The judiciary in the Latvian Constitution of 1922, with regard to the circulation of legal models

by Mauro Mazza

Abstract: After the 1990 declaration of independence, the 1922 Constitution of Latvia was reinstated. Things did not go very differently as regards the legislative discipline of the judiciary, since the rules contained in the law on the judiciary of 1992 largely reflect the provisions of the homologous law of 1918. The main innovation was represented by the creation, in 1996, of the Constitutional Court, with the necessary constitutional and legislative changes. The continuity of the state was therefore accompanied by the continuity of the judiciary, in force of the 1922 Constitution. With regard to the circulation of legal models, and in particular of formants, after the end of the Soviet era Latvia's judicial system returned to being part of the Roman-Germanic sub-family of continental civil law. This is also confirmed by the creation of the Constitutional Court, which exercises the centralized control of constitutionality.

Keywords: Constitutional history, Latvian Constitution of 1922, judicial power, continuity of the State of Latvia, circulation of legal models and formants.

1. The Latvian judicial system before the approval of the 1922 Constitution

Even before the adoption of the Constitution (*Satversme*) of Latvia on February 15, 1922[1], the (Latvian) People's Council[2] approved, on

[1] On which, see: M.M. Laserson, 'Das Verfassungsrecht Lettlands', *Jahrbuch des öffentlichen Rechts der Gegenwart*, vol. XII, 1923, p. 258 ff.; A. Cazéjus, *La Constitution de la Lettonie (Documents et commentaires)*, Faculté de Droit, Toulouse, 1925 (Bibliotthèque de l'Institut de Législation comparée de Toulouse, *Série des Constitutions*, no. II); A. Giannini, *Le Costituzioni degli Stati dell'Europa orientale*, vol. II, Istituto per l'Europa orientale (IPEO), Roma, 1929, p. 357 ff.; J.K. Pollock Jr., 'The Constitution of Latvia', *American Political Science Review*, 1923, p. 446 ff.; C. Taube, *Constitutionalism in Estonia, Latvia and Lithuania. A Study in Comparative Constitutional Law*, Iustus Förlag, Uppsala, 2001, p. 112 ff.; I. Álvarez Vélez, 'Constitución de Letonia', *Revista de las Cortes Generales*, vol. 65, 2005, p. 283 ff. In the authoritative opinion of Giannini, *Le Costituzioni degli Stati dell'Europa orientale*, cit., p. 375, «from a technical point of view, the Latvian Constitution is well drafted». Authoritative in this sense is also the opinion of A. Di Gregorio, 'Il costituzionalismo euro-atlantico di fronte alla complessità dell'Europa orientale: retaggi storici, difficoltà delle transizioni e fenomeni di rigetto e rielaborazione', paper presented at the conference *La complessa dimensione culturale, geopolitica e giuridica del conflitto in Ucraina. Origini, contesto e conseguenze di lungo periodo*, held at the University of Milan on May 24, 2022, who highlighted the advanced

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December 5, 1919, the law on the maintenance of the previous Russian laws valid in Latvia. Art. 1 of that law established that Russian laws, in force within the borders of Latvia until October 24, 1917, are to be considered temporarily valid after November 18, 1918, until they are replaced by new laws and provided that they are not in contradiction with the legal system of Latvia and the program adopted by the (Latvian) People's Council.

It followed that the Latvian Republic recognized itself as Russia's successor, but with important exceptions. First, Russian laws could still be revoked or replaced by Latvian laws. Secondly, Russian laws were not to be in conflict with the interests of the Latvian state; not only in general with the Latvian democratic order, but in particular with the political platform adopted by the People's Council. Thirdly, and above all, Soviet laws could never have effect in the Republic of Latvia. This is because - as mentioned above - only the Russian laws adopted before 24 October remained in force temporarily in Latvia, not those approved after the Bolsheviks took power, which took place on 24 and 25 October 1917.

In pre-Soviet Russia, the administration of justice was profoundly revised with the statute of November 20, 1864[3]. It intended to separate the functions of the administration and the police from those specific to the judiciary. However, the separation of powers was certainly not achieved. In fact, the monarchical principle retained its full force. Be it as it may, the 1864 legislation entered into force in the three Baltic Provinces with effect from 9 July 1889, with the sole exception of the jury trial[4].

character of the Latvian Constitution of 1922.

[2] The People's Council of Latvia (*Latvijas Tautas padome*, LTP) was the first legislative institution of Latvia, created on November 17, 1918. It consisted of forty members. Cf. R. Balodis, *The Constitution of Latvia*, Institut für Rechtspolitik (IRP) an der Universität Trier, Trier, 2004 (*Rechtspolitisches Forum*, no. 26), p. 4. Until 1917, the majority of the population of Latvia considered possible not a full independence of the country, but only greater autonomy than Russia; cf. D. Iļjanova, 'The Governmental System of the Republic of Latvia', *in* N. Chronowski *et al.* (Eds.), *Governmental Systems of Central and Eastern European States*, Oficyna – Wolters Kluwer Polska, Warszawa, 2011, especially p. 367.

[3] See P. Vincenti, 'Gli statuti giudiziari russi del 1864 nel contesto delle grandi riforme di Alessandro II', *Il giusto processo civile*, 2012, p. 1051 ff.; J. von Puttkamer, 'Die russische Justizreform von 1864. Eine Kontroverse', *Jahrbücher für Geschichte Osteuropas*, 1999, p. 405 ff.; P.H. Solomon (Ed.), *Reforming justice in Russia, 1864-1996. Power, Culture, and the Limits of Legal Order*, Sharpe, Armonk (NY), 1997; I. Petrova *et al.*, 'Historical stages of the transformation of the judicial system and legal procedures in the Russian Empire: case of judicial reform of 1864', *Cuestiones Políticas*, 2020, p. 333 ff.; P. Gonneau, A. Lavrov & E. Rai, *La Russie impériale. L'Empire des Tsars, des Russes et des Non-Russes (1689-1917), sub* 6. *Les grandes réformes et les contre-réformes (1855-1894)*, Presses universitaires de France, Paris, 2018, p. 143 ff. On attempts to reverse the effect of the reforms; see T. Taranovski, 'The Aborted Counter-Reform: Murav́ev Commission and the Judicial Statutes of 1864', *Jahrbücher für Geschichte Osteuropas*, 1981, p. 161 ff. The models of the Russian judicial reform of 1864 were not only English and French, but there were also influences of the procedural codes of the Canton of Geneva as well as the Kingdom of Sardinia.

[4] Cf. S. Lazdiņš, 'Die Justizreform vom Jahr 1889 und ihre Bedeutung für die Baltischen Provinzen Russlands und (später) Lettland', *in* F.L. Schäfer & W. Schubert (Hrsg.), *Justiz und Justizverfassung. Siebter Rechtshistorikertag im Ostseeraum, 3–5 Mai 2012*

An important institutional step took place on 6 December 1918, with the approval by the (Latvian) People's Council of the Provisional Rules on the courts of Latvia and on the judicial procedure[5]. They were generally referred to as the Basic Courts Law. The Basic Courts Law of 1918 introduced major changes in the Russian Law of 1864. The innovations contributed to the founding of Latvia as a sovereign state. In particular, art. 10 of the Basic Law on Courts of 1918 established that the language to be used before the courts of the Republic of Latvia was exclusively Latvian. Important was the change of leading language in legal system after 1918. First time in history it was Latvian, and it was quite big challenge to manage all necessary things in state language. Important changes took place in the transition from Russian to Latvian legislation. For example, village jurisdictions also existed at the time of Russian legislation, but with jurisdiction only for disputes between peasants[6]. In the Latvian Republic, however, the jurisdiction of village courts was extended to all inhabitants of the basic judicial district. Other innovations concerned the suppression of the criminal jurisdiction of the village courts. This competence was, in fact, transferred to the magistrate's courts. In addition, the appeal *per saltum* that could be proposed directly to the Supreme Court against the decisions of the village jurisdictions was abolished, with the devolution of the relative jurisdiction to the magistrate's courts, albeit in the special composition integrated by lay assessors. The village jurisdictions remained until the Soviet occupation of Latvia in 1940[7], were then restored following

Schleswig-Holstein, Peter Lang, Frankfurt am Main, 2013, p. 91 ff.; S. Kucherov, 'The Jury as Part of the Russian Judicial Reform of 1864', *American Slavic and East European Review*, 1950, p. 77 ff.

[5] See A. Bilmanis, *Law and Courts in Lavia*, Latvian Legation, Washington (DC), 1946, p. 34 ff, *sub* 'Latvian Courts' and 'Competence of Courts and Procedure'. On Alfrēds Bīlmanis, see A. Sprudzs, 'Dr. Alfred Bilmanis and His Struggle for Freedom of the Baltic States', *in* A. Sprudzs & A. Rusis (Eds.), *Res Baltica. A Collection of Essays in Honor of the Memory of Dr. Alfred Bilmanis (1887-1948)*, Sijthoff, Leyden, 1968, p. 11 ff. Bīlmanis wrote also, for example, 'Free Latvia in Free Europe', *The Annals of the American Academy of Political and Social Science (AAPSS)*, vol. 232, no. 1, 1944, p. 43 ff.; *Latvia as an Independent State*, Latvian Legation, Washington (DC), 1947 (revised edition of *Latvia in the Making, 1918-1928: ten Years of Independence*, Riga times, Riga, 1928), and *ivi* cf. especially p. 75 ff., *sub* 'Constitution of 1922', as well as p. 90 ff., *sub* 'Judicial System'. Graduated in history from Moscow University, he first became head of the press office of the Latvian Foreign Ministry, then representative of the Republic of Latvia to the Society of Nations, then again ambassador of Latvia in Moscow (from 1932 to 1935) and, finally, ambassador of Latvia to the United States of America (from 1935 to 1948). The documentation concerning this important diplomat and historian of Latvia has been included, since 1948, in the Latvian collections of the Hoover Institution Library and Archives of Stanford University. The aforementioned fund consists of 8 manuscript boxes, 2 oversize boxes, 1 oversize folder, and includes correspondence, speeches and writings, memoranda, reports, and printed matter, relating to Latvian foreign relations, conditions in Latvia during and after World War II, and postwar Latvian refugees and émigré affairs.

[6] So-called class jurisdiction.

[7] The soldiers of the Red Army entered the territory of Latvia on June 17, 1940. See A. Bilmanis, 'Latvia: A Victim of Unprovoked Aggression by Soviet Russia', *New York Times*, 1940 July 23; Id., *Latvia in 1939-1942. Background, Bolshevik and Nazi Occupation, Hopes for Future*, Latvian Legation (Latvian Press Bureau), Washington (DC), 1942; I.

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independence and, finally, they were suppressed from 1 January 2007. As for the sentences handed down by the magistrate's courts, they were subject to appeal before the courts of county, both in criminal and civil matters. Unlike what happened under Russian law, the county courts had, in the Republic of Latvia, a so-called mixed jurisdiction, in the sense that they decided both in some cases as a judicial body of the first degree[8], and as a body of the second degree, against the decisions issued by the magistrate's courts.

