



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

DISSENTING OPINION

of the Constitutional Court Justice Kristīne Krūma
in the Case No. 2007-10-0102

“On Compliance of the Law “On Authorisation to the Cabinet of Ministers to Sign the Draft Agreement between the Republic of Latvia and the Russian Federation on the State Border between Latvia and Russia Initialled on August 7, 1997” and the Words “Observing the Principle of Inviolability of Borders Adopted by the Organization of Security and Cooperation in Europe” of Article 1 of the Law “On the Republic of Latvia and the Russian Federation Treaty on the State Border of Latvia and Russia” with the Preamble and Article 9 of the Declaration of May 4, 1990 of The Supreme Council of the Republic of Latvia “On Restoration of Independence of the Republic of Latvia” and Compliance of the Treaty of March 27, 2007 of the Republic of Latvia and the Russian Federation of the State Border of Latvia and Russia with Article 3 of the Satversme of the Republic of Latvia”.

1. The applicants – twenty-one members of the Saeima (Parliament) – asked:

1) to recognize the Law On Authorization and words “observing the principle of inviolability of border established by the Organization of Security and Cooperation in Europe” of the Ratification Law as not being in compliance with the Preamble and Article 9 of the Declaration of May 4, 1990 of the Supreme Council of the Latvian Soviet Social Republic (Latvian SSR) “On Restoration of Independence of the Republic of Latvia” (hereinafter – the Declaration of Independence);

2) to recognize the Border Treaty and the Ratification Law as not being in compliance with Article 3 of the Satversme of the Republic of Latvia.

The Constitutional Court established in the case No. 2007-10-0102 (hereinafter – the Judgment) of November 29, 2007:

- 1) The authorization complies with the Preamble and Article 9 of the Declaration of Independence;
- 2) The Border Treaty complies with Article 3 of the Satversme (Constitution);
- 3) The Ratification Law complies with Article 3 of the Satversme;
- 4) The words “observing the principle of inviolability of border established by the Organization of Security and Cooperation in Europe” of the Ratification Law do not comply with the first part of Article 68 of the Satversme.

Unfortunately I cannot agree with several arguments mentioned and conclusions made in the Judgment.

2. When assessing the Declaration of Independence, the Court has concluded that Article 9 of the Declaration of Independence does not concern the entire Peace Treaty of August 11, 1920 between Latvia and Russia (hereinafter – the Peace Treaty), including Article 3 of this Treaty (*see: Para 66 of the Judgment*). In the view of the Constitutional Court, Article 9 of the Declaration of Independence only confirms the doctrine of continuity of the Republic of Latvia.

Based on such interpretation of Article 9 of the Declaration of Independence, the Constitutional Court has indirectly indicated that the Ratification Law complies with Article 9 of the Declaration of Independence, but the words “observing the principle of inviolability of border established by the Organization of Security and Cooperation in Europe” of the Ratification Law do not comply with Article 68 of the Satversme.

I neither agree with the argumentation included in the Judgment that Article 9 of the Declaration of Independence does not concern the entire 1920 Peace Treaty.

I hold that the reference to the 1920 Peace Treaty included in Article 9 of the Declaration of Independence is not restricted only by the fact that Russia has

recognized independence of Latvia. For justification of such conclusion, I can provide three arguments.

First of all, the interpretation by the Constitutional Court of Article 9 of the Declaration of Independence does not comply with the principle of State continuity.

Second, the interpretation by the Court does not comply with the consequent practice that Latvia has been observing before conclusion of the Border Treaty in relation to the domestic law, as well as international relations.

Third, this interpretation does not comply with the former practice and statements of Latvia regarding the Border Treaty.

3. Article 9 of the Declaration of Independence provides: “To develop relations between Latvia and the USSR in accordance with the Peace Treaty between Latvia and Russia of 11 August 1920, which is still in force and which recognizes the independence of Latvia for all time. To establish a Government Commission for conducting negotiations with the USSR.”

