

PEOPLE'S SELECTIVE SOVEREIGNTY WHOLES IN THE LATVIAN CONSTITUTIONALISM

Vlad Mihail GHINEA¹

Abstract. *The situation of non-citizens within the Latvian state is a sensitive point in the country's legal system. The legal framework formed around it dictates the inability of the constitutional system to reach all the inhabitants of the Latvian territory. As justification, a community that at one time numbered a third of the entire population of Latvia is classified as neither citizens nor foreigners. Latvia finds itself in a situation where a significant proportion of its population has all the obligations characteristic of citizens, but not all their rights. The situation in Latvia and the answer to the idea "is the Russian minority part of the Latvian people?" is found in the study of the early history of the Latvian state. The present study raises questions both regarding the sovereignty of the people within a democratic state, and regarding the role of Latvia's internal situation for the political future of Europe.*

Keywords: constitutionalism, non-citizens, Russophones, minority rights, sovereignty.

DOI 10.56082/annalsarsciphil.2024.1.27

I. Introduction

In modern constitutional law, one of the most important talking points are its reports. In the continental system, one of the most important legal subjects is neither the state nor its institutions, but the people.

The term "people" can be defined in a multitude of ways, and most of the time these definitions are not entirely equivalent to each other. A people can, at different times, be associated with a "nation", "nationality", sometimes even with an "ethnicity", but most of the time the similarity between these terms and others is determined by the paradigm built by the fundamental law of the state in particular. In a generic way, by "people" is meant the mass of citizens, in other words, those who have legal relations with the state in question.

However, the 20th decade of the 21st century brought with it certain events that should raise new discussions regarding the way a state regulates its relations with the various communities on its territory. Whether we are talking about mass migrations, or about the recent successes of far-right parties in many European states, the decade in which we live seems to be under the sign of personal identity more than those that preceded it, an identity that requires having a well-defined relationship with the state.

¹ Bachelor student, Faculty of Law, Bucharest Academy of Economic Studies; Faculty of History, University of Bucharest

In the European Union there are various ways in which a state can interact with its ethnic minorities. Romania, for example, is one of the states with the best representation of national minorities, even regarding the numerically insignificant ones. However, other states not only do not have a treatment as effective as that of Romania, but they even have one that can involve controversies in the field of international law.

The Baltic states, the Republics of Estonia, Latvia and Lithuania, represented, especially since 2022, one of the dioceses of the Union that captured the greatest attention. This fact was also shared in the case of the North Atlantic Treaty Organization, and is due to the extremely vulnerable position they have from a strategic and military point of view. The tense situation of the Baltic states is only made worse by their large ethnic Russian population. In Estonia and Latvia, Russians represent the second largest ethnic group (representing 23.6% and 23.7% of the populations of the two countries, respectively). In Lithuania, they are the third largest ethnic group (5.02%). The large population of Russian minorities could represent a future danger for the two states, given Moscow's rhetoric regarding the role of the Russian Federation to protect Russians, whether inside or outside its borders.

II. Brief history of the situation

In the present study, a historical research is necessary, in order to understand the relationship between the Republic of Latvia and its Russian population, both from a cultural and legal point of view.

Before independence, Latvia was part of the Russian Empire.² Most of the territories that represent Latvia today were divided between two governorates: Livonia and Courland. According to the census data of 1897, Livonia had a population of almost 1,300,000, of which 43.4% of the population were Latvians, and 5.24% were Russians. In Livonia, Latvians represented 43.4% and Russians 3.8%. At the time of Latvia's independence, therefore, the Russian population was a minority, representing a small ethnic group. Apart from the two Latvian-dominated governorates, Latgalia, populated mostly by a combination of Latvians and Latgalians (a minor ethnic group, close to the Latvians), was part of the Vitebsk Governorate. This, unlike the other two, was dominated by Slavs: out of a population of 1.67 million, 53% were Belarusians, 17.7% Latvians and 13.3% Russians. Almost all Latvians were concentrated in Latgalia, the west of the province.

In the middle of 1917, Latvia will declare its independence within the Russian state. Soon, Riga will be occupied by the Germans, which will lead to the combination of a series of Latvian committees and parties, which will meet in

² A. Bilmanis; *A history of Latvia*, Princeton University Press, Princeton, 1951, p. 285

Valka to declare Latvian independence and the formation of a representative parliament. The Provisional Latvian National Council will be formed, whose first major task was the creation of a constituent assembly. It should be noted that all PLNC members were ethnic Latvians. The new constitution was to be drawn up on the basis of the equal representation of all four provinces of Latvia (Semigalia, Courland, Livonia and Latgale). The problem of Latgale will be mentioned in one of the decisions of the PLNC, which will declare the annexation of some regions mostly populated by Russians, their fate being later clarified by the constituent assembly, calling for a plebiscite. In other words, the Slavs of Latgale had no choice, being now, from the point of view of the Valka council, part of the Latvian state entity.

