



## CONSTITUTIONAL COURT REPUBLIC OF LATVIA

# CREATION OF THE CONSTITUTIONAL COURT

To ensure that the constitution is respected, democratic countries have gradually established institutions of constitutional review.

In inter-war Latvia, the Senate decided on the interpretation of constitutional norms, but in the early 1930s some members of the Saeima put forward the idea of a separate constitutional court.

During the occupation years, a similar view was expressed by several Latvian politicians and lawyers in exile. During the period of Latvia's awakening in the late 1980s, as demands for a state governed by the rule of law were voiced, there were discussions about whether a separate constitutional court was needed in Latvia as opposed to the centralised constitutional court of the USSR.

After the restoration of Latvia's independence, the introduction of constitutional review contributed to the development of a democratic State under the rule of law.

The Constitutional Court performs the function of constitutional review. It ensures that the Constitution is respected, strengthens constitutional values and protects everyone's fundamental rights.

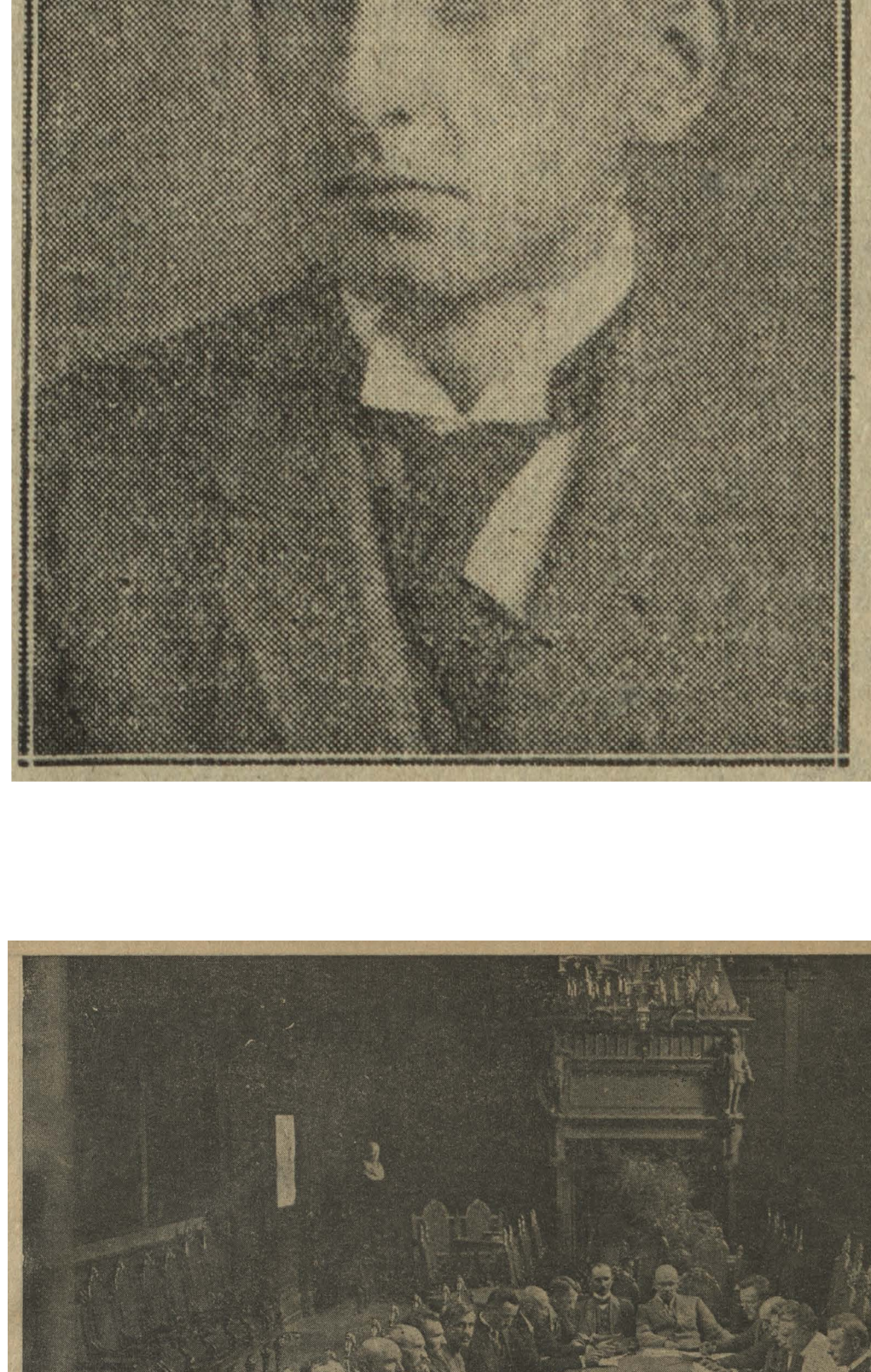
## CONSTITUTIONAL PROTECTION AS A NECESSITY. THE IDEA OF CONSTITUTIONAL CONTROL IN INTER-WAR LATVIA

