

Protection of Fundamental Rights in the Constitution of the Republic of Latvia during the Interwar Period and after the Restoration of Independence



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Introduction

Fundamental rights have been recognised as part and parcel of any democratic state nowadays. Moreover, during the 20th century the human rights law has transgressed national laws and constitutions and has become an integral part of the international public law. However, many rights which today citizens of any democratic state would find natural and inherent part of their political systems were not understood in the same way at the beginning of the 20th century when the Republic of Latvia emerged. This research aims to illustrate the principal debates about the fundamental rights at the birth of the independent Republic of Latvia, identify the core legal documents establishing citizen's rights in the newly established state as well as to compare the pre-war catalogue of fundamental rights to the existing fundamental rights chapter in the Constitution of the Republic of Latvia.

1. The Evolution of Human Rights during the Interwar Period— Developments under the League of Nations and in Nation States

The general climate in Europe after the World War I was characterised by ideas which aimed to radically change the existing international legal order based on power relations among states. In order to avoid dramatic consequences of the World War I and ensure peace, leaders of the allied powers promoted the creation of the League of Nations. The League of Nations, as a predecessor of the United Nations, was the first universal inter-state organisation and its principle objective was to resolve any disputes among states in a peaceful way. In order to achieve this, the organisation established a number of treaties, most prominently the Kellogg–Briand Pact, prohibiting the use of war in settling disputes among the states.¹

This period is also characterised by the re-emergence of old states and birth of new states, like the Baltic States, in line with the “principle of self-determination” proposed by the U.S. President Woodrow Wilson. This principle implied that the “settlement of every question, whether of territory, of sovereignty, of economic

arrangement, or of political relationship” is to be made “upon the basis of the free acceptance of that settlement by the people immediately concerned and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for the sake of its own exterior influence or mastery.”²

The League of Nations also created the offspring of international human rights law.³ The most visible examples are the establishment of the international organisation of protection of labour rights (ILO) and formation of minority rights protection system. However, this system was not universal but was intended to protect minority population founding themselves in new states due to the dissolution of Ottoman, Austro Hungarian and Russian Empires.

These developments at the international level had an impact on the development of rule of law, fundamental rights and strengthening the democracy at the national level. In the beginning of 1920ies, which is characterised by lawyers as a period of “constitutional romanticism”,⁴ the fundamental rights were embedded in the constitutions of many European states. Therefore, the drafters of the Latvian Constitution—Satversme—were influenced by both the democratic values prevailing at the international level and developments at the constitutional level of other European states, most notably by the fundamental rights catalogue in the Weimar Constitution and by the elements of direct democracy in the Constitution of Switzerland.⁵ The idea that fundamental rights should be inserted in the constitution of a new state seemed natural in the context of developments at the international level and in other states.

However, despite these progressive developments at the international level, human rights still remained predominantly an internal issue. As the subsequent repressions against minorities, most notably against the Jewish population in Nazi Germany, illustrated, international law and the League of Nations in effect did not limit the states to violate the rights of their own citizens. Furthermore, the economic crisis at the end of 1920ies gradually led to social unrest and transition from democracy to authoritarian regimes almost in whole Central and Eastern Europe. The Republic of Latvia was not an exception. On 15 of May 1934, following the transition to authoritarianism in other Baltic States, the head of government Kārlis Ulmanis dismissed the Parliament and proclaimed himself the head of state. While the coupe did not provoke any violent clashes, this change of political system was accompanied by the restrictions on fundamental rights, most notably censoring free speech, banning the political parties, cancelling elections and restricting the rights of minorities.⁶

2. Fundamental Rights Catalogue in the Newly Established Republic of Latvia

As mentioned above, the era of “constitutional romanticism” in Europe after the World War I has influenced the debates about the relationship between the state and citizens also in the newly established Republic of Latvia. This explains why the reference to rights of citizens was included not only in the act of proclamation of the Republic of Latvia on 18 November 1918, but also in the documents preceding the proclamation act. On 17 November 1918, the Political Platform of the People’s Council of Latvia was adopted. This declaration intended to establish the core principles of temporary constitution and identify the main political directions of the Provisional Government. The importance of fundamental rights is illustrated by the

fact that out of nine chapters of the declaration two were devoted to fundamental rights. Chapter IV provided for minority rights, but Chapter V guaranteed political freedoms.