It should be noted that during the same period, the Germans in Latvia were trying to obtain annexation into the German Empire. A diet dominated by Germans will be formed in Mitau (present-day Jēgļava) who will "beg" Emperor Wilhelm to become Duke of Courland.³ It is a representative fact to express the fact that not all ethnic minority groups seem to have supported the cause of the Latvians for self-determination.

Due to the events of the war, the CPNL will manage to leave the Russian Empire and take refuge abroad, especially in London, where it will enjoy *de facto* recognition from the government of the United Kingdom of Great Britain and Ireland.

At the end of 1918, the Latvian People's Council was formed. It will speed up the process of obtaining independence, declaring a President, Vice-President and Prime Minister of the Republic of Latvia on November 17, 1918.⁴ Out of the total of 252 members of the CPL, 189 were Latvians, 26 Germans, 18 Jews, 7 Latvians, 6 Russians, 4 Poles and two Lithuanians. This scheme of representation is a remarkable one, indicating that the Republic of Latvia, even if the provisional legislative-executive force was formed in the absence of a constitutional law, was formed on democratic principles, which include proportional representation of the population. In other words, the spirit of the Latvian law includes the proportional representation of all populations on its territory.

On January 30, 1918, the LPC will declare the independence of Latvia. This was to be formed "within its ethnographic limits", defined by self-government, independence, democratic republicanism.⁵ Through these aspects, one can observe the relationship that the Latvian state assumed towards the non-Latvian and non-Latgal populations of its framework – the Republic is one constituted and defined around the Latvian and Latgale populations, but through its democratic and inclusive character, minorities are also welcomed. One of the named missions of

³ Bilmanis, *op. cit.*; p. 296

⁴ Bilmanis, *op. cit.*; p. 307

⁵ Bilmanis, *op. cit.*; p. 308

the Constituent Assembly was precisely the emergence of national minorities and the inclusion of measures in the Constitution to protect them and integrate them into Latvian political life. The recognition of the Riga government in November of the same year will be followed by serious measures to Latvianise the new republic. Laws will be passed to impose the Latvian language in public institutions and schools, most of the time at the expense of both Russian and German.

The German population will really feel attacked by these measures - while the Latvians will see them as justifiable attempts to introduce a Latvian feeling within a Latvian state, the Germans will see it as an attack on their identity.

The Latvians will face hostility from the Germans, who will use their influence to pressure the Baltics into submission. With the support of the Allies, the Estonian and Polish armies, the Latvians will be able to expel the Bolsheviks from their territory, and to force the Germans to give up their territorial claims.⁶

The War of Independence of Latvia will be completed by a victory of the separatist forces, the Republic of Latvia being secured by the signing of a peace treaty with the communists, on August 11, 1920, in Riga. The Constitution of Latvia will finally be adopted on February 15, 1922.⁷ Latvia will mark itself in interwar Europe as a model of democracy, offering significant rights to citizens, especially in terms of participation in political life. However, Latvia will fall prey to the authoritarian current that will take over Europe in the 1930s. One of the reasons why the Latvian population will be open to the authoritarianism of the fascist model will be precisely the possibility of ethnic minorities to participate in political life with such great freedom, given that most of the time, following their interests, they contributed to the political impact in which the republic found itself. Following the Molotov-Ribbentrop Pact, Latvia's independence will be interrupted, and it will rejoin a Russian state.

This description of the formation of the Latvian state was necessary to indicate two vital aspects: first, the multi-ethnic character of the new republic, this being present through the support given to the cause of the national minorities in Latvia. Thus, minorities are protected by the spirit of Latvian law, since the birth of the Latvian state. Secondly, the history of the formation of the Latvian state shows the conflict fought by ethnic Latvians and Germans, relevant information for later.

III. Constitutional provisions

A constitution is, above all, the foundation of a state and a legal system. This does not only include legal provisions, but represents a mirror of the respective state from a historical, political, national, cultural, or other "extra-legal"

⁶ Bilmanis, *op. cit.*; pp. 328-329

⁷ Bilmanis, *op. cit.*; p. 336

point of view. As a main consequence, each constitution represents an important symbol of the national characteristics of the state in question.⁸

