

# The Latvian parliamentary form of government and the significant powers vested in the President

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**Abstract:** From a theoretical point of view, the Latvian parliamentary form of government has a strong western imprint. However, it strongly differs from its reference models and confers important powers on the Head of State, especially with regard to the legislative authority, as an inevitable legacy impacts of previous authoritarian regimes as well as of the Weimar government. The multi-party system and coalition governments affect the relationships among constitutional bodies and reduce public participation in favor of the President of the Republic.

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**Keywords:** Head of State; Veto power; Early dissolution; Multi-party system; Citizen participation.

## 1. The origins of the form of government

The parliamentary system of the Republic of Latvia is similar to that of Lithuania but it differs from that of Estonia<sup>1</sup>; it adopted the Constitution of 1922<sup>2</sup>, which was amended several times. The separation of powers under the Constitution, which is the result of the historical and constitutional development of the Country, shows a strong western imprint from a

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<sup>1</sup> D. Auers, *Comparative Politics and Government of the Baltic States – Estonia, Latvia and Lithuania in the 21st Century*, London, 2015; M. Kasapović, *Parliamentarism and Presidentialism in Eastern Europe*, in *Političkamisaio*, 5, 1996, 120-135.

<sup>2</sup> This is the only Baltic State where the Constitution ratified between the two world wars is still in force, although it has been amended eleven times. It was promulgated by the Constituent Assembly (*Satversmes sapulce*) on 20 June 1992 and it entered into force on 7 November 1992. The Constitution of Latvia was drafted by the Constitutional Assembly, which was influenced by the Weimar Constitution. The first draft of the Constitution consisted of two parts: the first one regulated the government bodies and their functioning; the second part regulated the rights and duties of the citizens. After Kārlis Ulmanis' coup d'etat, on 15 May 1934, the Constitution was suspended and it was reintroduced by the Saeima only in July 1993. Cfr. J. Pleps, E. Pastars, I. Plakane, *Konstitucionālās tiesības*, Riga, 2014; A. Di Gregorio, *Epurazioni e protezione della democrazia. Esperienze e modelli di "giustizia post-autoritaria"*, Milano, 2012; Idem, *I sistemi costituzionali dei paesi dell'Europa centro-orientale, baltica e balcanica*, Milano, 2019, 62; E. Levits, *Verfassungsgerichtsbarkeit in Lettland*, in *Osteuropa-Recht: Gegenwartsfragen aus dem sowjetischen Rechtskreis*, 4, 1997, 25 ss; R. Balodis, *The Constitution of Latvia*, Trier, 2004.

theoretical point of view, although it has many characteristics that differ from its reference model, as the important role of the Head of State. Between the two World Wars, that is, between 1918 and 1940<sup>3</sup>, before declaring its independence from the Soviet Union in 1991, Latvia<sup>4</sup> went through a difficult period of independence, which led to the birth of the Republic of Latvia and of its Constitution, clearly influenced by the democratic values of the Weimar Constitution. In fact, during the World War I the country was occupied by German forces, which invaded the coastline in Kurzeme region. The outcome of the war was the defeat of Russia and Germany and it set the basis for the birth of the independent Republic of Latvia. After the surrender of the Reich in November 1918, Soviet Russia declared the Treaty of Brest-Litovsk null and void; on 11 August 1920 a Latvian-Soviet peace treaty was signed, which declared the independence of Latvia.

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Until 1934 both the Latvian Constitution and political branches were heavily influenced by Germany's Weimar Constitution. Indeed, the proportional electoral rules and the absence of mass-based parties drove to an extreme, and still existing, fragmentation of the political landscape<sup>5</sup>, as well as to many changes of governments; indeed, 18 government coalitions were formed in fourteen years. In the same year and by one act, in Latvia, the Constitution was abolished, the Parliament was dissolved and authoritarian regime was established by Karlis Ulmanis, leader of the Farmers' Union, who had served many times as prime minister; all these events were legitimized by an imminent threat of a right or left-wing coup d'état<sup>6</sup>. Like in Estonia, the political consequences of the *putsch* were that all political parties were banned and there were restrictions on fundamental rights. However, since then, a greater nationalist fervour emerged, which could be summarized in

<sup>3</sup> The Latvian National Awakening movement, which emerged after 1905 and was facilitated by the 1917 Russian Revolution, led to proclamation of the independent State of Latvia on November 18, 1918. Since then Kārlis Ulmanis' Provisional Government experienced the Bolshevik invasion and the German occupation of Latvia. After gaining independence in early months of 1920, the country was immediately characterized by a great political uncertainty: 10 government coalitions were formed from the adoption of the 1932 Latvian Constitution to 1934. A. Plakans, *A Concise History of the Baltic States*, Cambridge, 2014; D. J. Smith, *The Baltic States, Estonia, Latvia and Lithuania*, London- New York, 2002; A. Plankas, *Historical Dictionary of Latvia*, Lanham, 1997; A. Lieven, *The Baltic Revolution. Estonia, Latvia, Lithuania and the Path to Independence*, New Haven, 1993; G. Smith (Eds), *The Baltic States. The National Self-Determination of Estonia, Latvia and Lithuania*, London, 1994.

<sup>4</sup> From a geographical point of view, Latvia "descended" from three historical regions, Livonia, Latgale and Courland, under the control of Russia respectively from 1721 and 1795, and occupied by Germany during the World War I. R. Tuchtenhagen, *Storia dei paesi baltici*, Bologna, 2005, 35-63; A. V. Berkis, *The History of the Duchy of Courland (1561-1795)*, Towson, 1969.

<sup>5</sup> In 1931, there were twenty-seven parties in the Parliament.

<sup>6</sup> The transition to authoritarian regimes was the consequence of specific economic, cultural and international conditions, which are fundamental to understand the power and social structures in the Baltic States during the 1930s.

the slogan "Latvia to the Latvians". These events and the enhancement of a cultural plan which fostered cultural cooperation with other European countries, marked by the birth of national universities, have all certainly influenced the current form of government, together with the growth of democratic participation and popular consciousness. Over time, great importance has been given to citizen participation, especially through the 2009 Constitutional Reform, through mechanisms of direct democracy, thus creating a clear relationship with the Head of State rather than with the Parliament, which is the expression of a well-structured and complex system of political parties.

