

# The “national” dimension of the Latvian Constitution one hundred years after its entry into force

by Lino Panzeri

**Abstract:** The article analyzes the birth of the 1922 Constitution of Latvia by highlighting its enduring commitment to the ideal of citizenship as attached to the “demos” nation as opposed to the “ethnos” nation. In this regard, due account will be given of the trajectory of Latvian constitutionalism throughout the Soviet domination and after the newly regained independence with specific focus on the guarantees provided for by the Constitution for non-ethnic residents and citizens, who are apparently assimilated to ethnic citizens in the effort to build a fully-fledged Latvian nation.

**Keywords:** Latvian Constitution of 1922; Constitutional History; National dimension; Continuity of the State of Latvia.

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## 1. Introduction

In order to examine the topic of the “national” dimension of the Constitution of Latvia, it is necessary to reference some specific characteristics of this Country.

Primarily, from a historical perspective, Latvia has for centuries been the subject of contention between many hegemonic Kingdoms of the Baltic area and this has favored continuous migratory flows. The first Baltic groups, which settled – according to some – over two thousand years ago, were followed, commencing as early as the 13<sup>th</sup> century, by the first German settlements, by those of Jews, Poles and Roma in the 16<sup>th</sup> century, by those of Russians and Belarusians in the 17<sup>th</sup> and 18<sup>th</sup> centuries and, more recently, since the end of the 19<sup>th</sup> century, by those of Estonians and Lithuanians<sup>1</sup>. The Latvians have, however, always constituted a clear majority, which was endangered only following the Soviet occupation of 1940. In fact, the USSR pursued the Sovietization of Latvian society, also through a mass influx of immigrants from other Republics.

Secondly, it is necessary to recall the complex political-institutional events that Latvia experienced during the twentieth century. At first, it emancipated itself from Tsarist Russia, after which it lived a short but

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<sup>1</sup> See A. Lieven, *The Baltic Revolution, Estonia, Latvia, Lithuania and the Path to Independence*, Yale University Press, New Haven-London, 1993, pp. 131 et seq., and Y. Plasseraud, *Les États Baltiques. Les Sociétés Gigognes. La dialectique Minorités-Majorités*, Armeline, Crozon, 2003, pp. 130-138.

intense period of independence in the interwar age and, finally, as mentioned, a long season of incorporation into the USSR, which ended only in 1991 with the full restoration of sovereignty.

To understand how the “national” dimension has affected the evolution of Latvian constitutionalism, it is necessary to consider each of these historical phases.

## 2. The “national” dimension during the preparatory works for the new Constitution

On the 18<sup>th</sup> of November 1918, the provisional National Council proclaimed the independence of Latvia and, pending a Constituent Assembly elected by all citizens to adopt a constitution, it approved a “political platform”, which formed the basis of the State system until the 27<sup>th</sup> of May 1920. Despite the vague contents of the platform<sup>2</sup>, it contained some important commitments regarding the legal status of national minorities. Chapter IV not only guaranteed national minorities the right to send their own representatives to the Constituent Assembly and, in the future, to the legislative bodies (point 1), it also ensured that they were entitled to both participate in the provisional government (point 2) and to ownership of “cultural and national rights”. The relative regulations were reserved to the law<sup>3</sup>.

On the 17<sup>th</sup> and 18<sup>th</sup> of April 1920, in accordance with these commitments, out of a total of one hundred and fifty members, seventeen deputies belonging to minority groups (six Germans, seven Jews and four Russians) were elected to the Constituent Assembly. They managed to convey the demands of their representatives. In fact, as soon as the Assembly took office, it made a specific *Declaration on the State of Latvia*, approved unanimously on the 27<sup>th</sup> of May 1920. In addition to the independence of the Republic and the democratic nature of its political system, it affirmed the principle whereby the State authority emanated from the «people of Latvia» («*Latvijas tauta*»), thus accepting that the notion of the people included all groups that had settled in the Country<sup>4</sup>.

During the preparatory works for the new Constitution, the inclusion of a catalog of rights (included in Part II of the project) was considered and, some of these rights also included the “national” dimension: Section 115, while specifying that «the Latvian language [was] the State

<sup>2</sup> See R. Balodis, *Evolution and Transformation of Constitutional Law of the Republic of Latvia at the Turn of the 20<sup>th</sup> and 21<sup>st</sup> Centuries*, in *Harmonization of Law in the Baltic Sea Region in the Turn of the 20<sup>th</sup> and 21<sup>st</sup> Centuries*, University of Latvia, Riga, 2006, p. 458.

<sup>3</sup> On these political principles see A. Cazéjus, *La Constitution de la Lettonie (Documents et commentaires)*, Faculté de droit, Toulouse, 1925, pp. 53-54. On the inclusive approach taken by the National Council see K. Kangeris, *Die historischen Voraussetzungen für die demokratische Staatsgründung in Lettland 1918*, in B. Meissner, D.A. Loeber, C. Hasselblatt (herausgegeben von), *Der Aufbau einer freiheitlich-demokratischen Ordnung in den baltischen Staaten*, Bibliotheca Baltica, Hamburg, 1995, pp. 11 et seq.