In specialized literature, a distinction has been made over time between a constitutional state and constitutionalism.⁹ The first term refers exclusively to the existence of a state that, in one form or another, is based on a fundamental law. A constitution must, however, be more than a simple law that people are required to obey. This requires representing the very manifestation of all the characteristics that make a state unique, from all points of view. The very principle of the supremacy of the constitution represents a basic element of constitutionalism.¹⁰ According to Latvian jurists, any non-democratic, illiberal, ineffective, symbolic or nominal constitution is not capable of ensuring the propagation of the constitutional spirit. This creed is based on the theory of constitutional law formulated by jurists such as Hans Kelsen. The great Austrian jurist will compare the nature of a fundamental law as an *instrumentum probationis* and the religious norms of an organized religion. According to him, by His will God created all forms of authority in the state. Similarly, Kelsen believes that someone must be the author of a legal system, and that that person (or persons) has the necessary aptitude to create a constitution based on it.¹¹ In most democratic systems that "person" is the people. From this point of view, any fundamental law which does not ensure the people's political rights, which does not ensure their right to be able to act on their own with the aim of obtaining their own social mobility according to their own merit, or which it is not effective in its purposes, cannot be considered a representative law for the constitutional spirit.

From this point of view, a criticism that can be brought to the communist constitutions of Latvia considers their lack of validity. Although their message implied the popular will, the events that took place at the beginning of the communist period proved that at least they were not effective in imposing the popular will, and at most they did not have the support of the people from the very beginning. It is certain that, from the point of view of the Latvian people, the legal actions carried out during the communist period can be considered invalid, given that the fundamental law through which the legal system of the Latvian SSR was manifested had nothing to do with the will of the people.

The constitutional text is the starting point in the attempt to find the constitutional norm.¹² However, in addition to the fundamental law that we know as the "Constitution" of the Republic of Latvia, the Constitutional Court of Latvia

⁸ J. Pleps, E. Pastars, I. Plakane, *Constitutional law*, translation from Latvian by I. Bekere, Latvijas Vestnesis, Riga, 2022 pp. 23-24

⁹ Pleps et al, op. cit.; p. 25

¹⁰ Pleps et al, op. cit.; p. 35

¹¹ H. Kelsen; *Introduction to the problems of legal theory*, Clarendon Press, Oxford, 2002, p. 59

¹² Pleps et al, op. cit.; p. 56

confirmed the equality between it and several other documents:¹³ The Act of Proclamation of the Republic of Latvia of November 18, 1918, the Declaration of the State of Latvia of May 27, 1920, the Declaration "On the Restoration of the Independence of the Republic of Latvia" of August 21, 1991, the Constitutional Law of August 21, 1991.

Also, in the Latvian legal concept, the concept of "formal constitution" is representative. Usually, the term "formal constitution", especially in the Romanian legal language, refers to "the legal act relative to political institutions, a category whose elaboration and modification often follow particular rules, distinct from those in use for the adoption of ordinary laws".¹⁴ This fact takes into account the superior character of the authority of the constitutional norms, in the sense that they are the ones that refer directly to the constitutional framework of the state. However, from the perspective of the Latvian legislator, the constitutional norms themselves need to be in accordance with certain norms superior to them, namely, the norms of law in general, and the democratic norms that are the basis of the formation of a state governed by law, in particular.¹⁵ Considering this concept, we can observe the equality between the constitutional norms and the main norms of the law (equality, equity, justice, etc.),¹⁶ a fact that allows putting on the same level with regard to the state authority of several legal acts with constitutional value at the same time.

In the case of Latvia, it can be observed that these acts with constitutional value are fundamentally related to the independent status of Latvia. Moreover, they have the role of reinforcing the fact that, from the point of view of the Seimas, the Constitution, and the Latvian state as a legal entity, in the period 1940-1991 there was a legal parallelism, in the sense that *de facto*, the Republic of Latvia ceased to exist, instead being replaced by the Latvian SSR, but *de jure*, it continued to exist, the Constitution continued to be valid, and most, if not all of the actions undertaken by the LSSR during this period were illegal. This fact may also refer to the immigration to the LRSS during the communist period. It should be noted that this lifting of certain legal acts essential for the simple existence of the state and its legal framework may also involve relevant discussions regarding the nature and the supposed necessity of codification in the legal field,¹⁷ a phenomenon that underlies the emergence of constitutional law as a notion in itself.¹⁸

¹³ Pleps et al, op. cit.; p. 28

¹⁴ M. Bădescu; Teoria generală a dreptului; Curs universitar, Editura Hamangiu, București, 2022, p. 14

¹⁵ Pleps et al, op. cit.; p. 41

¹⁶ Bădescu, 2022, op. cit.; p. 81

¹⁷ Pleps et al, op. cit.; p. 29

¹⁸ M. Bădescu; Drept constituțional și instituții politice; Curs universitar, editura Hamangiu, București, 2023, p. 1

The very act of creating a constitution is the result of an order given by the people, through state institutions. Thus, the Constitutional Court of Latvia declared that the entire legal system of Latvia is based on its status as an independent democratic state, along with the basic principles of a democratic government.¹⁹ From this decision it can be understood that the inclusion of national minorities in the process of governance is a fact that belongs to the very nature of Latvian law, any measure that does not respect their equal rights not respecting, at the same time, the spirit of Latvian law. However, from the same syllogism it can be deduced that any illegal occupation of the Latvian state represents incompatibilities with Latvian law. From this point of view, the Latvian SSR, by its mere existence, represented an incompatibility with Latvian law, given that it did not respect the concept of an independent and democratic state of the Republic of Latvia.