Finally, the Latvian Senate was established at the top of the judicial system. Before that, the appeal of last resort had to be proposed to the judging Senate of imperial Russia[9]. The Senate of independent Latvia, which then functioned as the Supreme Court, consisted of three

Šneidere, 'The Occupation of Latvia in June 1940: A Few Aspects of the Technology of Soviet Aggression', *in* V. Nollendorfs & E. Oberlander (Eds.), *The Hiddeen and Forbiden History of Latvia Under Soviet and Nazi Occupations 1940-1991. Selected Research of the Commission of the Historians of Latvia*, Foreword by V. Vīķe-Freiberga (President of the Republic of Latvia), Institute of the History of Latvia (University of Latvia), Rīga, 2005, p. 43 ff. (Latvia was occupied first by the Soviets in 1940-1941, then by the Nazis in 1941-1944/45 and then again by the Soviets in 1944/45-1991; see, with a meaningful title, A. Bilmanis, *Latvia Between the Anvil and the Hammer*, Latvian Legation, Washington, DC, 1945, and also U. Neiburgs, 'Pretošanās kustība nacionālsociālistiskās Vācijas okupētajā Latvijā (1941–1945). Pētniecības sasniegumi un problēmas' [='Resistance Movement in Latvia during National-Socialist German Occupation (1941–1945). Research Achievements and Challenges'], *Latvijas Univesitātes Žurnāls. Vēsture/Journal of the University of Latvia. History*, no. 5, 2018, p. 13 ff.); R. Kraujelis, 'The status and the future of Baltic States and Romania in the strategy of Western Allies in the early years of the Second World War: a comparative view', *Revista Română de Studii Baltice şi Nordice-RRSBN* [=*Romanian Journal for Baltic and Nordic Studies*], 2010, no. 1/2 (published by *Asociaţia Română pentru Studii Baltice şi Nordice-ARSBN*/Romanian Association for Baltic and Nordic Studies, based at the Valahia University of Târgovişte), p. 93 ff.; M.F. Björn, *Lettland im Zweiten Weltkrieg. Zwischen sowjetischen und deutschen Besatzern 1940–1946*, Schöningh, Paderborn, 2009; R. Wnuk, 'Inszenierte Revolution. Sowjetherrschaft in Polen und dem Baltikum 1939–1941', *Osteuropa*, 2013, no. 5-6, p. 151 ff. The Soviet authorities initiated the re-Sovietization of Latvia; cf. J. Denis, 'Identifier les «Éléments ennemis» en Lettonie. Une priorité dans le processus de resoviétisation (1942-1945)', *Cahiers du Monde russe*, 2008, p. 297 ff.; D. Bleiere, 'The Sovietisation of Latvia in the Context of the Baltic States', *in Latvia and Latvians*, vol. II, Latvian Academy of Sciences-LAS (Academia Scientiarum Latviensis, in Latvian *Zinātņu akadēmija*), Riga, 2018, p. 593 ff. Anti-Soviet sentiment is widespread in Latvia; see, for instance, A. Berkis, 'Soviet Russia's Persecution of Latvia, 1918 to the Present', *Journal of Historical Review*, 1998, p. 29 ff. One of the reasons for the social conflict is represented by the fact that most Latvians are faithful of the Lutheran Church, while those belonging to the Russian minority adhere to the Orthodox Church. In the legal doctrine, see *inter alia* D.A. Loeber, 'Forced Incorporation: International Law Aspects of the Soviet Takeover of Latvia', *in International and National Law in Russia and Eastern Europe. Essays in Honor of George Ginsburgs*, Kluwer Law International, The Hague, 2001, p. 225 ff. But there is no lack of historical reconstructions most favorable to the Soviets; see J. Rislakki, 'Did the Soviet Union occupy Latvia?: Were the Latvians victims of genocide?', *in* J. Rislakki (Ed.), *The Case for Latvia. Disinformation Campaigns Against a Small Nation. Fourteen Hard Questions and Straight Answers about a Baltic Country*, Brill, Leiden, 2008, p. 143 ff.

[8] When the court of law was not competent in the first instance.

[9] Based in St. Petersburg.

departments, for civil, criminal and administrative litigation. Among the tasks of the Senate was that of exercising, in joint sections, the function of nomofilachy, to overcome the conflicts of jurisprudence[10]. There were fifteen members of the Senate[11].

A particular aspect concerned popular participation in the administration of justice. Art. 5 of the Basic Law on Courts of 1918, in fact, provided that in order to judge some crimes the trial had to be carried out with a jury. However, not all members of the population could join the juries, but only public employees of the municipal administrations. This provision, considered excessively restrictive, never actually entered into function, and with it the criminal trial with jury ceased.

Further changes to the judiciary were made directly by the Constituent Assembly (*Satversmes Sapulce*), which functioned as the first Parliament of Latvia, in office from 1 May 1920 until 7 November 1922. In particular, with a law approved[12] on 11 June 1920, it was established that judicial decisions should be issued and executed in the name of the sovereign people of Latvia.

Of fundamental importance, as well as in open discontinuity with the Russian legislative system, was the provision, contained in art. 9 of the Basic Law on Courts, for which the magistrates are designated by the legislative power.

Administrative court's partly started in 1918. At least relevant department in the Supreme court. According to Basic Laws of Court 1918 was created Administrative department in Latvian Senate and it worked from very beginning.

Upon completion of the Latvian judicial system, the Constituent Assembly approved the law of March 4, 1921, concerning administrative jurisdiction. Under the 1921 law, three degrees of administrative justice were created. However, they were subsequently reduced, in the sense that, while the Supreme Administrative Court remained in function, the other two degrees of administrative jurisdiction were abolished, thus being replaced by administrative bodies, composed by public employees placed in a position of independence and chosen, or elected, by the local administrations of the corresponding level.

With regard to the procedure to be followed before the administrative litigation bodies, they were those contained in the code of civil procedure[13]. Thus, the judge in administrative disputes had extended

[10] Cf. Bilmanis, *Law and Courts in Lavia*, cit., p. 40.
[11] *Ivi*, p. 41.
[12] Unanimously.
[13] Now *Civilprocesa likums* [Civil Procedure Law], approved on 14 October 1998. In postsocialist Latvian law, administrative disputes are decided, unitl 2004, by the courts of the general jurisdiction, but following the procedural rules contained in the Administrative Procedure Act (in Latvian, *Administratīvā procesa likums*), approved on October 25, 2001 and subsequently amended several times, in 2003, 2004, 2006, 2008, 2012, 2013, 2017 as well as, most recently on 11 November 2021. From this point of view, a (temporary) survival of the socialist and Soviet model could be seen, since in the socialist countries administrative litigation was attributed to the organs of general jurisdiction, but following a special procedure. This solution is still in force in the People's Republic of China. See, for the former USSR, M. Mazza, 'Il controllo

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investigative powers, altering the traditional principle of disposition, where private parties play the key role. They were justified with the consideration that in the disputes in question the power of the state manifests itself *vis-à-vis* a citizen, in a tendential position of weakness.

The control exercised by the administrative courts, not unlike that vested in the Supreme Court of Latvia for civil and criminal litigation, was typically of a cassatory nature[14]. This meant that the Latvian administrative judges could only review the legality of the acts, or omissions, of the public administration (both central and local), without entering into the assessment of the appropriateness of administrative action or inaction.

giurisdizionale della pubblica amministrazione nelle Repubbliche *ex* sovietiche', *Rivista trimestrale di diritto e procedura civile*, 1993, p. 549 ff; R. Scarciglia, *Diritto amministrativo comparato*, Giappichelli, Torino, 2020, p. 137 ff, and, for the People's Republic of China, M. Mazza, *Le istituzioni giudiziarie cinesi. Dal diritto imperiale all'ordinamento repubblicano e alla Cina popolare*, Giuffrè, Milano, 2010. Already in the period between the two world wars, the Latvian administrative doctrine had highlighted the need to approve a specific law on the administrative process, considering the provisions of the code of civil procedure inadequate. See: V. Bukovskis, 'Administratīvās tiesas reforma' ['Reform of the Administrative Court'], *Tieslietu Ministrijas Vēstnesis*, 1925. p. 817 ff.; F. Zilberts, 'Pie jautājuma par administratīvo sodīšanu un administratīvām tiesām' ['On the Issue of Administrative Sanctions and Administrative Courts'], *Tieslietu Ministrijas Vēstnesis*, 1937, p. 145 ff. (texts in Latvian). As regards the post-socialist Latvian administrative legal doctrine, see J. Briede, 'Administrativa procesa likuma l. panta komentars' ['Commentary on Article 1 of the Administrative Procedure Law'], *in* J. Briedes (Ed.), *Administrativa procesa likuma komentari*, TNA, Rīga, 2013, p. 13 ff. (in Latvian); J. Briede, 'Administratīvā procesa kārtībā izskatāmie pieteikuma priekšmeti' ['Subjects Covered by the Administrative Procedure'], *in* J. Briede (Ed.), *Administratīvais process tiesā*, Latvijas Vēstnesis, Rīga, 2008, p. 158 ff. (in Latvian); J. Briede, *Administratīvā is akts*, Latvijas Vēstnesis, Rīga, 2003 (in Latvian). For a comparative study between the Latvian and the Kyrgyz administrative processes, K. Kore-Perkone, 'Main Characteristics of Administrative Acts From the Perspective of Administrative Procedure Law of Latvia and Judicial Practice', *Administrative Law and Process*, 2019, no. 2, p. 133 ff., where the author develops the thesis that the understanding of the administrative act is largely conditioned by the administrative courts. The main difference in the definition of the administrative act, in the legal systems of Latvia and Kyrgyzstan, consists in the fact that the first enumerates both the characteristics that the administrative act must have and those that it must not have (so-called positive part and negative part), while the second contains only the list of the characteristics that the administrative act must possess. It follows - the author concludes - that the definition contained in the Latvian law is more detailed. Since 1 February 2004, however, with the full entry into force of the law on administrative procedure of 2001, as amended by the law of 4 December 2003, disputes between citizens and the public administration are decided in the first instance by the District Administrative Court (in Latvian, *Administratīvā rajona tiesa*), which has five distinct seats, in the second instance by the Regional Administrative Court (*Administratīvā apgabaltiesa*) and, in the third and last instance, by the Administrative Department of the Supreme Court (*Augstākās tiesas Administratīvo lietu departaments*) of the Republic of Latvia. Cf. K. Krūma & D. Plepa, *Constitutional Law in Latvia*, Kluwer Law International, Alphen aan den Rijn, 2016, p. 109 ff., especially p. 115.

[14] Cassation instance, or in Latvian *kasācijas instance*. Cf. J. Kalacs, 'Pārdomas par administratīvo tiesu' ['Reflections on the Administrative Court'], *Tieslietu Ministrijas Vēstnesis*, 1937, p. 314 ff. (text in Latvian).

The characteristics of the Latvian judicial system were therefore confirmed by the Constitution of February 15, 1922, which thus outlined the constitutional dimension of the judiciary. Since the Basic Law of 1922 was reintroduced after independence from the Soviet Union, it also currently governs the judiciary in the Republic of Latvia.

2. The constitutionalization of the judiciary in 1922

In the Latvian Constitutional Charter of 1922 the judiciary is regulated in Chapter VI, articles 82 to 86[15]. In the Constituent Assembly[16], for the approval of almost all the articles in question, there were not many discussions, and some provisions were adopted unanimously. In particular, art. 82 of the Constitution, according to which all citizens are equal before the law and the courts, art. 86, for which justice is administered only by the bodies to which this power has been attributed by law and only by following the rules of procedure established by law, as well as art. 83, according to which the judges are independent and subject only to the law, were approved by the Constituent Assembly unanimously. But things didn't always turn out this way. Many discussions, in fact, accompanied the adoption of the provisions concerning the term of office of the judges. The original project, for which the judges are appointed by the Parliament (*Saeima*) and are not removable from the office with the consequent nomination for life, was strongly criticized by the members of the Constituent Assembly, expression of leftist political positions. Various opinions were expressed in this regard. On the one hand, the appointement of judges by the Parliament was proposed only for the magistrates of the

[15] See the (Italian version of the) constitutional text in M. Ganino (Ed.), *Codice delle Costituzioni*, vol. III, Wolters Kluwer Cedam, Milano, 2013, p. 98 ff., with the introductory commentary by M. Mazza, *La Costituzione della Lettonia (1922)*, p. 87 ff. In 2014 the Preamble was added to the Latvian Constitution; cf. A. Angeli, 'Latvia. A New Preamble to the Constitution Adopted', on the website www.nad.unimi.it, 23 July 2014; K. Jarinovska, 'The Preamble of the *Satversme*: the New Approach to Constitutional Self-Restraint', *Acta Juridica Hungarica - Hungarian Journal of Legal Studies*, 2014, p. 351 ff.; K. Jarinovska, 'Drafting the Preamble for the Satversme: A New Approach to one of the Oldest Still-Functioning Republican Basic Laws', *Vienna Journal on International Constitutional Law*, 2015, p. 253 ff. The Latvian Constitution is the oldest in Eastern Europe still in force. The reference models of the 1922 Constitution of Latvia were many, including the Weimar Constitution, as well as the constitutional experiences of France, Switzerland, Finland, Poland, Czechoslovakia, Estonia and, above all, Lithuania. See J. Pleps, *Influence of Lithuanian Constitutional Law on Latvian Constitutional Law*, Mykolas Romeris University [Mykolo Romerio universitetas-MRU], Vilnius, 2007, especially p. 407 ff.; R. Balodis, 'Evolution of Constitutionality of the Republic of Latvia: from 1918-2006', *Jahrbuch des öffentlichen Rechts der Gegenwart*, vol. 56, 2008, especially pp. 271-272. During the validity of the Latvian Constitution of 1922 there were cases of (judicial) repression of (political) dissent; cf. A. Cecchini, 'Repressione e dissenso in Lettonia. Partito Socialdemocratico e quadri comunisti dal 1922 al 1934', *Slavia. Rivista trimestrale di cultura*, 2020, n. 2, www.slavia.it.