<sup>4</sup> On this *Declaration* see A. Rodiņa, J. Pleps, *Constitutionalism in Latvia: Reality and Developments*, in *New millennium Constitutionalism: Paradigms of Reality and Challenges*, Njhar, Yerevan, 2013, p. 435.

language», admitted that «people belonging to national minorities enjoyed the right to freely use their own language, both in writing and in speech»; Section 116 of the project, again, ensured that for the expression of their national and cultural life the minorities of Latvia enjoyed the right to create their own autonomous institutions under public law.

However, the proposal to include a catalog of rights, despite the widespread support expressed in this sense by political forces, was not implemented. In fact, on the 15<sup>th</sup> of February 1922, the Constituent Assembly approved Part I of the Constitution, which entered into force on November 7 of the same year, however, on the 5<sup>th</sup> of April 1922, it rejected Part II of the project by only six votes<sup>5</sup>.

Despite the exclusion of the catalog of rights and, therefore, also of rules relating to the “national” dimension, any exclusionary intent on the part of Constituents was denied. The outcome of the vote was at times attributed to the excessively abstract nature of the formulation of some rights, at times to the criticism by some Constituents of the legalization of industrial action as an instrument for making economic demands but also of political struggle, and at times to the abandonment of the principle of separation between Church and State<sup>6</sup>. However, the desire to strike at the guarantees afforded to minorities and to question the theory – attributable to the political reflections of Miķelis Valters – of the «*gemeinsame Staatsnation*» [«Common nation State»]<sup>7</sup> was denied.

In compensation for the consequences of this choice, it was argued by some that the general provisions of the Constitution would be sufficient to ensure minorities the necessary guarantees for the protection of their rights<sup>8</sup>. In particular, reference was made to the fact that the «people of Latvia» («*Latvijas tauta*») were identified as the holders of sovereignty as previously stated in the Declaration of the 27<sup>th</sup> of May 1920, to be understood as inclusive of all ethnic groups<sup>9</sup>, according to an approach that was appropriately summarized a few years later, on the occasion of an international forum, by Prime Minister Mārgers Skujenieks: «We Latvians feel, together with the Germans and most of the national groups in Latvia, like a Nation, which has common objectives and tasks»<sup>10</sup>. Others also

<sup>5</sup> See A. Kučs, *Protection of Fundamental Rights in the Constitution of the Republic of Latvia during the Interwar Period and after the Restoration of Independence*, in *Juridiskā zinātne/Law*, No. 7, 2014, p. 58.

<sup>6</sup> See A. Kučs, *supra*, note 5, pp. 57-58.

<sup>7</sup> M. Valters, *Baltengedanken und Baltenpolitik*, Société Général d’Imprimerie et d’Édition, Paris, 1926, p. 85.

<sup>8</sup> See H. de Montfort, *Les nouveaux Etats de la Baltique*, Pedone, Paris, 1933, p. 109.

<sup>9</sup> See F. Wittrock, *Die Rechtslage der deutsch-baltischen Minderheit in Lettland*, Ruetz, Riga, 1929, p. 45, and M.C. Helstein, *La Constitution de la République de Lettonie*, Editions Universitaires, Strasbourg, 1930, pp. 73-74, note 32. See also M. Germane, *Civic or ethnic nation? Two competing concepts in interwar Latvia*, in *Nations and Nationalism*, Vol. 18, No. 3, 2012, 456, who, although aware of the limitations of any literal translation, emphasizes the clear semantic difference existing between the expressions «*Latvijas tauta*» («people of Latvia») and «*latviešu tauta*» («Latvian people»).

<sup>10</sup> See A. Šilde, *Die Entwicklung der Republik Lettland*, in B. Meissner (herausgegeben von), *Die Baltischen Nationen. Estland, Lettland, Litauen*, Markus Verlag, Köln, 1990, 66.

referred to the prospect of adopting specific special laws to protect the rights of minorities, so as to deal definitively with the issue without the need for any specific reference to minorities in the Constitution.

The above remarks illustrate the impact that the concept of Nation exerted on the Latvian Constituent Assembly. Between a universalistic connotation, which has matured since the French Revolution, and an ethnic-cultural connotation, which consolidated in the Germanic area, during the Nineteenth century, it was the former that prevailed in Latvia, at least initially. Contrary to what happened, during that same period, in other States born from the disintegration of Empires and characterized by the affirmation of the nation-State, the concept of Nation never took on marked ethnic connotations. The bond of belonging was not internalized as a blood bond or, in any case, as an ethnic-cultural bond, according to the German concept of *Volk*, rather it took on a more political meaning. In Latvia, therefore, the “*ethnos* nation” did not prevail over the “*demos* nation”, consolidating a new type of political organization, in the context of which the coexistence of diversity, at least under certain conditions, was not perceived as a threat.