First of all, in our analysis it is necessary to research the preamble, given that the fundamental legal act of the Republic is a unitary whole and that all the norms written in it are closely interconnected.²⁰ Therefore, the preamble begins with the assurance that the present fundamental law has been adopted by the Latvian people through the Constituent Assembly.²¹ By emphasizing this fact, it is ensured that it derives from the will of all the citizens of the Republic of Latvia, a vital fact both for the legitimacy of democracy and of a republic. The Constituent Assembly, named by the National Council of Latvia, was a body that will welcome members of all significant minorities on the territory of Latvia. Over time, it had 166 members, of which 136 were Latvians, 10 Jews, 9 Latvians, 7 Germans, and 4 Russians. The minorities did not have as significant a proportion as in the case of the NCL, but their involvement remained a welcome one. Therefore, although the preamble mentions exclusively the "Latvian people", it must be understood as also assimilating the minorities, regardless of their ethnicity.

In theory, there is nothing in the Constitution that indicates any form of discrimination. Respecting the usual norms of European constitutionalism, all rights are granted to those who possess the citizenship of the republic, such as the right to be elected to the Parliament.²² The constitutional rights of Latvian citizens are present in Chapter VIII of the Constitution. This article did not exist in the interwar period, being added following the return to force of the Constitution following independence from the Soviet Union. Within it several rights can be mentioned, such as equality before the courts (art. 91 (1)), the guarantee of rights without discrimination (art. 91 (2)), the impossibility of extraditing a Latvian

¹⁹ Peps et al, op. cit.; pp. 30-32

²⁰ Peps et al, op. cit.; p. 64

²¹ Constitution of the Republic of Latvia, Preamble

²² Constitution of the Republic of Latvia, Article 9

citizen (art. 98), etc. Of interest is article 116, which regulates the situations in which fundamental rights can be subject to restrictions, namely only in the situations provided by law and in order to protect the rights of other people, the democratic structure of the state, public safety, well-being and morality public. It is not rare that a constitution or a law in general has the possibility to limit to a certain level the rights that a person could have. However, Article 116 can represent a relevant ground regarding the removal of the fundamental rights of some citizens from others. We cannot accuse Latvia of abuses, but the comparison of these restrictions with those imposed on non-citizen minorities and, after 2022, on Russian speakers in general, is one that needs to be done.

It is necessary to add some details regarding the principle of the sovereignty of the people. This, very important in terms of constitutional law, refers to the possibility of citizens to deliberately and unrestrictedly determine the way in which the state is organized and in which it acts.²³ According to Jean-Jacques Rousseau, the principle of the sovereignty of the people refers to the totality of the inhabitants of a certain territory, in this case, of the state. Also, according to him, sovereignty of the people is indivisible, inalienable and non-transferable.

Also, another relevant principle in terms of constitutional law is that of local government. According to the specialized literature, this principle has the role of satisfying the need for a deconcentrated local leadership that knows the local issues as well as possible, by involving the citizens of the region in question in the local government.²⁴

IV. Legal framework

The most significant law is the one of April 12, 1995, *"On the status of those former citizens of the USSR who do not have the citizenship of Latvia or another state"*. The law refers to former citizens of the USSR and their children who met several conditions, namely if they already lived in Latvia before April 1, 1992 for more than 10 years and did not have the citizenship of Latvia or another state.²⁵ This legislation affected almost a third of the entire population of Latvia, especially Russophones. Among the rights and obligations mentioned to non-citizens, those "specified in the Constitution of the Republic of Latvia" take precedence.²⁶ The non-mention of this social class in the Constitution implies that non-citizens have the same rights and obligations as citizens. In addition to

²³ Pleps et al, op. cit.; p. 96

²⁴ Pleps et al, op. cit.; p. 127

²⁵ Saeima of the Republic of Latvia, Law of 12th of April 1995 "On the status of those former citizens of the USSR which do not have the citizenship of Latvia or of another state", section 1, article (3)

²⁶ Law of 12th of April 1995, section 2, paragraph (1)

constitutional rights and obligations, non-citizens also have specific ones,²⁷ namely to preserve their native language and culture within their ethno-cultural "autonomy" and not to be expelled from Latvia. The status of non-citizen, according to section 5, can be abolished by renouncing it, revoking it, or obtaining citizenship through the provisions of the citizenship law. The renunciation of the non-citizen status is done at the moment when the person in question obtained the citizenship of another state. The revocation is made if the person in question does not comply with the aforementioned provisions.

