

Address of the President of Latvia, Egils Levits, at the discussion 'Role of National Council in Legislative Process'

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[Egils Levits](#)



Honourable Speaker of the Saeima,

Honourable Chair of the Constitutional Court,

Dear ladies and gentlemen,

Friends and colleagues,

Let me start by saying some words about how Satversme (Constitution) works, then I would like to discuss the role of legislature in constitutional system and more specifically how this 'gap' in our legal and political system that we have identified can be filled by a new constitutional body, the National Council.

What is Satversme? From today's perspective, our constitution is not just a set of rules that has been put on paper and is there for the next hundred years for anyone to refer to and read. Such understanding of Satversme implies that any 7-year old child can be interpreting its provisions. And reading does not equal understanding. That is the first point of departure. Satversme can be interpreted and understood through a specific and complex system because Satversme is not just a written text that you can read, the direct text, it is a set of rules, a description of principles. There are as many or even more unwritten legal principles that are not written in the constitution. These principles are explained and elaborated in legal science, legal practices, especially the legal practices of Constitutional Court. Values and specific or unique links between them that form a single system are also an integral part of constitution. System held together by the text and principles of the constitution. Values are usually constant, but definitely not still and stagnant. Values form through interaction between social processes and legislative acts.

Satversme, therefore, with its written and unwritten elements defines and embodies the state, its core principles and how the

state operates. However, sections of Satversme that we can find in the text do not all have equal 'weight' or importance. Some sections of Satversme belong to the core of the constitution. There are values, principles and specific legal expressions that form the basis of other sections of Satversme. And then, of course, there are also laws, Cabinet of Ministers regulations, but this is the foundation. Core of the constitution is a legal and political notion that we are aware of. We had this debate 10 years ago and agreed what core of Satversme does not represent. With respect to political system, it is not a set of equally 'weighty' sections. Satversme is built like a pyramid. You have the foundation on which all other sections of Satversme sit, the basis for all other laws, Cabinet of Ministers regulations and other legislative acts. And this pyramid stands on the core of constitution which is a legal concept and notion of political system.

Foundation of Satversme is the visible, the written part of constitution, especially the preamble that was adopted in 2014. Its core lies in Section 1 and 2, provisions of Section 4 about the official language, and also Section 8. The foundation of Satversme is protected as its 'inviolable core'. As long as constitution is in force, no one, neither Saeima (Parliament) nor people as a whole can change these core principles. For example, one of the core principles of constitution is that Latvia is a democratic state, and neither Saeima nor people as a whole can declare through a referendum that Latvia is no longer a democratic state or state governed by the rule of law, or socially responsible or nation state. This means that legislature, the lawmakers are not a part of primitive democracy (Athenian democracy) where any, even controversial laws can be adopted. Legislature works within a certain framework that is set by Satversme, framework that is based around the core of Satversme.

In what way are the core principles of Satversme binding to legislature? In two ways. First, in a negative way, i.e. Saeima cannot adopt laws that legally contradict the constitution, including, of course, the core principles of Satversme. If any of the adopted laws contradict Satversme and a complaint is made, Constitutional Court has the duty to revoke the law post factum. But we all know quite well that not all such laws that possibly contradict Satversme are brought before Constitutional Court. There needs to be a complaint or application. It does not happen automatically. However, at least some of these contradictions are addressed by Constitutional Court.

I already mentioned the negative power of the core principles over legislature, but there is also the positive power as well. We see that there is no positive institutional arrangement, i.e. good law-making principle implies that legislature should find the best solution out of all possible legitimate proposals that are legally acceptable from constitutional point of view. They have to find the best, but it is not enough to just have legal analysis. Legal analysis only determines whether proposal is acceptable from constitutional point of view. That is how it goes. And, let us say, some of these proposals are later 'spotted' and 'sidelined' by Constitutional Court. These solutions may legally be in line with Satversme and at the same time may not be the best option in particular case. And this brings me to the political nature of parliamentary democracy.

In parliamentary democracy, different bodies like Saeima, government which is composed of political parties, political groups represent various views. Political views. And that is good for the society. These political views represent specific party lines, specific ruling coalition. One coalition will opt for solution A, while a different party, another coalition might have something entirely different in mind. That is how democracy works. There are different political alternatives. However, these political positions are always linked to specific party lines and the number of seats that party has in parliament. State, on the other hand, may altogether be based on certain principles that may not necessarily coincide with those of the coalition or other coalitions. These principles need to be identified, defined and interpreted in order to apply them beyond party or coalition interests and to be able to determine whether party or coalition principles match national interests, are meaningful and comply with principle of better regulation or sustainable national development in the broadest possible sense. If we would do such analysis, we would be compelled to conclude that not all laws adopted by Latvia are good in terms of supporting sustainable national development. And there has to be a body that has the mandate and expertise to determine and say that. Basically, there should be someone who says, 'What you are offering is perfectly legal from constitutional point of view, but it might not be the best option.' It is not the best option because it will contradict sustainable national development vision. And then whomever is responsible for the solution, either Cabinet of Ministers or the Saeima, can then decide whether to accept or disregard such comments. That, of course, is the duty of Saeima.