In the inter-war period, the idea of a separate institution of constitutional review was put forward by Saeima deputy Pauls Šimanis (Paul Schiemann), who pointed out that the separation of powers "would be ensured in practice only if we had an independent national chamber of justice, which could check whether the decisions of parliament and executive bodies were in accordance with the Constitution and, if necessary, annul them".

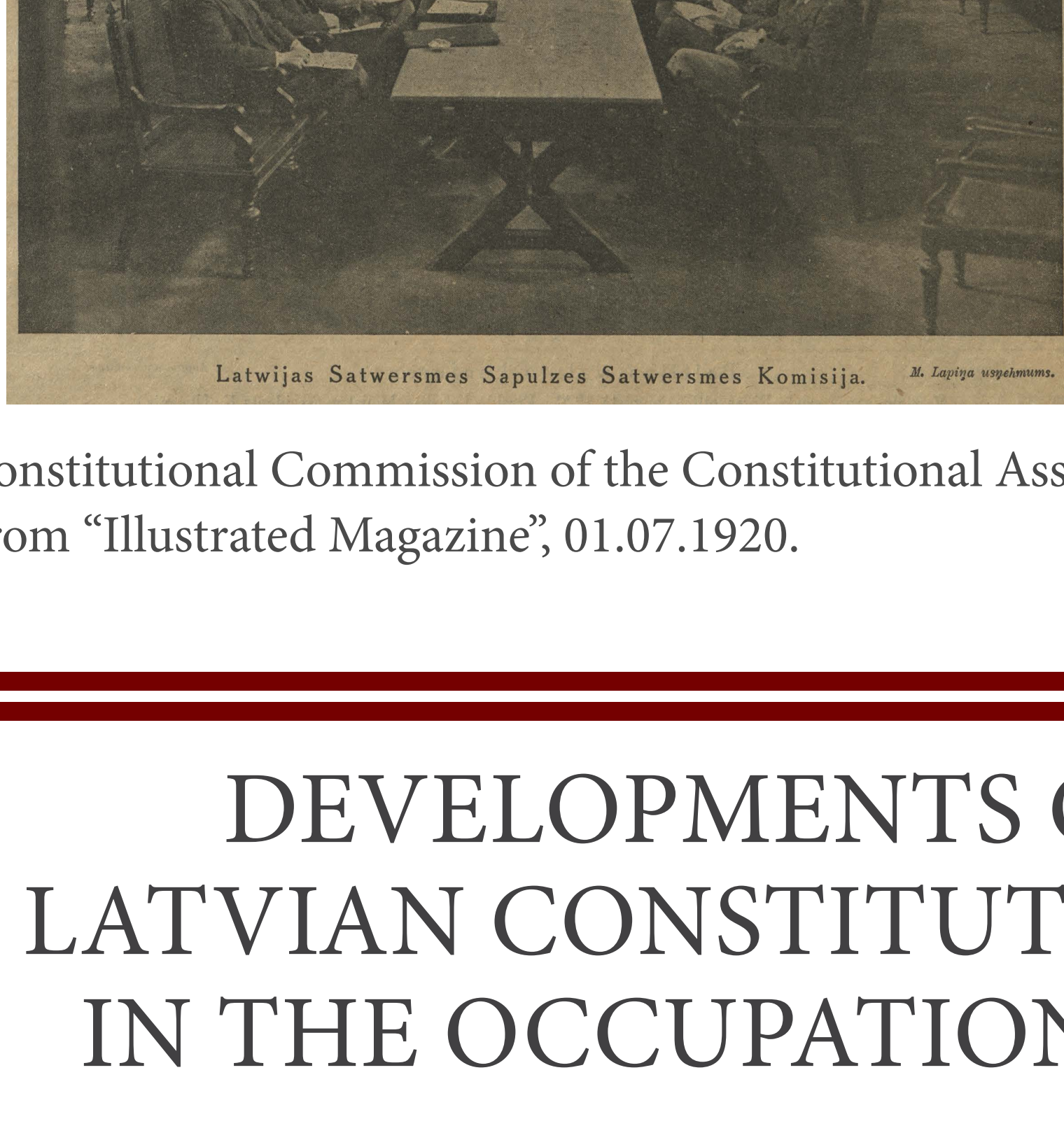
In 1933, Helmuts Štegmanis (Helmut Stegman), together with Pauls Šimanis, submitted to the Saeima a proposal to amend Article 86 of the Constitution to read as follows: "For the purpose of deciding on questions concerning the compatibility of a law with the Satversme, as well as the compatibility of Cabinet regulations and orders with the