Despite the authoritarian drift of the Thirties, this approach prevailed, at least formally until the premature end of this fruitful constitutional season.

The consolidation of this approach was due to the concurrence of different factors.

Firstly, the victorious outcome of the struggle for independence, which created a favorable climate or, at least, one that was not prejudiced against minorities. In addition to this there was a need for Latvia to consolidate its international legitimacy, ensuring protection for minorities as desired by the League of Nations. Although Latvia was not a Country “created” by post-war treaties, such as Czechoslovakia and Yugoslavia, whose minorities were afforded special international guarantees, the protection of minorities was still an important goal to be demonstrated to the international community<sup>11</sup>.

Secondly, the independence process was pursued on the impetus of a national movement which was formed with much delay as compared to other European contexts. Tsarist Russia had not pursued assimilationist goals, if not belatedly and with modest results, and therefore the goal of independence was not animated by nationalistic drifts.

The absence of these drifts was also favored by the concurrence of two other different factors. On the one hand, the rooting of multinational federalist thought – which had already matured in the pre-revolutionary era, in the considerations of the so-called Austro-Marxists, such as Karl Renner and Otto Bauer – who, in Latvia, found a following in the political reflections of Mārgers Skujenieks and Miķelis Valters and in the affirmation of the national-cultural autonomy model<sup>12</sup>. On the other hand, the awareness of the historical sedimentation of heterogeneous groups in

<sup>11</sup> On these factors see J. Hiden, D.J. Smith, *Looking beyond the Nation State: A Baltic Vision for National Minorities between the Wars*, in *Journal of Contemporary History*, Vol. 41, No. 3, 2006, p. 390.

<sup>12</sup> See M. Germane, *supra*, note 9, pp. 442 et seq.

the Baltic area, which were however accustomed, albeit according to rigid social stratification, to coexistence.

Thirdly, the inclusive attitude was conditioned by a widespread sense of pragmatism. Given the particular geographical location of Latvia and its relatively small size, it was essential to promote a sense of belonging and the loyalty of members of minority groups. In fact, in case of denial of their rights, they could have found the guarantors of their identity in their kin-States, thus endangering the Latvian statehood. At the same time, the protection of minorities met the expectations of some historical groups – in particular, Germans and Jews – which, despite being minorities and economically weakened, continued to be integral components of the Country's *élite*, with whom the young Republic necessarily had to interact.

The choices made at the beginning of the Twenties did not consolidate a process of true integration<sup>13</sup>; however, they fueled the feeling of loyalty by minorities<sup>14</sup> and favored the start of an overall positive season for the coexistence of the various national components. The absence of a dominant party and wide participation in political life contributed to this. The adoption of a proportional electoral system also allowed for adequate parliamentary representation of minority members<sup>15</sup>, especially the German minority. This was followed by the approval of a series of laws dealing with minority rights, with a particularly advanced content: these included the «Law on the autonomy of educational institutions», adopted on the 8<sup>th</sup> of December 1919, which recognized the right of members of minority groups to be taught, through their educational institutions, in their mother tongue<sup>16</sup>. This legislation ensured a very high standard of protection for minorities, often taken as an example, and favored the strengthening of national cohesion in accordance with the idea of the *Staatsgemeinschaft*, in the context of which the majority and minorities could coexist within the same territory<sup>17</sup>.

In consideration of the above, it is not surprising that, despite the fact that the coup d'état of the 15<sup>th</sup> of May 1934 triggered an authoritarian drift in Latvia, favored by growing nationalistic demands, the attitude towards minorities did not degenerate into formally exclusionary measures. The Constitution itself, although suspended, was never replaced by new texts, as occurred in Estonia and Lithuania, nor was it formally revoked over subsequent years, and this would have been of decisive importance for the

<sup>13</sup> According to A. Plakans, *A Concise History of the Baltic States*, Cambridge University Press, Cambridge, 2011, p. 316, «this multiculturalism took the form of coexistence rather than integration».

<sup>14</sup> See I. Alpine, *Nationality policy in the Baltic States*, in T. Jundzis (Ed.), *The Baltic States at Historical Crossroads*, Academy of Sciences of Latvia, Riga, 1998, p. 360.

<sup>15</sup> See M. Garleff, *Ethnic Minorities in the Estonian and Latvian Parliaments: The Politics of Coalition*, in V.S. Vardys, R.J. Misiunas (Eds.), *The Baltic States in Peace and War (1917-1945)*, The Pennsylvania State University Press, University Park, London, 1978, p. 81.

<sup>16</sup> On the implementation of this Law see I. Butulis, *Die Schulautonomie Lettlands*, in D. Henning (herausgegeben von), *Nationale und ethnische Konflikte in Estland und Lettland während der Zwischenkriegszeit*, Carl-Schirren-Gesellschaft e. V., Lüneburg, 2009, pp. 157 et seq.

<sup>17</sup> Cfr. J. Hiden, D.J. Smith, *supra*, note 11, p. 392.



choices made by the Latvian authorities in the transitional phase towards the restoration of independence<sup>18</sup>.