Analyzing the legal information regarding non-citizens, we can therefore observe that they do not have many limitations, at least not within this normative legal act. A non-citizen has more rights than a simple stateless person. They have the right to be part of political parties,²⁸ and they have the right to finance political parties.²⁹

Within the Latvian state, however, it is important to understand the importance of the Latvian language. The Latvian people can only express their will through it. In the law of December 9, 1999, the "*Law on the Official Language*", adopted precisely in the context of the fact that almost a third of the population belongs to the status of non-citizens, it is desired to facilitate the spread of the Latvian language and the integration of non-citizens.³⁰ The purpose of the law is to protect and propagate Latvian in local government institutions, in courts, in schools, etc.³¹ The law prescribes the state's obligation to protect and support the development of the Latgale language, a "historical variant of the Latvian language". It also prescribes the same obligations in the case of the Livonian language, a language that was extinct for a period of time. The law directly states that "any language used in the Republic of Latvia, with the exception of Livonian, shall be regarded (...) as a foreign language". Within the Latvian state we can observe, therefore, from a legal point of view, a hierarchy in the protection of languages. Therefore, the Russian-speaking minorities are caught in a trap: although they have largely the same civil rights as Latvian citizens, those who have the status of non-citizens do not have the possibility to have certain jobs, to vote or, to learn in their own mother tongue.

A complete list of all rights denied to non-citizens can be found in an article published by the Human Rights Committee of Latvia in 2013. It lists 80 rights that

²⁷ Law of 12th of April 1995, section II, article (2)

²⁸ Saeima of the Republic of Latvia, Law of 22nd of June 2007 "*Law of political parties*", chapter IV, article 26, paragraph 1)

²⁹ Saeima of the Republic of Latvia, Law of 19th of July 1995 "*Law on the finance of political organizations (parties)*", article 4, paragraph 1), point (2)

³⁰ Saeima of the Republic of Latvia, Law of 9th of December 1999 "*Law of the official language*", section I, paragraphs 4)-5)

³¹ Law of 9th of December 1999, section II, paragraph (1)

are denied to non-citizens, most of which relate to the field of political rights.³² To mention only a few of these, non-citizens do not have the right to be judges, they cannot be policemen, they cannot participate in the Seimas elections, in municipal elections, to vote in referendums, they cannot found political parties, etc.³³ Despite enjoying full protection within the Latvian state of all civil rights that citizens have, non-citizens do not enjoy political rights and many other rights related to professional career.

Finally, the Law of 22 July 1994, the "*Citizenship Law*", mentions non-citizens in a relevant way only in a 2013 amendment. According to this latest amendment, among certain criteria, children of non-citizens acquire Latvian citizenship at birth, thus putting an end to the community of non-citizens (in other words, non-citizens cannot be born any further, the community will, at some point, disappear entirely, either by adopting Latvian citizenship or by aging and death).³⁴ Otherwise, non-citizens are not directly mentioned even in the initial section of the law, which defines relevant terms in the law, as well as "stateless person". In the same spirit, we mention that most of the laws offered above do not directly mention non-citizens, and their lack of rights within some laws. Instead, most laws prefer to indicate as a strict criterion for obtaining certain possibilities the status of citizen, a fact that isolates non-citizens in a gray area, where they are neither citizens nor stateless.

V. Relevant ECHR cases

Of all the ECHR cases involving non-citizens, the most important recent one is *Valiullina and others v. Latvia*, case 56928/19. This is significant in the context of conflicts between non-citizens and the Latvian state, as it presents in detail the entire situation regarding the education reforms introduced in 2018.³⁵ The applicants represent children and their mothers, all of Russian ethnicity. One of the three applicant families is made up entirely of non-citizens, and in the case of the third family, the mother is herself a non-citizen.

