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Requirements to be Set for Voters' Legislative Initiatives in the Republic of Latvia: Legal Regulation, Practice, and Recent Findings of Judicature

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The article is dedicated to legal regulation of the practice of voters' legislative initiative in Latvia. The article examines changes to the regulation on this right of a totality of citizens and implementation thereof after 2010, when significant amendments were introduced to "Law on National Referendums, Initiation of Laws and European Citizens' Initiative". The article will provide an analysis of the practice of the Central Election Commission in deciding on registration of draft laws and draft amendments to the *Satversme*, submitted by voters. Since both the *Satversme* and the law provides that a draft law submitted by voters must be fully elaborated, the article examines criteria of assessment leading to the answer, whether the draft law should be recognised as being fully elaborated in its content and form. A special procedure has been established for appealing against decisions by the Central Election Commission, envisaging appeal against these decisions to the Supreme Court, therefore also the findings by the Supreme Court with respect to procedure for exercising the voters' right to legislative initiative will be analysed. Some aspects in the regulation on voters' legislative initiatives have been controversial, therefore the Supreme Court and members of the *Saeima* have submitted applications to the Constitutional Court, request examination of compatibility of regulation established in law with the *Satversme*, therefore the article will provide also an insight into the judicature of the Constitutional Court on issues of voters' legislative initiatives.

Keywords: totality of citizens, voters' legislative initiative, initiative group, fully elaborated draft law, draft amendments to the *Satversme*, the Central Election Commission, national referendum, collection of signatures.

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Introduction

Pursuant to Article 2 of the *Satversme* [Constitution] of the Republic of Latvia (hereinafter – the *Satversme*), in Latvia the sovereign power is vested in the people of Latvia, and in the name of the people it is exercised by all citizens of the Republic of Latvia who have the right to vote.

Article 64 of the *Satversme* provides that there are two subjects of legislation in Latvia – the parliament (the *Saeima*) and the people. Latvia belongs to the countries, where voters have the right to legislative initiative. Voters' right to legislative initiative did not exist in all the democratic states; also in the European scale this right is not too widespread.¹ Article 78 of the *Satversme* defines the procedure, by which voters exercise the right to legislative initiative granted to the people: “Electors, in number comprising not less than one tenth of the electorate, have the right to submit a fully elaborated draft of an amendment to the Constitution or of a law to the President, who shall present it to the *Saeima*. If the *Saeima* does not adopt it without change as to its content, it shall then be submitted to national referendum.”

This right of the people has existed in Latvia since 7 November 1922, when the *Satversme* entered into force, and this Article has not been amended following adoption of the *Satversme*. A more detailed regulation on the procedure for implementing electors' legislative initiatives has always been defined at the level of laws. Currently, this issue is regulated by the law adopted in 1994 “Law on National Referendums, Initiation of Laws and European Citizens' Initiative”² (hereinafter – the Law), although over time a number of significant amendments have been introduced to it.

It must be noted that at the time of drafting the *Satversme* the Constitutional Assembly initially envisaged applying the voters' right to legislative initiative only to amendments to the *Satversme*; i.e., a wording was proposed that at least one fifth of voters would have the right to submit to the President of the State fully elaborated draft amendments to the *Satversme* [...].³ When the draft *Satversme* was examined article by article, member of the Constitutional Assembly Fēlikss

¹ *Ņikuļceva, I.* Vēlētāju likumdošanas iniciatīva Latvijā [Voters' Legislative Initiative in Latvia]. *Jurista Vārds*, 2009. 8. decembris, Nr. 49.

² Par tautas nobalsošanu, likumu ierosināšanu un Eiropas pilsoņu iniciatīvu: LR likums [Law on National Referendums, Initiation of Laws and European Citizens' Initiative: Law of the Republic of Latvia]. *Latvijas Vēstnesis*, 20.04.1994. Nr. 47(178).

³ In the course of drafting the *Satversme* this article was Article 76. See *Satversmes Sapulces IV sesijas 20. sēdes stenogrammu 09.11.1921* [Transcript of the 20th sitting of the IV Session of the Constitutional Assembly 09.11.1921]. In: *Latvijas Satversmes Sapulces stenogrammu izvilks (1920–1922)*. Rīga: Tiesu namu aģentūra, 2006., 467. lpp.

Cielēns at the meeting of November 1921 proposed that the voters' initiative should be also applicable to "all other laws", he further proposed decreasing the necessary threshold of voters to one tenth.⁴ The issue of the number of voters' signatures required in support of a new initiative caused extensive debates, various numbers were offered (*inter alia*, one thirtieth, which many members of the Constitutional Assembly criticised as too low a threshold, which therefore could be used for propaganda purposes and, to quote Otto Nonācs, could "deluge the legislative institution, the *Saeima*, in papers").⁵ As a result of discussions, O.Nonācs' proposed 1/10 as the necessary support for voters' legislative initiative was upheld, and the people were granted this right both with respect to draft laws and amendments to the *Satversme*.

The issue of voters' right to legislate has been studied previously in Latvian legal science,⁶ however, the majority of these studies were done prior to 2012, when significant amendments to the Law were adopted, which have changed the procedure in which this right is exercised. On 8 November 2012, the *Saeima* adopted "Amendments to "Law on National Referendums, Initiation of Laws and European Citizens' Initiative""⁷ and they entered into full force on 1 January 2015. These amendments gradually introduced significant innovations in implementation of legislative initiative, and the procedure, in which voters' initiatives are to be implemented, has become more complex. For example, until amendments to the Law of 2012 were adopted, collecting of signatures to initiate laws was utterly simple – it was conducted in two stages, first of all, voters had to collect 10 000 signatures using their own resources, but further collecting of signatures was organised by the State and financed by the state budget resources. Political events at the end of 2011 proved that some political forces deliberately used this flexible regulation as campaigns to increase their popularity by offering for collection of signatures proposals that were contrary to national interests and constitutional values, for example, a proposal to enshrine in the *Satversme* the Russian language as an official language, as well as immediately after it – a draft law for automatically accepting all Latvia's non-citizens into the Latvian citizenship.⁸ It has been aptly

⁴ In the course of drafting the *Satversme* this article was Article 76. See *Satversmes Sapulces IV sesijas 20. sēdes stenogrammu* 09.11.1921 [Transcript of the 20th sitting of the IV Session of the Constitutional Assembly 09.11.1921]. In: *Latvijas Satversmes Sapulces stenogrammu izvilums (1920–1922)*. Rīga: Tiesu namu aģentūra, 2006., 467. lpp.

⁵ See: *Satversmes Sapulces IV sesijas 19.sēdes stenogrammu* 08.11.1921 [Transcript of the 19th sitting of the IV Session of the Constitutional Assembly 08.11.1921]. From: *Latvijas Satversmes Sapulces stenogrammu izvilums (1920–1922)*. Rīga: Tiesu namu aģentūra, 2006., 454. lpp.

⁶ For example, in 2012 at the University of Latvia I.Ņikulceva presented her doctoral thesis "Tautas nobalsošana un vēlētāju likumdošanas iniciatīva" [National Referendum and Voters' Legislative Initiative. Thesis]. Available at https://dspace.lu.lv/dspace/bitstream/handle/7/5120/22881-Inese_Nikulceva_2013.pdf?sequence=1 [last viewed 20.07.2017].

⁷ *Grozījumi likumā "Par tautas nobalsošanu, likumu ierosināšanu un Eiropas pilsoņu iniciatīvu"*: LR likums. Pieņemts 08.11.2012 [Amendments to "Law on National Referendums, Initiation of Laws and European Citizens' Initiative": Law of the Republic of Latvia. Adopted on 08.11.2012]. *Latvijas Vēstnesis*, 27.11.2012., Nr. 186(4789)

⁸ *Čepāne, I.* Latvija ir referendumu paradīze [Latvia is a Paradise for Referendums]. *Jurista Vārds*, 21.08.2012. Nr. 34(733). See also Judgement of 12 February 2014 by the Constitutional Court of the Republic of Latvia in case No. 2013-05-0, para. 18.2 Available at http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2013-05-01_Spriedums.pdf and Judgement of 12 February 2014 by the Department of Administrative Cases of the Republic of Latvia in case No. A420577912 SA-1/2014 [last viewed 20.07.2017].

noted in legal science that the end of 2011 saw the beginnings of a new era – implementing confrontational people's legislative initiatives.⁹ These processes caused very important discussions on issues of constitutional law, *inter alia*, on mechanism for protecting the constitution as the foundation, the basic value of the State.