### 3. From incorporation into the USSR to the reinstatement (even de facto) of Latvian sovereignty: the impact of the principle of continuity on the “national” dimension

The season of independence for Latvia, like that of the other Baltic Republics, was abruptly interrupted in the summer of 1940, following Soviet occupation and, after a short interruption following the invasion by Nazi Germany, it lasted until 1991. This annexation to the USSR, which occurred in violation of international law and Sections 1, 76 and 77 of the 1922 Constitution<sup>19</sup>, was followed by deep Sovietization of Latvia, pursued on several levels.

On a social level, it was achieved both by acting against the Latvian national majority – many of whose members were deported or chose exile – and by favoring, starting from the 1950s, mass immigration from the other Republics of the Union. This affected the national composition of Latvia to such an extent that, in 1989, the Latvian component only represented a small majority, equal only to 52% of the total population of the Republic<sup>20</sup>. On an institutional level, Sovietization was achieved by imposing an organizational model of political power extraneous to the Latvian tradition and, on a constitutional level, with the adoption, on the 25<sup>th</sup> of August 1940, of a new Constitution modeled on the Soviet model of 1936, then replaced, on the 19<sup>th</sup> of April 1978, by a new text, in turn inspired by the Soviet Constitution of 1977.

Independence, as mentioned, was only regained in 1991. On the 4<sup>th</sup> of May 1990 the Latvian Supreme Soviet adopted the *Declaration on the restoration of independence for the Republic of Latvia*, which specified that, given the illegitimacy of the Soviet annexation of 1940, Latvia had never lost its original sovereignty, other than *de facto*. The document formalized the principle of continuity of the State<sup>21</sup>, thereby affirming that the Republic emancipated from Soviet occupation in 1991 was identical to that proclaimed by the Provisional National Council on the 18<sup>th</sup> of November 1918<sup>22</sup>.

<sup>18</sup> According to J. Lazdiņš, A. Lerhis, J. Pleps, I. Ziemele, *Legal and Historical Elements of Latvia's Restoration of Independence*, in *Baltic Yearbook of International Law*, Vol. 19, Issue 1, 2021, pp. 57-58, during the Soviet occupation, the Latvian Constitution of 1922 became not only the legal basis for the activities of the Latvian foreign service and of the national resistance movement but also a political symbol of Latvia's independence.

<sup>19</sup> See J. Pleps, *The Continuity of the Constitutions: The Examples of the Baltic States and Georgia*, in *Wroclaw Review of Law, Administration & Economics*, Vol. 6, No. 2, 2016, pp. 33-34.

<sup>20</sup> See C. Schmidt, *Der Minderheitenschutz in den baltischen Staaten. Dokumentation und Analysen*, Kulturstiftung der Deutschen Vertriebenen, Bonn, 1993, p. 57.

<sup>21</sup> See A. Rodiņa, J. Pleps, *supra*, note 4, p. 436; on this principle in international law see I. Ziemele, *State Continuity and Nationality: The Baltic States and Russia. Past, Present and Future as Defined by International Law*, Nijhoff, Leiden-Boston, 2005, pp. 109 et seq.

<sup>22</sup> In the judgment of the 29<sup>th</sup> of November 2007, case No. 2007-10-0102, the Latvian

The principle of continuity legitimized the restoration of the pre-war legal order, but, on a constitutional level, it posed some questions.

The debate became polarized between those who, in accordance with the principle of continuity, proposed the unchanged conservation of the 1922 text – to be updated, if necessary, but always in compliance with the revision procedure envisaged therein – and who, on the other hand, while supporting the aforementioned principle, proposed the adoption of a new Constitution, which was more in line with the achievements of European constitutionalism that have developed over the last seventy years.

Section 4 of the *Declaration*, while denying that the 1922 Constitution had ever been revoked, ordered the suspension of its effectiveness save for Sections 1, 2, 3 and 6 (art. 4), alongside which the Soviet Constitution of the 19<sup>th</sup> of April 1978 remained temporarily in force, where compatible. Section 7, however, provided for the establishment of a special commission with the task of preparing a new constitutional text. Although this commission had prepared a new project, on the 21<sup>st</sup> of August 1991, the day of independence from the USSR, the «Constitutional Law on the statehood of Latvia» was approved. It restored the full effectiveness of the original Constitution alone, anticipating a choice later formalized by the Latvian Parliament (*Saīma*), on the 6<sup>th</sup> of July 1993<sup>23</sup>.

This entirely original choice was full of implications. Primarily and with regard to the system of sources, it sealed the principle of continuity of the State<sup>24</sup>. The continued effectiveness of the 1922 Constitution, which was never revoked (but only suspended following the 1934 coup d'état), and, therefore, remained uninterruptedly in force, albeit only *de jure*, even during the occupation, resulted in the illegitimacy of any measure for the Sovietization of Latvia carried out for over fifty years by the USSR and aimed, in essence, at “liquidating” its statehood<sup>25</sup>. Therefore, this choice was not only symbolic and identarian in scope, rather it provided, also on a formal level, a foundation for definitive emancipation from a painful past.