This is one of the institutional gaps we can see in the Latvian system. There is no such body, with such mandate and expertise. Expertise that would offer such interpretation. The existing, let us say, legal bureaus and other departments that government bodies have are not mandated to produce such opinions. For example, a civil servant cannot say, 'Minister, this goes against the

principles of constitution.' On the contrary, he or she has to say that this will be solved in the context of Satversme. Criticising or assessment of whether it is acceptable is a political matter. Public servants have to follow the political vision and have to implement the proposal irrespective of whether a new coalition or government is elected. Civil service will try to integrate the political vision anyway, of course, as far as it is legal. That is their duty. So, I believe that we have, of course, all the necessary institutional frameworks, however, we need to strengthen their capacity by hiring high level legal experts capable of analysing these aspects. It is not going to fill this gap, however, because such legal experts will not be entitled to say, 'You see, I tend to agree with opposition on this and what you are proposing is against the vision of sustainable development.' Such opinion must be provided by an independent body. Body as independent as, for example, Constitutional Court. In other words, whenever the issue is referred to Constitutional Court, it evaluates the constitutionality of legislative initiative post factum. However, there is essentially no body to give such assessment prior to adoption.

Why Latvia needs such body? Many countries have similar national councils with different mandates. But why would Latvia need such a council? Looking at our political culture, we can see that we have small and rather unstable political parties. At least some of the parties are not really stable, with no long-term political agenda and thus also incapable of developing long-term political doctrine. I think that such an advisory body would be very helpful and make the work of parliamentarians a lot easier. It would make MPs' choice between the best, better, good and poor proposal a lot easier. And all of these proposals would still fit constitutional principles.

Let me give you some examples. For example, the bailout of Parex bank which cost around a billion of euro to our taxpayers. This decision was legitimate and constitutional. And legal services that assured that it is legal made no mistake there. But, was it good, or right? There was no such in-depth analysis, of course, because nobody was tasked with it. Feed-in tariff scheme is perfectly constitutional, but is it the best possible way? There is no such legal or political assessment because no body has been delegated to produce one. That has, of course, cost us hundreds of millions of euro because no one has undertaken analysis and suggested the best scenario. What I am saying is that National Council would be tasked with such analysis and would be expected only to give its arguments and informed opinion. Opinion which would be based on thorough legal, national sustainability analysis free from any political vision of coalition. National Council would operate independently – independently assess sustainability implications, interpret the principles impartially, develop and assess them. Democratic and legitimate parliament would then have to take the decision based on such opinion. National Council cannot, should not and would not make these decisions on its behalf. Decision would still be with Saeima and MPs once they have debated the opinion of National Council. So, we are missing such analysis and it is an institutional gap in our system.

Let me also raise another issue. Our institutional framework that is based on Satversme is a classical parliamentary democracy. It began evolving in late 19th century and in early 20th century had matured into a fully-fledged parliamentary republic. Whereas, compared to a century ago, modern parliamentary democracy has become a lot more complex. Our institutional system should keep up with constantly growing complexity of social processes. There is never going to be no more room for improvement. It is a constant evolution. We cannot govern and develop our complex and modern society with simple institutional framework designed for a local government with population of 5 000 people. Complexity of modern Latvian society is the same as in bigger countries with 50 million population. No one should say, 'Well, we are a small country, we do not need more than 100 articles.' Latvia has the population of almost 2 million people and our Civil Law has 1 500 articles. To have highly developed legal framework, we have to invest as much as France whose law, if I am not mistaken, has roughly the same or even slightly bigger number of articles. As a small country, Latvia, of course, has to proportionally invest more of its government capacity and resources into good governance. And when it comes to quality, I should admit that, without going in too much detail, our legislative process is rather weak. I am not saying that many of our laws contradict Satversme and end up in Constitutional Court. What I am saying is that in terms of quality, characteristics or content process is rather weak.

That is why we need such body. It will not replace the existing departments and support units of the government departments. We will still need them. We just have to make them stronger to ensure that initiatives coming from the Cabinet of Ministers are constructive enough. Once we have determined that there is such a gap in our national institutional framework, we can address it and make sure we have better law-making process that benefits the interests of our society.

I will not speak here about the composition or setting up of the National Council. I suppose that it should broadly mirror the

Constitutional Court. Constitutional court is composed of 7 justices, seven advisers and their aides. Similar staff should be involved in legal analysis as well. They would analyse the amendments to Satversme, laws that are connected to core principles of constitution. As I already mentioned, core principles of Satversme are a legal and political concept. They would evaluate new legislative proposals and identify areas that need to be legislated. For example, one of the current big priorities is Public Media Governance Law. It is a new law. Latvia has never had a special law regulating this area. This law should automatically be analysed by National Council, as is the case with other important changes in the existing legislation. We, of course, need to establish what is important. What needs to be regulated. Moreover, on top of being requested to give opinion on specific issues to Saeima or Cabinet of Ministers, National Council should also be allowed to give its opinion and assessment of particular initiatives proactively. That would, let us say, make it a sort of a 'one-stop shop' in terms of analytics.

I do not think we should be discussing nomination and composition of the council today. We have to agree on the basics first. I suppose that like Constitutional Court judges the members of the Council should be elected for 10 years and nominated by various bodies. However, that, as I already mentioned, is something that we should address later.

What is more important right now is that we agree and decide that, as a modern, progressive, democratic country governed by law, we, Latvia, are ready to fill this institutional gap. And I know what pros and cons will be mentioned. Why? Because, back in 1992, when I was among those experts who drafted the Constitutional Court Law, we heard all the same objections that we hear today, almost 30 years later. 'We have never had such body.' 'Where are we going to find competent judges?' 'What about the funding we need?' If we would claim today that we should close the Constitutional Court because we have never had one before and the judges are probably not the most competent, and it is too expensive, and we, of course, have not heard such claims, and even if there would be someone claiming that, everyone would just laugh. I think that this is the same case and it reminds me of a debate that we had from 1992-1996 when we were thinking about the establishing of the Constitutional Court. And today we are debating whether Latvia, a modern and progressive country, needs a National Council. But I still hope that the outcome will be the same as back then.

Thank you for your attention!



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