After the Molotov-Ribbentrop Pact<sup>7</sup>, the country was considered as a State under the influence of the Soviet Union; on 5 August 1940 Latvia was annexed illegitimately to the USSR and so it succumbed to authoritarian rule<sup>8</sup>. After fifty years, thanks to the Popular Front, on 4 May 1990 the Latvian Parliament introduced a transition period which gradually established the independence from the USSR<sup>9</sup>. This long period of authoritarian regime had a deep impact on the current form of government. According to the approach of the socialist state, the principle of unity of state powers was exercised by a single "supreme" body<sup>10</sup>, that is the Parliament. The President of Latvia was endowed with strong powers in line with the influence of the Weimar Republic, which was a parliamentary republic only theoretically, since the President, who was elected by universal suffrage, had wide-reaching powers. Similar circumstances have certainly influenced the relationships between the constitutional bodies in the Latvian system of government which, albeit it is not entirely based on parliamentary system, gives Parliament and the Executive a more hidden role, also due to the extreme multi-party system<sup>11</sup> which has always caused political instability.

<sup>7</sup> German-Soviet Nonaggression Pact was an agreement signed by Germany and Soviet Union in which the two countries agreed not to attack each other. It also recognized Estonia, Latvia, and Lithuania as falling within the Soviet sphere of influence. In fact, according to the agreement, Germany occupied most of central Poland while the Soviet Union first occupied and annexed the rest of Poland, and then occupied and incorporated the Baltic states, too.

<sup>8</sup> Despite the State declared its neutrality in 1939. Cfr. J. R. Misiunas, R. Taagepeera, *The Baltic States. Years of Dependence, 1940-1980*, London, 1983; A. B. Altemir, *Gli Stati Baltici di fronte alla disintegrazione sovietica: alcune riflessioni a quindici anni dalla proclamazione della loro indipendenza*, available at <https://journals.uniurb.it/index.php/studi-A/article/view/284/276>.

<sup>9</sup> In 1991 the Latvian Supreme Soviet declared the independence of the Republic of Latvia. Cfr. E. B. Deksnis, T. Jundzis, *Restoration of the Sovereignty and Independence of the Republic of Latvia 1986-1994*, Riga, 2015, 68; G. Swain, *Latvia's democratic resistance: a forgotten episode from the Second World War*, in *European History Quarterly*, 2, 2009, 13 ss.

<sup>10</sup> M. Volpi, *Forme di governo*, in G. Morbidelli, L. Pegoraro, A. Rinella, M. Volpi, *Diritto pubblico comparato*, Torino, 2016, 279-281.

<sup>11</sup> «Extreme multi-party system» (according to the well-known classification by L. Elia), *Governo (forme di)*, in *Enc. dir.*, vol. XIX, 654-657.

The President of the Republic of Latvia is elected by the legislative body (differently from the Weimar Republic); he plays a prominent role, he has the power to veto legislation and he is entitled to issue the order for the dissolution of the Saeima, of which he is the president, and whose implementation depends on the participation of the citizens. In fact, citizens think this body guarantees regime stability, which, on the contrary, is not easily guaranteed by the Parliament and the government.

## 2. The compression of the Parliament: regulatory policy and practice

Latvia has a unicameral Parliament. The rules of the Saeima (Parliament) are defined in Chapter 2 of the Constitution; it is elected for a maximum term of 4 years and it has a regulatory autonomy, to carry out its functions<sup>12</sup>. The Parliament has also enhanced the protection of its members, who enjoy extensive autonomy<sup>13</sup> to ensure a certain political neutrality and to reduce the pressure of other authorities – like the executive power – on members of parliament. The parliamentary term of office is based on the absence of restrictions and instructions of the voters. Parliamentary immunities<sup>14</sup> are largely protected; in fact, parliamentary authorization is necessary to commence criminal prosecution and to impose administrative sanctions against members of the Saeima<sup>15</sup>.

It is well-known that the two-House system of the Baltic, Balkan and East Central European countries, is not based on the necessity to guarantee a federal system<sup>16</sup> to the states, but it is due to the political need to divide public powers in terms of "counterpower and guarantees"<sup>17</sup>. This circumstance is moderately met in Latvia, in fact the Head of State has the right to interfere in the work of the one-chamber Parliament, since he has the suspensive veto power and he is entitled to propose the dissolution of the Parliament. Although the Constitution provides limits to the powers of

<sup>12</sup> All citizens of the Republic of Latvia elect 100 parliamentary representatives of the people (deputies). The elections for the Saeima are held on the first Saturday in October and it shall hold its first sitting on the first Tuesday in November. Before the adoption of the Amendments in 1997, the Saeima was to be elected for a term of three years, which was one of the shortest parliamentary terms in the world.

<sup>13</sup> As in Slovenia and Slovakia. J. Sawicki, *Forme di governo*, in A. Di Gregorio (ed.), *I sistemi costituzionali dei paesi dell'Europa centro-orientale, baltica e balcanica*, cit., 167. See also:

[https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/04/2019-08-01\\_Judgment.pdf](https://www.satv.tiesa.gov.lv/web/viewer.html?file=https://www.satv.tiesa.gov.lv/wp-content/uploads/2019/04/2019-08-01_Judgment.pdf).

<sup>14</sup> Since the Constitutions of the former Socialist area had distanced themselves from the former socialist systems which subordinated the executives branch to the legislative one. Ivi, 171.

<sup>15</sup> As ruled by Articles 28 and 29 of the Constitution. Cfr. Ibidem.

<sup>16</sup> M. Volpi, *L'organizzazione costituzionale*, in G. Morbidelli, L. Pegoraro, A. Rinella, M. Volpi, *Diritto pubblico comparato*, cit., 490.