The idea of the continuity of the interwar constitutional experience was not however manifested with respect to the “civic” dimension of belonging<sup>26</sup>. In fact, despite the potential of the 1922 constitutional text, partly expressed by legislation on minority groups in the 1920s, the legislative choices adopted in the immediacy of independence highlighted an opposing attitude,

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Constitutional Court affirmed that «the Republic of Latvia [...] was founded on the 18<sup>th</sup> of November 1918 and, despite the aggression and occupation by the USSR which took place in 1940, continued its uninterrupted existence [...]».

<sup>23</sup> On this constitutional evolution see, among others, A. Sprudz, *Rebuilding Democracy in Latvia: Overcoming a Dual Legacy*, in J. Zielonka (Ed.), *Democratic Consolidation in Eastern Europe*, Vol. I, *Institutional Engineering*, Oxford University Press, Oxford, 2001, pp. 139-140, D. Iljanova, *The Republic of Latvia*, in C. Kortmann, J. Fleuren, W. Voermans (Eds.), *Constitutional Law of 10 EU Member States. The 2004 Enlargement*, Kluwer, Deventer, 2006, p. V-6, R. Balodis, A. Kārklīņa, E. Danovskis, *The Development of Constitutional and Administrative Law in Latvia after the Restoration of Independence*, in *Juridiskā zinātne/Law*, No. 5, 2013, pp. 48-50, and J. Lazdiņš, A. Lerhis, J. Pleps, I. Ziemeles, *supra*, note 18, pp. 56 et seq.

<sup>24</sup> See I. Ziemeles, *supra*, note 21, pp. 32-33.

<sup>25</sup> See J. Pleps, *supra*, note 19, pp. 33 et seq.

<sup>26</sup> Cfr. M. Germane, *supra*, note 9, pp. 456-457.

characterized by exclusionary choices. This was particularly the case for linguistic policies – which culminated by qualifying Russian as a foreign language, although it was the mother tongue of a very significant component of the population<sup>27</sup> – and, above all, for citizenship<sup>28</sup>. By applying the principle of continuity and its consequences rigidly<sup>29</sup>, full status was only recognized for those who had already held that status before 1940, including those belonging to national minorities who were already citizens before this date<sup>30</sup>. This choice, however, excluded those who had immigrated during Soviet times or who had no ancestors who were already citizens and had not managed to meet the stringent conditions required for naturalization. For those excluded from naturalization, the «Law on the Status of Former USSR Citizens who are not Citizens of Latvia or any other State», adopted on the 25<sup>th</sup> of April 1995, introduced the category of «*nepilsoņi*», or rather those who were already citizens of the USSR but had lost this status as a result of the Soviet dissolution without acquiring another citizenship. These people were granted access to social rights, but their enjoyment of political rights was limited and many restrictions were placed on the ownership of other rights (for example with respect to access to public employment and the exercise of some professions or the purchase of private property)<sup>31</sup>.

This attitude was also maintained following the adoption of constitutional rules intended to compensate for the absence, in the restored Constitution, of a catalog of rights.

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<sup>27</sup> See D. Iljanova, *supra*, note 23, pp. V-8-10; on the linguistic legislation see, among others, M.A. Jubulis, *Nationalism and Democratic Transition. The Politics of Citizenship and Language in Post-Soviet Latvia*, University Press of America, Lanham-New York-Oxford, 2001, pp. 122 et seq., and D. J. Galbreath, *Nation-Building and Minority Politics in Post-Socialist States. Interests, Influences and Identities in Estonia and Latvia*, *ibidem*-Verlag, Stuttgart, 2005, pp. 180 et seq.; on the most recent amendments to the legislation on education in minority languages see Venice Commission, *Latvia. Opinion on the recent amendments to the legislation on education in minority languages*, Strasbourg, 18 June 2020 (Opinion No. 975/2020).

<sup>28</sup> See again D. Iljanova, *supra*, note 23, pp. V-10-12.

<sup>29</sup> According to J. Lazdiņš, A. Lerhis, J. Pleps, I. Ziemeles, *supra*, note 18, p. 54, «Latvia adopted its citizenship policy with a view to the following legal facts: (1) it was not a new State, (2) an unprecedented number of settlers had been imposed on Latvia in the Soviet era and (3) it had to address the consequences of Soviet occupation that affected its citizens in multiple ways».

<sup>30</sup> On the application of the principle of continuity to the issue of citizenship see judgment of the 13<sup>th</sup> of May 2010, case No. 2009-94-01. On the continuity of Latvian citizenship during the Soviet occupation see J. Pleps, *Citizenship and State Continuity: The Example of Latvia*, in M. Krešić, D. Banović, A. Carrio Sampedro, J. Pleps (Eds.), *Ethnic Diversity, Plural Democracy and Human Dignity. Challenges to the European Union and Western Balkans*, Springer, Cham, 2022, pp. 212-216.