This was the reason why the *Saeima* on 8 November 2012 adopted amendments to the Law, establishing a stricter procedure, i.e., introduced a requirement to indicate the initiative group responsible for the draft law, abandoning two stages in signature collection and clearly defining the competence of CEC in registering draft laws. The new regulation was adopted to limit the possibility for submitting low-quality draft laws, with respect to which, moreover, pursuant to procedure established in Article 78 of the *Satversme*, in case these were not adopted, a national referendum had to be held. The Constitutional Court recognised: “[...] if low-quality or unconstitutional draft laws were regularly submitted for national referendums, then the very idea of voters' legislative initiative would be levelled out and, over time, the civic activity of voters could decrease”.¹⁰

These amendments, clearly, make implementation of a legislative initiative more complicated.¹¹ The new regulation has been contested at the Constitutional Court, which recognised it as being compatible with the *Satversme*.¹² The practical relevance of the issue of voters' legislative initiative is revealed also by the fact that in recent years a voters' initiative has been registered for collection of signatures for the third time already – a draft law that envisages revoking of amendments to the Law adopted in 2012.¹³

Issues related to voters' right to initiate draft laws due to different reasons have been repeatedly examined also by the Constitutional Court and the Supreme Court, for example, analysing the issue regarding the content of requirement set for voters' legislative initiatives that the draft law must be “fully elaborated” and the authorisation of the Central Election Commission in the procedure of registering

⁹ Rodiņa, A. Valstiskuma pamatu aizsardzības mehānismi [Mechanisms for Protecting the Foundations of Statehood]. Latvijas Universitātes 71. zinātniskās konferences rakstu krājums. Tiesību interpretācija un tiesību jaunrade – kā rast pareizo līdzsvaru. Rīga: Latvijas Universitāte, 2013, 221., 223. lpp.

¹⁰ Judgement of 18 December 2013 by the Constitutional Court in case No. 2013-06-01, para. 13.2. Available at http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2013-06-01_Spriedums.pdf [last viewed 20.07.2017].

¹¹ See Brikmane, E. Tautas rosināti referendumi: vai jaunais regulējums tos ierobežo? [Referendums Initiated by the People: Are They Restricted by the New Regulation]? *LV portāls*. 05.02.2015. <http://m.lvportals.lv/visi/skaidrojumi/268528-tautas-rosinati-referendumi-vai-jaunais-regulejums-tos-ierobezo/?size=3> [last viewed 20.07.2017].

¹² Judgement of 12 February 2014 by the Constitutional Court in case No. 2013-05-01. Available at http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2013-05-01_Spriedums.pdf [last viewed 20.07.2017].

¹³ The first initiative was registered in August 2014; however, within 12 months it did not gain the necessary support for submitting the draft law to the *Saeima*. Available at <https://www.cvk.lv/pub/public/30928.html> [last viewed 20.07.2017]. The second initiative was submitted in August 2015. It did not gain the necessary support by voters within 12 months either (see <https://www.cvk.lv/pub/public/31154.html> [last viewed 20.07.2017]). Also now – in 2017 an third initiative by this association has been registered for active collection of signatures (registered by CEC in September 2016), and voters may sign for it until 18 December 2017. All 3 initiatives were submitted by the same association and they all had identical content – the proposal consists of 1 Article in the following wording: “To revoke the law of 8 November 2012 “Amendments to “Law on National Referendums, Initiation of Laws and European Citizens' Initiative””. See: <https://www.cvk.lv/pub/public/31280.html> [last viewed 20.07.2017].

initiatives. In the framework of this article, the procedure for implementing voters' legislative initiative, which was introduced by amendments of 2012 will be examined; *inter alia*, by analysing the findings of judicature about these issues, as well as decisions by the Central Election Commission on registering initiative groups or refusal to register these groups.

1. Concept of Initiative Groups and Their Role in Elaborating a Draft Law

Amendments of 2012 to "Law on National Referendums, Initiation of Laws and European Citizens' Initiative" introduced a novelty that only initiative groups had the right to propose voters' legislative initiatives. Section 23 of the Law provides that an initiative group must be established for collecting signatures for a draft law or draft amendments to the *Satversme*. The Law specifies that an initiative group may be a political party or an association of parties or a society that has been established by no less than 10 voters and has been registered in procedure defined in "Associations and Foundations Law".

The requirement set for initiative groups to register exists in all European states, where voters have the right to submit draft laws (for example, Spain, Switzerland, Poland, and Lithuania).¹⁴ Registration of initiative groups has the advantage that it allows obtaining precise information about persons, who collect signatures and finance collection thereof; thus, for example, preventing financing collection of voters' signatures from abroad.

An initiative group may be an association or a political party, which has been active before, as well as new subjects, established specifically for this purpose, because the Law does not require previous experience or length of activities. Upon receiving documentation submitted by the initiative group, CEC arrives at a conclusion on whether the submitter can be identified.

Until amendments of 2012 were adopted, usually initiatives were proposed by political parties or trade unions, which an interest group had approached with its ideas. Usually each initiative had one organiser with a relative large number of informal supporters, whereas after amendments of 2012 entered into force, initiatives have been predominantly proposed by associations, and only one of them was proposed by a political party.¹⁵ Practice shows that sometimes initiatives that are rather different as to their content; i.e., pertain to various issues, have been proposed by the same associations.¹⁶

¹⁴ Grozījumi tautas nobalsošanas un likumu ierosināšanas regulējumā. Kādas izmaiņas un kad gaidāmas [Amendments to the regulation on national referendums and initiation of laws. What kind of changes and when are expected?]. Available at <http://www.lvportals.lv/print.php?id=252811> [last viewed 20.07.2017].

¹⁵ Likumprojekts "Par tautas līdzdalību eiro ieviešanas termiņa izlemšanā" [Draft Law "On Participation of the People in Deciding on the Term for Introducing Euro"]. Available at <https://www.cvk.lv/pub/public/30456.html> [last viewed 20.07.2017].

¹⁶ For example, association "Latvija par latu" [Latvia for Lats] has initiated amendments to the *Satversme* to reinforce the national currency – lats, to dismiss the *Saeima*, as well as amendments to Article 68 of the *Satversme* that would envisage that voters could demand holding a national referendum regarding significant changes in the terms for Latvia's participation in the EU.

2. Requirements to Be Set to Draft Laws and Draft Amendments to *Satversme* to Be Submitted

2.1. Concept of Fully Elaborated Draft Law

Pursuant to Article 78 of the *Satversme*, voters have the right to initiate both draft amendments to the *Satversme* and draft laws. A draft law may be both amendments to an existing law and an entirely new law. Moreover, the procedure of submitting and criteria to be met set for draft amendments to the *Satversme* and a draft law are the same, therefore hereinafter the term “draft law” is to be understood also as draft amendments to the *Satversme*. In Accordance with Section 23(3) of the Law, an initiative group submits to the Central Election Commission a submission and a draft law or draft amendments to the *Satversme*, with respect to which it is planned to collect voters' signatures. It is the obligation of the initiative group to prepare a draft law or draft amendments to the *Satversme* fully elaborated in the form and content, with respect to which they plan to collect voters' signatures. After the initiative group has submitted the submission and a draft law or draft amendments to the *Satversme*, CEC must review the submitted documentation and within 45 days adopt one of the following decisions: 1) to register the draft law; 2) to set a term for correcting any faults in the submission and the draft law or draft amendment to the *Satversme* (for example, in cases, when the title of the law must be specified, the text of the draft law must be corrected in accordance with requirements of the Latvian literary language and orthography, or terminology used in the draft law must be specified¹⁷); (3) to reject registration of the draft law.¹⁸

Pursuant to provisions of Section 23(5) of the Law, the Central Election Commission (hereinafter – CEC) has the right to refuse registration of the draft law or draft amendments to the *Satversme* only in 2 cases: firstly, if the initiative group does not comply with the requirements set for the initiative group (see above regarding requirements set for initiative groups), or, secondly, if the draft law or draft amendments to the *Satversme* is incomplete *in form or in content*.