Satversme and laws, there shall be a State Court, which shall function on the basis of a special law."

This idea was not realised in the inter-war period.



Helmuts Štegmanis,  
Member of the Saeima.  
From "At the Last Moment", 21.10.1933.



Constitutional Commission of the Constitutional Assembly. 1920.

From "Illustrated Magazine", 01.07.1920.

## DEVELOPMENTS OF THE LATVIAN CONSTITUTIONALISM IN THE OCCUPATION PERIOD

Under the conditions of the occupation, it was impossible to establish an institution of constitutional control to protect the Constitution, but Latvian politicians and jurists in exile in Western countries argued for the need for such an institution. Miķelis Valters and Augusts Abakuks justified the need to establish a separate Constitutional Court.

In Latvia, the development of the idea of constitutional review was given a new impetus by the events of the Awakening, when the rule of law became an important goal.

During 1989-1990, while the occupation was still in force, discussions were held about the possibility of establishing a Constitutional Court of the Latvian SSR (Latvian Soviet Socialist Republic), but in the summer of 1990, shortly after the restoration of independence, the first version of the law on the Constitutional Court of the Republic of Latvia was drafted.



Rally in front of the House of Political Education in Riga to mark the anniversary of the Soviet deportations of June 1941. In the foreground, a poster "We demand the restoration of Latvia's independence". 14 June, 1988.

# FUNCTIONS AND VALUES OF THE CONSTITUTIONAL COURT

## JUDGE OF THE CONSTITUTIONAL COURT — HIGHLY QUALIFIED LAWYER, JUST AND LOYAL TO THE REPUBLIC OF LATVIA

The judges of the Constitutional Court are entrusted with a special responsibility and special powers — to examine cases on the compliance of laws with the Satversme, ensuring the protection of the values and fundamental rights of a democratic state governed by the rule of law.

When appointing judges of the Constitutional Court, the highest qualification and reputation requirements are applied. Taking into account the specific competence of the Constitutional Court, all branches of State power participate in the composition of the Court.

Three candidates are nominated by the members of the Saeima, two — by the Cabinet of Ministers and two — by the Plenum of the Supreme Court. Judges are approved by the Saeima.

The first Constitutional Court judges were confirmed by the Saeima on the 17th of October, 14th of November and 28th of November, 1996, and after taking the oath on the 9th of December the first composition of the Court began its work.

THE OATH OF A JUDGE OF THE CONSTITUTIONAL COURT:



"I, \_\_, ASSUMING THE DUTIES OF A JUDGE, AM AWARE OF THE RESPONSIBILITY ENTRUSTED TO ME AND SWEAR (SOLEMNLY PROMISE) TO BE HONEST AND JUST, FAITHFUL TO THE REPUBLIC OF LATVIA, ALWAYS STRIVING TO ASCERTAIN THE TRUTH, NEVER TO BETRAY IT, TO ADMINISTER JUSTICE IN STRICT ACCORDANCE WITH THE CONSTITUTION AND LAWS OF THE REPUBLIC OF LATVIA."

