candidate

Article 37 of the Satversme adopted in year 1922 established that “a person who has not reached the age of 40 cannot be elected as the President”. There were no other requirements established in the constitutional norm in respect candidate to the President’s position.

In the 1996 election of the President, as one of the candidates that were nominated and registered for the position of President was Alfrēds Rubiks, although he was sentenced and was serving his time in imprisonment. Such decision by the Saeima was widely criticized. When deciding on registration of Alfrēds Rubiks for the election of the President, a member of the Saeima of the time (currently – judge of the Satversme Court), professor Romāns Apsītis, noted that the Satversme forbids to register an individual as a candidate for the President’s election, who is not lawful, i.e., is sentenced and serving the time. Romāns Apsītis justified his decision with the fact that Article 37 of the Satversme is to be interpreted in connection with Article 9 of the Satversme, i.e., Article 37 of the Satversme cannot be looked isolated, but only as a continuation to Article 9 of the Satversme, which establishes: “Any lawful person, who on the day of election is older than 21 years old can be elected in Saeima”.<sup>1</sup> The judge of the European Court of Justice, professor Egils Levits, also supported the version of professor Romāns Apsītis: “If we would consider only [Article 37 of the Satversme], then a 41 year old mentally disabled person could also be registered as a candidate for the President’s position, therefore it would limit in its legal capacity an Indian citizen, who serves the sentence in prison. [...] To interpret the Satversme methodologically correctly – in the specific situation by using a systematic interpretation method – in compliance with Article 37 of the Satversme in connection with Article 9, the candidate for the President’s position must conform to three prerequisites: 1) the candidate must be citizen of Latvia; 2) must have legal capacity (in this understanding, individuals, who are acknowledged incapacitated or are serving the time in imprisonment, are not having legal capacity), and 3) must be at least 40 years old.”<sup>2</sup>

The connection to the requirements of Article 43 of the Lithuanian Constitution of 1922 in respect to candidates to the President’s position and the requirements for a member of parliament, were prescribed in *expressis verbis*, i.e., it was established that a president can be at least 35 years old citizen of Lithuania, who is eligible to be elected at the Seims (the Parliament). In this situation, the formulation of Lithuanian constitutional norms would have been useful in interpretation of Article 37 of the Satversme, which is construed similar to Article 43 of the Lithuanian Constitution, with a clear indication on the fact that a candidate for the President’s position must conform to the requirements brought forward to the members of the Parliament.

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<sup>1</sup>For more details, see: Meļķis E. *Tiesību normu iztulkošana*. 2<sup>nd</sup> edition publication. Riga: University of Latvia, 2000, pp. 35 – 36.

<sup>2</sup> Levits E. Starp tiesību normu un tiesisko realitāti. *Diena*, October 10, 1995.

### (b) Election of the President

Article 52 of the Satversme provides how the President can lose its position prior to the end of term (resignation, death, or revocation), however the term for which the following President would be elected is not established. The situation is made even more difficult by the fact that in regulating dismissal of the President through referendum, Article 50 of the Satversme establishes that upon occurrence of the concordant fact “Saeima elects a new President for the dismissed President’s remaining term of office.”

Upon adaptation of the Satversme, severe debates started between Balduin von Disterlo and Kārlis Dišlers about the term that the new president should be elected for in such extraordinary situations. Disterlo considered that in all cases, when the position of President is vacated prematurely, its descendant should be elected for a full term of office, save for cases of Article 50 of the Satversme.<sup>1</sup> However by systematic interpretation of Articles of the Satversme and by addressing the essence of the President, Kārlis Dišlers argued that in all cases when the post of the President is vacated prematurely, its descendant may be elected only for the remaining term of office.<sup>2</sup> This theoretical dispute was decided with a precedent. After death of President Jānis Čakste, upon discussion of constitutional character, the Saeima elected Gustavs Zemgals for a full office term as the President, and not for the remaining office term of the President Jānis Čakste.<sup>3</sup> Kārlis Dišlers summarized: “With this precedent, it seems, the order will be established, that the President in all cases, except the case prescribed in Article 50 of the Satversme of the Republic of Latvia, will be elected for 3 years”.<sup>4</sup>

Nonetheless, when examining the Lithuanian Constitution of 1922, the answer is clearly stated about a reasonable solution of Latvian constitutional law problem. Part II of Article 45 of the Constitution provides that in all cases when the President of the Republic leaves the post prematurely (voluntary resignation, dismissal, death, illness forbidding performing responsibilities of the position), the new president would be elected for the remaining office term of the previous president. In the norm of the Satversme, this condition, regardless of the fact that it fully conforms to the logics of the state organization of Latvia, was not formulated sufficiently clearly; this therefore caused debates upon death of Jānis Čakste.

### (c) Extension of Parliament Mandate

Article 10 of the 1922 wording of the Satversme prescribed that the Saeima is elected for three years. However Article 12 of the Satversme provided that au-

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<sup>1</sup> Disterlo B. Juridiskas piezīmes pie Latvijas Republikas Satversmes. *Tieslietu Ministrijas Vēstnesis*, 1923, No. 7, pp. 5 – 6.

<sup>2</sup> Dišlers K. Dažas piezīmes pie Disterlo raksta: „Juridiskas piezīmes pie Latvijas Republikas Satversmes”. *Tieslietu Ministrijas Vēstnesis*, 1923, No. 9/10, pp. 110 – 111.