In practice, initiative groups most often have encountered problems in meeting the criterion that draft must be *fully elaborated*, and because of this CEC has decided to reject the submitted draft law for registration. Information available from CEC shows that since the end of 2012 until the present registration of 8 draft laws

¹⁷ CVK 07.11.2013. Lēmums Nr. 37 “Par biedrības “Sargāsim mūsu bērņus!” iesniegto likumprojektu “Grozījumi likumā “Bērnu tiesību aizsardzības likums”” [Decision by CEC of 07.11.2013 No. 37 “On the Draft Law Submitted by the Association “Sargāsim mūsu bērņus!” “Amendments to “Protection of the Rights of the Child Law””]. Available at <https://www.cvk.lv/pub/public/30672.html> [last viewed 20.07.2017]; See also the decision by CEC of 31.07.2014. No.71. Available at https://www.cvk.lv/pub/upload_file/2014/71.pdf [last viewed 20.07.2017].

¹⁸ CVK 07.11.2013. Lēmums Nr. 37 “Par biedrības “Sargāsim mūsu bērņus!” iesniegto likumprojektu “Grozījumi likumā “Bērnu tiesību aizsardzības likums”” [Decision by CEC of 07.11.2013 No. 37 “On the Draft Law Submitted by the Association “Sargāsim mūsu bērņus!” “Amendments to “Protection of the Rights of the Child Law””]. Available at <https://www.cvk.lv/pub/public/30672.html> [last viewed 20.07.2017]; See also decision by CEC of 31.07.2014. No. 71. Available at https://www.cvk.lv/pub/upload_file/2014/71.pdf [last viewed 20.07.2017].

or draft amendments to the *Satversme* has been refused,¹⁹ whereas 5 initiatives have been registered for collecting signatures.²⁰

In view of the fact that the law provides that the initiative group may appeal against the decision by the Central Election Commission to refuse registration of a draft law or draft amendments to the *Satversme* to the Department of Administrative Cases of the Supreme Court, a number of initiators have exercised this right, and judicature has evolved in Latvia regarding what a draft law should be like in order to be considered as being *fully elaborated*.

It should be noted that in deciding on a draft law or draft amendments to the *Satversme*, CEC may request information, explanations and opinions that are necessary for deciding on this issue from state and local government institutions, as well as to invite experts. This right envisaged in the Law is actively exercised in practice, and it is customary to request faculty members of the law departments of Latvian institutions of higher education to provide opinions on a particular draft law.

2.1.1. Scope of Concept “Fully Elaborated Draft Law in Form”

The criterion that a draft law must be fully elaborated in form requires abiding by requirements of legal technique. The Cabinet Regulation “Regulation on Drafting Regulatory Enactments”,²¹ as well as handbooks on drafting various regulatory enactments²² provide answers to what a draft law should be like in form. As Prof. Kārlis Dišlers concluded in his time, to consider a draft law as being fully elaborated in its form, it should be obvious from the draft law, “which existing laws or sections in laws are revoked or amendment, and the feasible and logically understandable content of the amendments and new sections should be clear”.²³ A draft law must comprise legal norms – it cannot be drawn up as a declarative statement or a conceptual proposal.²⁴

The Supreme Court has noted in its judgement of 2014 that pursuant to provisions of the *Saeima* Rules of Procedure also a draft law or draft amendments to the *Satversme* submitted by a totality of citizens must be drawn up in the form of a draft law. At the same time, it should be taken into account that the formal

¹⁹ Initiatives, the registration of which was refused: <https://www.cvk.lv/pub/public/31296.html> [last viewed 20.07.2017]. Note – here information is provided only with regard to draft laws, but in addition to that CEC has refused to register for collection of signature also proposal to dismiss the *Saeima*, because the criteria set in Article 14 of the *Satversme* for exercising this right of voters were not met.

²⁰ Initiatives registered for collection of signatures: <https://www.cvk.lv/pub/public/31293.html> [last viewed 20.07.2017].

²¹ Ministru kabineta 03.02.2009. noteikumi Nr.108. Normatīvo aktu projektu sagatavošanas noteikumi [The Cabinet Regulation of 03.02.2009 No. 108. Regulation on Drafting Regulatory Enactments]. *Latvijas Vēstnesis*, 17.02.2009. Nr. 26(4012).

²² Normatīvo aktu projektu izstrādes rokasgrāmata [Handbook for Drafting Regulatory Enactments]. Rīga: Valsts kanceleja, 2016. Available at <https://tai.mk.gov.lv/book/1/chapter/23> [last viewed 20.07.2017].

²³ *Dišlers, K.* Vai Centrālajai vēlēšanu komisijai ir tiesība pārbaudīt iesniegtos likumprojektus [Does the Central Election Commission Have the Right to Verify the Submitted Draft Laws]. *Jurists*, 1928, Nr. 5, 135., 136. sl.

²⁴ Latvijas Universitātes Juridiskās fakultātes Valststiesību zinātņu katedras vēstule CVK Nr. 2020-V10-36 [Letter by the Department of State Law of the Faculty of Law, University of Latvia to CEC No. 2020-V10-36]. *Jurista Vārds*, 02.10.2012. Nr. 40(739) 21. lpp.

requirements must be only as high as to exclude such drafts the applicability of which is impossible due to formal deficiencies (for example, the draft is not drawn up as a draft law, the content of the text of the draft law is incomprehensible, the text comprises logical errors, etc.).²⁵

A draft law must comprise also transitional provisions or provisions on entering into force, if such are necessary due to substance of amendments.²⁶ Practice, i.e., CEC's decisions to refuse registering initiatives, shows that initiative groups usually have not encountered problems in meeting formal criteria; however, refusals to register initiatives basically have been linked to the fact that a draft law had not been fully elaborated in its content.

2.1.2. Scope of Concept "Fully Elaborated Draft Law in Content"

Any law, as to its content, must fit into the legal system. This means that a law, in using recognised methodology for applying and, in particular, for interpreting law, should be applicable without causing collisions with norms that a higher in the hierarchy of legal force or legal norms that must applied as a priority.²⁷

In recent years a stable case law has developed in Latvia on the issue, what the content of a draft law should be in order to be considered as being fully elaborated.²⁸ As the Constitutional Court has noted already in its decisions of 19 December 2012 on terminating legal proceedings in the so-called official language referendum case,²⁹ a draft law cannot be considered as being fully elaborated in its content, if: 1) it envisages deciding on such issues that are not to be regulated in law at all; 2) if it were adopted, it would collide with norms, principles, and values included in the *Satversme*; 3) if it were adopted, it would collide with Latvia's international commitments. The Supreme Court also consistently follows these criteria for assessing "a fully elaborated" draft law, in reviewing cases, in which a CEC's decision is appealed against, by referring to this decision by the Constitutional Court. Actually, it should be noted that, although the decision by the Constitutional Court on the need to initiate a case in the so-called case of official language referendum was at the time criticised in legal science,³⁰ it must be concluded that these legal proceedings have contributed significantly to the development of constitutional law, *inter alia*, by developing criteria for assessing a fully elaborated draft law, which are still taken as the basis to assess the degree in which a draft law has been elaborated (compliance with the term "fully elaborated").

²⁵ Judgement of 28.03.2014 by the Department of Administrative Cases of the Supreme Court in case No. SA-3/2014, para. 9.

²⁶ *Pastars, E.* Referendumu nedienas [Troubles with Referendums]. *Diena*, 03.08.2002. Quoted from: Saeimas Juridiskā biroja vēstule Nr. 12/13-3-n/36-11/12 Centrālajai vēlēšanu komisijai [Letter by the Saeima Legal Bureau No. 12/13-3-n/36-11/12 to the Central Election Commission]. *Jurista Vārds*, 02.10.2012. Nr. 40(739), 18. lpp.

²⁷ Judgement of 28.03.2014. by the Department of Administrative Cases of the Supreme Court in case No. SA-3/2014, para. 10, see also Saeimas Juridiskā biroja vēstule Nr. 12/13-3-n/36-11/12 Centrālajai vēlēšanu komisijai [Letter by the Saeima Legal Bureau No. 12/13-3-n/36-11/12 to the Central Election Commission]. *Jurista Vārds*, 02.10.2012. Nr. 40(739), 18. lpp.

²⁸ Judgement of 18.12.2013 by the Constitutional Court in case No. 2013-06-01 and Judgement of 28.03.2014 by the Supreme Court in case No. SA-3/2014.