The robe of the first President of the Constitutional Court, Judge Aivars Endziņš. The visual design of the mantle is by artist Gunārs Zemgals. 1996.

## CONSTITUTIONAL COURT AND THE BRANCHES OF STATE POWER

One of the objectives of the Constitution is to ensure the smooth functioning of the State by distributing duties and responsibilities among the various branches of State power. The task of the Constitutional Court is to ensure that these branches of State power operate in accordance with the general principles of law and other norms of the Satversme. Already in its first judgments, the Constitutional Court assessed the limits of the competence of the legislator and the executive.

The Constitutional Court has clarified what matters are exclusively within the competence of the Saeima and what conditions must be met in order to authorise other institutions to issue normative acts in accordance with the Satversme.



# THE FOUNDATIONS OF THE STATE. THE CONSTITUTIONAL COURT AND LATVIA'S CONSTITUTIONAL IDENTITY

The Constitution contains several elements of constitutional identity – Latvia is a democratic, legal, socially responsible and national state. Although the values essential for the State, the fundamental principles of its order and the constitutional identity of the State are established by the Satversme, the decisions of the Constitutional Court are important for understanding their content. The first four articles of the Satversme, which establish the foundations of the Latvian State, have been interpreted in more than 80 judgments of the Constitutional Court, mainly by interpreting and applying the principles of a democratic state governed by the rule of law.

## I LATVIA IS AN INDEPENDENT DEMOCRATIC REPUBLIC

“The concept of “democracy” in Article 1 of the Constitution is a so-called functional legal concept. The main principles developed from the legal concept of democracy concern public participation in public decision-making, the separation and mutual control of public powers, the subordination of public powers to rights, human dignity and human equality, the subjective right of the individual to public power, the rule of law, and social solidarity.” (Constitutional Court Judgment of 19th of May, 2009, in case No 2008-40-01, paragraph 11)

According to the Constitution, the people of Latvia can exercise their sovereign power only in a democratic state.

As Latvia is a democracy, the country must have a legal order that enables the people, the bearers of sovereign power, to express their will.” A prerequisite for the functioning of a democratic state governed by the rule of law is the ability of each individual person to self-limit his or her egoistic freedom and act responsibly” (see paragraph 19.2 of the Constitutional Court’s judgment of 11th of December, 2020, in Case No 2020-26-0106).

## II THE SOVEREIGN POWER OF THE LATVIAN STATE BELONGS TO THE PEOPLE OF LATVIA

“If the constitutional order of the State is amended without observing the procedure laid down in the Satversme, Article 2 of the Satversme is one of those Articles of the Satversme which remain *de jure* in force throughout the existence of unconstitutional regimes, ensuring the right of the citizens of Latvia as a whole to decide freely on their future. The people of Latvia have the right and the duty to restore the State of Latvia in the manner required by the constitutional and legal basis of the State of Latvia. Such an obligation is also imposed on every member of the Latvian people – a citizen of Latvia, regardless of whether he was born before or after the establishment of the unconstitutional regime” (Constitutional Court Judgment on the 29th of November, 2007, in case No 2007-10-0102, paragraph 31.2).

“At the heart of democracy is the implementation of the will of the majority of society. This is closely linked to the principle of popular sovereignty. The people, the bearers of sovereign power, must be able to influence national decision-making. The will of the people must be the basis of state power, must be the source of state power.” (Constitutional Court Judgment of 19th of May, 2009, in case No 2008-40-01, paragraph 11).



Court, in an open hearing with the participation of the parties, on the constitutionality of the provisions of the Subsidised Electricity Tax Law. 4 June, 2015.

## III THE TERRITORY OF LATVIA, WITHIN THE LIMITS SET BY INTERNATIONAL TREATIES, CONSISTS OF VIDZEME, LATGALE, KURZEME AND ZEMGALE.