Fundamental rights were reflected also in the forthcoming documents of the governing institutions of the new republic. Latvian Constituent Assembly, the first elected body of the Republic of Latvia, which convened its first meeting on 1 May 1920, adopted two documents (interim constitutions): Declaration of the State of Latvia (27 May 1920) and Provisional Regulations regarding Political System of Latvia (1 June 1920). Article 9 of the Provisional Regulations guaranteed political freedoms: freedom of speech and thought, press freedom, freedom of association and assembly, freedom of strike, inviolability of correspondence and home.

The main purpose of the Constituent Assembly of Latvia was to draft the Constitution of the Republic of Latvia (*Satversme*). The first part of the Constitution defined that the new state is a parliamentary republic; it prescribed the powers of the President of the State, the legislator, the executive and the courts, as well as contained rules about the election of the Parliament (*Saeima*). The second part of the Constitution was intended to formulate citizens' rights and obligations. As one of the deputies in charge of the drafting this part of the Constitution A. Kuršinskis stated in the debates of Assembly—this part of the Constitution will regulate the relations between the citizen and the State. He further added that it will fill the first part of *Satversme* with democratic content, because citizens deprived of rights would not be able to develop and maintain democratic state institutions established with the first part of *Satversme*.⁷ Debates at the Constituent Assembly demonstrate that majority of the deputies of the Assembly were in favour of including the fundamental rights chapter in the Constitution. For instance, on 7 February 1922 when the Constituent Assembly had a vote on the first draft of the fundamental rights chapter of *Satversme* it was supported unanimously by the deputies.⁸

However, the opinions about the content and importance of this part of *Satversme* strongly differed among various political groups and deputies. Many of the members of Assembly, for instance, A. Bergs and A. Petrevics criticized the draft text of this part of *Satversme* as too abstract. They emphasised that *Satversme* only declares but not grants substantial rights to the citizens and allows the *Saeima* and, in certain conditions also the government, to specify and limit most of the fundamental rights by adopting subsequent laws.⁹ A. Bergs also referred to other states like the United Kingdom and France where fundamental rights are not granted in the constitution but citizens are free in these states despite this. The representative of Social Democrats F. Cielēns and the abovementioned A. Kuršinskis partly agreed to claims to formulate the rights in the Constitution more specifically. However, they both also stressed the ideological and symbolic role of this part of *Satversme*. F. Cielēns emphasised that there are no democratic culture and traditions in the new republic compared to Western European democracies, where citizens would organise themselves and protect their rights and freedoms despite the absence of constitutional guarantees. He considered constitutional protection of citizens' rights and obligations as an important tool for eliminating the psychological and political remains of the Russian Empire.¹⁰ Similarly, A. Kuršinskis agreed that this is a crucial period in the development of the state and that the so-called declaratory norms have their importance in the political development of the state and citizens' education about and awareness of their rights. Lastly, F. Trasūns, representing *Latgale's* Christian Peasants' Union, criticised the second part of the *Satversme* for formulating

many rights, but not containing obligations of citizens. He insisted on the need to protect the young generation against harmful information and to strengthen citizens' obligations towards the State.¹¹

The content of fundamental rights which should be granted was largely influenced by the catalogue of 1919 Weimar Constitution (*Weimarer Verfassung*)¹² and French Declaration of the Rights of Man and of the Citizen.¹³ The draft fundamental rights part of the Satversme guaranteed major civil and political rights and freedoms: freedom of speech and religion, freedom of assembly and association, inviolability of home and correspondence. The Satversme also prescribed certain social and economic rights: right to property, right to strike, free access to and compulsory education up until the age of 18, providing support to low income families with regard to children's dress, food and educational equipment. As far as the cultural rights are concerned, access to art and science was guaranteed. While the Latvian language was proclaimed as the official language, the rights of national minorities and free use of minority languages were recognised. Furthermore, in line with the policy of the new republic to bring to an end the privileges, which the Baltic Germans and nobility enjoyed for centuries, the Satversme stated that all ranks and titles should be abolished.