²⁹ Decision of 19.12.2012 by the Constitutional Court on Terminating Legal Proceedings in case No. 2012-03-01. Available at <https://likumi.lv/doc.php?id=253569> [last viewed 20.07.2017].

³⁰ See *Rodiņa, A.* Valstiskuma pamatu aizsardzības mehānismi [Mechanisms for Protecting the Foundations of Statehood]. Latvijas Universitātes 71. zinātniskās konferences rakstu krājums. Tiesību interpretācija un tiesību jaunrade – kā rast pareizo līdzsvaru. Rīga: Latvijas Universitāte, 2013, 225., 226. lpp.

The Venice Commission of the Council of Europe has also noted that a draft law to be submitted for a national referendum must comply with legal norms of higher legal force, international law, and the principles of the Council of Europe (democracy, human rights, and a state governed by the rule of law).³¹

In practice CEC has repeatedly refused to register draft laws, which had been incompatible with either the *Satversme* or international treaties binding upon Latvia.

For example, registration was refused as being incompatible with the *Satversme*, for collecting signatures to support a draft law submitted by an association that envisaged introduction of personal financial liability of members of the *Saeima*, Ministers and State Secretaries, i.e., envisaged that these officials “shall be personally financially liable for losses caused by the decisions adopted, signed or promoted by these officials”.³² In the particular situation, it was concluded that this draft law would collide with the principle of non-liability of members of the *Saeima*, enshrined in Article 28 of the *Satversme*, because Article 28 of the *Satversme* provides that “[m]embers of the *Saeima* may not be called to account by any judicial, administrative or disciplinary process [...]” This draft law was interesting also because it envisaged establishing liability of these officials, but in the subsequent section provided that “the procedure for applying financial liability shall be elaborated by the Cabinet as a discrete draft law, which shall be submitted to the *Saeima* within six months”. CEC noted with respect to this proposed wording of the section, by referring to findings by the Constitutional Court, that this section would collide with the principle of legal certainty. The requirement that “a legal norm, which establishes restrictions upon a person’s fundamental rights, must be clear and as precise as possible. [...] The issuer of a legal norm must ensure that the legal norm is worded so unambiguously that it could be correctly interpreted and applied, and an individual could be aware of legal consequences of application thereof”³³ follows from the principle of legal certainty. I.e., this article of draft law essentially is a thesis or a goal, but a mechanism for reaching it has not been defined; thus, the draft law was recognised as being declarative and unclear, because voters, signing for the draft law, would have no clarity about its legal consequences and what the practical mechanism for applying material liability would be.

Similarly, a draft law that envisaged defining on the level of law new cases for national referendum was refused registration for collecting signatures as being incompatible with the *Satversme*. It must be noted that over time a number of proposals by various initiative groups were submitted to CEC that were united by one common idea – at the time, when lats was still the national currency of Latvia, initiative groups envisaged introducing on the level of laws a new case of public referendum, i.e., to provide that the issue of changing official currency could

³¹ Code of Good Practice on Referendums, CDL-AD(2007)008rev, Venice, 16-17 March 2007, point III.3. Available at <http://www.venice.coe.int/webforms/documents/?pdf=CDLAD%282007%29008-e> [last viewed 20.07.2017].

³² CVK 19.05.2015. lēmums Nr. 4. un 02.04.2015. lēmums Nr. 3. Par biedrības “Atvērtās pārvaldības partnerība Latvijā” iesniegto likumprojektu “Likums “Par Saeimas deputātu, ministru un valsts sekretāru personisko materiālo atbildību”” [Decision by CEC of 19.05.2015 No. 4 and Decision of 02.04.2015. No. 3 “On the Draft Law Submitted by the Association “Atvērtās pārvaldības partnerība Latvijā” “On the Personal Liability of Members of the Saeima, Ministers and Secretaries of the State]. Available at <https://www.cvk.lv/pub/public/31136.html>; <https://www.cvk.lv/pub/public/31107.html>; <https://www.cvk.lv/pub/public/31134.html> [last viewed 20.07.2017].

³³ See Judgement of 28.06.201 by the Constitutional Court in case No. 2012-26-03, para. 14.

be decided upon only in a national referendum. One of the initiatives, which was submitted in January 2013, envisaged amending the law “On the Bank of Latvia” by providing that lats was the only legal means of payment in Latvia – until the moment, when the people decided otherwise in a referendum.³⁴ Some initiatives envisaged defining holding of a referendum in a special, newly adopted law “On People’s Participation in the Change of Legal Means of Payment in the Republic of Latvia”.³⁵ In all these cases, CEC refused to register these drafts, because CEC validly found that introduction of a new type of national referendum was an issue of amending the *Satversme*, which should be decided upon by the *Saeima* and the totality of the people of Latvia as the constitutional legislator. Thus, the submitted draft laws could not be recognised as being fully elaborated because they envisaged to regulate in law a matter that could be decided only by amendments to the *Satversme*. CEC, on the basis of Article 64 of the *Satversme*³⁶ noted: “Since the *Satversme* exhaustively defines cases, when the totality of citizens as a body of state power participates, other cases of national referendums cannot be envisaged in a law or other regulatory enactment. A new case of national referendum, previously not envisaged in the *Satversme*, is to be introduced only by amending the *Satversme*, on which the *Saeima* or the totality of Latvian citizens must decide on as a constitutional legislator”.³⁷ It must be noted that this decision by CEC also pointed to some aspects that proved that a regulation like this would also collide with international commitments assumed by Latvia.

As mentioned above, it has been recognised in judicature that to recognise a draft law as being fully elaborated in content, it may not collide with international commitments that the State has assumed. In 2013, CEC refused to register an initiative submitted by voters that envisaged amending Article 4 of the *Satversme* by adding to it a sentence “Lats shall be the national monetary unit of Latvia”³⁸ as being incompatible with the international commitments of the State. CEC validly concluded that the issue of means of payment in Latvia was related to Latvia’s accession to the European Union and participation in the Economic and Monetary

³⁴ 18.03.2013. CVK lēmums Nr. 14 Par iniciatīvas grupas iesniegto likumprojektu “Grozījumi likumā “Par Latvijas Banku” [Decision by CEC of 18.03.2013 No. 14 “On the Draft Law Submitted by an Initiative Group “Amendments to the Law “On the Bank of Latvia”]. Available at https://www.cvk.lv/pub/upload_file/14_pilnais.pdf [last viewed 20.07.2017].

³⁵ CVK 31.01.2013. lēmums Nr. 5. Par iniciatīvas grupas iesniegto likumprojektu “Par tautas līdzdalību eiro ieviešanas termiņa izlemšanā” [Decision of 31.01.2013 by CEC No. 5 “ On the Draft Law Submitted by an Initiative Group “On People’s Participation in Deciding on the Term for Introducing EURO”]. Available at https://www.cvk.lv/pub/upload_file/PV%202013/31012013_CVK_lemums_Nr_5_izversts.pdf [last viewed 20.07.2017]; CVK 18.09.2013. lēmums Nr.35 Par biedrības “Latviešu Biedrība” likumprojektu “Par tautas līdzdalību Latvijas Republikas likumīgā maksāšanas līdzekļa nomaiņā” [Decision by CEC of 18.09.2013 No. 35 “On the Draft Law Submitted by Association “Latviešu Biedrība” “On Participation of the People in Replacing the Official Means of Payment in the Republic of Latvia]. Available at https://www.cvk.lv/pub/upload_file/35_pilnais.pdf [last viewed 20.07.2017]. See p. 11.

³⁶ Article 64 of the *Satversme* provides: “The *Saeima*, and also the people, have the right to legislate, in accordance with the procedures, and to the extent, provided for by this Constitution.” I.e., it follows from this Article that the rights of the people as the legislator are limited and exist only in the scope that is set in the *Satversme*.

³⁷ Para. 15, 16. Available at https://www.cvk.lv/pub/upload_file/14_pilnais.pdf [last viewed 20.07.2017].

³⁸ CVK 14.05.2013. lēmums Nr. 17 Par biedrības “Par latu, pret eiro” iesniegto likumprojektu “Grozījums Latvijas Republikas Satversmē” [Decision by CEC of 14.05.2013 No. 17 “On the Draft Law Submitted by the Association “Par latu, pret eiro”, “Amendment to the *Satversme* of the Republic of Latvia”]. Available at https://www.cvk.lv/pub/upload_file/17_pilnais.pdf [last viewed 20.07.2017].