“The Latvian state was established as a nation-state by the self-determination of the Latvian people in the territories it inhabited – Vidzeme, Latgale, Kurzeme and Zemgale.” (Paragraph 40.3 of the Constitutional Court’s judgment of 29th of November, 2007, in case No 2007-10-0102).” The restored Republic of Latvia identifies itself with pre-war Latvia. The constitutional institutions of the Latvian state justify their position on the grounds that Latvia had not lost its status as a subject of international law after the events of 1940. After independence, Latvia continues its statehood (*integratio ad integrum*). Latvia’s continuity is also recognised by the international community. Initially, this recognition took the form of non-recognition of Latvia’s unlawful incorporation into the USSR, but after the restoration of Latvia’s independence it turned into recognition of the continuity of the Latvian state, i.e. the international community recognised the Latvian state restored on 4th of May, 1990, as the same state whose independence had been unlawfully terminated in 1940.” (Paragraph 33.2 and 34 of the Constitutional Court’s judgment of 29th of November, 2007, in case No 2007-10-0102).

## IV THE OFFICIAL LANGUAGE OF THE REPUBLIC OF LATVIA IS LATVIAN. THE FLAG OF LATVIA IS RED WITH A WHITE STRIPE

“The Latvian language fulfils the functions of the only state language, i.e. it is the language of mutual communication of all inhabitants of Latvia and a unifying language of the democratic society.

Therefore, every person permanently residing in Latvia must be able to speak the language of that country, and at a level that enables him or her to participate fully in the life of democratic society.”

“The obligation to display the Latvian national flag at residential buildings strengthens the national consciousness and, consequently, the democratic Republic of Latvia, where fundamental rights can be effectively exercised. A strong sense of nationhood shows that citizens see their country as a value in itself, and such a sense of nationhood can only develop in a democracy where citizens are free to express their views.” (Paragraph 15.2 of the Constitutional Court’s judgment of 2nd of July, 2015, in case No 2015-01-01.)

# HUMAN DIGNITY AND FUNDAMENTAL RIGHTS PROTECTION FOR EVERYONE

The Constitutional Court has emphasised the principle of human dignity in several rulings, stating that it is a constitutional value and as a fundamental right is inherent to every person, regardless of any conditions.