<sup>17</sup> F. Lanchester, *Forma di governo parlamentare nell'Europa centro orientale*, in S. Bertole, P. Grilli di Cortona (cur.), *Transizione e consolidamento democratico*, Torino, 1998, 79.

the President, the main idea is the one developed during the process of democratic transition, which does not recognize the primacy of the Elective Assembly over the Executive. This approach, in contrast with the monistic parliamentary government, is influenced by the dualistic tendency of the Weimar Constitution, which granted the President and the Parliament the same legitimacy, deriving from his electoral mandate. Indeed, this Constitution has been the point of reference for the constituent assemblies after the World War II<sup>18</sup>, while monism<sup>19</sup> is one of the most typical trend in the evolution of parliamentary form of government. This dicotomy is evident in Latvia. On a theoretical level, the Parliament has a central role, especially within the ordinary legislative procedure. It is regulated by Chapter V and members of parliament are the main holders of legislative powers, since no particular privileges are recognised to the Executive, neither in relation to the initiative in the proper sense, nor regarding the deliberation phases of a legislative process. However, since the legislative procedure is characterised, like in every parliamentary system, by a high institutional pluralism, the number of government bills which become law is higher than that of legislative proposals. The Constitutions of the countries in the former Soviet Union have departed from the old socialist approach, which tended to contain the executive power. Moreover, the President of the Republic of Latvia<sup>20</sup> has the right to initiate legislation, together with the direct citizen participation, who are involved in the legislative process, albeit through referendums<sup>21</sup>. These prerogatives also weaken the parliamentary government. Even if the Head of State sporadically exercises his legislative powers, this is in contrast to the typical role of the President in parliamentary systems of government, that is, to be the symbol of the national unity, just as popular referenda create a tie with the presidential powers in case of early dissolution of the Parliament. Finally, exasperate multi-partitism and coalition governments do not make its functioning easy.

<sup>18</sup> The Weimar Constitution came into force in 1919 and it was a socio-political, ideal and institutional compromise, i.e. a compromise between popular sovereignty and conservative forces. Its form of government was characterised both by the popular sovereignty and the authority and the state authority and unity. M. Volpi, *Le forme di governo*, cit., 422.

<sup>19</sup> The former European socialist parliamentary system showed two different trends: the first one with the Parliament playing a central role based on a unicameral legislature, in which the government may have the parliamentary investiture vote or the Parliament might move a a motion of no confidence; the second one, instead, consists in the rationalization of the relationship of trust and in particular in the regulation of the vote of no confidence. M. Volpi, *Le forme di governo*, cit., 437- 438.

<sup>20</sup> Like Poland, Lithuania and Hungary. J. Sawicki, *Forme di governo*, cit., 171.

<sup>21</sup> According to the experience of the Weimar Republic, citizens might use this tool even to repeal a law recently approved (former Art. 74), but only if the number of voters is at least half of the number of electors as participated in the previous Saeima election and if the majority has voted for repeal of the law. M. Mazza, *La Costituzione della Lettonia (1922)*, in M. Ganino (ed.), *Codice delle Costituzioni*, Vol. III, Torino, 2013, 92.

## 2.1. Early dissolution of the Parliament: presidential powers and electorate

One of the main weakness of the Latvian Parliament is its early dissolution. This hypothesis may be a typical option of all parliamentary systems, linked to the loss of the relationship of trust between the Government and the legislative body, while in Latvia it assumes unique features<sup>22</sup>. This characteristics highlight the significant role of the President of the Republic, as well as his relationship with the electorate, which is responsible for completing the procedure. However, the electorate does not hold a leading position in terms of implementation. Indeed, the Constituent Assembly considered the early dissolution of Parliament as a menace of dictatorships<sup>23</sup>.

Pursuant to Article 48<sup>24</sup> of Satversme, as amended in 2009, only the President of the Republic has the right to early dissolve the Parliament. He submits a request to the Central Election Commission to call for a referendum upon this issue; if in the referendum half of the votes will cast in favor of dissolution, the Saeima shall be considered dissolved and new elections shall be called no later than two months after the date of the dissolution of the Saeima.

The early dissolution of the Saeima is a strong presidential prerogative, since the President has in no way limits and conditions. In order to allow the Head of State a wide margin of action, the presidential orders do not require to be countersigned neither by the Prime Minister nor by any other minister<sup>25</sup>. On the contrary, in parliamentary systems all the presidential acts are countersigned by the Ministers in order to relieve the President of the legal liability deriving from his acts.

Article 49<sup>26</sup> of the Constitution states that if the Saeima has been dissolved, the mandate of the members of the Saeima shall continue to take effect until the newly elected Saeima has convened, but the dissolved Saeima may only hold sittings at the request of the President – in this case, the agenda of such sittings shall be determined by the President. In the meantime, the agenda of the sittings of the Parliament, which has been

<sup>22</sup> A.H. Saharov, *Institut Prezidentstva v Sovremennom Mire* [*The Institute of President in Contemporary World*], Moskva, 1994, 129.

<sup>23</sup> R. Bērziņš Rīkojuma, *Rīkojuma iespējamā neatbilstība Satversmei*, in *Jurista Vārds*, 2, 2011, 5-7.

<sup>24</sup> It states: “*The President shall be entitled to propose the dissolution of the Saeima. Following this proposal, a national referendum shall be held. If in the referendum more than half of the votes are cast in favour of dissolution, the Saeima shall be considered dissolved, new elections called, and such elections held no later than two months after the date of the dissolution of the Saeima*”.

<sup>25</sup> A. Kārklīņa, *Dissolution of Parliament in Latvia: legal regulaion and practice*, in *Jurisprudencija*, 3, 2013, 1220.

<sup>26</sup> Article 49 states: “*If the Saeima has been dissolved or recalled, the mandate of the members of the Saeima shall continue to be in effect until the convening of the newly elected Saeima, but the former Saeima may only hold sittings upon the request of the President. The President shall determine the agenda of such sittings of the Saeima.*”



weakend in his powers, shall be determined by the Head of State, whose term of office may extend beyond the deadline set by Art. 48<sup>27</sup> of the Constitution, as shown by the early dissolution in 2011. Thus, it was virtually impossible to implement the mechanism enshrined by Article 50<sup>28</sup> of the Constitution – that if in the referendum more than half of the votes are cast against the dissolution of the Saeima, then the President shall be removed from office, as demonstrated by the implementation of the constitutional provision.