Whilst the Preamble of the Declaration of Independence explicitly includes the doctrine of continuity of Latvia, as well as a reference to international recognition of Latvia in 1920 and the military aggression by the USSR in 1940 and the subsequent occupation. It has been concluded in the Preamble of the Declaration of Independence that “incorporation of the Republic of Latvia into the USSR is invalid from the point of view of the international law and the Republic of Latvia *de jure* exists as a subject of international law, and it is recognized by more than 50 States of the world” (*see: Judgment of March 7, 2005 by the Constitutional Court in the case No. 2004-15-0106, Para 12*).

4. I agree to the conclusion of the Constitutional Court that, since the Preamble and Article 9 of the Declaration of Independence are effective norms of constitutional rank, the Constitutional Court is entitled to assess compliance of the contested laws with the provisions of the Declaration of Independence (*see: Para 62 of the Judgment*). I also agree to the conclusion of the Constitutional Court that the Preamble of the Declaration of Independence strengthens the doctrine of continuity of Latvia (*see: Para 64 of the Judgment*).

I also agree to the conclusions of the colleagues that it is not necessary to assess within the limits of the Judgment the political expediency and compliance of the Border Treaty and agreements made with the Russian Federation with the interests of Latvia (*see: Para 36.4 of the Judgment*). Although the question whether “signing and ratification of this Treaty comply with the interests of Latvia” is urgent, this is and may not be the object of the Judgment and this Dissenting Opinion. The Satversme does not confer the rights to the Constitutional Court to assess compliance of such decisions with the interests of the State. The Satversme only requires that each decision is made in accordance with the Satversme. Therefore the Constitutional Court may only investigate whether the Satversme has been observed in the case under review.

5. In order to find out the scope of Article 9 of the Satversme, the Constitutional Court widely quotes and analyzes the explanation provided by one of the authors of the Declaration of Independence, Egils Levits, on the content of Article 9 of the Declaration, namely: “Article 9 of the Declaration provides that relations of Latvia with the USSR are to be formed on the basis of the Peace Treaty of 1920. This Article, of course, is also related to the legal continuator of the USSR – Russia. This means - until this Article of the Declaration has been repealed, Latvia can form all treaty relations with Russia only in the manner that would ensure that the later treaties are not in conflict with the 1920 Peace Treaty. Article 9 is particularly important for solving the issue of Abrene.” (*see: Levits. E. 4.maija Deklarācija Latvijas tiesību sistēmā //4. maijs. Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju. Rīga: Fonds Latvijas Vēsture, 2000, pp. 64*). The majority of the justices of the Constitutional Court indicate that “one can agree to the views expressed by the Cabinet of Ministers that such an explanation of Article 9 of the Declaration of Independence by E. Levits does not comply with the object and content of Article 9 of the Declaration” (*see: Para 66 of the Judgment*).

I do not share this opinion of the Constitutional Court because of my own arguments and because of the fact that the interpretation of Article 9 of the Declaration of Independence provided by E. Levits reflects the doctrine of continuity and coincides with the consistent practice of Latvia in relation to the

validity of the Peace Treaty. Taking into account the aforesaid, the Constitutional Court has methodologically guided itself by the substantiation of the arguments of E. Levits, the Dissenting Opinion shall also contain a reference to his interpretation. The Court had to pay more attention to the practice of Latvia, as well as to opinions of other deputies of that time, rather than to focus on the opinion of one of the authors of the Declaration of Independence, which, in fact, is approved by the practice of Latvia.

6. The Court indicates that “first of all, one has to take into account that E. Levits is the only scholar”, who has offered such interpretation. However, Romāns Apsītis, who also is one of the co-authors of the Declaration of Independence, has not *expressis verbis* related the restoration of the State border of Latvia and Russia with the Peace Treaty (*see: Para 66.1 of the Judgment*).