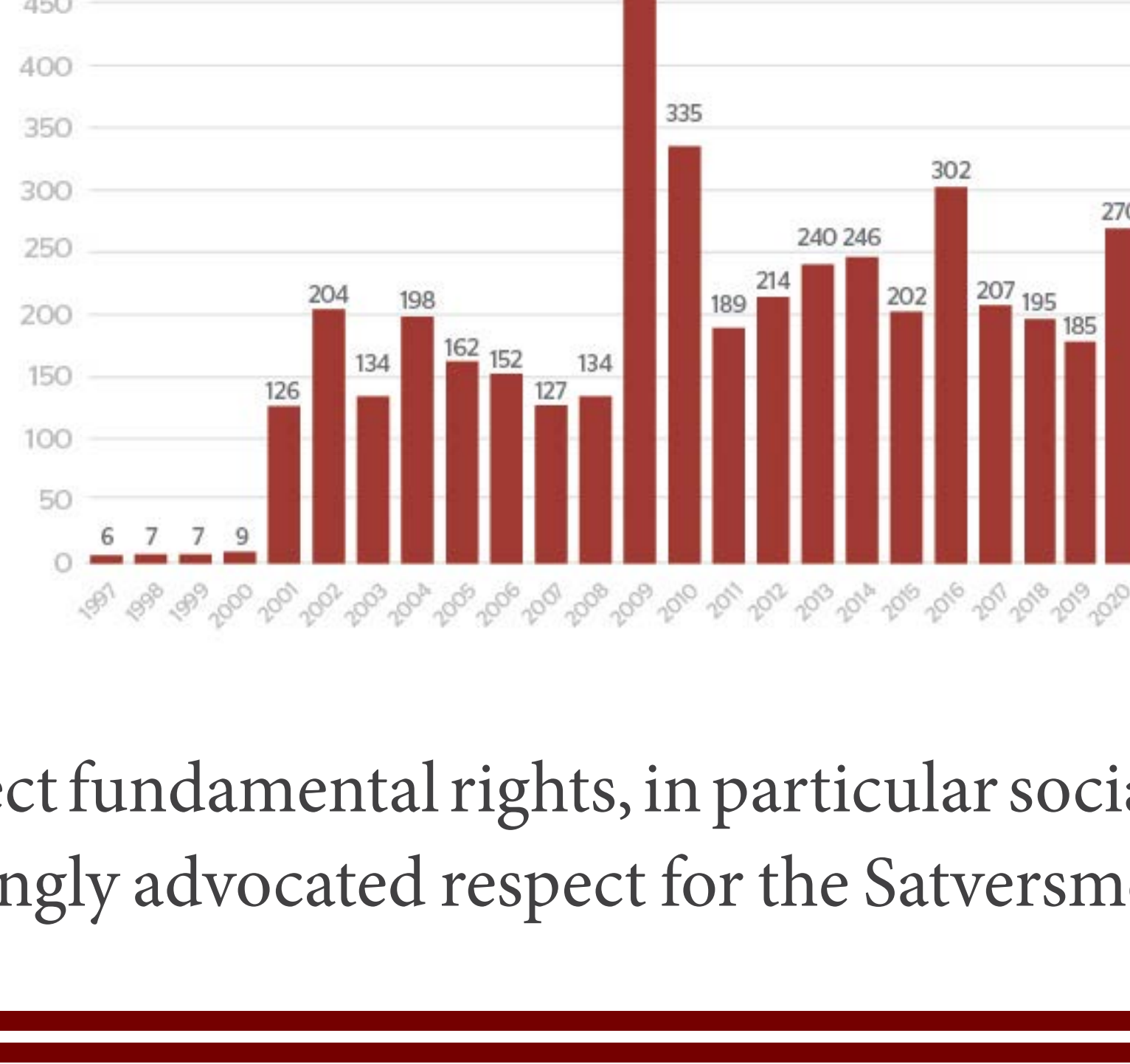
The Constitution contains a broad set of fundamental rights. In most cases, fundamental rights are not regarded as absolute and may be restricted in the interests of legitimate aims enshrined in the Satversme. A person may challenge restrictions on fundamental rights before the Constitutional Court.

Upon an application of a person – a constitutional complaint – the Constitutional Court assesses whether a restriction on fundamental rights is established by law, whether it has a legitimate aim and whether it complies with the principle of proportionality.

## “THE STATE MUST PROVIDE EFFECTIVE PROTECTION FOR ANYONE WHOSE RIGHTS OR LEGITIMATE INTERESTS HAVE BEEN VIOLATED”

Since 2001, when the institution of a constitutional complaint was introduced, the number of cases examined by the Constitutional Court has increased significantly, as any person who considers that his or her fundamental rights have been infringed has the right to apply to the Constitutional Court.

The austerity measures introduced after 2008 had a significant impact on social security for many. When examining cases, the Constitutional Court pointed out that even in conditions of financial recession, the legislator must respect fundamental rights, in particular social rights, and thus strongly advocated respect for the Satversme.



# LATVIA IN THE SYSTEM OF INTERNATIONAL AND EUROPEAN RIGHTS INTERNATIONAL AND EUROPEAN RIGHTS OPENNESS AND INTERACTION

The transition to the rule of law in a democratic state since 1990 has ideologically contributed to the entrenchment of Western legal thinking in Latvia.

With Latvia’s accession to many international treaties, as well as accession to the European Union, international and European legal norms have become part of the Latvian legal system.

The decisions of the Constitutional Court have contributed to the alignment of the Latvian legal system with international and European Union law.

Joining the European Union was a long-held ambition. In assessing Latvia’s intention to ratify the Lisbon Treaty, the Constitutional Court recognised that the transfer of certain competences to the European Union was not to be regarded as a weakening of Latvia’s sovereignty, but rather as its use to achieve the objectives set out in the European Union Treaties, which were not contrary to the values enshrined in the Satversme. The Constitutional Court clearly defined the limits to which the transfer of competences is permissible.



Conference “Activism of the Constitutional Court in a Democratic State”, jointly organised by the Constitutional Court and the Council of Europe Commission

“Democracy through Law”

(Venice Commission), 26-27th of May, 2016, Riga