<sup>31</sup> In the judgment of the 7<sup>th</sup> of March 2005, case No. 2004-15-0106, the Latvian Constitutional Court affirmed that the new category of Latvian non-citizens is «a category previously unknown to the international law»; they «cannot be compared to any other status of a physical person which has been provided for in international legal acts, as the scope of the rights granted to non-citizens does not fully correspond to any other such status. Latvian non-citizens cannot be regarded as citizens, aliens or stateless persons; they should be seen as persons with “a specific legal status”». On this category see K. Krūma, *EU citizenship, Nationality and Migrant Status. An Ongoing Challenge*, Nijhoff, Leiden-Boston, 2014, pp. 361 et seq.



With respect to the national question, the «Constitutional Law on the rights and duties of citizens and persons» of 10 December 1991 (which, despite its title, did not have effective constitutional status) was limited to sanctioning a generic prohibition on discrimination based on race, nationality or language (Section 12) and a duty to respect the customs and traditions of ethnic and national groups resident in Latvia (Section 41)<sup>32</sup>.

The subsequent Constitutional Law of the 15th of October 1998, which inserted Title VIII into the Constitution (Sections 89-116), containing a catalog of fundamental rights<sup>33</sup>, also only paid little attention to minorities: Section 91 formalized the principle of equality before the law by prohibiting all discrimination; Section 114 introduced the right of people belonging to ethnic minorities to preserve and promote their own language and cultural and ethnic identity. At the same time, however, the same Constitutional Law sanctioned, in Section 4 of the Constitution, the official status of Latvian as the only language of the State. The centrality of the Latvian language was then also confirmed by subsequent constitutional Laws: that of 30<sup>th</sup> of April 2002 introduced an obligation for members of the *Saīema* to take an oath to Section 18 of the Constitution, the formalization of Latvian as the working language of the *Saīema* to Section 21 and, again, the right of everyone to receive an answer to their requests addressed to State or territorial institutions in the same language to Section 104. With the Constitutional Law of the 23<sup>rd</sup> of September 2004, the use of the Latvian language as the working language in local authorities was included under Section 101<sup>34</sup>.

These first interventions on the text of the Constitution confirmed, on the one hand, the superficiality of the attention paid to minorities settled in the Country – which have also become a very significant component in terms of numbers – and, on the other, the propensity of the constitutional legislator to promote the linguistic element as an identity factor<sup>35</sup>. This latter propensity is also confirmed by case law of the Constitutional Court, an examination of which illustrates that, on balancing the protection of minority linguistic rights, the protection of the national language has constantly prevailed as a necessity, since its use and consolidation are strictly connected to the same democratic stability of the system<sup>36</sup>.

Despite the desire to follow-up on updates to the 1922 Constitution with reference to rights, the promotion of identity elements was established as a priority with respect to the national issue, rather than the promotion of guarantees for minorities, as requested by international

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<sup>32</sup> On this Law see R. Hofmann, *Minderheitenschutz in Europa. Völker- und staatsrechtliche Lage im Überblick*, Gebr. Mann, Berlin, 1995, pp. 108-109.

<sup>33</sup> See J. Pleps, *The Constitutional Foundations of the Republic of Latvia*, in *Latvia and Latvians. Collection of scholarly articles*, Vol. I, Latvian Academy of Sciences, Riga, 2018, pp. 116 et seq.

<sup>34</sup> On these Laws see D. Iljanova, *supra*, note 23, pp. V-8-9.

<sup>35</sup> According to J.L. Schulze, *Strategic Frames. Europe, Russia and Minority Inclusion in Estonia and Latvia*, University of Pittsburgh Press, Pittsburgh, 2018, p. 39, in Latvia and Estonia, «[n]ational languages became the main tool and symbol for reconstructing national identity and for rejecting both Soviet occupation and russification [...]».

<sup>36</sup> See judgment of the 21<sup>st</sup> of December 2001, case No. 2001-04-0103.

organizations. This approach was conditioned by the vivid memory of the long Soviet incorporation and the social and demographic transformations it brought about, especially as a result of mass immigration from the other Republics of the USSR<sup>37</sup>.

The development of this exclusionary attitude favored, over subsequent years, a reflection on what exactly was the foundation of the State and its formalization in the Constitution. In this regard, some legal authors developed the conviction that there was an “essential core” of the Latvian constitutional identity – obtainable by way of interpretation of Sections 1-4 and 6 and not subject to revision – pertaining to the national qualification of Latvia, its indivisibility, the ownership by its people of sovereign power and its inalienability, the democratic nature of the legal system, the principle of legality and that of State social responsibility<sup>38</sup>.