At first, scholars<sup>29</sup> were very sceptical regarding this procedure, since they thought it did not comply with the institutional framework of the country. However, the only case of early dissolution that has occurred so far has shown its real implementation to advantage of the Head of State, although, unlike other parliamentary systems, the Latvian President can only initiate the referendum for the premature termination of the Parliament, without immediately dismissing it, even if the referendum on the dissolution of Parliament does not require quorum.

Following the Presidential order no. 2 issued on 28 May 2011 by the President Valdis Zatlers, the Central Election Commission announced the Referendum on the dissolution of the Saeima. On 23 July, 2011, it held the referendum and 689.823 voters voted, so the voter turnout in the Referendum was 44.73 percent, and 94.3 percent of the voters voted affirmatively for the dissolution of the Saeima<sup>30</sup>. On September 17, 2011, the first early elections were held in the history of Latvian Parliament. The President Valdis Zatlers decided to announce the dissolution of the Saeima short before the end of his presidential term, which was on 7 July 2011. In this way he created a mechanism to prevent the removal of the Head of State, as set forth in Art. 50 of the Constitution, thus showing how this mechanism was clearly against both the legislative body and the electorate itself.

The voters might request the President of the Republic to order an early dissolution of the Saeima, but such a request will not be legally

<sup>27</sup> E. Pastars, *Konstitucionālo vērtību aizsardzība Saeimas atļaišanas gadījumā*, in *Jurista Vārds*, 45, 2011, 2–4. In this case, although the 10th Saeima was dissolved on 28 May, 2011, it has worked almost for five more months, until 17 October, 2011, when the newly elected Saeima has convened.

<sup>28</sup> Article 50 states: *If in the referendum more than half of the votes are cast against the dissolution of the Saeima, then the President shall be deemed to be removed from office, and the Saeima shall elect a new President to serve for the remaining term of office of the President so removed.*

<sup>29</sup> K. Dišlers, *Ievads Latvijas valststiesību zinātnē*, Rīga, 1930, 177.

<sup>30</sup> This referendum was held when the Parliament used the veto vote to fight against corruption of the politician Ainars Šlesers, leader of LPP-LC (*Latvijas Pirmā Partija/Latvijas Cels*), a political party created from the merger of the Christian-democrats and the Liberals. Ainars Šlesers had been a former prime minister accused of illegal participation in monetary transactions, corruption and abuse of power. To deal with the political crisis, the President Valdis Zatlers decided to initiate a referendum to dismiss the Parliament. K. Dišlers, *Ievads Latvijas valststiesību zinātnē*, cit., 153.

binding<sup>31</sup>. Although the President is entitled to propose the dissolution of the Saeima, in 2011 Zatlers addressed to the people expressing his motivations for the dissolution action, in order to gain more support. In fact his proposal to dissolve the Saeima occurred in a time when it enjoyed a very low level of trust in the society, as shown by the survey which reported that only 10% of citizens trusted it<sup>32</sup>.

Since the President has no limits in proposing the dissolution of the Saeima, he can also choose the time he thinks is most favorable to reduce the risk to be removed from office<sup>33</sup>. Moreover, even if Article 51<sup>34</sup> of the Constitution enshrines the procedure to remove the President from office with a majority vote of not less than two-thirds of all of members of parliament, such a rule also prevents this possibility. In practice, until the new parliament has been convened, the agenda of the dissolved Saeima shall be determined by the President and so he shall not be removed.

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### 3. The "active" role of the Head of State

The early dissolution of the parliament is a very interesting mechanism, where the people are “functional” to the President. Moreover, even the power of the voters to recall the Saeima, as provided by Article 14<sup>35</sup> of the Constitution, supports this approach since, unlike the procedures provided by Article 48 of the Constitution, there are many conditions which binds the exercise of this power. This is a pretty chaotic procedure which requires the support of majorities and the compliance with time limits, while the President could initiate dissolving the Saeima even on the last day of his authority<sup>36</sup>.

The President of the Republic of Latvia is elected by the Saeima for a period of 4 years, (renewable once), by an absolute majority of votes; he also

<sup>31</sup> J. Pleps, *Kādā veidā var atlaist Saeimu*, in *Jurista Vārdi*, 45, 2003, 3–6.

<sup>32</sup> *Valsts Prezidenta Valda Zatlera paziņojums Latvijas Tautai. State President Institution, 2011 [interactive]*.

<sup>33</sup> A. Kārklīņa, *Dissolution of Parliament in Latvia: legal regulation and practice*, cit., 1219.

<sup>34</sup> It states: “Upon the proposal of not less than half of all of the members of the Saeima, the Saeima may decide, in closed session and with a majority vote of not less than two-thirds of all of its members, to remove the President from office”.

<sup>35</sup> It states: “Not less than one tenth of electors has the right to initiate a national referendum regarding recalling of the Saeima. If the majority of voters and at least two thirds of the number of the voters who participated in the last elections of the Saeima vote in the national referendum regarding recalling of the Saeima, then the Saeima shall be deemed recalled. The right to initiate a national referendum regarding recalling of the Saeima may not be exercised one year after the convening of the Saeima and one year before the end of the term of office of the Saeima, during the last six months of the term of office of the President, as well as earlier than six months after the previous national referendum regarding recalling of the Saeima. The electors may not recall any individual member of the Saeima”.

<sup>36</sup> A. Kārklīņa, *Dissolution of Parliament in Latvia: Legal Regulation and Practice*, cit., 1222–1227.



has interesting prerogatives which contrast with pure parliamentary systems. This approach is usually adopted in many states of the former Soviet Union, where the Head of State enjoyed - at least initially - great powers, which then generally faded away during the consolidation of democratic institutions<sup>37</sup>. However, the role of the Head of State is still very important in some countries, like in Latvia. The main idea of the Constitutions of these countries is that the President should not simply play a weak or representative role<sup>38</sup>. Like in other parliamentary systems, the President of Latvia represents the State of Latvia in international relationships, appoints the diplomatic representatives of Latvia and implements the decisions of the Saeima concerning the ratification of international agreements. He is the Commander-in-Chief of the armed forces<sup>39</sup> of Latvia and he has the right to grant clemency<sup>40</sup> to criminals. However, he also has powers which detach from the reference form of government. In fact, Chapter III lacks an Article in which the President is the guarantor of the national unity and of the territorial integrity, while Article 40 only recognizes him a role that is more active than nominal.