The decision presents statistical data regarding migration in the Latvian SSR, during the communist period. It should be noted that the people who came to Latvia during this time are called "migrants", as they were not associated in any way with a policy of colonization of Latvia by the Soviet Union. Later in the same paragraph, however, the USSR is mentioned as the "orchestrating power of colonization", a fact that is not proven by the internal politics of the USSR. The

³² Latvian committee for Human Rights, *Latvijas pilsoņu un nepilsoņu tiesību atšķirību saraksts*, Riga, 2013, pp. 36-42

³³ LCHO, p. 38

³⁴ Saeima of the Republic of Latvia, Law of 22nd of July 1994 "Law of citizenship", chapter 1, section 3

³⁵ CEDO case nr. 56928/19, *Valiullina and others v. Latvia*, Introduction, paragraph 1.

case presents the gradual policy changes regarding the language of instruction in schools. The transition regarding the change in the proportions between the two languages took place between September 1, 2019 and September 1, 2021. The measures were applicable to all types of schools, private or state.³⁶ On September 29, 2022, the law was amended again, specifying that the entire education pre-school and primary school must be conducted in Latvian, the classes intended to facilitate the preservation of the language and the national identity of the minorities being transferred to the field of extracurricular activities.

In this case, the most significant fact is the position of the Constitutional Court of Latvia regarding the importance of the Latvian language, but also the reactions of certain international organizations. CCL believes that the Latvian language is a fundamental condition for the formation of a democratic state within the Latvia. According to it, the measures regarding the Latvianisation of education in Latvia were primarily caused by the spread of the Russian language within the republic, a self-sustainable language which can be used in everyday life in Latvia without knowing the state language. This situation led to the state actions having as goal the facilitation of the integration of the Russian population into the Latvian one, in order to be able to avoid any dual-state situations, which could result in the undermining of the state. The justification brought by the state for the adoption of this law is also represented by the need to integrate minorities into the everyday life of Latvian society, a fact that cannot take place without ensuring the knowledge of Latvian. This fact is reinforced by the statement of the OSCE High Commissioner for National Minorities, according to which knowledge of the mother tongue is essential for the personal development of a citizen, but knowledge of the national language is equally important for his integration into the state. The High Commissioner reinforces the right of all persons from national minorities to establish their own educational institutions in accordance with national law.

Among the relevant treaties signed by Latvia is the Framework Convention for the Protection of National Minorities, considered the broadest and most developed convention on this subject. However, since this does not define what a "national minority" is, over time different opinions have emerged regarding the definition of the term. At the time of signing the convention, the Republic of Latvia made a statement defining national minorities as representing "citizens of Latvia who differ from Latvians in terms of culture, religion and language, who have traditionally lived in Latvia for generations and who consider themselves to be part of the Latvian state and society". The same document later mentions that "A person who is not a citizen of Latvia but who has a permanent and legal residence on the territory of Latvia, who is not part of a national minority (...) as it

³⁶ *Valiullina and others v. Latvia*, The Facts, partea B, II, b)

is defined in this declaration, but who identifies with a national minority that conforms to the definition present in this declaration will enjoy the rights mentioned in the Framework Convention, unless specific exceptions are prescribed by law". Having said that, for a non-citizen to be able to join his co-nationals who are recognized as national minorities, he first needs to get rid of his status.

On March 3, 2021, the Committee of Ministers of the European Parliament issued a document evaluating Latvia's compliance with the provisions set out in the Framework Convention. According to it, Latvia complies in an exemplary manner, except that compliance with the provisions is limited to citizens only. The Committee will make a recommendation for continuation of teaching and learning in the mother tongue. The Venice Commission considers imposing the Latvian language to be justified on the basis of the legacy of a segregated school system between Latvian speakers and non-speakers of Latvian from the Latvian SSR.

As for the issue of the status of non-citizens, this is best put by the European Commission for Combating Racism and Intolerance, which states that, given that many ethnic Russians are Latvian citizens, and that many non-citizens are ethnic non-Russians, there is no identification between the political status and the ethnic-linguistic one. However, this measure disproportionately hit Russian speakers, with representatives of the Russian community in Latvia accusing the state of not consulting them in the formulation of the new law.

VI. The future of the situation, consequences and reflections

The example of the Russians in Latvia is relevant regarding the issue of the sovereignty of a nation within a state, what it really means to be part of a people, but also how the law, although by its nature, just, can be used to create divisions within the state.

To answer whether or not the Russians are part of the Latvian people I decided to appeal to the historical argument, proving the role that the Russian minority had in the birth of the Latvian state. Since the current Latvian Republic claims to be one and the same with the interwar one, the role of the Russians since the end of the First World War is more relevant than that of the end of the Cold War in terms of the view that the constitutional force had in mind at the time of its establishment the Constitution. The Russians themselves had an impact on the primary constituent authority, given that some of its members were representatives of the Russian minority. We tend to take for granted the gesture of offering minorities the right to be part of the constituent assembly, but this fact signifies the acceptance by Latvians (and Latgians) of minorities within the state, assimilating them to the people by offering them all civil and political rights protected by the Constitution to which they also contributed. Having said that, the short answer to the question is "yes". Although the state is called "Latvia", and

from all points of view it is meant to be a Latvian republic, it welcomes and integrates the minorities into its ranks. After all, this is precisely what equality offered to minorities is all about: giving them a chance to participate in the political and social life of the state the same way that the dominant nation does.