[16] On popular sovereignty and constituent power in Latvia, see I. de la Blanca Miranda, 'La aplicación de la teoría democrática sobre el poder constituyente a los casos de Estonia y Letonia: la historia de una disonancia', *Revista General de Derecho Público Comparado*, no. 29, 2021, e(lectronic)pp. 1-36 (www.iustel.com).

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county courts, as well as of the supreme courts (ordinary and administrative). The other judges, on the other hand, had to - according to this prospect - be elected directly by the people, with a mandate that was not irrevocable, as for the judges of the higher levels, but lasting five or six years. This position was supported by the Social Democrats[17]. Nor was the position of the Social Democrats united. A part of them, in fact, was in favor of the popular election of all judges, who were to be given a six-year term. According to the Social Democrats, the irrevocable mandate of judge was not compatible with the principles of the democratic state. If the office of judge were irrevocable[18] - the Social Democrats argued - how could one then prevent incompetent persons from exercising their judicial functions? Election, and (above all) re-election, protect - in the opinion of the Social Democrats - from this inconvenience. On the other hand, in the opinion of the Social Democrats, deserving and competent judges had nothing to fear from the election system, as the "good" magistrates would be elected and re-elected for the entire duration of their life.

The thesis thus supported by the Social Democrats was, however, opposed by the representatives of the Christian National Union in the Constituent Assembly. The latter believed that the independence of judges can only be ensured by their nomination for life, that is, through the conferral of an irrevocable office, without prejudice of course to the hypothesis of the censurable behavior of the individual judge. Among other things, National Christians observed, during the debate in the Constituent Assembly, that in Russia, where the election of judges was contemplated, they were almost always subject to the will of those segments of the population[19] who had elected them[20].

At the third reading, the Social Democrats again supported their position, this time unified. They therefore asked to introduce the principle of the electivity of judges in the Constitution, for a period of six years. Having therefore reached the final decision, the Social Democrats' proposal was rejected, albeit by a narrow majority. In fact, forty-five members of the Constituent Assembly were in favor of the Social Democratic proposal, while forty-nine were against[21]. Since then, all Latvian judges have been appointed by the Parliament, which has thus become the guarantor of the independence of the judges. This very important choice was, however, also very divisive. Almost half of the members of the Constituent Assembly were in fact in favor of the election of judges every six years, and just over half instead supported their irrevocable designation, or for life, to protect their independence.

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[17] On the historical formation of political parties in Latvia, see U. Krēsliņš, 'Latviešu politisko partiju veidošanās un loma Latvijas valsts tapšanā un sākuma gados (1917–1922)' ['Formation of Latvian Political Parties and Their Role in Origins of Latvia's Statehood and Its Initial Period (1917–1922)'], *Latvijas Univesitātes Žurnāls. Vēsture/Journal of the University of Latvia. History*, no. 1, 2016, p. 18 ff. (text in Latvian).

[18] That is, for life.

[19] That is, the groups of voters.

[20] On the debate within the Constituent Assembly, see J. Lazdiņš, 'Clashes of Opinion at the Time of Drafting the *Satversme* of the Republic of Latvia', *Journal of the University of Latvia. Law*, no. 10, 2017, especially pp. 98-100 (as regards the judicial power).

[21] The members of the Constituent Assembly abstained were eight.

A particular event, in the Constituent Assembly, concerned the institution of the jury. It was contemplated by art. 85 since its original version; the relative provision was voted unanimously at the second reading and, at the third reading, there was no longer any discussion on the point.

However, in the Latvian legal system, the establishment of juries never came. The bill, in implementation of the constitutional provision, was drafted in 1925, but was not approved by Parliament. There were many resistances, especially related to the Russian experience, which provided for popular juries, but which was believed to have opened the way to abuse and excess; more generally, there was a widespread fear that popular juries could influence the decisions of the courts, through an undue class spirit[22].

A new legislative project was drawn up in 1933. It was strongly inluenced by the administration of justice in the Cantons of Switzerland[23]. The institution of lay assessors was envisaged. In particular, the courts - according to the project - would have judged in the composition of three professional judges and four lay assessors. Since the judicial decisions had to be adopted by majority, it followed that the lay assessors could (at least abstractly) "put in the minority" the professional magistrates. The bill provided that the lay assessors were drawn by lot from special lists, in relation to each criminal proceeding. The requirements to be included in the lists were not particularly demanding. First, it was necessary to have Latvian citizenship. Secondly, as for the age, it must have been between thirty and sixty-five years. Thirdly, the lay assessor had to be able to read and write. Fourthly, the lay assessor was not to have previously undergone criminal convictions, nor to have any ongoing criminal proceedings. Finally, priests and monks, as well as employees of the state and decentralized territorial bodies, could not carry out the function of people's councilor, nor - obviously enough, but the project provided for it[24] - the Head of State, the deputies of the National Parliament, judges, officials and police officers. It was also provided for a daily fee in favor of the lay assessor, as well as the reimbursement of travel expenses incurred. The equalization, provided for by the legislative project, between the position of the lay assessors and that of the professional judges was very important.

[22] As well as introducing the class struggle into the judicial system.

[23] In Switzerland, lay judges are contemplated in all Cantons, except those of Lucerne and Zug. See B. Suter, *Appointment, Discipline and Removal of Judges: A Comparison of the Swiss and New Zealand Judiciaries*, Faculty of Law Victoria university of Wellington, Wellington, 2014, pp. 15-16.In Italian, cf.: W.J. Habscheid & H. Walder, 'L'organizzazione giudiziaria in Svizzera', *in* A. Giuliani & N. Picardi, *Ricerche sul processo*, 2, *Il processo civile svizzero*, Maggioli, Rimini, 1984, p. 3 ff.; W.J. Habscheid, 'Il giudice in Svizzera', *Giustizia civile*, 1986, II, p. 450 ff.; L.P. Comoglio, *Principi e garanzie fondamentali del nuovo processo civile elvetico*, *Rivista di diritto processuale*, 2011, p. 652 ff.; S. Gerotto, *Svizzera*, Il Mulino, Bologna, 2011, p. 107 ff.; S. Gerotto, P. Mahon, R. Sanchez Ferriz, *Il sistema costituzionale svizzero* (*Trattato di Diritto Pubblico Comparato ed Europeo*, Fondato e diretto da G.F. Ferrari), Wolters Kluwer Cedam, Milano, 2020, p. 232 ff.

[24] In art. 46.

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The jury trial[25] was contemplated, in the draft law, for crimes of greater importance, starting with voluntary murder. Furthermore, it concerned the criminal trials for conspiracy, extortion, fraud, as provided for by the penal code[26] approved on April 24, 1933[27].

From a procedural point of view, the judicial decisions adopted with the intervention of the lay assessors were not subject - according to the 1933 project - to the ordinary appeal, but only to an appeal by cassation. In other words, the legislative project in question did not contemplate the presence of lay assessors in a hypothetical second degree proceeding[28].

In Latvian doctrine, the supporters of the opportunity to foresee, in the first instance, the presence of lay assessors in the judicial panels rested on the consideration of introducing a logic of "common sense" in judicial decisions, on the assumption that this was the essential rule for evaluating if a person is guilty or innocent, therefore beyond the legal technicalities, necessary for the quantification of the sentence after the college as a whole (with the intervention, that is, of the lay assessors) has eventually issued the verdict condemning the defendant. Furthermore, two problems that may afflict the administration of justice would have been avoided, namely on the one hand the professional *routine* of judges, which can lead to a reduced consideration of the human aspects involved in the judicial process, and, on the other hand, the possible lack of popular trust in the functioning of the courts, being instead the presence of the lay assessors a suitable element to strengthen the aforementioned trust.

Certainly, in Latvian doctrine, there was no lack of opponents to the introduction of lay assessors in the courts of justice. They affirmed that lay assessors decide not on the basis of the law but of conscience, and thus they destroy the essential elements of justice and bring about an apparent justice. Furthermore, it was pointed out that lay assessoras do not face any responsibility for their actions[29]. And then other aspects were highlighted, such as the psicological subjection of the lay assessor with respect to the professional judge[30], or the possibility that the lay assessor is excessively influenced by the rhetoric of lawyers[31].

[25] To be understood as a process in which lay assessors are present. On the relative distinction, in Latvian doctrine, see F. Menders, 'Zvērināto un šefenu tiesas' [‘Juries and *Schöffen* Courts’], *Tieslietu Ministrijas Vēstnesis*, 1924. P. 117 ff.

[26] *Latvijas krimināl*kodekss. By decree of 6 November 1940, the Supreme Council of the Latvian Soviet Socialist Republic replaced the Latvian criminal code 1933 with the criminal code (in Russian, *Уголовном кодексе*) of the Soviet Union 1926, the applicability of which was extended to the territory of Latvia, and which remained in force until 1961. See G. Ginsburgs, 'Sanctions in the criminal codes of the Russian, Latvian, Estonian and Lithuanian Republics', *Journal of Baltic Studies*, 1987, p. 389 ff.; K. Grzybowski, 'Soviet Criminal Law Reform of 1958', *Indiana Law Journal*, 1960, p. 125 ff. (on the Soviet criminal code of 1926).

[27] The death penalty, for crimes committed in peacetime, had been eliminated from the Latvian legal system with the penal codification of 1933.

[28] That is, on the model of the appellate courts of assizes, where professional judges sit together with popular judges.

[29] See A. Rodiņa, 'Liability of Judges in Latvia - Problematical Aspects', in M. Giżyńska & A. Piszcz (Eds.), *Liability of Public Officers — Selected Issues*, Pawel Wlodkowic University College Press, Płock, 2013, p. 133 ff.

[30] On the leadership of professional judges in mixed courts that include lay judges see,

Authoritative exponents of the Latvian judiciary of the time, such as the Deputy Prosecutor of the capital Riga, expressed fears and reservations with respect to the lay assessors, also in consideration of material issues, namely for the fact that carrying out the function of lay assessor involved an economic sacrifice that only rich people could afford. Unfortunately, however, on the one hand the rich are not numerous and, on the other hand, they are not always suitable to carry out the role of lay assessor.

Ultimately, it resulted in a jagged situation. This is because the lay assessors were contemplated by the legislation in one of the (four) historical-cultural regions of Latvia, namely in Latgalia, not instead in Kurzeme, Semgalia and Vidzeme. In Latgalia, the lay assessors were eliminated only with the law of 14 September 1920, in view of the introduction of the relative figure in the whole territory of Latvia, which however - as we have seen above - never happened.

Finally, it should be noted that, after the coup d'état of 15 May 1934[32] and the establishment of an authoritarian regime in Latvia[33], there

for example, S. Machura, *Civil Justice: Lay Judges in the EU Countries*, *Oñati Socio-Legal Series*, vol. 6, no. 2, 2016, who examines the pros and cons of the participation of lay judges in both civil, criminal and administrative trials. An updated world overview is now provided by S. Ivković *et al.*, (Eds.), *Juries, Lay Judges, and Mixed Courts. A Global Perspective*, Cambridge, 2021.