#### 4. The proposals for constitutional revision and the introduction of the Preamble

In more recent years, further polarization of this debate has been fueled by an attempt to intervene with respect to the constitutional text including provisions relating to language, pursued through the instrument of popular legislative initiative pursuant to Section 78 of the Constitution. This Section recognizes that (at least) one tenth of the electors are entitled to present a draft law or an amendment to the Constitution to the *Saīema* and establishes that, in the event of non-approval without amendments or rejection by the *Saīema*, the text is submitted for a referendum; Section 79 then establishes that a draft amendment to the Constitution submitted to a popular vote is considered as approved if at least half plus one of those entitled to vote have voted in favor.

In 2010, an initiative was first presented aimed at amending Section 112 of the Constitution, which ensures the right to education, introducing an obligation for first and second grade educational institutions to offer educational programs exclusively in the Latvian language<sup>39</sup>. Despite the unsuccess of the proposal, given the failure to obtain the necessary signatures, it pushed the Russian-speaking minority to promote an opposing referendum initiative, which collected the necessary signatures, aimed at the officialization of the Russian language alongside the Latvian one, through the amendment of Sections 4, 18, 21, 101 and 104 of the Constitution. This initiative, as foreseeable, fueled the fears of the majority, due to the potential repercussions that its possible outcome could have on the Constitutional identity attitude, developed over the decades and

<sup>37</sup> On the consequences of mass immigration during the Soviet era on the ethnic composition of the inhabitants of Latvia see judgment of the Latvian Constitutional Court of the 13<sup>th</sup> of May 2005, case No. 2004-18-0106.

<sup>38</sup> See J. Pleps, *supra*, note 33, pp. 111 et seq.; on these principles see also R. Balodis, *The Constitution of Latvia*, in *IRP - Legal Policy Forum*, No. 26, 2004, pp. 15-17, and A. Rodiņa, J. Pleps, *supra*, note 4, pp. 437 et seq.

<sup>39</sup> On this proposal see E. Somer, *Direct Democracy in the Baltic States. Institutions, Procedures and Practice in Estonia, Latvia and Lithuania*, Peter Lang, Frankfurt am Main, 2015, pp. 96-97.

underlying the decision to maintain it as a symbol of the continuity of the State with respect to Soviet occupation.

Although it was rejected, on the 18<sup>th</sup> of February 2012, by 74.8% of voters, given the obvious opposition by the majority of “national” Latvians, the proposal was nevertheless of disruptive political significance. The fact that a referendum initiative on the issue was proposed and, then, the fact that the majority of Russian speakers, probably coinciding with the voters who voted in favor of the request, questioned the uniqueness of Latvian as the official language of the Republic were interpreted as indicative of a profound fracture in society and the existence of a component that many perceived as potentially capable of endangering the existence of an independent and democratic Latvia<sup>40</sup>.

In September 2012 this issue was the subject of the «Opinion on the constitutional foundation of the Latvian State and on the inviolable core of the Constitution», delivered by a special commission of constitutionalists appointed by the Presidency of the Republic<sup>41</sup>. In the document, which offers valuable insights into the dynamics of the Latvian State-building process, the existence, in the 1922 Constitution, of an essential core was recognized which, despite the fact that Section 77 admits the modifiability of the entire text, is not subject to reform. The constitutional identity of the Latvian State falls within the scope of this essential core, the purpose of which has been identified as the desire for self-determination of the Latvian nation, to be conceived as an entity with an ethnic-cultural connotation and the holder of the constituent power.

On this premise, the Opinion also reinterpreted the reference to the «people of Latvia» («*Latvijas tauta*») mentioned in Section 2 of the Constitution, for a long time understood as inclusive of all citizens, regardless of national affiliation, and as the foundation, in this regard, of State sovereignty. This foundation has been reformulated in an ethnic-cultural sense (so much so that the expression «*Valstsnācija*», i.e., «nation-State», has been used), and justification for the State has been identified in the guarantee that the Latvian nation – understood as a political subject defined on an ethnic-cultural basis – could democratically self-determine. In support of this theory, moreover, reference was made to the circumstance that in 1918 the Latvian State was created in a territory historically inhabited by Latvians, as defined by Section 3 of the Constitution, to the constant reference only to the Latvian nation in the declarations made by the founding fathers and, at that time, to the fact that the establishment of the Republic was functional to implementing a project expressed by the Latvian nation alone, with respect to which the minorities would have been involved only at a later time.

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<sup>40</sup> On this referendum see K. Jarinovska, *Popular Initiatives as Means of Altering the Core of the Republic of Latvia*, in *Juridica International*, XX, 2013, pp. 155-156, E. Somer, *supra*, note 39, pp. 97-98, and I. Ijabs, *After the Referendum: Militant Democracy and Nation-Building in Latvia*, in *East European Politics, Societies and Cultures*, Vol. 30, No. 2, 2016, pp. 297-299; see also T. Agarín, *Extending the Concept of Ethnocracy: Exploring the Debate in the Baltic Context*, in *Cosmopolitan Civil Societies Journal*, Vol. 8, No. 3, 2016, p. 91.

<sup>41</sup> On this Opinion see I. Ijabs, *supra*, note 40, pp. 299 et seq.