However, the main counter-argument that has been brought to this line of thinking is related to the fact that the Russians of now are not the Russians of then. Not all the Russians who existed in Latvia at the time of the establishment of communism are those who are currently in Latvia. I could not, however, find a study that indicates whether all the descendants of Russians who had nationality from the beginning received Latvian nationality after the fall of communism.

However, this very argument is a problematic one, which does not fully reflect reality. First of all, the idea that the population that came in addition can be so easily described by the umbrella term of "Russians" does not reflect the reality of the situation. Thus, even if most of those who came to Latvia during the communist period self-identified as Russian, this fact does not fully reflect their ethnic composition. This phenomenon can be explained by cultural and social factors that remain in many parts of the Soviet Union to this day, but also by the status of Russian as a lingua franca in the former Soviet space. From this point of view, a false alternative of "us vs. them" is created. Russian in the Latvian space is seen by the minorities who use it as their primary language as a factor that represents a way by which they can interact and understand each other, sometimes even within families.

Secondly, the somewhat duplicitous aspect of this measure should be noted. As I mentioned before, the situation in which Latvia found itself at the time of the fall of communism is not very different compared to the situation in which it found itself at the time of independence from the Russian Empire. From an ethnic point of view, the difference was represented by the replacement of the dominant ethnic group in the Soviet Union, the Russians, with the Germans, who, although representing a relatively small minority, their influence was comparable. In both cases, the ethnic group in question migrated to the region when it was controlled by a state in which it was dominant, and both people imposed their own language. Having said that, it can be considered that if the migration of Soviet citizens to Latvia, coming from completely different ethnic groups and geographical areas, united only by the Russian language, represents the Soviet Union's attempt to "Russify" the area, then the migration of ethnic Germans, coming in many waves and from various areas of the German space, represented the "Germanization" of the Baltics. Measures as harsh as those against the Russian language are not imposed against the German language. Germans are not seen as settlers, but as one of Latvia's national minorities. Obviously, it is not appropriate to deprive the Germans in Latvia, who still remained in very small numbers, of the rights such as

the one to vote, however the possibility of making a comparison remains on the table.

Above I defined constitutionalism as the possibility of a constitution to be applied equally, fairly, to all citizens. The Constitution of Latvia, according to the principle of the sovereignty of the people, can be considered as undemocratic, given the fact that at one time almost a third of the population did not have the right to vote, and therefore could not participate in the democratic life of the state. Given the extremely high percentage of people deprived of the right to vote, this argument of the foreigners who came during the communist period needs to be looked at from another perspective, not just from the national one. The Constitution of Latvia refers exclusively to citizens, non-citizens not being mentioned once in the entire act. This can be justified by legal pragmatism, as non-citizens did not exist at the time of the creation of the Constitution. However, a constitution needs to refer to the contemporary social reality.³⁷ Precisely for this reason, the absence of non-citizens from among the Constitution could call into question the manner in which it is applied to them, especially regarding articles such as 98 or 116.

As already mentioned before, the legal situation in Latvia violates the principle of the sovereignty of the people and that of local government, given that within the state there is a significant proportion of the population that does not have the right to participate in democratic life, nor the possibility to participate in local government. Above we mentioned how these aspects can be flawed in relation to the actual Constitution, but at the same time we could think that, given that the situation of non-citizens is regulated by a lot of laws, we could accuse said laws of unconstitutionality, or of disrespecting the constitutional spirit.

The justifications given by the Latvian state cannot be omitted. Both international organizations and the spirit of *realpolitik* make us understand that asking minorities to learn the national language and integrate within the state is, indeed, a justifiable goal and a right of the state. However, the controversy lies in the third-party status that non-citizens have, being neither citizens nor foreigners, but somewhere in between, having all the obligations of national minorities, but not having all the rights. The message from certain Latvian officials is simple: if they want to become citizens, the process is simple.³⁸ However, a large number of non-citizens still chose not to follow it. Certainly, this is caused by certain social tensions among the Russian-speaking communities, fact which is not helped by the antagonism they feel from the Latvian state.³⁹ The non-citizens feel

³⁷ Bădescu, 2023, op. cit.; p. 25

³⁸ K. Jocechova; *In the Baltics, the stateless who can't vote in the EU election*, 8 iunie 2024, available at <https://www.politico.eu/article/baltic-aliens-eu-election-vote-european-parliament-slogan-unhcr-data-estonia-latvia-stats/>, retrieved on 8th of August 2024.