For this reason, while swearing the oath of office to the Parliament, it is particularly important when the President affirms that he will do everything in his power *“to promote the prosperity of the Republic of Latvia”*<sup>41</sup>. It is also symptomatic the pressure from public opinion on the introduction of the direct elections of the Head of State; moreover, a strong rejection of political parties persists in this country, which traditionally results in a strong support for independent candidates<sup>42</sup> for the presidential nomination. Therefore, it is no coincidence that a typical presidential power of the parliamentary systems, as commander-in-chief of the armed forces, is declined in a peculiar way in this experience. Art. 44<sup>43</sup> provides that the

<sup>37</sup> A. Di Gregorio, *Forme di governo e transizione democratica nell'Europa post-socialista*, in L. Montanari, R. Toniatti, J. Woelk (ed.), *Il Pluralismo nella transizione costituzionale dei Balcani: diritti e garanzie*, Trento, 2010, 19.

<sup>38</sup> J. Sawicki, *Forme di governo*, cit., 180.

<sup>39</sup> Article 42 states: *“The President shall be the Commander-in-Chief of the armed forces of Latvia. During wartime, the President shall appoint a Supreme Commander.”*

<sup>40</sup> Article 45 states: *“The President has the right to grant clemency to criminals against whom judgment of the court has come into legal effect. The extent of, and procedures for, the utilisation of this right shall be set out in a specific law.”*

<sup>41</sup> Article 40 states: *“The President, upon taking up the duties of office, at a sitting of the Saeima, shall take the following solemn oath: “I swear that all of my work will be dedicated to the welfare of the people of Latvia. I will do everything in my power to promote the prosperity of the Republic of Latvia and all who live here. I will hold sacred and will observe the Constitution of Latvia and the laws of the State. I will act justly towards all and will fulfil my duties conscientiously.”*

<sup>42</sup> D. Auers, *Comparative Politics and Government of the Baltic States – Estonia, Latvia and Lithuania in the 21st Century*, London, 2015, 55-57.

<sup>43</sup> *“The President has the right to take whatever steps are necessary for the military defence of the State should another state declare war on Latvia or an enemy invade its borders. Concurrently and without delay, the President shall convene the Saeima, which shall decide as to the declaration and commencement of war.”*

President has the right to take whatever steps are necessary for the military defence of the State, so if a state declares war on Latvia or an enemy invades its borders, the Parliament shall take on a rather pleonastic dimension, because it shall only confirm an already well-defined procedure. Moreover, the Head of State has the right to interfere in the implementation of government powers and he has the right to initiate legislation. Pursuant to Article 46 of the Constitution, the President, referring to the French semi-presidentialism, has the right to summon and to preside over extraordinary meetings of the Cabinet and to determine the agenda of such meetings. This is a very important prerogative, since there are no constitutional limitations on the exercise of this power; in fact the Head of State may arbitrarily decide when, and to what extent, to interfere with the activity of the government. On the contrary, the power to initiate legislation (Article 47 of the Constitution) seems to be weaker, especially when compared to the French semi-presidentialism, where the President can call for a referendum for the approval of a bill, without submitting it to the Parliamentary vote. However, this power still seems to be connected to the suspensive veto power, subject to the only significant restrictions pursuant to Articles 73 and 75 of the Constitution. This latter power, binding the content of the law, is not clearly exercised by the President with regard to the laws he proposes.

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### 3.1. Suspensive veto power and the “network governance”

Like in every parliamentary system, the President of the Republic has the right to promulgate the laws (Article 70 of the Constitution) and, pursuant to Article 71, within ten days of the adoption of the law by the Saeima, the President may require that a law shall be reconsidered<sup>44</sup>. However, in line with the presidential systems, the President of Latvia may exercise the suspensive veto power (Article 72 of the Constitution).

It is well known that the President of the United States of America has the power of the veto to prevent a bill from becoming law without his approval and signature; it is also well known that there are three types of veto power: pocket veto, when the President refuses to approve a bill; partial veto, when the President rejects particular provisions of a bill enacted by a legislature without vetoing the entire bill; and package veto, when a president can veto a bill only in its entirety<sup>45</sup>. The reasons for the exercise of this power may be based both on political legitimacy and merit. However, this power has a different connotation in Latvia. Indeed, “presidential veto” and “suspensive veto” are related in the majority of the European legal systems, because a veto power is a mechanism that enables the President to prevent a bill from becoming law. As matter of fact the American

<sup>44</sup> I. Ābolīņa, *Presidential Suspensive Veto Decision-Making Practice in Latvia: Valdis Zatlers and Andris Bērziņš*, in *Nordsci Conference on Social Sciences (Book 2, Vol I)*, Sofia, 2018, 471-479.

<sup>45</sup> M. Volpi, *Forme di governo*, cit., 444.

Constitution provides two types of veto according to the purpose<sup>46</sup>. Hence, while the presidential veto is a constitutional power of the Head of State, the suspensive veto is a different legal institution, typical of few legal systems, like the Latvian one<sup>47</sup>.

In this legal system the motives of State presidents for using the suspensive veto is to suspend a bill until reconsidered by the legislature, rather than verifying if a bill complies with the constitutional provisions or if it cannot be enacted into law for political reasons. Unlike Estonia and Lithuania<sup>48</sup>, Article 72<sup>49</sup> of the Constitution provides that President of Latvia or no less than one-third of the members of the *Saeima* have the right to suspend the proclamation of a law for a period of two months and within ten days of the adoption of the law by the *Saeima*; if the *Saeima* determines a law to be urgent<sup>50</sup>, the President may not request reconsideration of such law. During the aforementioned period, the veto power is absolute since it cannot be considered null.

The logic behind this provision responds to the idea that the suspensive veto can ensure an approval of a bill detached from political fervor, especially in an extreme multi-party system as the Latvian one. This means to allow more time to reconsider a law, both by the Parliament and the voters. In this case the Head of State acts as guarantor of the wellness of the Latvian people, confirming his tie with voters, since the suspended bill will be submitted to a national referendum within a period of two months, if so requested by not less than one-tenth of the voters who participated in the

<sup>46</sup> C. H. Pritchett, *The American Constitution*, New York, 1959, 307.