It is in light of this Opinion – containing the need for that “essential core” to be precisely entrenched in the Constitution, through the formalization of a Preamble – that the tenor of the choice, made by way of Constitutional Law of the 19<sup>th</sup> of June 2014, to introduce a Preamble into the Constitution must be contextualized. In consideration of certain declarative contents, the emphatic affirmation of the principle of continuity of the State and of the «irrevocable and inalienable right of the *Latvian nation* to self-determination, in order to guarantee the *Latvian nation* its own language, its own culture and its own development over the centuries» is of note, together with reference to the «*Latvian identity* [...], developed since ancient times by the *Latvian* and *Livonian* traditions, by the wisdom of the *Latvians*, by the *Latvian language*, by Christian and human values in general». With respect to this premise, the generic reference according to which Latvia «*respects ethnic minorities*» appears negligible and hardly functional to meeting the challenges of integration that are today arising in the Country.

Although some radical and even more exclusionary expressions have been eliminated – such as, in particular, the reference to the “nation-State”, used in the above mentioned Opinion but considered excessive and capable of inflaming conflict in relations with minorities –, even a superficial reading of the new Preamble illustrates how, many years after regained independence, the “national” dimension has established unprecedented centrality, at least with respect to the date of creation of the Constitution almost a hundred years earlier, indicative of a different attitude towards minorities who have recently immigrated to the Country, compared to that originally guaranteed to indigenous minorities.

The introduction of the Preamble, inspired by the theory whereby the Constitution could not defend itself<sup>42</sup>, was traced to the dynamics of the so-called “militant democracy”, evoked following international terrorist drifts that exploded at the beginning of the new millennium<sup>43</sup>.

In the Baltic context, this defensive attitude continues to be fueled by the perceived threat that has hovered over the State-building process since the time of independence, namely the fear of new Russian expansionism, symbolized, within the Latvian territory, by the constant presence of significant Russian-speaking groups<sup>44</sup>. Despite the constant search for equilibrium between opposing demands, this deeply rooted fear continues to condition political choices. However, it risks hindering completion of a cohesive process to be based on the internalization of the possible coexistence of diversities, courageously experimented by Latvia during the interwar season and today encouraged by the European integration project.

## 5. Final remarks

The different importance of the “national” dimension in the evolution of Latvian constitutionalism, characterized, in the interwar period, by an

<sup>42</sup> See J. Pleps, *supra*, note 33, p. 113.

<sup>43</sup> See A. Sajó, *Symposium: Terrorism, Globalization and the Rule of Law: From Militant Democracy to the Preventive State?*, in *Cardozo Law Review*, Vol. 27, 2006, pp. 2255 et seq.

<sup>44</sup> See. I. Ijabs, *supra*, note 40, pp. 297-299.

inclusive and original approach but, since its newfound independence, by a more exclusionary approach, has been analyzed above.

This evolution confirms the potential, but also the risks, of some solutions accepted by the Latvian Constitution of 1922, relating not only to the relative simplicity with which it can be revised, but also to the originality and democracy of some participatory instruments<sup>45</sup>, such as the referendum pursuant to Section 78 of the Constitution, to which recourse was made, in the terms mentioned above, in 2012. The latter, in particular, on the one hand allowed a minority to start a process that was intended to compensate for the inertia of the constitutional legislator, but, on the other hand, it has also given life to an identity spiral, demonstrated by the inclusion of the Preamble and susceptible, given the collapse of the geo-political context of the ex-Soviet area, to developments that are certainly not very functional to the consolidation of an authentic cohesive process.

From a broader perspective, this evolution highlights the specific nature of the national perception that has matured in Latvian constitutionalism, at least with respect to some dynamics that have consolidated elsewhere.

If in Western European Countries the “civic” perspective of belonging has only been affirming itself since the last three decades as a consequence of social transformations resulting from globalization and the inclusive impulses deriving from it, in Latvia this approach had already matured in the interwar period, favoring the experimentation of measures for the protection of national minority groups which, as mentioned above, proved to be very innovative. In the face of this, however, painful historical events following the Soviet occupation have given impetus to an opposing attitude, favoring the consolidation of a nationalistic approach. It is alien to the historical-constitutional tradition of the Country, but it was made necessary – first at a legislative level, and then subsequently at a constitutional level – to ensure the continuity of the Latvian identity and the consolidation of the rediscovered statehood with respect to possible external threats.

Although this perception may again today be fueled by insidious dynamics in the ex-Soviet area, the solidity of Latvian democratic institutions, firmly anchored to the European constitutional tradition, suggests some inclusive prospects – confirmed by the appreciable results achieved, also recently, for example, in terms of citizenship –, to which completion of the European integration process can make a decisive contribution.

Lino Panzeri  
Università degli Studi dell'Insubria  
[lino.panzeri@uninsubria.it](mailto:lino.panzeri@uninsubria.it)

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<sup>45</sup> According to A. Lieven, *supra*, note 1, p. 64, Baltic Constitutions of the interwar period were «too democratic for their own good».