Union. Article 119 of the Treaty on the Functioning of the European Union lists those activities, which the European Union and its Member States perform within the framework of the Economic and Monetary Union. Introduction of common currency is mentioned as one of activities to be implemented by Member States. Thus, the issue of the means of payment in Latvia (retaining lats or introducing euro) applies to terms of participation in the European Union and introduction of euro is a commitment that has been assumed by an international treaty. Thus, CEC concluded that the submitted draft amendment to the *Satversme* was not fully elaborated as to its content, because it collided with Article 73 of the *Satversme* and, if such were adopted, it would collide also with Latvia's international commitments.³⁹ In examining a case, in which this decision by CEC was appealed against, the Supreme Court in its judgement of 2014 strictly stated that "the concept "fully elaborated" of Article 78 of the *Satversme* is to be understood as such that encompasses also such legal initiative by a totality of citizens that respects Latvia's international commitments in such a way that it at the same time envisages measures to ensure that before the law or amendments to the *Satversme* included in the initiative enter into force or, at the latest, simultaneously with it, is possible to prevent possible collision with Latvia's international commitments. A draft law, which in the case of being adopted, would collide with Latvia's international commitments, cannot be regarded as being "fully elaborated"". Due to this, the Supreme Court decided that CEC had had grounds to refuse registration of draft amendments to the *Satversme*, because it would have been incompatible with international commitments, and therefore rejected the plaintiffs' claim to have CEC's decision revoked and to set an obligation to register it for collection of signatures.⁴⁰

It must be noted in addition that with respect to draft amendments to the *Satversme*, in order to consider them as being fully elaborated, it must be taken into consideration that they may not be incompatible either with those provisions of the *Satversme* that the draft does not propose to amend, or the core of the *Satversme*.⁴¹

All draft laws or draft amendments to the *Satversme* that are proposed must also have high quality content – a draft law may not have internal contradictions or be unclear otherwise. Moreover, the entire text of the draft law must comply with the criteria "fully elaborated", and in the case if the draft law even in a part thereof does not comply with the concept of being fully elaborated, then this deficiency cannot be eliminated and it must be recognised that the draft law as a whole does not comply with requirements of Article 78 of the *Satversme*, and this deficiency cannot be eliminated, for example, by deleting the incompatible part from the text of the draft law.⁴² A draft law should be fully elaborated already at the moment, when it is submitted to CEC for registration, and an excuse that following registration

³⁹ CVK 14.05.2013. lēmums Nr. 17 Par biedrības "Par latu, pret eiro" iesniegto likumprojektu "Grozījums Latvijas Republikas Satversmē" [Decision by CEC of 14.05.2013 No. 17 "On the Draft Law Submitted by the Association "Par latu, pret eiro", "Amendment to the *Satversme* of the Republic of Latvia"]. Available at https://www.cvk.lv/pub/upload_file/17_pilnais.pdf [last viewed 20.07.2017].

⁴⁰ Judgement of 28.03.2014 by the Department of Administrative Cases of the Supreme Court of the Republic of Latvia in case No. SA-3/2014.

⁴¹ Ibid.

⁴² See Decision by CEC of 19.05.2015, No. 4, para. 8; Saeimas Juridiskā biroja vēstule Nr. 12/13-3-n/36-11/12 Centrālajai vēlēšanu komisijai [Letter by the Saeima Legal Bureau No. 12/13-3-n/36-11/12 to the Central Election Commission]. *Jurista Vārds*, 02.10.2012. Nr. 40(739), 17. lpp.

it could be improved or improvement thereof could be entrusted to the *Saeima* is inadmissible.⁴³

In conclusion, it must be noted that the requirement that a draft law must be fully elaborated is particularly significant due to the provision of Article 78 of the *Satversme* that in case if a draft law submitted by 1/10 of electorate would not be upheld by the *Saeima* or were adopted with amendments, then such an incomplete draft law would be submitted for a national referendum, and might end with adoption of a probable “defective goods”. In view of the fact that the text of the draft law submitted by an initiative group may not be amended after it has been registered, it must be ensured that a draft that is incompatible with fundamental values of a democratic state governed by the rule of law is not submitted for a national referendum.

2.1.3. Restrictions Upon Content of Voters' Initiatives

The understanding that voters' initiatives cannot pertain to issues that fall within the competence of other bodies of state power has been consolidated in legal science; for example, if the *Satversme* provides that in Latvia amnesty is granted by the *Saeima*, then voters could not initiate a draft law on amnesty, to adopt a law on dismissal of judges from office (because this is an exclusive prerogative of the *Saeima*), etc.⁴⁴ Prof. K. Dišlers in his time specified that a totality of citizens may initiate adoption of only abstract and general legal norms, but not administrative or jurisdiction acts.⁴⁵

Already the pre-war legal science debated, whether voters had a right to initiate issues also with respect to those cases that are referred to in Article 73 of the *Satversme* as those cases that could not be submitted for deciding upon in a national referendum (i.e., budget and laws concerning loans, taxes, customs duties, railway tariffs, military conscription, declaration and commencement of a war, peace treaties, declaration of a state of emergency and its termination, mobilisation and demobilisation, as well as agreements with other nations). For example, professor K. Dišlers in a work that was published in the 1930s had noted that the restrictions referred to in Article 73 of the *Satversme* applied only to national referendums, but not to initiation of laws. The Professor, however, also noted that in practice it would be hard to imagine a situation, where voters submitted proposals regarding the budget or agreements with other nations; however, if the totality of citizens wished to initiate a draft law, for example, concerning introduction of a new tax or annulment of an existing tax, then, in K. Dišlers' opinion, the people could not be denied this right.⁴⁶ The Professor indicated that in such cases the draft law submitted by the voters could become a law only, if the *Saeima* were to adopt it. I.e.,

⁴³ Decision by CEC of 19.05.2015, No. 4, para. 12; see also Decision by CEC of 02.04.2015 No. 3, para. 17.

⁴⁴ Note. I.Nikuļceva has validly concluded that voters' legislative initiative according to Article 78 of the *Satversme* cannot be implemented also on issues that fall within the competence of the EU. See Nikuļceva, I. Tautas nobalsošana un vēlēšanu likumdošanas iniciatīva. Promocijas darbs [National Referendum and Voters' Legislative Initiative. Thesis]. Rīga: Latvijas Universitāte, 2012, 94. lpp. Available at https://dspace.lu.lv/dspace/bitstream/handle/7/5120/22881-Inese_Nikulceva_2013.pdf?sequence=1 [last viewed 20.07.2017].

⁴⁵ Dišlers, K. Nekonstitucionāls ierosinājums [An Unconstitutional Proposal]. *Jaunākās Ziņas*, 17.06.1927. Quoted from: Saeimas Juridiskā biroja vēstule Nr. 12/13-3-n/36-11/12 Centrālajai vēlēšanu komisijai [Letter by the *Saeima* Legal Bureau No. 12/13-3-n/36-11/12 to the Central Election Commission]. *Jurista Vārds*, 02.10.2012. Nr. 40(739), 18. lpp.

⁴⁶ Dišlers, K. Ievads Latvijas valststiesību zinātnē [Introduction to the Science of Latvian State Law]. Rīga: A. Gulbis, 1930, 117. lpp.

in this case, the consequences referred to in the second sentence of Article 78 of the *Satversme*⁴⁷ would not apply, if the *Saeima* did not adopt a draft law submitted by voters without amendments, then it could not be submitted for a national referendum.