[31] On opposing views, see P. Jakobi, 'Par un pret zvērināto tiesām' [‘For and Against Juries’], *Tieslietu Ministrijas Vēstnesis*, 1933, p. 96 ff. (text in Latvian).

[32] On which see V. Ščerbinskis, 'Leaders, Divided Society and Crisis. The Coup d'État pf 1934 in Latvia, its Causes and Consequences', *in* M. Housden & D.J. Smith (Eds.), *Forgotten Pages in Baltici History. Diversity and Inclusion*, Rodopi, Amsterdam, 2011, p. 187 ff.; J.T. Kuck, *The Dictator without a Uniform: Kārlis Ulmanis, Agrarian Nationalism, Transnational Fascism, and Interwar Latvia*, University of Tennessee, Knoxville (TN), 2014; A. Stranga, 'The Political System and Ideology of Karlis Ulmanis's Authoritarian Regime: May 15, 1934 – June 17, 1940', *in* L. Fleishman & A. Weiner (Eds.), *War, Revolution, and Governance. The Baltic Countries in the Twentieth Century*, Academic Studies Press, Boston (MA), 2018, p. 56 ff..; A. Stranga, 'The Authoritarian Regime of Kārlis Ulmanis (1934–1940): Politics, Ideology, Economics', *in Latvia and Latvians*, vol. II, Latvian Academy of Sciences-LAS (Academia Scientiarum Latviensis, in Latvian *Zinātņu akadēmija*), Riga, 2018, p. 476 ff.; E. Dunsdorfs, *Kārļa Ulmaņa dzīve: Ceļinieks, Politiķis, Diktātors, Moceklis* [*The Life of Karlis Ulmanis: The Voyager, the Politician, the Dictator, the Martyr*], Daugava, Stockholm, 1978 (text in Latvian), then published by Izdevniecība Zinātne, Rīga, 1992 (the work could not be published in Latvia during the Soviet occupation); A. Stranga, *Kārļa Ulmaņa autoritārā režīma saimnieciskā politika (1934-1940)* [*Economic Policy of the Authoritarian Regime of Kārlis Ulmanis (1934-1940)*], LU (Latvijas Universitātes) Akadēmiskais apgāds, Rīga, 2017 (in Latvian). Ulmanis was simultaneously Head of the Government, President of the Republic and Commander of the Armed Forces; during his regime, the Government took over the Parliament. There was the cult of the leader (*i.e.*, in Latvian, *vadonis*). Although Ulmanis claimed to have founded a (national-)revolutionary regime, in fact it was an authoritarian, or rather autocratic regime, with the concentration of all power in the hands of a single person (Ulmanis himself). Ulmanis claimed also he wanted to create a "Latvian Latvia". The glorification of Ulmanis was a central theme in the public activities of the regime and had a quasi-religious character – mutual love of nation and its leader was proclaimed as the ultimate goal of the public sphere (cfr. D. Hanovs & V. Tēraudkalns, 'Happy Birthday, Mr. Ulmanis! Reflections on the Construction of an Authoritarian Regime in Latvia', *Politics Religion & Ideology*, 2014, p. 64 ff.).

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was no lack of further proposals to introduce lay assessors in the administration of justice; even these initiatives, however, were not crowned with success.

3. The administration of justice in independent post-Soviet Latvia, (again) on the basis of the 1922 Constitution (as revised)

After the (long) Soviet interlude, during which the judicial institutions of Latvia were not different from those existing in the other republics of the USSR[34], the current phase of the new independence of the Republic of Latvia began[35]. It started with the Declaration on the (*de facto*) restoration of the independence of the Republic of Latvia, adopted on May 4, 1990 by the Supreme Soviet (*i.e.*, Parliament) of the Latvian Soviet Socialist Republic[36]. The articles of the Latvian Constitution of 1922 concerning the fundamental foundations of the State immediately entered (again) into force[37], while the entire text of the Constitutional Charter itself was reinstated from 6 July 1993[38]. Since chapter VI of the 1922 Constitution,

[33] As regards the Lithuanian authoritarian nationalism, in support of the regime between 1934 and 1939/40, see (in addition to the works mentioned in the preceding note) L. Zake, 'Authoritarianism and Political Ideas of Latvian Nationalist Intellectuals', *Journal of Baltic Studies*, 2007, p. 291 ff.; D. Hanovs & V. Teraudkalns, *Ultimate Freedom - No Choice. The Culture of Authoritarianism in Latvia, 1934–1940*, Brill, Leiden, 2013.

[34] So-called Soviet rule, on which see P. Biscaretti di Ruffia & G. Crespi Reghizzi, *La Costituzione sovietica del 1977. Un sessantennio di evoluzione costituzionale nell'URSS*, Giuffrè, Milano, 1979; M. Ganino, *Russia*, Il Mulino, Bologna, 2010; A. Di Gregorio, 'Uno Stato "nuovo" e un diritto "nuovo": la Rivoluzione Bolscevica e la sua eredità giuridica a cent'anni dall'"Ottobre"', *Diritto pubblico comparato ed europeo*, 2017, p. 993 ff.

[35] In just over a century, Latvia has transitioned from imperial periphery to nation-state, then Soviet Republic, and finally following the collapse of the Soviet Union to an independent Republic. See M. Loader, S. Hearne & M. Kott (Eds.), *Defining Latvia. Recent Explorations in History, Culture, and Politics*, Central European University (CEU) Press, Budapest, 2022.

[36] See J. Lazdiņš *et al.*, 'Legal and Historical Elements of Latvia's Restoration of Independence', *Baltic Yearbook of International Law*, 2021, p. 27 ff.; J. Lazdiņš *et al.*, 'Latvijas valsts tiesību avoti. Dibināšana – neatkarības atjaunošana' ['The Sources of Latvian State Law. Establishment of the State – Restoration of Independence'], Tiesu Namu Aģentūra, Rīga, 2015, p 299 ff. (text in Latvian). It was the "Second Independence" (cf. M. Valvidares Suárez, 'Breve aproximación a la Constitución de la República de Letonia', in *Revista Española de Derecho Constitucional*, no. 72, 2004, especially pp. 123-124), or "Third Awakening" (after those from the 1850s to the 1880s, *i.e.* "First Awakening", and 1918, *i.e.* "Second Awakening"; cf. J. Taurēns, 'European Dimension in Latvia's Independence Movement (1988–1991)', *Latvijas Univesitātes Žurnāls. Vēsture/Journal of the University of Latvia. History*, no. 5, 2018, p. 117 ff.). In Italian, see L. Panzeri, 'Il ripristino della sovranità delle Repubbliche baltiche a trent'anni dalla dissoluzione sovietica: aspetti storico-costituzionali', *Nomos*, 1-2022, available online on the site www.nomos-leattualitaneldiritto.it, and previously A. Biagini, 'Il primo Novecento e l'indipendenza baltica', in G. Motta (Ed.), *Il Baltico. Un mare interno nella storia di lungo periodo*, Edizioni Nuova Cultura, Roma, 2013, p. 51 ff.

[37] These are articles 1-3 and 6 of the Constitution.

[38] In comparative experience there are not many cases of restored constitutions; see J. Pleps, 'The Continuity of the Constitutions: the Examles of the Baltic States and Georgia', *Wroclaw Review of Law, Administration & Economics*, 2016, no. 2, p. 29 ff., who

dedicated to the courts of justice, was reinstated in its original version, it can be said that there was absolute continuity between the constitutional discipline of the judiciary in the pre-Soviet and post-Soviet era[39].

Below the constitutional level, in post-Soviet Latvia the problem arose of adopting a new law on the judiciary, based on the consideration that the legislative provisions approved in Latvia in the period between the two world wars had now become obsolete. For this purpose, a special working group was created by the resolution of 18 October 1990 adopted by the *Presidium* of the Supreme Council of the Republic of Latvia, in charge of drafting a new law on the judiciary. The working group, headed by the then President (Chief Justice) of the Supreme Court of the Republic of Latvia, Gvido Zemrībo, prepared a project, which was later adopted by Parliament and thus became the law of 15 December 1992[40]. The new law on the judiciary of 1992 was linked, to the maximum extent possible, to the provisions contained in the Provisional Rules on the courts of Latvia and on the judicial procedure of 6 December 1918[41]. Since, therefore, the Latvian judicial system created in the nineties of the last century largely resumed the characteristics of the Latvian judiciary between 1920 and 1940, it follows that this last model of administration of justice also gave rise to a democratic system of the courts, and also achieved the objective of the independence of the judiciary. Furthermore, the model of administration of justice adopted in 1992 in Latvia testifies, together with other laws, of course, the abandonment of the Soviet model and the return of the Latvian legal system to the family of continental European law, in particular to the Roman-Germanic sub-family[42].

recalls, as most recent cases, those of Latvia and Georgia. A possible explanation of the fact that in Lithuania the Constitution of 1922 was reintroduced and is still the Constitution of the country, while the same was not the case in Lithuania and Estonia, is to be connected to the fact that in the three Baltic countries, during the years thirties of the last century, authoritarian regimes were established, which approved new Constitutions in Lithuania (see F. Bonini, 'Lituania: un settennato autoriatrio', in F. Bonini *et al*., Eds., *Il settennato presidenziale. Percorsi transnazionali e Italia repubblican*a, Bologna, 2022, p. 147 ff.) and Estonia, but not in Latvia where the 1922 Constitution remained valid. The assertion of continuity with the previous democratic state was, therefore, more complex for Lithuania and Estonia. But anyone must never lose heart. The solution devised by Lithuania in this regard was particularly ingenious. In fact, the 1938 Constitution was only restored for an hour, in order to establish the legal continuity of the Lithuanian state. Cf. A. Sprudzs, 'Rebuilding Democracy in Latvia: Overcoming a Dual Legacy', *in* J. Zielonka (Ed.), *Democractic Consolidation in Eastern Europe*, vol. 1, *Insitutional Engineering*, Oxford University Press, New York, 2001, especially p. 140, and D.A. Loeber, 'Regaining Independence - Constitutional Aspects: Estonia, Latvia, Lithuania', *Review of Central and East European Law*,1998, p. 1 ff.

[39] See I. Ziemele *et al*., 'Doctrine of State Continuity. Latvia's Experience', *Journal of the University of Latvia. Law*, no. 14, 2021, p. 91 ff.

[40] The English translation of the Judiciary Act of 1992, which was subsequently amended several times, the first time on 16 December 1993 and the last on 10 December 2020, can be found on the website at ttps://likumi.lv.

[41] See above, in paragraph 1.

[42] Cf. J. Lazdiņš, 'Tendencies in the Development of Laws in the Republic of Latvia after the Renewal of Independence in 1990–1991', *Journal of the University of Latvia. Law*, no. 8, 2015, p. 43 ff. On the judicial system in civil/continental law models, see M. Mazza, 'Il potere giudiziario', *in* P. Carrozza, A. Di Giovine & G.F. Ferrari (Eds.), *Diritto*

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On the level of judicial organization, the new law on the judiciary of 1992 took up the essential model of the provisional Rules of 1918, but tried to modernize both the overall structure and also the terminology, linked to a "style of expression" no longer adapted to post-Soviet Latvia. Thus the judicial Senate became the new Supreme Court of the Republic of Latvia[43], adopting a denomination that is widespread in many national legal systems, and also to allow greater recognition abroad of the top body of the Latvian judicial system. Furthermore, the basic jurisdictions were renamed district (municipal) courts[44] and those of second instance regional courts[45], with the Supreme Court[46] at the top. Within the Supreme Court, the (three) Civil, Criminal and Administrative Departments are distinguished from the Civil Chamber, which decides in second instance the disputes attributed in the first instance to the Regional Courts[47].

costituzionale comparato, t. II, Roma-Bari, Laterza, 2014, p. 1056 ff.; F. Dal Canto, *Lezioni di ordinamento giudiziario*, Giappichelli, Torino, 2020, p. 11 ff.

[43] In Latvian, *Latvijas Republikas Augstākā tiesa*.