The draft Constitution also included a number of rights, which were recognised only in a few European democracies at the beginning of the 20th century: for instance, equality between men and women, including equality in marriage, equal rights to vote and stand for elections. The Constitution prohibited the death penalty, except in emergency and war situations when such penalty could have been applied by martial courts. In order to fight corruption among the civil servants, the Constitution also established direct responsibility of civil servants for illegal acts.

Serious debates within the Constituent Assembly were on the principle of separation of church and state and its insertion in the text of the Satversme. The deputies from the eastern part of Latvia—Latgale, the region which was under the Polish–Lithuanian rule in the 17th century and was predominantly inhabited by the believers of the Catholic Church,—raised objections against this rule. However, majority of deputies decided to declare that there is no national church in Latvia and to include the principle of separation of church and state in the final draft of the fundamental rights part of the Satversme. Furthermore, similarly as in the Constitutions of Switzerland, Norway and the Republic of Estonia and other European states, the draft of fundamental rights part specifically included ban on another religious congregation—Jesuits. However, after debates the members of Assembly decided to remove this article from the Satversme. Deputies from Latgale's Christian Peasants' Union and Latgale People Party, like F. Trasūns and F. Kemps, supported the idea that Jesuits should be allowed to perform their religious services and that there is no evidence that they would act against the State of Latvia. They stressed the historic contribution of Jesuits to the development of Catholic churches and education of priests in Latgale.¹⁴ Other deputies, like J. Goldmanis representing the Latvian Peasants' Party considered it unnecessary to single out Jesuits in the Satversme. They preferred the possibility to ban the activities of Jesuits and any other group if they would act against the interests of the State, by ordinary law.¹⁵

Despite the rather progressive catalogue of fundamental rights and general support of the members of the Constituent Assembly to include the fundamental rights part in the Constitution, the final text of the fundamental rights chapter failed to be adopted by the Assembly. The main reason for this lies in the disagreements among

various political groups about the content of the final text of the chapter. The Social Democrats argued for stronger guarantees for the employees' protection and recognition of the right to strike not only in cases of protest against economic difficulties but also as a form of political protest. Similarly, deputies from Latgale Region insisted on the need to refer in the text to autonomy of Latgale and abandon the principle of separation between the church and State. These disputes finally led to the negative vote on the inclusion of fundamental rights part in the Satversme. Since the deputies from Latgale abstained in the vote as a protest against the Latgalian issue and principle of separation of the church and State, there were not enough votes for approving the second part of the Satversme: 62 deputies voted in favour of the final draft of the fundamental rights chapter, 6 voted against and 62 abstained.

The non-inclusion of fundamental rights chapter is certainly unfortunate, because apart from the legal importance, this part of the Constitution would have raised the awareness of citizens about their rights and freedoms. It would have served as a guiding principle for the institutions of the new republic and would have strengthened the importance of fundamental rights in policy making. This gap in the Constitution was partly filled by separate laws on political parties, media and regulations on the implementation of other fundamental rights. There were debates and repeated attempts to adopt the fundamental rights chapter in subsequent years. However, given the increasing role of authoritarian regimes and popularity of authoritarianism in Europe at the end of 1920ties, the willingness of the deputies to establish fundamental rights in the text of the Constitution declined and after the authoritarian coup on 15 May 1934 this became also practically impossible.

3. Restoration of Independence and Adoption of the Fundamental Rights Chapter of the Satversme

The human rights—freedom of speech, press and assembly—played a crucial role at the end of 1980ties in transformation from the authoritarian Soviet system to democracy. This period coincided with the attempts to re-establish the independence of the Republic of Latvia and struggle against migration and suppression of the Latvian language. Even prior the restoration of independence, the first democratically elected Parliament adhered to the core human rights documents as a way to illustrate the democratic nature of the new political regime and acquire international recognition of the re-established Republic of Latvia. This was evidenced by the fact that on 4 May 1990 when the Supreme Soviet of the Latvian SSR adopted the Declaration “On the Restoration of the Independence of the Republic of Latvia” it also issued the Declaration on the Accession of the Republic of Latvia to International Instruments Relating to Human Rights.¹⁶ According to this document, the Republic of Latvia joined to 51 human rights instruments of the UN and OSCE. Moreover, the direct reference to the State's obligation to guarantee fundamental rights to all citizens and permanent residents of Latvia is found in the Declaration “On the Restoration of the Independence of the Republic of Latvia”. According to Article 8 of the Declaration, the Supreme Soviet of the Latvian SSR decided: “To guarantee citizens of the Republic of Latvia and those of other states permanently residing in Latvia social, economic and cultural rights, as well as those political rights and freedoms which comply with the universally recognised international human rights instruments. To apply these rights in full extent also to those citizens of the USSR who will express the desire to continue residing in the territory of Latvia without accepting its citizenship.”¹⁷