This issue has caused polemics also in the contemporary legal science. For example, Inese Nikuļceva has noted in her dissertation that she upholds Prof. K. Dišlers' findings,⁴⁸ being of the opinion that these restrictions, in cases of doubts, should be narrowly interpreted. Then again, the experts of constitutional law Jānis Pleps and Edgars Pastars have noted that restrictions established in Article 73 of the *Satversme* should be applied also to voters' initiatives.⁴⁹ In its judgement of 2014, the Constitutional Court, in examining a case, in which the primary issue to be reviewed did not pertain directly to restrictions upon voters' initiative, noted, *inter alia*, that "voters' right to legislative initiative are not applicable to draft laws, which, pursuant to Article 73 of the *Satversme*, cannot be submitted for a national referendum".⁵⁰

At the end of 2011, when, pursuant to regulation of the time, a draft amendment to the *Satversme*, signed by 1/10 of electorate, was submitted to the *Saeima*, envisaging enshrining the status of the Russian language as the second official language,⁵¹ a discussion began in society and among lawyers, whether voters could initiate draft laws with regard to any issues whatsoever. In September 2012, the Commission of Constitutional Law under the Auspices of the President published its opinion "On the Constitutional Foundations of the State of Latvia and the Inviolable Core of the *Satversme*", which included the conclusion that voters did not have an unrestricted right to initiate any constitutional amendments. I.e., the Commission noted that the constitution comprised such values that were not amendable, the official language being one of them, in view of the fact that Latvia was a nation state and the Latvian language was the identity of this State.⁵² Likewise, the Constitutional Court in its decision of December 2012 on termination legal proceedings in case No. 2012-03-01 has foregrounded the concept of values of the *Satversme*, imposing an obligation upon all subjects of legislation to abide by the principle – to act in accordance not only with norms and principles of the *Satversme*, but also values, by noting that "not only the legislator, which exercises

⁴⁷ Article 78 of the *Satversme* provides: "Electors, in number comprising not less than one tenth of the electorate, have the right to submit a fully elaborated draft of an amendment to the Constitution or of a law to the President, who shall present it to the *Saeima*. If the *Saeima* does not adopt it without change as to its content, it shall then be submitted to national referendum."

⁴⁸ Nikuļceva, I. Tautas nobalsošana un vēlētāju likumdošanas iniciatīva. Promocijas darbs [National Referendum and Voters' Legislative Initiative. Thesis]. Rīga: Latvijas Universitāte, 2012., 94.–95. lpp.

⁴⁹ Pleps J., Pastars E. Vai tauta var Saeimā iesniegt budžeta projektu [May the People Submit to the *Saeima* a Draft Budget]. *Jurista Vārds*, 10.09.2002, Nr. 18(251) un 24.09.2002, Nr. 19(252).

⁵⁰ Judgement of 12.02.2014 by the Constitutional Court in case No. 2013-05-01, para. 14.4. Available at http://www.satv.ties.gov.lv/wp-content/uploads/2016/02/2013-05-01_Spriedums.pdf [last viewed 20.07.2017].

⁵¹ Bērziņš iesniedz Saeimā likumprojektu par divvalodību [Bērziņš Submits to the *Saeima* a Draft Law on Two Official Languages]. LETA, 20.12.2011. Available at http://www.tvnet.lv/zinas/latvija/404238-berzins_iesniedz_saeima_likumprojektu_par_divvalodibu [last viewed 20.07.2017].

⁵² Latvijas valsts kodolu meklējot [Searching for the Core of the State of Latvia]. *Jurista Vārds*, Nr. 6(705), 07.02.2012.; Konstitucionālās tiesību komisijas 17.09.2012. viedoklis par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo *Satversmes* kodolu [Opinion by the Commission of Constitutional Law from 17.09.2012 on the Constitutional Foundations of the State of Latvia and Inviolable Core of the *Satversme*]. Available at http://www.president.lv/images/modules/items/PDF/17092012_Viedoklis_2.pdf [last viewed 07.02.2017].

the right to legislate independently, – the *Saeima*, but also the legislator, which exercises the right to legislate only in some case, – the people, has the obligation to abide by norms or higher legal force and respect constitutional values enshrined therein.⁵³ In the framework of these proceedings, the Ombudsman had also expressed the opinion that voters' entitlement to exercise their right to legislative initiative could not be considered as being unlimited and that it should not be abused, for example, to undermine democratic foundations of the State.⁵⁴

As the Justice of the Constitutional Court Gunārs Kušņiņš has noted, the *Satversme* may be amended in a national referendum, if such an amendment does not delete any element of the core of the *Satversme* or does not collide with any element of this core. "It is possible to add to the core of the *Satversme* through a national referendum; however, a totally different core of the *Satversme* may be established only by adopting a new *Satversme*".⁵⁵

2.2. Authorisation of Central Election Commission and Supreme Court in Evaluating Draft Laws Submitted by Electors

For a long time, legal science could not provide an answer regarding the limits of CEC's authorisation in evaluating draft laws submitted by voters; i.e., whether CEC has the right only to verify the credibility and compliance of submitted signatures or whether it has the right to assess the content of a submitted draft law. Thus, for example, in a publication of 1928 Prof. Dišlers had expressed the opinion that "[...] there could be no doubts that the Central Election Commission has the right to verify, whether the submitted draft itself complies with provisions of Article 78 of the *Satversme* [...] it is the supreme leading institution, which must strictly see to it that all laws that apply to election of the *Saeima*, initiation of laws by the people and national referendum would be correctly applied and enforced".⁵⁶ At the same time, Prof. Dišlers noted that the Central Election Commission had no right to influence or even evaluate the submitted draft law from the perspective of whether the Commission recognised the submitted draft law, as to its content, as being good and preferable, or vice versa.⁵⁷

These discussions resumed with new ardour in 2011, when an initiative was submitted to CEC regarding amendments to the *Satversme* on establishing the status of an official language to the Russian language.⁵⁸ With amendments to "Law on National Referendums, Initiation of Laws and European Citizens' Initiative", which the *Saeima* adopted on 8 November 2012, Section 23 of this Law clearly defines the scope of CEC's rights – to evaluate, whether a draft law or draft

⁵³ *Satversmes tiesas* 2012. g. 19. decembra lēmums Par tiesvedības izbeigšanu lietā Nr. 2012-03-01 [Decision of 19 December 2012 by the Constitutional Court on Terminating Legal Proceedings in case No. 2012-03-01]. *Latvijas Vēstnesis*, 20.12.2012., Nr. 200(4803), 18.3. pkt.

⁵⁴ *Ibid.*, para. 6.

⁵⁵ *Platace, L.* Vēlētāju tiesības ierosināt referendumus pārmaiņu priekšā [Voters' Right to Initiate Referendums in the Wake of Changes]. 25.07.2012. Available at <http://m.lvportals.lv/visi/likumi-prakse?id=250193?show=coment> [last viewed 20.07.2017].

⁵⁶ *Dišlers, K.* Vai Centrālajai vēlēšanu komisijai ir tiesība pārbaudīt iesniegtos likumprojektus? [Does the Central Election Commission Have the Right to Verify the Submitted Draft Laws?]. *Jurists*, 1928. gada oktobris, Nr. 5, 134.-135. lpp

⁵⁷ *Ibid.*

⁵⁸ A.Cimdars, Chairman of CEC, had proposed considering a proposal on the CEC's right to turn to the Constitutional Court to request a preliminary ruling. See: CVK Turpina meklēt atbildi par likumprojekta pilnīgu izstrādātību [CEC Continues Looking for an Answer Regarding a Fully Elaborated Draft Law]. *Jurista Vārds*, 02.10.2012. Nr. 40(739), 13. lpp.

amendments to the *Satversme* is fully elaborated in its form and content, and, thus, whether it can be registered for collecting signatures; the procedure for appealing against a decision by CEC is also defined. It must be noted, however, that before these amendments were adopted, CEC actually conducted assessment of draft laws – it had concluded that this competence followed from Article 78 of the *Satversme* (which provided for voters' right to submit a fully elaborated draft law) and the norms that defined the general competence of CEC.⁵⁹ Moreover, this competence of CEC had been approved also by the Constitutional Court in its decision of 19 December 2012.⁶⁰

CEC's right to assess, whether a draft law is fully elaborated, clearly follows from the current regulation in the law; however, CEC does not have the right to assess the expedience of the draft law and conduct assessment of its acceptability or its political assessment, which may be done only by the legislator – the *Saeima* or the people.⁶¹ In view of the purpose for which CEC was established and its competence, it must conduct only legal assessment of a draft law. As the Constitutional Court has noted, CEC must register all draft laws submitted by voters, except for the cases, when it *obviously* (italics by the author) is not fully elaborated in its content.⁶²

If CEC establishes that a draft law is not fully elaborated, it adopts a decision on refusing to register the draft law. As the Supreme Court has found, the decision by which CEC refuses registration and transfer of a draft law submitted by voters for collection of signatures is not to be recognised as being an administrative act, because it is adopted within the framework of legislative procedure.⁶³

Section 23¹ of the Law provides that the initiative group may appeal against the decision by the Central Election Commission to register a draft law or draft amendments to the *Satversme* to the Department of Administrative Cases of the Supreme Court, where the case is examined as by a first instance court, which means that the case is reviewed on its merits.⁶⁴ Thus, in the framework of such legal proceedings the Supreme Court must examine, whether the draft law submitted by voters is fully elaborated.⁶⁵

In practice, decisions by CEC to refuse registration have been appealed against in court several times; i.e., by requesting the Supreme Court to impose an obligation to submit the proposed law for collection of signatures; the Court has also been requested to enforce compensation for non-pecuniary damages.⁶⁶ It is interesting that the Supreme Court has exercised the right that follows from the

⁵⁹ See, for example, Decision by CEC of 01.11.201 No. 6, as well as Decision of 11 February 2013 by the Supreme Court in case No. A420577912 SA-1/2013.