[44] In place of the system of village jurisdictions and magistrates' courts. There are nine district courts in Latvia. In fact, in addition to the district courts there are the city courts, for a total of thirty-four first instance judicial offices.

[45] In replacement of the county courts, provided for by the Provisional Rules of 1918. There are six regional courts. They are as follows: Kurzeme Regional Court (in Latvian, *Kurzemes apgabaltiesa*), Latgale Regional Court (*Latgales apgabaltiesa*), Riga Regional Court (*Rīgas apgabaltiesa*), Vidzeme Regional Court (*Vidzemes apgabaltiesa*), Zemgale Regional Court (*Zemgales apgabaltiesa*), Regional Administrative Court (*Administratīvā apgabaltiesa*)

Furthermore, the Latvian Parliament established, with the modification of the Law on Judicial Power approved on 17 June 2020, the Special Economic Court (or Court of Economic Affairs) based in Riga, in order to carry out economic and financial crimes (*e.g.* money laundering and corruption, committed by public officials) more efficiently and effectively, and that deals with commercial causes, which are generally complex and long-lasting. On this innovation of the Latvian judiciary, see G. Giorgini Pignatiello, 'L'Unione europea e la controffensiva baltica nellagaranzia dello Stato di diritto. Le Repubbliche di Lettonia e Lituania nel quadro del Report 2020 sulla *Rule of Law*', *Nuovi Autoritarismi e Democrazie: Diritto, Istituzioni, Società*, 2021, no. 2, especially p. 53. The Special Economic Court has jurisdiction over the entire national territory of Latvia. Its activity began on March 31, 2021. It has been assigned ten judges, drawn from the staff of the district and regional courts. Parliamentary work for the creation of the new Court had started in December 2020. With the creation of the new Court, the aim was to "clean up" the country's financial sector. Court cases involving economic crimes have so far been known for slow decision making, and are often cited by investors as a major disincentive to invest in Latvia. The hope is that the new Special Economic Court will speed up judicial proceedings in cases of fraud, embezzlement and related crimes.

[46] In Latvian, *Augstākā tiesa*.

[47] The regional courts are the courts of first instance for disputes over property rights relating to immovable property, cases stemming from contract law, where the amount of the claim exceeds 214.000 EUR, cases concerning patent rights and protection of trademarks and insolvency and liquidation of credit institutions. This in civil matters. As regards criminal matters, the regional courts are the courts of first instance for crimes against humanity or peace, war crimes, genocide, crimes against the State; definite (but not all) serious or especially serious crimes; crimes against morals and sexual inviolability, performed with a juvenile or minor; cases in which special procedural protection measures have been performed for witnesses; criminal cases, containing documents on state classified objects.

The change of name of the courts did not alter the attribution of competences contemplated in Latvia between the two wars. An example of this is offered by the transformation of the old magistrate's courts into the new district courts. In truth, it was only a terminological change, caused above all by the fact that - as the working group for the reform of the judicial system created in 1990[48] observed - the population had become accustomed, in Soviet times, to turn to courts of first instance called district/municipal courts.

Two more notations dedicated to the new law on judicial power of 1992. Firstly, as highlighted in section 1 of the same law, the legislator wanted to adopt the expression of law on judicial power, not law on courts and procedure as it happened with the 1918 Rules, precisely to point out that it is an autonomous and independent power from the other powers, namely the legislative and executive powers, as is necessary in a State governed by the of law[49]. Secondly, in the drafting of the law on the judiciary power of 1992, the acquisitions that took place, at international level, in terms of fundamental human rights as well as the independence of the judiciary, were taken into account, following the law on the courts of justice and the procedure of 1918. Thus, in particular, references were made to both the Universal Declaration of Human Rights of 1948 and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, as well as the resolutions adopted within the framework of the United Nations on human rights issues and basic principles of the judiciary.

A rather intense discussion took place within the working group for the reform of the judicial system on the subject of lay assessors. As previously recalled [50], the original version of the 1922 Constitution provided for the institutional figure of lay assessors, contemplated by art. 85 of the Fundamental Charter. However, art. 85 was not implemented, and was indeed the only constitutional provision that remained unimplemented. In the post-Soviet era, the working group re-examined the question. There were positions in favor, as well as others against. A compromise solution was thus reached, consisting in providing for the criminal proceedings with the intervention, in the judicial panel, of the lay assessors only in one case, represented by the criminal trial that takes place in the first instance before the regional courts for charges that may imply the application of the death penalty. According to the president of the working group, Chief Justice Gvido Zemrībo, this provision could be considered as a first step, not excluding a subsequent expansion of the competence (and the very presence in the judicial bodies) of the popular judges.

This is certainly not the case. First of all, the death penalty is no longer contemplated, at least in peacetime, in the legal system of Latvia. Secondly, and above all, art. 85 of the 1922 Constitution, which in its original version contemplated popular participation in the administration

[48] See what was said earlier in this paragraph.
[49] Section 1 of the Judiciary Law of 1992 literally states that "An independent judiciary exists in the Republic of Latvia, alongside the legislative and executive powers".
[50] See *ante*, paragraph 2.

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of justice through the institution of lay assessors, was revised with the constitutional amendment law of 5 June 1996. As a result of this latest innovation constitutional, the current art. 85 of the Fundamental Charter deals with the Constitutional Court (*Satversmes tiesa*) of the Republic of Latvia[51]. The content of the constitutional provision now under consideration has therefore radically changed; it is no longer dedicated to lay assessors, but to constitutional justice. This demonstrates, among other things, the importance of diachronic comparison, or the history of law, because reading the current text of the Latvian Constitution of 1922, it would be very difficult to know that art. 85 referred to the modalities of popular participation in the composition of the judicial bodies.

Unlike what happened for the aspects concerning popular participation in the administration of justice through lay assessors, cyclically re-proposed in the constitutional and legislative history of Latvia, the question relating to the election of judges, at least in the terms envisaged by the Social Democrats in the Constituent Assembly, was no longer raised in the experience of post-Soviet Latvia.

4. Constitutional jurisdiction in the Latvian experience, from the debate initiated in 1923 to the 1996 constitutional reform

At the time of the adoption of the Latvian Constitution, in 1922, there were no positions in the Constituent Assembly in favor of the introduction of judicial review of the constitutionality of laws. Nonetheless, there were already experiences of constitutional justice, both in the form of diffuse control of constitutionality as in the United States of America, and in the form of centralized control, contemplated by Austrian and Czechoslovakian constitutional law. The unfavorable opinion expressed by the leading Latvian jurist of the time, prof. Kārlis Dišlers[52], who upheld the principle of parliamentary supremacy, with the corollary that the law cannot be questioned or challenged by anyone, was very important in determining

[51] On the Latvian constitutional jurisdiction, see later in paragraph 4.

[52] He studied law in St. Petersburg and then became a professor of public and administrative law at the University of Latvia, of which he was also Dean. As a political exponent of the Radical Democratic Party, he was a member of the second *Saeima*, from 1925 to 1928. Arrested by the Soviets in 1949, he was deported to Siberia in 1950 where he died in 1954. He was the author (or co-author), among other things, of the following (important) works: *Latvijas valsts varas orgāni un viņu funkcijas* [*Bodies of Latvian State Power and Their Functions*], Rīga, Gulbja, 1927; *Tautu pašnoteikšanās principa tiesiskais saturs* [*The principle of self-determination of Nations and its juridical essence*], Rīga, Latvijas Universitāte, 1932. While still a law student at the University of St. Petersburg, he published an appreciated comparative work entitled *Administrative justice in France and Germany* (in Latvian, *Administratīvā justīcija Francijā un Vācijā*). The President of the Latvian Constitutional Court (until 11 February 2022), prof. Sanita Osipova, former director of the Department of Theory and History of Law of the Law Faculty of the University of Latvia, has created the Kārlis Dišlers Foundation. Osipova studied *inter alia* the historical phase of Soviet law in Latvia; see her essay entitled 'Valdemārs Kalniņš (1907–1981). The founder of Soviet legal history in Latvia', *in* V. Erkkilä & H.-P. Haferkampp (Eds.), *Socialism and Legal History. The Histories and Historians of Law in Socialist East Central Europe*, Routledge, London-New York, 2020, p. 136 ff.

this orientation. In truth, in the following years there was no absence of those who supported the opportunity, if not the necessity, of introducing the judicial review of constitutionality in Latvia[53]. In particular, in 1930 the relative proposal was advanced by Paul Schiemann[54], a jurist of German origin active in Latvia[55], who supported precisely the thesis in favor of the

[53] The debate on the possibility of providing constitutional justice mechanisms, in relation to the Latvian Constitution of 1922, recalls in some ways the analogous debate that took place with reference to the Polish Constitution of 1921. See, on this point, M. Mazza, 'The judiciary in the Polish Constitution of 1921 and in its historical precedents', *Diritto pubblico comparato ed europeo online*, 2021, especially pp. 3098-3099.

[54] The Latvian name was Pauls Šīmanis. He was the leader of the Baltic-German Democratic Party, and always defended minorities. See J. Hiden, *Defender of Minorities: Paul Schiemann, 1876-1944*, London, Hurst, 2004, and before V. Freimane, 'Remembering Paul Schiemann (1876-1944)', *Journal of Baltic Studies*, 2000, p. 432 ff.; J. Hiden, 'A Voice from Latvia's Past: Paul Schiemann and the Freedom to Practise One's Culture', *Slavonic and East European Review*, 1999, p. 680 ff. *Adde* M. Garleff, 'Zur Rezeptionsgeschichte Paul Schiemanns', *Jahrbuch des baltischen Deutschtums*, 2014, p. 115 ff., and, by the same author, 'The Historiography of Paul Schiemanns', *in* Housden & Smith (Eds.), *Forgotten Pages in Baltici History*, cit., p. 117 ff. The political orientation of Šīmanis was liberal, albeit with some pecuiarities; cf. I. Ijabs, 'Strange Baltic Liberalism: Paul Schiemann's Political Thought Revisited', *Journal of Baltic Studies*, 2009, p. 495 ff. (according to the author, Schiemann's a-national theory of the state includes significant Marxist elements). For a collection of the writings of Šīmanis, see H. Donath (Hrsg.), *Paul Schiemann. Leitartikel, Reden und Aufsätze*, Frankfurt a.M. (published privately), 1986. He wrote extensively on the problems of the Latvian state; see, for example, P. Schiemann, 'Lettlands Staatsproblem', *Rigasche Rundschau*, November 1919, no. 89. On Paul Schiemann and the Baltic movement for the protection of minorities, see also M. Housden & D.J. Smith, 'A. Matter of Uniqueness? Paul Schiemann, Ewald Ammende and Mikhail Kurchinskii Compared', *in* Housden & Smith (Eds.), *Forgotten Pages in Baltici History*, cit., p. 161 ff.; M. Housden, *On Their Own Behalf. Ewald Ammende, Europe's National Minorities and the Campaign for Cultural Autonomy 1920-1936*, Brill, Leiden, 2014; D. Smith, 'Retracing Estonia's Russians: Mikhail Kurchinskii and Interwar Cultural Autonomy', *Nationalities Papers*, 1999, p. 455 ff. The aforementioned authors contributed to the debate on the so-called liberal nationalism, in the dilemma between the nation-state and the state of nations.