<sup>47</sup> M. Đorđević, *Suspenzivni veto predsednika republike*, cit., 132.

<sup>48</sup> Article 107 of the Constitution of the Republic of Estonia states: “*The President may refuse to promulgate a law passed by the Riigikogu and, within fourteen days after its receipt, return the law, together with his or her reasoned resolution, to the Riigikogu for a new debate and decision. If the Riigikogu, for the second time and without amending it, passes a law which has been returned to it by the President, the President either promulgates the law or applies to the Supreme Court for a declaration of unconstitutionality in respect of that law. If the Supreme Court declares the law to be in conformity with the Constitution, the President promulgates the law*”. On the contrary, Article 72 of the Constitution of the Republic of Latvia sets out: the *Saeima* can vote for the adoption of a law which had been suspended by the President.

<sup>49</sup> “*The President has the right to suspend the proclamation of a law for a period of two months. The President shall suspend the proclamation of a law if so requested by not less than one-third of the members of the Saeima. This right may be exercised by the President, or by one-third of the members of the Saeima, within ten days of the adoption of the law by the Saeima. The law thus suspended shall be put to a national referendum if so requested by not less than one-tenth of the electorate. If no such request is received during the aforementioned two-month period, the law shall then be proclaimed after the expiration of such period. A national referendum shall not take place, however, if the Saeima again votes on the law and not less than three-quarters of all members of the Saeima vote for the adoption of the law.*”

<sup>50</sup> The Article 75 of the Constitution states: “*Should the Saeima, by not less than a two thirds majority vote, determine a law to be urgent, the President may not request reconsideration of such law, it may not be submitted to national referendum, and the adopted law shall be proclaimed no later than the third day after the President has received it.*”

previous Saeima election and if the majority has voted to repeal the law<sup>51</sup>.

To date, suspensive veto power has been used less than a hundred times, and in about eighty percent of the cases the President's observations were taken into account by the Parliament. So in case of early dissolution of Parliament, the practice has shown the real impact of this mechanism. However, this kind of power depends on several interconnected factors, as the charismatic leadership of the Head of State, his influence on the voters and on the members of parliament and the public participation in the analysis of the draft laws to be discussed by the Saeima. Democratic participation provides an open and transparent decision-making process involving representatives of the society and various sectors, as well as members of professional networks<sup>52</sup>, so the President has discretionary power when he exercises suspensive veto. It also influences the parties choices with regard to the amendments of bills which have not been passed yet, as provided by Article 72 of the Constitution. This is called "*network governance*", implemented by the Presidents since 1998. It started during the term of office of Guntis Ulmanis and it was established as a tradition during the first mandate of Vaira Vīķe-Freiberga (1999-2003)<sup>53</sup>. In fact, during the mandate of Andris Bērziņš almost ninety per cent of the laws were vetoed due to network request, just as the request of suspensive veto sent by President of Latvia Raimonds Vējonis on November 9, 2018, was accompanied with favorable opinions of various groups of society.

In this context, the President's suspensive veto power acquires a very clear function vis-à-vis the legislature, since it represents the need to examine the law with special attention. When the Presidency is stronger, this need becomes even more incisive, as during the presidency of Valdis Zatlers, who used his suspensive veto power thirteen times, although in two cases laws were not amended. Zatlers understood the discontent of the voters and announced that he would have started the process of dissolving parliament in 2011.

#### 4. The weakened executive

In this context, the role of the government, disciplined in a concise manner by Chapter IV, is not particularly incisive, even if the relationship of trust with the legislative body, an expression of a perfect bicameral system, is rather rationalized<sup>54</sup>. It is established, similarly to what happens in Lithuania, both with the Prime Minister, appointed by the President of the

<sup>51</sup> As provided by the Article 74 of the Constitution.

<sup>52</sup> S.J. Kobrin, *Sovereignty@Bay: Globalization, Multinational Enterprise, and the International Political System*, Oxford, 2009; S.P. Osborne, *The new public governance? Emerging perspectives on the theory and practice of public governance*, London, 2010.

<sup>53</sup> To date she has resorted to the use of the suspensive veto, more than all the other Latvian Presidents.

<sup>54</sup> J. Sawicki, *Le forme di governo*, cit., 211.

Republic pursuant to Art. 56 of the Constitution, and with the Ministers, thus opting for a mixed system, which only partially recalls the experience of the chancellorship<sup>55</sup>. The Constitution, even if it provides the motion of no-confidence vote in the Prime Minister, does not mention the institution of constructive vote of no confidence, designed to guarantee a certain governmental stability. This choice is in line with the exaggerated multi-party system which undermines the stability of the executive power. The pre-eminent position of the Chancellor, elected by an absolute majority of the Bundestag, which allows the theoretical possibility of appointing a minority government and the stability of German governments<sup>56</sup>, are the consequence of multiple rationalization mechanisms, together with a moderate multi-party system. Similar conditions are not found, however, in Latvia, just as the use of the constructive no-confidence motion which would in fact be impracticable. Indeed, in this hypothesis, the election of a new chancellor by an absolute majority is required at the same time as the vote of no confidence itself, since this is also guaranteed by the majority-type functioning of the form of government, as occurs in the German experience. The no-confidence vote is more in line with the Latvian form of government which, typical of the majority of Central-Eastern European states<sup>57</sup>, implies the replacement of a single minister<sup>58</sup>. Therefore, the executive shows a congenital precariousness since only a simple majority is required, not only to grant the confidence vote but also to revoke it<sup>59</sup>. Likewise, the Constitution does not mention the issue of confidence, to be understood as a tool to strengthen the government, since it is responsible for influencing the majority so that it remains united regarding the political direction, on which the relationship of trust with the government is based. Last but not least, the Government is no longer the holder of the power of decree with legislative force, in the time between two parliamentary sessions following the repeal of Art. 81 of the Constitution. The political pre-eminence of the Prime Minister, which is found in the systems of the former Soviet Union bloc with majority parliamentarianism, does not characterize the Latvian experience. In this system, the Head of government tends, in fact, to act as a mediator<sup>60</sup> between the various components of the majority, since the

<sup>55</sup> Cfr. ex multis G. Parodi, *La Germania e l'Austria*, in P. Carozza, A. Di Giovine, G. F. Ferrari (cur.), *Diritto costituzionale comparato*, Roma-Bari, 2009, 196-205.