⁶⁰ *Satversmes tiesas* 19.12.2012. lēmums Par tiesvedības izbeigšanu lietā Nr. 2012-03-01 [Decision of 19.12.2012 by the Constitutional Court on Terminating Legal Proceedings in case No. 2012-03-01]. *Latvijas Vēstnesis*, 20.12.2012. Nr. 200(4803).

⁶¹ Judgement of 18.12.2013 by the Constitutional Court in case No. 2013-06-01, para. 14.3. Available at http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2013-06-01_Spriedums.pdf [last viewed 20.07.2017].

⁶² *Ibid.*, para. 14.3 and 15.4.

⁶³ Decision of 20.02.2013 by the Senate of the Supreme Court in case No. A420577912 SA-1/2013, para. 9.

⁶⁴ Administratīvā procesa likuma 105. panta pirmā daļa: LR likums [Section 105(1) of the Administrative Procedure Law: Law of the Republic of Latvia]. *Latvijas Vēstnesis*, 14.11.2001. Nr. 164(2551).

⁶⁵ Judgement of 18.12.2013 by the Constitutional Court in case No. 2013-06-01, para. 15.4. Available at http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2013-06-01_Spriedums.pdf [last viewed 20.07.2017].

⁶⁶ Decision of 11.02.2013 by the Supreme Court of the Republic of Latvia in case No. A420577912 SA-1/2013 Available at at.gov.lv/files/files/1-sa-2013.doc [last viewed 20.07.2017].

Constitutional Court Law⁶⁷ and has submitted an application to the Constitutional Court, requesting examination of compatibility of para. 2 of Section 23(5) and Section 23¹(1) of the Law with Article 1 of the *Satversme*. The Supreme Court expressed concern, whether the legal norm, which established CEC's competence to assess voters' initiatives as to their content and the competence of the Supreme Court to examine complaints regarding such decisions was not incompatible with the principle of separation of the state power.⁶⁸ The Constitutional Court in its judgement of 2013 found that there was no incompatibility between the contested law and the *Satversme*. As the Constitutional Court has noted – the Supreme Court must clarify, whether the draft law submitted by voters, indeed, obviously is not fully elaborated in its content, and whether CEC in its decision on incompatibility of a draft law with the respective requirement provides legal reasoning.⁶⁹ The Constitutional Court also pointed out that it had exclusive competence to recognise legal norms as being incompatible with norms of higher legal force and invalid. However, an administrative court in the framework of each case must also verify the compliance of the applicable legal norm with norms of higher legal force. The *Saeima* has a right to transfer into the jurisdiction of an administrative court examination also such cases, which by their nature are not narrowly administrative. Moreover, it follows from Section 13 of the law “On the Central Election Commission”⁷⁰ that CEC is an institution, upon which norms and provisions of the Administrative Procedure Law are binding.⁷¹ Thus, the Constitutional Court ruled that this regulation complied with Article 1 of the *Satversme*. It must be noted that also during the inter-war period the legality of CEC's decisions was reviewed by the Supreme Court (at the time – the Senate).

2.3. Course of Collecting Signatures and Legal Consequences Thereof

If CEC has concluded that the initiative group meets the requirements set in the law and that the draft law must be recognised as being fully elaborated, it must register the respective draft law or draft amendments to the *Satversme* for collection of signatures.⁷² Pursuant to Section 22 of the Law, voters may submit a draft law or draft amendments to the *Satversme* within 12 months from the day, when the draft law or draft amendments to the *Satversme* have been registered in the Central Election Commission. All citizens of Latvia, who have the right to elect the *Saeima*, have the right to initiate laws. If within 12 months provided for collection of signatures no less than one tenth of electors has signed in support of the draft law or draft amendments to the *Satversme*, then pursuant to Article 78 of the *Satversme* the draft submitted by voters is transferred to the President of the State for submitting to the *Saeima*. It must be noted that the term of 12 months for collecting signatures

⁶⁷ Satversmes tiesas likums: LR likums. 19.¹-pant [The Constitutional Court Law: Law of the Republic of Latvia. Section 19¹]. *Latvijas Vēstnesis*, 14.06.1996. Nr. 103(588).

⁶⁸ See Decision of 20.02.2013 by the Senate of the Supreme Court of the Republic of Latvia in case No. A420577912 SA-1/2013 9. pkt. Available at at.gov.lv/files/files/ [last viewed 20.07.2017]. By this decision the Supreme Court decided to amend the content of its decision of 11.02.2013 on submitting an application to the Supreme Court.

⁶⁹ Judgement of 18.12.2013 by the Constitutional Court in case No. 2013-06-01, para. 15.3 and 15.4.

⁷⁰ Par Centrālo vēlēšanu komisiju: LR likums [On the Central Election Commission: Law of the Republic of Latvia]. *Latvijas Vēstnesis*, 20.01.1994., Nr. 8(139).

⁷¹ Judgement of 18.12.2013 by the Constitutional Court in case No. 2013-06-01, para. 15.1.

⁷² See: Par tautas nobalsošanu, likumu ierosināšanu un Eiropas pilsoņu iniciatīvu: LR likums [Law on National Referendums, Initiation of Laws and European Citizens' Initiative: Law of the Republic of Latvia]. *Latvijas Vēstnesis*, 20.04.1994. Nr. 47(178) 23. pantu [Section 23].

has been recognised as being reasonable and sufficient, allowing voters to express their will and the initiators of a draft law to collect signatures of at least one tenth of voters.⁷³

If within 12 months the initiative group has not gained the required support by 1/10 of voters, the law does not prohibit an identical initiative for repeated collection of signatures. In practice, for example, draft laws of identical nature have been registered repeatedly, three times, for collection of signatures – *Law on Revoking the Law of 8 November 2012 Amendments to Law on National Referendums, Legislative Initiatives and European Citizens' Initiative* (registered the first time for collection of signatures on 6 August 2014, the second time – on 18 September 2015, and the third time – on 16 September 2016).⁷⁴

Although the amendments of 2012 have made registration of initiatives more complicated, possibilities for collecting signatures have been expanded. Until 2012, signing was done only at notaries public or orphans' courts, however, now it is possible to sign also in local governments or sign using electronic signature on the site for collecting signatures.⁷⁵ The signed forms must be submitted to the initiative group.

In 2009, the Constitutional Court had to examine a case, in which the applicants – 20 members of the *Saeima* – requested examination of whether the section of the law, which provides that the signatures of persons submitting a draft law had to be certified by a notary public or orphans' court, complied with the principle of good governance following from Article 1 of the *Satversme*. The Constitutional Court in this case concluded that this procedure allowed ensuring that the expression of a person's will was genuine and useful, to decrease the possibility of influencing people's legislative process by counterfeit signatures and other unlawful proceedings and, thus, protected the democratic order of the state. Therefore, the Constitutional Court ruled that the contested norms were not incompatible with the principle of good governance.⁷⁶

In the meaning of Article 78 of the *Satversme*, the legislative process begins, when the President submits to the *Saeima* a draft law that has been fully elaborated by one tenth of electors, whereas implementation of voters' legislative initiative begins earlier – in accordance with the procedure set out in Law on National Referendums.⁷⁷ Examination of a draft law submitted by voters does not differ from examination of draft laws submitted by other subjects of legislation. In Latvia, draft laws are examined in 3 readings (in 2 readings, if members of the *Saeima* recognise

⁷³ Judgement of 12.02.2014 by the Constitutional Court in case No. 2013-05-01, para. 19.2. Available at http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2013-05-01_Spriedums.pdf [last viewed 20.07.2017].