[55] On the relationship between German legal culture and Baltic constitutional experiences, see A. Headlam-Morley, *The New Democratic Constitutions of Europe. A Comparative Study of Post-War European Constitutions with Special Reference to Germany, Czechoslovakia, Poland, Finland, the Kingdom of the Serbs, Croats & Slovenes and the Baltic States*, Oxford University Press, London, 1928, p. 10 ff. Giannini, *Le Costituzioni degli Stati dell'Europa orientale*, cit., p. 359, had observed that «Latvia did not have its own constitutional traditions; nevertheless, conquered by Russia, and, under its protection, dominated by the German elements, it tenaciously preserved its national consciousness». The capital of Latvia itself, Rīga, was founded in 1201 by a Germanic population (from 1282 the city joined the Hanseatic League; cf. M. Di Pasquale, 'Conoscere la storia della Lettonia per capire il poker baltico di Mosca', *Strade. Verso luoghi non comuni*, 31 October 2016, and *amplius*, by the same author, *Riga magica. Cronache dal Baltico*, Il Sirente, Fagnano Alto, AQ, 2015). On the historical role played by the Germanic minority in the Baltic countries (*Deutschbalten* or *Baltendeutsche*), and on its dominant position from an economic, political and social point of view, see M. Bituniac, 'I tedeschi del Baltico nel lungo volgere della storia', in Motta (Ed.), *Il Baltico. Un mare interno nella storia di lungo periodo*, cit., p. 41 ff.; J.W. Hiden, 'The Baltic Germans and German Policy towards Latvia after 1918', *The Historical Journal*, 1970, p. 295 ff., and before A. Bilmanis, 'Grandeur and Decline of the German Balts', *Slavonic*

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provision of a Constitutional Court, or also of a Constitutional Chamber at the top body of the judicial system, responsible for verifying compliance with the Constitution of both laws and other regulatory legal acts. According to Shiemann, judicial review of constitutionality is necessary to guarantee the principle of the separation of powers.

If, therefore, there was no shortage of proposals to introduce centralized control of constitutionality, there was no lack of those who supported the reasons for the diffuse control of constitutionality. In particular, this proposal was put forward during the meeting of the Society of Jurists in Riga, held on 13 September 1923. On that occasion, the idea of attributing centralized control of constitutionality to the judicial Senate, with *erga omnes* effects (and, therefore, of abrogation) of any decisions of unconstitutionality of the laws, was rejected

Again, in 1934, a Balto-German jurist, Helmuth Stegman[56], proposed to introduce, in art. 86 of the Constitution, the provision of the Constitutional Court, which would take the name of the State Court with the task of verifying both the compliance of the laws with the Constitution and the regulations and orders issued by the Council of Ministers with the laws adopted by Parliament. However, the proposal regarding the creation of constitutional jurisdiction certainly did not have a large following in Parliament, receiving only a favorable vote. In fact, there was a widespread fear that constitutional justice would weaken the stability of both the government and the parliamentary institutions themselves, making it possible to declare the invalidity of a law approved by Parliament.

In terms of jurisprudential orientations, however, the Senate of Latvia had already adopted some decisions concerning the interpretation of constitutional rules, also reserving to itself the right to establish whether or not the laws and other regulatory legal acts are in conformity with the Constitution. This had happened, in particular, with judgments no. 23 of 21 October 1920 and no. 2 of January 26, 1921.

Immediately after the proclamation of the independence of post-Soviet Latvia, which took place with the Declaration of 4 May 1990[57], discussions on the introduction of constitutional justice resumed. Moreover, there was also a strong textual element. The second paragraph of art. 6 of the Declaration on the restoration of the independence of the Republic of Latvia, in fact, expressly provided for the creation of the Latvian Constitutional Court. In the opinion of one of the drafters of the Declaration of Independence, Egils Levits[58], the constitutional litigation

and East European Review, 1944, p. 50 ff.

[56] The Latvian name was Helmuts Štegmanis. Graduated in law from the University of Tartu, he was representative of Latvia to the League of Nations (Latvia became a member of the League of Nations on September 22, 1921), and a member of the Latvian Parliament from 1933 to 1934. He also worked both as a lawyer and magistrate, and joined the *Deutsch-baltische Landespartei* (DbLP). The DbLP only existed between 1933 and 1934, a period in which Štegmanis represented the party itself in the *Saeima*.

[57] See *supra*, in paragraph 3.

[58] President of the Latvian Republic since July 2019. Son of anti-Soviet dissidents and emigrated to Germany, after the independence of Latvia he returned to his homeland; he has served as a judge at both the Strasbourg Court and the Luxembourg Court. During the years of exile, he obtained degrees in law and political science in Germany

body was even more necessary in the transitional period, that is, in the transition from Soviet law to the legal system of post-Soviet Latvia. According to Levits, there would have been many cases in which to doubt the compliance of the laws with the Constitution, or rather of the normative acts of secondary rank with the primary normative sources. But the scientific discussion did not produce concrete results, at least at the constitutional level.

The debate that opened on the occasion of the approval of the new law on the judiciary in 1992[59] was also not very satisfactory. This is because the creation of a Constitutional Chamber within the Supreme Court was proposed, as is currently the case in the Estonian legal system[60]. There was, however, strong political opposition in Latvia to this solution, which was thus set aside and had no concrete follow-up.

Therefore, the necessary political-parliamentary consensus was formed for the creation of the Constitutional Court. The fifth *Saeima*, whose first convocation took place in July 1993, started the work for the inclusion of the Constitutional Court in the constitutional system of Latvia. It was necessary both to modify the constitutional provision and also to approve the law on the Constitutional Court. In view of the adoption of this last special law, the law on the judiciary of 1992 was integrated by Parliament in June 1994, in order to include the reference to the future law on the Constitutional Court.

With the election of the sixth *Saeima*, preparatory work regained momentum, focusing on the activities of the Parliament's Legal Affairs Commission. A constitutional revision project was drawn up, relating to art. 85 of the Constitutional Charter, and a draft law on the Constitutional Court of the Republic of Latvia. On June 5, 1996, Saeima approved the new text of art. 85 of the Constitution, thus establishing the Constitutional Court for the first time in the country's constitutional history[61]. The

(at the University of Hamburg). President Levits has carried out research activities at the legal faculty of the University of Kiel, writing on the subject of the law of Eastern countries. See, for example, the essay titled 'The Development of Legal Relations Between the Communist Party of Latvia and the Communist Party of the Soviet Union', *in* A. Loeber et al. (Eds.), *Ruling Communist Parties and Their Status Under Law*, Nijhoff, Dordrecht, 1986, p. 57 ff.

[59] Examined above, in paragraph 3.

[60] See M. Mazza, 'Estonia – La Camera per il controllo di costituzionalità della Corte Suprema: uno sguardo alle decisioni emanate nell'anno 2000', *Diritto pubblico comparato ed europeo*, 2000, p. 1462 ff. On the other hand, there are not many differences between the constitutional justice systems of Latvia and Lithuania; cf. A. Endziņš & V. Sinkevičius, 'Constitutional Review in Latvia and Lithuania: A Comparative Analysis', *International Comparative Jurisprudence* (published by Mykolas Romeris University, Lithuania), 2017, p. 161 ff. The main difference probably consists in the fact that in Lithuania there is no direct constitutional appeal by citizens, which is instead contemplated by the Latvian legal system (on this aspect see even further, in this paragraph).

[61] On constitutional justice in Latvia, see M. Mazza, *La giustizia costituzionale in Europa orientale*, Cedam, Padova, 1999, p. 235 ff.; F. Dal Canto, 'La giustizia costituzionale nei paesi dell'Europa orientale', *in* J. Luther, R. Rombioli & R. Tarchi (Eds.), *Esperienze di giustizia costituzionale*, Foreword by A. Pizzorusso, tome II, Giappichelli, Torino, 2000, especially pp. 441-443; F. Fede, *La giurisdizione costituzionale nelle repubbliche europee della*

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current wording of art. 85 of the Latvian Constitution establishes that the Constitutional Court verifies the compliance of laws with the Constitution, with the power to declare a law invalid in whole or in part[62]. Constitutional judges, based on art. 85 of the Constitution, are designated by the Parliament, by secret vote and by a majority of at least fifty-one votes[63]. The law on the Constitutional Court, also adopted in 1996, establishes that the Latvian constitutional litigation body is composed of seven judges, of which three are confirmed by Parliament on the proposal of at least ten deputies of the *Saeima*, two on the proposal of the Council of ministers and the remaining two on a proposal from the *plenum* of the Supreme Court of the Republic of Latvia. The constitutional judges are appointed for a ten-year term, which ends in any case upon reaching the seventieth year of age. In order to become a constitutional judge, one must be forty years old and have the citizenship of Latvia. They must then have a qualified legal education, with at least ten years of experience. For candidates proposed by the *plenum* of the Supreme Court, they must be magistrates belonging to the judiciary. In any case, the article 55 of the law says or provides requirements who may not be candidates for the office of a judge. The constitutional judges are not removable, except for the hypotheses contemplated by art. 10 of the law on the Constitutional Court, *i.e.* for health reasons, a criminal conviction has occurred, or for systematic violation of official duties. There are incompatibilities, in the sense that constitutional judges cannot hold any other office or carry out further paid activities, except for teaching and scientific research. Finally, the law on the Constitutional Court provides that both the President and the Vice-President of the same Court are chosen by the constitutional judges from among them, by secret vote. The favorable vote of the absolute majority of the members of the Court is required[64], and the term of office of President and Vice-President is in both cases three years.

The Constitutional Court, which in the initial phase exercised only the abstract control of constitutionality, then repositioned itself as the body to which the concrete control of constitutionality is also attributed, following therefore the raising of the relative question by the judges of the general jurisdiction. Pursuant to art. 19, paragraph 2, of the law on the Constitutional Court of 1996, in the Latvian legal system, individual direct

ex Unione sovietica, Cedam, Padova, 2001, p. 195 ff.; M. Mistò, 'La giustizia costituzionale nei Paesi dell'Europa centro-orientale', *in* M. Olivetti & T. Groppi (Eds.), *La giustizia costituzionale in Europa*, Introduction by G. Zagrebelsky, Giuffrè, Milano, 2003, especially pp. 312-314. For the jurisprudential orientations, see M. Mazza, 'La giurisprudenza costituzionale nei Paesi baltici: profili processuali', *Diritto pubblico comparato ed europeo*, 2006, p. 994 ff. More recently, cf. I. Ziemele *et al.*, 'The Constitutional Court of the Republic of Latvia', *in* A. von Bogdandy *et al.* (Eds), *The Max Planck Handbooks in European Public Law. Constitutional Adjudication: Institutions*, vol 3, Oxford University Press, Oxford, 2020, p. 505 ff.; A. Rodiņa, 'Appointment of the Constitutional Court Justice: Some Issues', *Journal of the University of Latvia. Law*, no. 14, 2021, p. 129 ff.

[62] It therefore performs the Kelsenian function of negative legislator.

[63] Out of the total of one hundred deputies that make up the single-chamber parliament of Latvia.

[64] There are currently six constitutional judges in Latvia.

appeal to the Constitutional Court is also allowed[65]. Thus, in the Latvian constitutional order, the principal access to the Constitutional Court is contemplated alongside the incidental one, further supplemented by the provision of individual direct appeal. The individual constitutional appeal cannot be proposed before the available degrees of general jurisdiction have been completed. However, the Constitutional Court may decide following the individual appeal even in the absence of this requirement, whether the constitutional question is of general interest or whether ordinary legal protection is not suitable for avoiding harm to the applicant[66]. The direct constitutional appeal can be brought by both individuals and legal entities[67]. The subject of so called abstract control are: the President of the State, the *Saeima* as a collegiate institution, at least 20 members of the *Saeima*, the Cabinet of Ministers, the Prosecutor General, and the Council of the State Audit Office. There are also two other subjects of abstract control, who have to abide by specific procedural restrictions – the Council for the Judiciary and the *Ombudsman*. A local government council has the right to submit two types of application. The first, only a council may submit a request regarding the initiation of a case regarding compliance of such an order with law, with which a minister authorised by the Cabinet has suspended a decision taken by the local

[65] Also from this point of view the experience of the Baltic countries was similar in the final objective pursued but different in the path. This is because in Latvia and Estonia the constitutional individual appeal has been contemplated from the start, while in Lithuania it has only been regulated since 1 September 2019. On the fact that the Baltic states are similar and often "put together", but in reality they have many elements of differentiation, cf. C. Taube, 'Baltic Diversity: Comparing Constitutions', *Jurisprudencija*, 2002, no. 22, p. 42 ff.

[66] See D. Iļjanova, 'The Republic of Latvia', *in* C. Kortmann *et al.* (Eds.), *Constitutional Law of 10 EU member States. The 2004 Enlargement*, Kluwer, Deventer, 2006, especially p. V-50 f.