<sup>56</sup> M. Volpi, *Forme di governo*, cit., 432.

<sup>57</sup> Ivi, 504.

<sup>58</sup> In particular, the vote of no confidence in a minister may pass as provided by Art. 159 of the Constitution of Poland and Article 97, ch. 5, of the Constitution of Estonia. Cfr. J. Sawicki, *Le forme di governo*, cit., 226.

<sup>59</sup> Article 59 of the Constitution states: "In order to fulfil their duties, the Prime Minister and other Ministers must have the confidence of the Saeima and they shall be accountable to the Saeima for their actions. If the Saeima expresses no confidence in the Prime Minister, the entire Cabinet shall resign. If there is an expression of no confidence in an individual Minister, then the Minister shall resign and another person shall be invited to replace them by the Prime Minister."

<sup>60</sup> G. De Vergottini, *Diritto costituzionale comparato*, Padova, 1999, 456.



Government is the result of agreements made between the parliamentary groups and it is not pre-established following the electoral consultations. This contributes to confirm, especially in terms of continuity, the figure of the Head of State as guarantor of the development of the country.

#### 4.1. Government instability between political mediation and extreme multipartyism

The tangible functioning of the form of government, but, above all, the stability of the executives, depend both on the party system and on the electoral system. In line with the countries of Eastern Europe<sup>61</sup>, Latvia also follows a proportional electoral system with a five per cent threshold which, referred to in Articles 6 and 7 of the Constitution<sup>62</sup>, provides for the election of one hundred members of the Saeima through the subdivision of the territory into five multi-member constituencies, containing between twelve and thirty-six seats. The choice of this method of transforming the votes expressed by the voters into seats feeds a structure of the parties that is very articulated and inherent in the Latvian experience. Inheritance of pre-war traditions, the Latvian multi-party system is, in fact, responsible for guaranteeing not only the broadest political representation, as a reaction to the single-party system that has long characterized the national realities of the former Soviet bloc, but also responds to the need to represent, as in the other Baltic countries, the multi-ethnic character of the population<sup>63</sup>. On the implementation level, however, this system determines the weakening of the role not only of the Government, but also of the Prime Minister who, rather than exercising a real political function, ends up intervening between the different positions that are defined within complex and broad coalitions of government. In other words, the Prime Minister is constantly bound by the agreements between political parties, by the political orientation, and in terms of *appointive power*, by the government formation<sup>64</sup>. Therefore, the so-called model of the "government of parties"<sup>65</sup> is delineated, which declines in favor of the Head of State. As previously highlighted, the presidential office benefits from a particular tie with the electorate and, consequently, with Parliament. This point contributes to its already evident stability, since

<sup>61</sup> Mixed electoral systems have been adopted only in Hungary and Albania. Cfr. M. Ganino, C. Filippini, A. Di Gregorio, *Presidenti, Governi e Parlamenti nei paesi dell'Europa orientale*, in A. Di Giovine, A. Mastromarino (cur.), *La presidenzializzazione degli esecutivi nelle democrazie contemporanee*, Torino, 2007, 168-170.

<sup>62</sup> Article 6 states: "*The Saeima shall be elected in general, equal and direct elections, and by secret ballot based on proportional representation.*". Article 7 states: "*... the number of members of the Saeima to be elected from each district shall be proportional to the number of electors in each district.*"

<sup>63</sup> The population is made up of 63% Latvians, Russians (24.2%), Belarusians (3.1%), and Ukrainians (2.2%).

<sup>64</sup> L. Elia, *Governo (forme di)*, cit., 656.

<sup>65</sup> M. Ganino, C. Filippini, A. Di Gregorio, *Presidenti, Governi e Parlamenti nei paesi dell'Europa orientale*, cit., 169.



it is not easy to dismiss the President of the Republic, while from 1993 to today the average duration of governments has been twelve months.

In the aftermath of independence, Latvia witnessed the proliferation of political parties, currently present in Parliament in the number of fifteen<sup>66</sup>. If in the transition from Soviet rule to independence, continuity was guaranteed by the permanence of the Latvian Popular Front<sup>67</sup> in power, the profound economic crisis of 1993, in determining its disintegration, led to the definition of today's jagged party system. Alongside the historical Latvian Popular Front and the Latvian National Independence Movement, which guided the reconstruction of the country, numerous political parties have been formed over time and have suffered different fates. Many entered Parliament immediately and were subsequently excluded from it, others fell apart after a short period, while others split up, giving rise to new movements or merging with other parties<sup>68</sup>. And the consequence was that few coalition governments covered the entire legislature, especially in the 1990s<sup>69</sup>. Although they are not formally included among the constitutional bodies, the political parties undoubtedly play a fundamental role in the Latvian experience. The Constitution, while not dealing with it in depth, facilitates their formation by providing in Art. 102 that "every individual has the right to form and join associations, political parties and other public bodies"<sup>70</sup>. This is an approach taken up by the same Law on social organizations and political parties of 1992 which, in setting a loose discipline<sup>71</sup>, provides for the formation of joint lists, thus guaranteeing the smallest parties to exceed the minimum threshold of 5%. As a consequence, the exasperated multi-party system and highly unstable governments are inevitable. It is well known that the purpose of multipartyism, generally understood, is to guarantee pluralist elections and to avoid the "fixation" of the party system. However, in Latvia, the extreme nature of multi-party system takes on a rather negative connotation, which has especially reflected on the public opinion that condemns the strong fragmentations within the political parties in Parliament as well as how MPs leave one political party for another. In this regard, there have been various attempts, however unsuccessful, to limit similar distortive effects<sup>72</sup> through an ad hoc discipline, a symptom of an evident discontent which supports the active role of the

<sup>66</sup> There are currently thirty-two parties in the country.