³⁹ Jocechova, op. cit.

marginalized and disappointed by the attitude of the state, fact which cannot be denied, when political parties formed around the interests of the Russian minority (non-citizens and citizens) are rejected and surrounded by a *cordon sanitaire*, due to the fact that they "would try to bring Latvia into Russia's sphere of influence".⁴⁰ The political marginalization of such a group will only lead to the creation of the impression that the Latvian political system is unfair, one created especially with the aim of putting the Russians at a disadvantage.

Finally, to support this last thesis, we cannot help but see the system of non-citizens from the point of view of the historical-political context in which it was adopted. When the USSR collapsed there was a huge exodus of ethnic Russians from the former republics, towards the Russian Federation. In the case of the Baltic states, around 10-13% of the Russian population left for Russia.⁴¹ Such an interpretation should not be seen as an accusation against the Latvian state, but it would not be impossible to imagine that the desire of the Latvian legislator was to create the environment through which a large number of Russophones would leave. After all, Russia offered citizenship to all Russians which immigrated, and the Law of April 12, 1995 shows that one of the ways to get rid of the non-citizen status is obtaining a citizenship, not necessarily the Latvian one, the Russian one being also permissible. We can think that the Latvian legislator wanted to encourage Russophones to leave Latvia, which would not raise as many moral questions as questions related to the role that this status still has in the Latvian state, given that relatively few Russophones actually decided to leave.

VII. Conclusion

Latvia is a state whose history is fundamentally linked to the principle of minority tolerance and their integration into the Latvian state. Since the beginning of the Republic of Latvia, national minorities have been an important factor in the creation of the Latvian state.

In Latvia we have a phenomenon of selective sovereignty, given that at a certain moment a third of its population, which up to that moment enjoyed full rights, is suddenly categorized as outsiders, not being citizens either, but nor foreigners. This situation is a delicate one, given the current geopolitical context. The situation of Russian speakers in Latvia, therefore, raises significant moral questions related to the freedom of a state to manage its own people, but also who is part of that people.

⁴⁰ ECHR case nr. 42221/18, *Jdanoka vs Letonia* (*Ždanoka v. Latvia*), The Facts, part II, C, paragraph 19, 8-9

⁴¹ T. Heleniak; Migration of the Russian Diaspora After the Breakup of the Soviet Union, in Sangudi, G; Journal of International Affairs, volumul 57, New York, Columbia University Press, 2004, p. 106

BIBLIOGRAPHY

- [1] M. Bădescu, *Drept constituțional și instituții politice*; Curs universitar, Hamangiu, Bucharest 2023;
- [2] M. Bădescu, *Teoria generală a dreptului*; Curs universitar, Hamangiu, Bucharest, 2022;
- [3] A. Bilmanis, *A history of Latvia*, Princeton University Press, Princeton, 1951;
- [4] Latvian Committee for Human Rights, *Latvijas pilsoņu un nepilsoņu tiesību atšķirību saraksts*, Riga, 2013;
- [5] *Constitution of the Republic of Latvia*;
- [6] ECHR case nr. 42221/18, *Jdanoka vs Letonia* (*Ždanoka v. Latvia*);
- [7] ECHR case nr. 56928/19, *Valiullina și alții vs Letonia* (*Valiullina and others v. Latvia*);
- [8] T. Heleniak, *Migration of the Russian Diaspora After the Breakup of the Soviet Union*, in Sangudi, G; *Journal of International Affairs*, volumul 57, New York, Columbia University Press, 2004;
- [9] K. Jochecova, *In the Baltics, the stateless who can't vote in the EU election*, 8 iunie 2024, available at <https://www.politico.eu/article/baltic-aliens-eu-election-vote-european-parliament-slogan-unhcr-data-estonia-latvia-stats/>, retrieved on the 8th of August 2024;
- [10] H Kelsen, *Introduction to the problems of legal theory*, Clarendon Press, Oxford 2002;
- [11] J. Pleps, E. Pastars, I. Plakane, *Constitutional law*, traducerea din letonă de I. Bekere, Latvijas t Vestnesis, Riga, 2022;
- [12] Saeima of the Republic of Latvia, Law of 22nd of July 1994 “*Citizenship law*”;
- [13] Saeima of the Republic of Latvia, Law of 12th of April 1995 “*On the status of those former citizens of the USSR which do not have the citizenship of Latvia or that of any other state*”;
- [14] Saeima of the Republic of Latvia, Law of 19th of July 1995 “*Law of financing of political organisations (parties)*”;
- [15] Saeima of the Republic of Latvia, Law of 9th of December 1999 “*Law of state language*”;
- [16] Saeima of the Republic of Latvia, Law of 22nd of June 2007 “*Law of political parties*”.