[67] Cf. R. Tarchi (Ed.), *Patrimonio costituzionale europeo e tutela dei diritti fondamentali. Il ricorso diretto di costituzionalità* (proceedings of the conference in Pisa, held from 19 to 20 September 2008), Giappichelli, Torino, 2012, in particular p. 539; L. Brunetti, 'Prospettive e limiti del «ricorso diretto di costituzionalità», come via di accesso alla Corte costituzionale, per la tutela dei diritti fondamentali. Considerazioni preliminari ad uno studio', *Forum di Quaderni costituzionali*, June 1, 2017, on the webiste www.forumcostituzionale.it, especially note no. 3 and corresponding text; E. Ferioli, *Dissenso e dialogo nella giustizia costituzionale*, Presentation by G. de Vergottini, Wolters Kluwer Cedam, 2018, p. 171 ff.; G. Gentili, 'Una prospettiva comparata sui sistemi europei di ricorso diretto al giudice costituzionale: suggestioni e spunti per la Corte costituzionale italiana', *Revista de Estudios Jurídicos*, no. 11, 2011 (Segunda Época), available online at https: // revistaselectronicas. ujaen.es., especially p. 13 ff.; I. Daneliene, 'Individual Access to Constitutional Justice in Lithuania: The Potential Within the Newly Established Model of the Individual Complaint', *Revista de Derecho Político*, no. 111, 2021, especially pp. 283-284. Some remarks can also be found in the introductory report of R. Tarchi, 'Il ricorso diretto individuale a tutela dei diritti fondamentali: prospettiva comparata e sistema italliano di giustizia costituzionale', *in* R. Tarchi (Ed.), *Patrimonio costituzionale europeo*, cit., p. 3 ff. As a result of an analysis of Eastern European legal systems, it was observed that there is no one-to-one correspondence between the institution of direct recourse and the concrete protection of fundamental rights; see F. Dal Canto, 'Il ricorso diretto individuale nei paesi dell'Europa centro-orientale', *in* Tarchi (Ed.), *Patrimonio costituzionale europeo*, cit., especially p. 268.

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government council. The second, local government council can apply to the Constitutional Court to challenge a normative act if an act being disputed infringes upon the rights of the relevant local government. It means that local governments are not "clear" subject of abstract control[68]. The decisions of the Constitutional Court are final and unappealable. Art. 30 of the law on the Constitutional Court provides for the institution of the dissenting opinion, unlike what happens for the judges of the general jurisdiction, who are instead required to respect the secrecy on the opinions expressed in the council chamber[69]. The deadline for bringing an appeal to the Constitutional Court is six months from the moment in which a judicial decision, no longer subject to appeal, begins to produce its effects. The decisions of the Latvian Constitutional Court have *erga omnes* effects. In accordance with section 32 (3) of the Constitutional Court Law, a legal provision, which has been declared by the Constitutional Court as non-compliant with a norm of a higher legal force, must be regarded as being not in effect from the day of publication of the Constitutional Court's judgment (*ex nunc*). This is the so-called general presumption. In the meantime the Constitutional Court Law has granted to the Court a broad discretion to decide on the date of which a legal norm, which is incompatible with the *Satversme*, becomes invalid. The Constitutional Court, by substantiating its opinion, can rule that the unconstitutional legal norm becomes invalid from the day it was adopted (*ex tunc*) or on another day (*ex tunc*), or the date may be set in the future (*pro futuro*). The Constitutional Court can decide on the suspension of the execution of the judicial decision which is the subject of the judgment; this provision is also applicable just in those cases when a person (legal entity) applies to the constitutional court and submits constitutional complaint.

The establishment of the Constitutional Court is of special importance, also because it is the most important innovation introduced in the original framework of the 1922 Constitution[70], together with that on the catalog of fundamental rights of 1998. As has been noted in the doctrine, this innovation has filled a gap[71].

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[68] The administrative subdivision of Latvia has two decentralized levels, one regional and the other local. See: S. Sileoni, 'Estonia, Lettonia, Lituania', *Amministrare*, 2007, especially p. 192 ff.; G.J. King *et al.*, 'Local Government Reforms in Latvia, 1990-2003: Transition to a Democratic Society', *Public Administration*, 2004, p. 931 ff.; E. Vanags *et al.*, 'After the Fall of the Soviet Union: The Changing Status of Local Governments in the Republic of Latvia', *International Journal of Public Administration*, 1999, p. 135 ff.

[69] Cf. R. Raffaelli, *Dissenting opinions in the Supreme Courts of the Member States*, European Parliament, Brussels, 2012, especially p. 25

[70] The original version of the Latvian Constitution consisted of 88 articles, divided into seven sections, for a total of (only) 3,300 words. Cf. Pollock Jr., 'The Constitution of Latvia', cit., p. 447. among the first translations of the Latvian Constitution into vehicular languages, see *Current History*, vol. XVII, December 1922, p. 486 ff.

[71] See E. Anselmi, 'Forma di governo, prassi e compromessi in sede costituente: l'esperienza di Estonia, Lituania e Lettonia', *in* L. Mezzetti & V. Piergigli (Eds), *Presidenzialismi, semipresidenzialismi, parlamentarismi: modelli comparati e riforme istituzionli in Italia*, Giappichelli, Torino, Introduction by G. de Vergottini, 1997, especially p. 498.

The Latvian Constitutional Court referred *expressis verbis* to foreign precedents in over twenty per cent of the decisions[72]. The most frequent references were made to judgments of the German Federal Constitutional Court, but there are also references to decisions adopted by the Supreme Court of the United States of America or by the House of Lords of the United Kingdom; in one case, the Latvian Constitutional Court referred not to a judgment but to a dissenting opinion[73]. A substantial number of references[74] are addressed to the decisions of the Lithuanian Constitutional Court and, even if less, of the Constitutional Chamber of the Estonian Supreme Court. There are also references, in a decreasing extent, to the Czech (and, first, Czechoslovakian), Austrian, Slovenian, Belgian, Polish, French, Spanish, Swiss, Hungarian, Russian and (once also) Azerbaijani constitutional jurisprudence. However, a more frequent reference to foreign constitutional jurisprudence is observed in the initial phase of operation of the Latvian Constitutional Court, while subsequently, when the Court has accumulated experience, there is a less extensive, selective and in some ways even sceptical use of the constitutional judgements of other countries.

Over the course of the 2000s, the judicial activism[75] of the Constitutional Court has progressively increased[76]. Two cases can be examined in order to confirm this trend. The first of them concerns the unconstitutionality of the so-called legislative omissions. There have not been many decisions of the Latvian Constitutional Court that fall into this typology. One of them appears significant. It was the question of religious symbols and objects in prisons. Penitentiary regulation no. 423 of 30 May 2006, as amended by resolution of the Council of Ministers no. 847 of 1 November 2011, establishes[77] which objects can be kept in the availability of prisoners, but it did not expressly say anything with regard to religious objects, namely images, crosses, rosaries, etc. Against this omission a direct constitutional appeal was brought by Nauris Rakuzovs. Starting from the consideration of art. 99 of the 1922 Constitution, which recognizes and

[72] Cf. J. Pleps, 'Foreign precedents in the case-law of the Latvian Constitutional Court', *European Journal of Public Matters*, 2017, p. 21 ff.; A. Rodiņa, 'Foreign Materials in the Judgments of the Constitutional Court of the Republic of Latvia', *in* G.F. Ferrari (Ed.), *Judicial Cosmopolitanism. The Use of Foreign Law in Contemporary Constitutional Systems*, Brill, Leiden, 2020, p. 476 ff.

[73] See the judgement of the Constitutional Court of the Republic of Latvia of 18 January 2010, in the case no. 2009-11-01. The reference was to the dissenting opinion attached to the judgment of the Constitutional Court of the Czech Republic (*Ústavní soud České republiky*) of 14 July 2005 in the case no. *Pl. ÚS 34/04: Judges' Salaries*. In their dissenting view, Czech constitutional judges Vojen Güttler, Jan Musil and Pavel Rychetský argued that the ban on lowering the pay of magistrates cannot be considered absolute (see *sub* point 10.3 of the Latvian constitutional judgment).

[74] About seventeen percent of cases.

[75] That is, the so-called normocreative power.

[76] The constitutional culture and constitutional jurisprudence of Latvia seem particularly influenced by the German tradition. See, in this sense, K. Krūma & S. Statkus, 'The Constitution of Latvia – A Bridge Between Traditions and Modernity', *in* A. Albi & S. Bardutzky (Eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, T.M.C. Asser Press, The Hague, 2019, p. 951 ff.

[77] In the first Appendix.

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guarantees the right to freedom of thought, conscience and religion, the Latvian Constitutional Court declared that this lack of legislative provision, or such a legal lacuna, is neither justified nor proportional[78]. Consequently, for the constitutional judges of Latvia there is, in the case in question, a failure to implement art. 99 of the Constitution. The Ombudsman of the Republic of Latvia[79] also intervened in the constitutional process, supporting the reasons for the detainee applicant. The prison administration, on the contrary, had opposed the request in the trial before the Constitutional Court, arguing that the prison regulation allows inmates to keep religious books with them in their cells, and this would be sufficient - according to the Latvian Prison Administration[80] - to ensure, in any case in conditions of deprivation of liberty, religious freedom to the extent required by international documents concerning the protection of human rights. The Court, moreover, specified that the authorization to bring religious objects, in the cell or in the premises where prison life takes place, is subject to authorization, for each request, by the director of the prison. As for the follow-up to the constitutional decision, adopted on March 18, 2011 in case no. 2010-50-03 and which became effective on the following 22 March, the National Executive of Latvia amended, with a resolution approved on 1 November 2011, the relevant parts of the prison regulations.

The second case concerned the so-called evolutionary interpretation of legislative norms, in order to take into account the (unstoppable) social changes. The dispute related to a particularly sensitive case. Ms. Tatjana Ždanoka[81] contested the conformity with the 1922 Constitution of art. 5, paragraph 6, of the electoral law for the *Saeima* of 25 May 1995[82], in the part in which it establishes that the persons who, after 13 January 1991, were active in the Communist Party of the Soviet Union, or in the Communist Party of Latvia, are not eligible in the Latvian National Parliament[83]. Against the Latvian judicial decisions[84] which, once Ms.

[78] The judgment is available, both in the Latvian and English languages, on the website of the Constitutional Court of Latvia at https://www.satv.tiesa.gov.lv.

[79] On which see U. Vangansuren, *The Institution of the Ombudsman in the Former Communist Countries*, International Foundation for Election Systems (IFES), Washington (DC), 2002. The current legislation on the Latvian Ombudsman is contained in the law of 6 April 2006; cf. Krūma & Plepa, *Constitutional Law in Latvia*, cit., p. 195 ff. The last mentioned law became effective on 1 January 2007. Among the funcions and powers of the Ombudsman there is also that of presenting appeals to the Constitutional Court.

[80] In Latvian, *Ieslodzījuma Vietu Pārvalde*. There are currently ten prison institutions in Latvia.

[81] In February 1993, Ms Zdanoka became chairperson of the *Kustība par sociālo taisnīgumu un līdztiesību Latvijā* [Movement for Social Justice and Equal Rights in Latvia], which later became the political party *Līdztiesība* [Equal rights], in Russian *Равноправие*. On the reconfiguration of the party system in Latvia in the transition from the Soviet to the post-Soviet model, see widely M. Solska, *Die Systemkrise des Kommunismus und die Entwicklung der Parteiensysteme in Estland, Lettland und Litauen 1988-2011*, LIT Verlag, Münster, 2013.

[82] Amended several times, most recently on March 31, 2010.

[83] Despite this provision, empirical research, (at least) relating to the years 1990 to 2004, has shown that many former communists sit in democratic parliaments; see I.