<sup>3</sup> Lazersons M. „Konstitucionāla” likumdošana un Saeimas publisko tiesību komisija. *Jurists*, 1928, No. 7, columns 198 – 199.

<sup>4</sup> Dišlers K. *Ievads Latvijas valststiesību zinātnē*. Rīga: A. Gulbis, 1930, p. 159.

thority of the Saeima is terminated only when the newly-elected Saeima convenes. In the wording of the Satversme *expressis verbis*, it is not regulated as to what should occur if the term of the Saeima has expired, but new Saeima election has not taken place due to extraordinary circumstances.

On the one hand, Article 10 of the Satversme indicates clearly formulated term of Saeima mandate. On the other hand, in Article 12 of the Satversme, the principle of legislature continuity was formulated, i.e., the mandate of the previous parliament ceases when the newly-elected parliament convenes, and there is no inter-legislature period in the country. "The Satversme of the Republic of Latvia adopted by the Constitutional Assembly introduces amongst other an interesting innovation: the legislative institution – the Saeima elected by the people – becomes a permanent, continually existing institution."<sup>1</sup>

In the wording of the Satversme *expressis verbis*, it was not established in what way these two principles are to be connected in cases, when it is not possible to organize parliamentary elections in the anticipated term. The given matter was solved in the resolution of senators of the Latvian Senate, which was created in exile in year 1948. In this resolution, the senators evaluated the matter on whether the Satversme of 1922 is in force and what state authorities of Latvia exist physically and legally. The senators assessed whether the madate of the Saeima, elected in year 1931, remain intact, although operations of this Saeima were suspended in year 1934 as a result of coup of Kārlis Ulmanis and Latvia had been transferred under power of the Soviet Union in year 1940. The senators emphasized: "The principle has been clearly expressed in the Satversme indicating that during the term of Saeima mandate, in between previous and newly elected Saeima, such situation cannot be formed that the State of Latvia would temporarily be without an eligible legislative institution – the Saeima. Therefore it is established that in all cases, the term of Saeima mandate ceases only at the moment of convening of newly elected Saeima. Thus the authority of Saeima [elected in year 1931] has not been terminated."<sup>2</sup>

In the Lithuanian Constitution of 1922, this matter was clearly regulated in the wording of Constitution, anticipating also the prolongation procedure for the members of Seims (Para. II of Article 25).

## CONCLUSIONS

The constitutional experience of both Latvia and Lithuania, as well as the cognitions expressed by legal scientists of both countries are rather interesting and useful when solving constitutional law matters in the other country. This mutual relation is confirmed the best with the tight cooperation of constitutional courts of both countries.

Closer cooperation between constitutional law scientists of both countries would be beneficial, in order to develop constitutional cognitions characteristic

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<sup>1</sup> Dišlers K. Permanenta likumdošanas iestāde un deputātu imunitāte. *Tieslietu Ministrijas Vēstnesis*, 1922, No. 1, p. 7.

<sup>2</sup> Senator's Resolution. Book: 4. *majjs. Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju*. Jundzis T. (sc. red.) Rīga: Fonds Latvijas Vēsture, 2000, p. 384.

for both countries through recognizing mutual and also different matters in the constitutional systems of both countries, thus enriching the joint set of constitutional values. Such dialogue would undoubtedly ease settlement of disputable constitutional law issues, because mostly both countries deal with similar problems.

It can be established that the existing Constitution of the Republic of Latvia, which was adopted in year 1922, is similar to the part of Lithuanian Constitution of year 1922, which regulates the state power organization. This similarity can be used to interpret the constitutional norms. There are at least three cases, which were discussed in this article, where disputable formulations of constitutional norms can be easily interpreted by applying Lithuanian experience.

### **LIETUVOS KONSTITUCINĖS TEISĖS ĮTAKA LATVIJOS KONSTITUCINEI TEISEI**

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#### **Santrauka**

*Straipsnyje aptariama Lietuvos konstitucinės teisės įtaka Latvijos konstitucinei teisei. Straipsnyje analizuojamos kelios Latvijos konstitucijos (Satversme) nuostatos, analogiškos Lietuvos Respublikos 1922 metų konstitucijos normoms. Be to, straipsnyje pateikiama informacija apie Lietuvos daroma poveikį Latvijos praktikai.*

*Antroje darbo dalyje aprašoma Lietuvos poveikis bendraja prasme. Šis poveikis pasireiškia konstitucinėje teisėkūroje, taip pat atsispindi Latvijos konstitucini teismo praktikoje. Kaip itin svarbų faktorių autorius pamini glaudų Lietuvos bei Latvijos konstitucinių teismų bendradarbiavimą.*

*Trečioji darbo dalis skirta Latvijos konstitucijos (Satversme) nuostatų palyginimui su Lietuvos Respublikos 1922 metų konstitucija. Autorius atkreipia dėmesį į panašias abiejų konstitucijų nuostatas. Nepakankamai aiškios Latvijos konstitucijos normos bei jų taikymo praktika taipogi yra analizuojamos šioje darbo dalyje. Autorius teigia, jog abiejų keliančios Latvijos konstitucijos normos Lietuvos Respublikos 1922 metų konstitucijoje yra pateiktos daug aiškiau.*