Contrary to the neighbouring Baltic States—Estonia and Lithuania—the Parliament of Latvia did not adopt a new constitution, but restored the pre-war Constitution of the Republic of Latvia, which did not contain the fundamental rights chapter. Therefore, initially the fundamental rights were granted in the constitutional law “The Rights and Obligations of a Citizen and a Person”, which was adopted on 10 December 1991. According to Article 1 of the constitutional law, “A person, his/her existence, liberty, honour and rights are the highest fundamental values of the State of Latvia.”¹⁸ The law guaranteed the core civil and political as well as social and economic rights. It is interesting to note that apart from rights the law emphasised also the obligations of each citizen. For instance, according to Article 11, Paragraph one, “A citizen must be loyal to the Republic of Latvia and has the right and responsibility to defend its freedom, independence and democratic parliamentary system.”¹⁹ Furthermore, Article 42 of the law emphasised the obligation of every person to pay taxes, by stating: “Everyone participates in the discharge of State and local government expenses, by paying taxes and levies in accordance with the procedures set by law,”²⁰ but Article 43 defined the responsibility of each person to protect the environment.²¹ This law played the key role in safeguarding human rights protection at the national level until the inclusion of fundamental rights in the Constitution of the Republic of Latvia in 1998. Among other important human rights laws, the Law on Press adopted in 1990 and the Law on Ethnic Minorities adopted in 1991 can be mentioned.

On 15 November 1998, Chapter VIII or the so-called Fundamental Rights Chapter was adopted and integrated within the pre-war constitution of the Republic of Latvia. The Chapter was inspired both by the pre-war draft of the 2nd part of the Constitution as well as the development of fundamental rights at the universal and regional level during the fifty years of Soviet occupation. This was also evidenced by the first clause of the fundamental rights chapter, Article 89 of the Constitution, which lays down the so-called principle of openness of the Constitution to international human rights law. It states: “The State shall recognise and protect fundamental human rights in accordance with this Constitution, laws and international agreements binding upon Latvia.”²² The Constitutional Court of the Republic of Latvia, which has extensively referred to the international human rights sources to interpret the scope of the fundamental rights protected by the Constitution,²³ has emphasised in its case-law that: “From this Article it can be seen that the aim of the legislator has not been to oppose norms of human rights, included in the *Satversme*, to the international ones. Quite contrary—the aim has been to achieve mutual harmony of the norms.”²⁴ Therefore, the Court concludes that: “In cases, when there is doubt about the contents of the norms of human rights included in the *Satversme*, they should be interpreted [as far as possible]²⁵ in compliance with the practice of application of international norms of human rights.”²⁶ The words “as far as possible” mean that in situations where the Constitution guarantees higher protection of fundamental rights than international human rights treaties, the constitutional guarantees should prevail.

The fundamental rights chapter of Constitution contains most civil and political rights as well as social and economic rights. It is essential to note that in contrast to many states where social and economic rights are only formulated as principles, in the *Satversme* these are individual rights which individuals can claim before court. In a decision on the compliance of certain provisions of “Law on State Social Allowances” with the *Satversme*, the Constitutional Court has made clear that: “[..] If some social rights are included in the Constitution, then the State cannot refuse

them. These rights do not have only a declarative nature. These rights have become the rights of an individual. A person may require realisation of these rights from the State, as well as may defend the abovementioned rights in a court.”²⁷ The court has also emphasised that: “When implementing the rights to social security established by the Satversme, the State is obligated to established normative regulation of these rights, as well as to establish an effective mechanism of implementation of the legal norms. The duty of the State is to not only declare the rights but also “implement” them and monitor their application.”²⁸