Ždanoka's membership of the Communist Party was ascertained, had deprived her of the passive electorate for the *Saeima*, an appeal was lodged before the European Court of Human Rights, which had urged Latvia, with the decision delivered on March 16, 2006 in the case *Ždanoka v. Latvia*[85], to constantly monitor and consequently, if necessary, to review the content of the legislative restrictions on electoral matters. The Constitutional Court of the Republic of Latvia, with the judgment delivered on 29 June 2018 in case no. 2017-25-01[86], established that the disputed provision of electoral legislation does not have the purpose of sanctioning membership of a particular political party, but wants to prevent access to the National Parliament by people who, due to their political militancy, constitute a present danger to the independence of the Latvian State as well as to the principles of the democratic State governed by the rule of law. Since this situation of danger, both potential and actual (as in the case of Ms Ždanoka[87]) remains[88], the legislative provision which is the subject of the

Matanite, *Старая палітычная эліта ў посткамуністычных парламентах (Эстонія, Латвія, Літва і Польшча)* [*Old political elite in post-Communist parliaments (Estonia, Latvia, Lithuania and Poland)*], *Палітычная сфера. Часопіс палітычных даследаванняу* [*Political Sphere. Journal of Political Studies*], no. 8, 2007, *Central and Eastern European Online Library* (CEEOL), www.ceeol.com (text in Belarusian).

[84] Adopted by the Riga Regional Court and the Civil Division of the Supreme Court of the Republic of Latvia.

[85] Issued on appeal no. 58278/00. On this legal dispute before the European Court of Human Rights, see J. Zand, 'The Concept of Democracy and the European Convention on Human Rights', *University of Baltimore Journal of International Law*, 2017, especially pp. 215-216; H. Hoogers, '*Ždanoka v. Latvia* – European Court of Human Rights: The boundaries of the right to be elected under Article 3 of the first Protocol to the European Convention on Human Rights. Judgment of 16 March 2006, Ždanoka v. Latvia, Application No. 58278/00', *European Constitutional Law*, 2007, p. 307 ff. The Chamber and the Grand Chamber of the Strasbourg Court adopted, in the case in question, totally different approaches. See A. Pecorario, 'Il rovescio del giudizio della Grand Chamber, in tema di violazione dell'art. 3 primo protocollo e degli articoli 10 e 11 della convenzione, svela la complessità della transizione lettone', in the webiste at https://www.associazionedeicostituzionalisti.it (the first sentence of the Court was pronounced on June 17, 2004). The simple Chamber, in fact, had affirmed the violation of the applicant's right of passive electorate, while the Grand Chamber established that the legislative and judicial authorities of Latvia are the ones best able to evaluate the safeguard measures of the newly independent democratic order.

[86] The judgment is available, both in the Latvian and English languages, on the website of the Constitutional Court of Latvia at https://www.satv.tiesa.gov.lv.

[87] In paragraph 13.4 of the judgment of the Constitutional Court mentioned in the text, express reference is made to demonstrations in which the nature of Latvia as an independent State was denied, and other occasions in which crimes against humanity committed during the Soviet occupation of Latvia are were even considered positively. In post-Soviet Latvia the question of national independence is treated with extreme rigor. Consider, for example, that the Supreme Court, with a judgment of 10 April 2019 which confirmed the decision of the Riga Regional Court of 26 April 2018, sentenced Mr. Maxim Koptelov to 140 hours of community service, for having published, in March 2014, a post in which he invited to sign an appeal in favor of the incorporation of Latvia into Russia. See the critical comment by A. Dimitrovs, 'Eurofederalists under Threat: The Latvian Supreme Court's Ruling on Independence', *Verfassungsblog*, 10 Mai 2019, available on the website at https://verfassungsblog.de. The opinion of an expert, the constitutionalist Lauris Liepa, had also been acquired in the proceedings before the

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constitutionality judgment has not (yet) exhausted - in the judges' assessment of constitutional legitimacy - its original function. Ms. Ždanoka, however, did not give up. She therefore presented her candidacy for the legislative elections, with the inclusion of her name in the list of the "Russian Union of Latvia"'[89] party. The Central Electoral Commission removed her from the electoral roll. Ždanoka then appealed to the (Riga) Regional Administrative Court, which however definitively rejected the appeal, recalling the decision of the Constitutional Court of 2018 and thus affirming, with the sentence pronounced on 3 September 2018 in dispute no. A43008018, A 43-0080-18/8, that Ždanoka still poses a threat to the democratic state system and national security[90].

The sometimes problematic dialogue between the Constitutional Court and Parliament was intense, for example with regard to the recognition of same-sex unions, in the years 2020-2021. The Constitutional Court established, with the decision of 12 November 2020 in dispute no. 2019-33-01, that the constitutional notion of family, contained in art. 110 of the Constitutional Charter, includes unions between persons of the same sex; following the ruling, in 2021 a constitutional reform proposal was presented to change the constitutional definition of family, which - according to this project - would be recognized and protected only if formed by the union of a man with a woman. At the same time. a legislative project of popular initiative was presented which provides for the recognition of unmarried couples, including those between people of the same sex[91].

Riga Regional Court; the expert argued that the incorporation of Latvia into Russia would violate the principle of sovereignty and independence of Latvia and that, therefore, the behavior of Mr. Koptelov is in violation of the Latvian constitutional order, with implications also on the criminal level. It is also true that art. 82, paragraph 1, of the Latvian penal code of 17 June 1998 (in force since 1 April 1999), which sanctions the public invitation to suppress the independence of Latvia, has been repealed by the new text of art. 81 of the same code, which sanctions such conduct only if implemented in a manner not provided for by the Constitution, but the reform law of 21 April 2016 specified also that the new provisions do not apply retroactively. However, the second paragraph of art. 5 of the criminal code of Latvia expressly states that the most favorable criminal law applies retroactively, unless the law itself provides otherwise (as was the case with the criminal reform of 2016). On the Latvian criminal code of 1998, see U. Krastiņš, 'Die Entwicklung der Strafgesetzgebung in der Republik Lettland', *Juridica international*, 2003, p. 68 ff.

[88] At least at the time of the constitutional decision, *i.e.* in 2018. Ms. Ždanoka is currently a member of the European Parliament.

[89] Or "Latvian Russian Union", *Latvijas Krievu savienība* (LKS) in Latvian. In Russian, the name of the party is *Русский союз Латвии*.

[90] On the widespread fear, in the Baltic countries and, therefore, in Latvia, that the mere presence of "non-Baltics" continues to be in itself a threat to the newfound independence, see L. Panzeri, *Nazione e cittadinanza nelle Repubbliche baltiche. Profili costituzionali e sovranazionali*, Editoriale Scientifica, Napoli, 2021, p. 116.

[91] See K. Engīzers & M. Melnika, 'Defining the Modern Family: The Latvian Constitutional Court, the Definition of "Family", and Parliamentary Bitterness', *VerfBlog*, 2021/2/02.

5. Some short concluding remarks on the continuity of the discipline of the judiciary in the Republic of Latvia, within the Roman-Germanic civil law sub-family

The examination carried out above[92] allows to conclusively identify some points.

First, only two years have elapsed from the Declaration of the Restoration of Independence of the Republic of Latvia in 1990 to the Judicial Power Act of 1992, during which time, relying on the provisions of the 1922 Constitution, the post-Soviet judicial system of Latvia has been fully realized.

Secondly, the model of administration of justice built on the basis of the 1922 Constitution before the Soviet occupation of Latvia was restored after the achievement of independence, thus showing that it has the characteristics necessary to adapt, but in line with continuity with the past, to contemporary society.

Thirdly, some changes were made in the post-Soviet phase, especially with regard to the protection of fundamental human rights[93] as well as to take into account international standards. These innovations, however, have by no means changed the original structure, formed between the two

[92] Judicial institutions do not appear to be among the most studied in view of the post-socialist transition; see S.I. Smithey & J. Ishiyama, 'Judicious Choices: Designing Courts in Post-Communist Politics', *Communist and Post-Communist Studies*, 2000, p. 163 ff. (with particular reference to the former Soviet Republics, Mongolia and Eastern Europe). However, judicial institutions have a central importance in the perspective of democratic consolidation (in the so-called emerging democracies); cf. P.C. Magalhães, 'The Politics of Judicial Reform in Eastern Europe', *Comparative Politics*, 1999, p. 43 ff. The impact of judicial reforms is crucial to the functioning of constitutional systems, as most recently pointed out by O. Boryslavska, 'Judicial Reforms in Eastern Europe: Ensuring the Right to a Fair Trial or an Attack on the Independence of the Judiciary?', *Access to Justice in Eastern Europe*, 2021, p. 122 ff. Boryslavska, 'Judicial Reforms in Eastern Europe', cit., notes that "The importance of the judiciary for the functioning of constitutional democracy can be described as existential. A corrupt judiciary, deprived of public trust, is one of the greatest threats to constitutional democracy and the biggest obstacle in developing countries. However, radical, unreasoned, unconstitutional measures aimed at carrying out judicial reforms not only do not bring the necessary and desired results but also move the state even further from constitutional democracy" (p. 139). The relations between "domestic" political actors and the judicial system are always central, as noted by R. Coman, '"Quo Vadis" Judicial Reforms? The Quest for Judicial Independence in Central and Eastern Europe', *Europe-Asia Studies*, 2014, p. 892 ff. In any case, the role of the judge in post-Socialist countries is not comparable to that of the judge in Socialist countries. This because "While especially in the early Communist system lawyers were pariahs, in post-Communism their role has been enhanced" (cf. Z. Kühn, *The Judiciary in Central and Eastern Europe. Mechanical Jurisprudence in Transformation?*, Leiden, Nijhoff, 2011, p. 164). Of course, delicate problems have arisen, even for the magistrates, in the post-Socialist transition, on which see A. Di Gregorio, *Epurazioni e protezione della democrazia. Esperienze e modelli di "giustizia post-autoriatria"*, Angeli, Milano, 2012, and, more recently, D.É. Adouki Emmanuel, 'La lustration dans le constitutionnalisme contemporain', *Revue française de droit constitutionnel*, no. 129, 2022, p. 1 ff., where a comparison between African constitutionalism and Central and Eastern European countries.

[93] See above in paragraph 4 and in this same paragraph.

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world wars, of the Latvian judicial system. In short, innovation in the judicial sector has been profitably grafted onto tradition, from which it has therefore been innervated.

Fourthly, the main novelty - in the field of the judiciary and procedural law[94] - was the creation, in 1996, of the Constitutional Court[95], although also in this case the proposals to achieve constitutional justice had not been lacking in the political and constitutional history of Latvia, with particular regard to the projects of 1923, 1930 and 1934.

Fifth, the continuity of the discipline of the judiciary in Latvia is an important aspect of the continuity of the country's constitutional law, based on the 1922 Constitution[96].

In conclusion, on a comparative level and in the perspective of the circulation of models, the belonging of the Latvian judicial system to the family of continental civil law systems emerges, in particular to the Roman-Germanic sub-family. The creation of the Constitutional Court, supplementing the provisions on the courts contained in the original version of the 1922 Constitution, confirms this thesis, since the constitutional dispute body exercises control of constitutionality in a centralized form.

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[94] The other innovation of great importance was represented - as just mentioned above - by the introduction in the Constitution of 1922, through the revision of 1998, of the catalog of fondamental rights (in Latvian, *Cilvēka pamattiesības*), contained in the new Chapter VIII. The Constitution of Latvia does not include a section dedicated to the local government. There is only one constitutional provision, art. 3, dedicated to the subdivision of the Latvian State into four 'territories'. The weak territorial decentralization was achieved through legislation (laws of 1994, 1996, 1997 and 1998).

[95] Regulated in chapter VI of the Constitution, dedicated to the courts (see supra, in paragraph 4).

[96] Cf. J. Lazdiņš, 'Tiesu varas pēctecība kā viens no valsts kontinuitātes pamatiem' [‘Continuity of the Judicial Power as One of the Foundations for the State Continuity’], *in The 5th International Scientific Conference of the University of Latvia Dedicated to the 95th Anniversary of the Faculty of Law of the University of Latvia. Jurisprudence and Culture: Past Lessons and Future Challenges. Riga 10–11 November, 2014*, University of Latvia Press, Riga, 2014, p. 633 ff. (text in Latvian).