⁷⁴ See 18.09.2015. CVK lēmumu Nr. 8 "Par biedrības "Atvērtās pārvaldības partnerība Latvijā" iesniegto likumprojektu "Likums par 2012. gada 8. novembra likuma "Grozījumi likumā "Par tautas nobalsošanu, likumu ierosināšanu un Eiropas pilsoņu iniciatīvu" atcelšanu" [Decision by CEC of 18.09.2015 No. 8 "On the Draft Law Submitted by Association "Atvērtās pārvaldības partnerība Latvijā" "Law on Revoking the Law of 8 November 2012 "Amendments to Law on National Referendums, Legislative Initiatives and European Citizens' Initiative""]. Available at <https://www.cvk.lv/pub/public/31163.html> [last viewed 20.07.2017].

⁷⁵ Note: e-service www.latvija.lv

⁷⁶ See Judgement of 19.05.2009 by the Constitutional Court in case No. 2008-40-01. Available at <http://www.satv.tiesa.gov.lv/cases/?search%5Bnumber%5D=2008-40-01> [last viewed 20.07.2017].

⁷⁷ Judgement of 18.12.2013 by the Constitutional Court in case No. 2013-06-01, para 12.1. Available at http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2013-06-01_Spriedums.pdf 12.1 [last viewed 20.07.2017].

a draft law as being urgent). To prevent delaying a draft law submitted by voters, the law provides that the *Saeima* has to examine it in the session, during which it was submitted.

If the *Saeima* does not adopt a draft law submitted by voters (i.e., the *Saeima* rejects transferring it to commissions or rejects it as a whole)⁷⁸ or adopts it with amendments to its content, then, pursuant to Article 78 of the *Satversme*, a national referendum must be held on whether the draft law submitted by voters is acceptable. The regulation of Article 78 of the *Satversme*, providing that in case, if the parliament does not approve of the draft law submitted by voters, a national referendum must be held, is peculiar and seldom encountered in other countries. It is noted in legal science that Switzerland is the only other European state with a regulation like this.⁷⁹

Sometimes, the discussions in society and among lawyers have been caused by the question, which draft law should be submitted for a national referendum, i.e., – the version that was submitted by 1/10 of voters or the wording with amendments that would have been adopted by the *Saeima*. It must be noted that issue, whether voters support the draft law submitted by 1/10 of voters or the version with amendments by the *Satversme* must be put for a national referendum. This, *inter alia*, is confirmed by the practice of national referendums.⁸⁰ In fact, only in this stage, when the national referendum provided for in Section 78 of the *Satversme* takes place, the difference becomes apparent, whether the voters have proposed as a legislative initiative a draft law or draft amendments to the *Satversme*, because different requirements regarding quorum have been set for adopting the respective amendments. Namely, a draft amendment to the *Satversme* that has been put for a national referendum is adopted, if at least a half of those with the right to vote agree to it; a draft law, however, is adopted, if the voters constitute at least a half of electors who participated in the last election of the *Saeima* and if the majority has voted for adoption of the draft law (Article 79 of the *Satversme*).

Voters' right to legislative initiative is a mechanism that in Latvia has been applied in practice.⁸¹ As concluded above, after amendments to the Law of 2012 were adopted, a number of voters' initiatives have been registered with CEC for collection of signatures; however, none of them gained signatures of 1/10 of voters, so that the draft would be submitted to the President in the procedure defined in Article 78 of the *Satversme* for submitting it to the *Saeima*.

⁷⁸ See: Saeimas kārtības ruļļa 81. pantu. Saeimas kārtības rullis: LR likums [The Rules of Procedure of the *Saeima*: Law of the Republic of Latvia, Article 81]. *Latvijas Vēstnesis*, 18.08.1994. Nr. 96(227).

⁷⁹ See *Nikuļceva, I.* Velētāju likumdošanas iniciatīva Latvijā [Voters' Legislative Initiative in Latvia]. *Jurista Vārds*, 08.12.2009., Nr. 49.

⁸⁰ For example, in the national referendum held on 18 February 2012, the so-called language referendum case (which was held because the *Saeima* had not adopted the amendments to the a number of articles of the *Satversme* submitted by one tenth of voters, by which the official status of the Russian language would be entrenched), the formula of the referendum was "Are you for adoption of the draft law "Amendments to the *Satversme* of the Republic of Latvia that envisage granting to the Russian language the status of the second official language?" Possible answers were "For" and "Against". See: <https://www.cvk.lv/pub/public/30256.html> [last viewed 20.07.2017].

⁸¹ See also *Balodis, R., Kārklīņa, A., Danovskis E.* Latvijas konstitucionālo un administratīvo tiesību attīstība pēc neatkarības atjaunošanas [Development of Latvian Constitutional and Administrative Law after Restoration of Independence]. *Juridiskā zinātne*, 2012, Nr. 3, 69., 74.–77. lpp.

Summary

1. Latvia is one of the few countries in the world, where voters hold the right to legislative initiative. Pursuant to Article 78 of the *Satversme*, 1/10 of the voters have a right to submit to the *Saeima* a fully elaborated draft law (it may be an entirely new law or an amendment to an existing law), or draft amendments to the *Satversme*. However, to attain that the draft law is submitted to the *Saeima*, voters must comply with the requirements defined in the law “Law on National Referendums, Initiation of Laws and European Citizens’ Initiative”; i.e., they must establish an initiative group that is responsible for the draft law, and it must submit for registration to the Central Election Commission a fully elaborated draft law or draft amendments to the *Satversme*.
2. On 8 November 2012, the *Saeima* of the Republic of Latvia adopted amendments to the law “Law on National Referendums, Initiation of Laws and European Citizens’ Initiative: Law of the Republic of Latvia”, introducing a number of innovations to the procedure for exercising voters’ right to legislative initiative. The main innovation brought by these amendments is registration of an initiative group that is responsible for the particular draft law, clearly defined competence of CEC to assess draft laws submitted by voters and decide on registration thereof, as well as giving up the previously existing two stages of collecting signatures for initiating laws by voters, when the State assumed organisation and financing of collection of signatures after the voters had collected merely 10 000 signatures. It was found that at times some political forces had used this flexible regulation in bad faith, by proposing for national referendum initiatives that were incompatible with national values. These amendments, undoubtedly, make exercising of the legislative initiative more complicated. This is indirectly also proven by the fact that following adoption of the new regulation a number of voters’ initiatives have been submitted to CEC and registered for collection of signatures; however, none of these has succeeded in gaining support of 1/10 of voters within 12 months. The new regulation has been contested before the Constitutional Court, which recognised it as being constitutional.
3. Although sometimes the Constitutional Court decisions to terminate legal proceedings have been criticised in legal science, holding that they could cause doubt as to whether the Constitutional Court has sufficiently examined the application in the first stage, deciding on initiating the case, the decision of 19 December 2012 by the Constitutional Court on terminating legal proceedings in case No. 2012-03-01 has significantly contributed to the Latvian constitutional law. This decision defines the criteria for assessing whether voters’ initiatives are to be considered as being fully elaborated. The assessment criteria indicated in this particular decision are taken as the basis in the practice of CEC, as well as in case if a CEC’s decision is appealed against before the Supreme Court, the Court, in assessing the content of submitted draft laws, refers to the criteria defined in this decision by the Constitutional Court.
4. Amendments of 2012 provide that CEC refuses to register a draft law or draft amendments to the *Satversme*, if the draft law submitted by an initiative group is not fully elaborated in its form or content. Decisions by CEC reveal that often registration is refused exactly for the reason that a draft law is not fully elaborated as to its content. Judicature has become established in Latvia regarding the characteristics that a draft law must have to be regarded as being

fully elaborated. A draft law cannot be considered as being fully elaborated in its content, if: 1) it envisages deciding on such matter that are not to be regulated by law at all; 2) in case of being adopted, it would collide with norms, principles and values included in the *Satversme*; 3) in case of being adopted, it would collide with Latvia's international commitments.

5. The question, whether voters have the right to initiate a draft law that pertains to issues referred to in Article 73 of the *Satversme*, on which the people have no right to vote in a national referendum, has caused discussions in constitutional law for decades. The Constitutional Court has resolved this discussion in its decisions of 2013 by noting that voters have no right to submit draft laws with respect to issues referred to in Article 73. Likewise, voters have no right to submit draft laws that might be incompatible with national values and the core of the *Satversme*.

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