<sup>67</sup> The protagonist of the struggles for independence in the 1980s

<sup>68</sup> Like the Social Democratic Party, the conservative Homeland and Freedom Party, and the Latvian Socialist Harmony Party.

<sup>69</sup> A. Pilic, *Origin and formation of Latvia's political parties - The period of transition and the beginning of consolidation in Latvia's political landscape*, in [www.grin.com/document/9958](http://www.grin.com/document/9958).

<sup>70</sup> This provision can be found both in Article 35 of the Constitution of Latvia and in Article 48, clause 1, of the Constitution of Estonia.

<sup>71</sup> D. Auers, J. Ikstens, *The Democratic Rule of Political Parties*, in AA. VV., *How Democratic is Latvia. Audit of democracy*, Riga, 2005, 89-98.

<sup>72</sup> Together with the possibility of having it financed exclusively by the State.

Head of State.

## 5. A comparative study on the characteristics of the experience

Latvia's President holds a prominent role although its form of government is characterised by the instability of the executive power, by a weak legislative power and an exasperate multi-partyism which influences the relationships between the constitutional bodies. This process can be deduced from the presidential powers, some of which are atypical for a parliamentary system, even in terms of implementation and effectiveness. Indeed, a comparison with other legal systems of the former Soviet Union confirms this approach.

It is well known that, in the history of the constitutional evolution, the Presidents of Eastern European countries may hold significant constitutional powers, they have never exerted only ceremonial powers<sup>73</sup>, even when they have been elected by the Parliament. Moreover, to reduce intra-executive competition between President and Prime Minister, it has been unavoidable to regulate the respective powers on a constitutional level, and in particular to reduce the President's powers<sup>74</sup>. The reduction of these powers has been much more evident in the semi-presidential systems, resulting, first of all, in the exclusion of the President of the Republic from the Council of Ministers, like in Poland and Lithuania, which are parliamentary systems<sup>75</sup>.

On the contrary, in Latvia, the many constitutional amendments did not modify the President's right to convene and preside over extraordinary meetings of the Cabinet of Ministers and to determine the agenda of such meetings. Moreover, in Latvia this right, unknown to parliamentary systems, is combined both with the right to initiate legislation and the right to use the veto power, which has a strong connotation, since the use of the veto power may suspend the proclamation of law for two months. On the contrary, the Constitutional amendments in 2009 empowered the President to early dissolve parliament, while the Polish and Lithuanian Presidents do not have this right. This power is particularly significant in Latvia, although it shall not determine a "direct" dissolution, since it can be exercised, unlike parliamentary systems, regardless of the loss of trust. The President has the right to submit his proposal to early dismiss

<sup>73</sup> M. Ganino, *Le forme di governo dei Paesi dell'Europa centro-orientale*, in L. Mezzetti, V. Piergigli (cur.), *Presidenzialismi, Semipresidenzialismi, Parlamentarismi: modelli comparati e riforme costituzionali in Italia*, Torino, 1997, 382 ss.

<sup>74</sup> A similar mechanism took place in Poland with the 1997 Constitution, in Slovakia with the constitutional amendment of 1999, in Moldavia with the amendment of 2000, in Romania with the amendment of 2003.

<sup>75</sup> M. Ganino, C. Filippini, A. Di Gregorio, *Presidenti, Governi e Parlamenti nei paesi dell'Europa orientale*, cit., 156 e 162; V. Pagačias, *Semi-presidential Institutional models and democratic stability: comparative analysis of Lithuania and Poland*, in *Lithuania Political Sciences Yearbook 1999*, Vilnius, 2000.

the parliament without any limits, even short before his mandate expires, with the effect of preventing his removal from office. Moreover, it is interesting that the importance of the Latvian Head of State is even confirmed by some post-Soviet parliamentary systems, like Hungary and the Czech Republic. Indeed, in these legal systems the President does not play an important role. For example, Hungary's form of government is very close to the model of the chancellorship. In fact, it is called primacy of the Prime Minister<sup>76</sup>, since the party system is characterized by a party fragmentation that is favored by a mixed electoral system, and the coalition governments have one party which has an absolute majority and guarantees a certain stability. The Head of State, instead, exerts only ceremonial powers<sup>77</sup>, even if the authority to attribute to this constitutional body was one of the main issues addressed in the aftermath of the independence from the Soviet Union. The power to dismiss the National Assembly, of which he is the President, appears insignificant when compared to that of the President of Latvia, since his power is subject to certain condition, that is, if at least four no-confidence votes must have taken place in twelve months or if the Government fails to elect the person proposed for Prime Minister<sup>78</sup> within forty days of presentation of the first proposal. Before dissolving the National Assembly, the President of the Republic shall be obliged to make consultations. A similar system may be found in the Czech Republic, where the executive power is not exercised by the President, who does not have a political active role<sup>79</sup>, as in Latvia. In this system, the President's power to dissolve the Chamber of Deputies is subject to the same restrictions, like in Hungary, since it can be used only in the cases provided by Article 35<sup>80</sup> of the Constitution, and not for political reasons; and this involves limitations to the exercise of his discretionary power.

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<sup>76</sup> J. Sári, A. Kormány, *Il Governo*, in I. Kukorelli (Ed.), *Alkotmánytan (Studi costituzionali)*, Budapest, 1996, 291-302.

<sup>77</sup> M. Ganino, C. Filippini, A. Di Gregorio, *Presidenti, Governi e Parlamenti nei paesi dell'Europa orientale*, cit., 170.

<sup>78</sup> Starting from the date of the first proposal formulated by the President, as provided by Art. 28, ch. 3, of the Constitution.

<sup>79</sup> M. Ganino, C. Filippini, A. Di Gregorio, *Presidenti, Governi e Parlamenti nei paesi dell'Europa orientale*, cit., 178-181.

<sup>80</sup> That is, if the Chamber of Deputies has not decided on a Government Bill for a period longer than three months whereof the Government tied to the question of confidence; if the session of the Chamber of Deputies has been recessed for a longer period than admissible term; and if the Chamber of Deputies has not had a quorum for a period longer than three months although its session was not recessed and although during the said period it had been repeatedly convened to meet. Moreover, the President may not dissolve the Chamber of Deputies three months prior to the end of its electoral term.