In addition to the human rights catalogue established in the Universal Declaration of Human Rights, the Satversme includes also rights of minorities. Article 114 of the Satversme states: “Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity.”²⁹ This was an important step to demonstrate that the rights of minorities to use their language and develop their culture are protected, similarly as in the pre-war republic. For instance, on the basis of this clause, the Constitutional Court has declared invalid the part of Section 59 of the Law on Education pursuant to which private schools which use a minority language as a principal language of instruction were excluded from receiving the State funding.³⁰

A relatively new and progressive phenomenon of the Satversme is also the recognition of rights of the third generation, like, right to live in a favourable environment. Article 115 of the Satversme declares: “The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.”³¹ On the basis of this clause, individuals have successfully challenged in the Constitutional Court a decision of a municipality to build a waste utilisation factory next to their houses³² and a municipality development plan which provides for an extensive building in the area despite the objections by the local population.³³

As noted above, the fundamental rights chapter was adopted eight years after the restoration of independence of the Republic of Latvia. Nevertheless, the legacy of the Soviet past as well as values which played essential role during the struggle for the independence found their way in the text of the new chapter of the Satversme. For instance, Article 90 of Chapter VIII guarantees that everybody should be informed about his/her rights. Furthermore, Article 100 of the Constitution, apart from guaranteeing everybody the freedom of expression, specifically emphasises that any censorship is prohibited. In view of 50 years of russification policy during the Soviet occupation, a number of articles of the Constitution emphasise the protection and the role of Latvian as the official language in citizens’ interaction with authorities.

Lastly, development of fundamental rights in the Constitution did not end in 1998 with the adoption of Chapter VIII of the Satversme. First of all, subsequent amendments to the Satversme were made due to the accession of Latvia in the European Union and conclusion of agreements with other states. For instance, Article 98 of Satversme originally stated that citizens of Latvia cannot be extradited to a foreign country. However, due to the European Arrest Warrant and extradition agreements concluded with other states, the Satversme allows now for the extradition of citizens on the condition that it is provided for in international agreements ratified by the Saeima and if the basic human rights specified in the Constitution are not violated by extradition.³⁴ Secondly, an enormous role in the evolution of fundamental rights in the Satversme has been played by the Constitutional Court, which was established in 1996. The Court has developed enormous practice in interpreting and filling with the content the fundamental rights chapter of the Satversme.

Summary

The pre-war draft of the second part of the Satversme contained very progressive catalogue of fundamental rights, including core political and social rights, gender equality and granting voting rights to women, and prohibiting death penalty. Despite the fact that all political groups of the Constituent Assembly of Latvia supported the need to insert fundamental rights catalogue in the Constitution of the Latvian Republic, unfortunately this idea did not come into effect due to disagreements among deputies about the importance of certain rights. Most notably, the disregard of the request of Social Democrats for stronger guarantees as regards the right to strike and the request of deputies of Latgale Region to refer to autonomy of Latgale in the final text led to the failure of the decisive vote on this part of the Satversme in the Constituent Assembly. The adoption of the fundamental rights chapter of the Satversme most probably would not have prevented the authoritarian coup in 1934, since the collapse of democratic regimes at this period was common in most of the European states. However, the constitutionalisation of fundamental rights would have had symbolic nature strengthening the fundamental rights culture and making fundamental rights more visible to citizens.

The context surrounding the restoration of independence of the Republic of Latvia was characterised by the break-up of the Soviet Union and emergence of democratic regimes in most of the Central and Eastern Europe. Claims for fundamental rights and freedoms were obvious part of this process. Therefore, quiet naturally, it was among the first steps of the parliamentarians after proclaiming the restoration of the independence to adhere to principal international human rights documents and strengthen the fundamental rights at the national level—first in ordinary laws and subsequently by drafting a fundamental rights chapter of the Satversme. The fundamental rights catalogue of the Constitution was influenced both by the pre-war draft of the Satversme and developments in the international human rights law since 1948 and was also subsequently shaped due to the Latvia's membership in the European Union and bilateral treaties concluded with other states, which limit certain rights and freedoms originally granted in the Constitution. The essential difference from the pre-war period however is the creation of the Constitutional Court and introduction of the individual petition's procedure since 2001. As noted above, the court has developed extensive case-law on the interpretation of fundamental rights safeguarded in the Satversme and has made fundamental rights a "reality for citizens" through assessing individual complaints.

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