The argument that one of the co-authors of the Declaration of Independence, namely, A. Apsītis, has not mentioned the Peace Treaty and the Abrene issue is evidently insufficient to state that the co-authors have conflicting opinions. The Court has not referred to other sources that are recognized as authoritative in jurisprudence and that would deny the interpretation of E. Levits. It is neither confirmed by the extract quoted by the Court from the draft Declaration of Independence, which is directly related to the Abrene issue. Moreover, contrary to the opinion of the Constitutional Court, there are authors who agree to the opinion of E. Levits (*see: Dokumenti par Latvijas valsts starptautisko atzīšanu, neatkarības atjaunošanu un diplomātiskajiem sakariem. 1918 – 1998. Rīga: Nordik, 1999, pp. 166 – 167, 198. Lēbers D. A. The Russian–Latvian Territorial Dispute over Abrene. A Legacy from the Times of Soviet Rule // The Parker School Journal of East European Law, 1995, Vol. 2, No. 1, pp. 537 – 558, p. 542*).

7. The Court indicates that the main objective of the Declaration of Independence is absolute restoration of the statehood of Latvia. Therefore the Declaration of Independence dealt only with the main fundamental principles, ideas and activities for restoration of the independence of the State of Latvia”. However in the Judgment the Court has proved the claim of Latvia for restoration

of the State, continuity and agreement of the international community to this claim during both, the occupation period and independence (*see: Para 33 – 34 of the Judgment*) and draws attention to the validity of the Peace Treaty (*see: Para 54 of the Judgment*).

7.1. The claim for restoration of independence *per se* means that the legal relations that were effective before the loss of independence are also restored. A state can be regarded as “the same” state if it is continued in a certain way or its claim for continuity is restored with the same constitutive features and accepted (*see: Crawford J. The Creation of States in International Law, 2nd ed. Oxford University Press, pp. 668 – 671*). State identity is the identity that manifests itself in the international law and responsibilities before and after the event that did harm to its identity (*see: Marek K. Identity and Continuity of States in Public International Law. Geneve: Librairie E. Droz, 1954, p. 14*). James Crawford indicates that the claim for State continuity means that the State preserves its legal relationships disregarding the subjective changes, moreover it preserves them at a greater extent than in the case of state succession, which is often characterized by non-succession (*Crawford J. Creation of States, p. 668*).

Hence, if the State claims for continuity and the international community recognizes this claim, the international treaties that the State has concluded when it existed *de facto* remain valid.

7.2. Latvia, in its former practice, has strictly observed the principle of continuity of treaty obligations. On January 5, 1993, the Supreme Council passed the Resolution “On Multilateral Treaties that the Republic of Latvia has Ratified or Adhered to from 1940”. The Resolution provided that “multilateral treaties that the Republic of Latvia has ratified and adhered to up to 1940 and that are effective according to the principles of international law are binding on the Republic of Latvia” (*Ziemele I. Latvijas Republikas starptautiski tiesiskais statuss // Latvija. Starptautiskās organizācijas. Starptautiskie līgumi. Rīga: Saeimas Kanceleja, 1995, pp. 11*). Latvia has concluded one hundred international agreements up to 1940.

An identical approach Latvia has established regarding bilateral agreements. The Ministry of Foreign Affairs together with other institutions during the time period from 1991 to 1997 carried out revision of bilateral

agreements. The majority of the agreements that were concluded from 1922 to 1940 did not reflect the modern-day bilateral relations, although the majority of the states hold, according to the international law, that pre-war agreements that are concluded with the Republic of Latvia, are valid unless it has been stated otherwise (*Jākobsons I. The Claim for Independence // Baltic Yearbook of International Law, Volume I, Kluwer Law International, 2002, pp. 233 – 261, p. 241*). It was particularly indicated by the United States of America (*Action Memorandum of the United States Department of State of 16 April 1992*). Latvia has also concluded special agreements, for instance, with Norway (the agreement was concluded on November 2, 1994), Poland (the agreement was concluded on February 10, 1997), Czech Republic (exchange of Memorandums took place in 1999) regarding validity of international agreements of 1918 – 1940. In 2000, Latvia and Japan agreed that the treaties concluded between the USSR and Japan during the time period from 1940 to 1991 shall not be applied in the bilateral relations of Japan and the Republic of Latvia. The Minister of Foreign Affairs of the Islamic Republic of Iran also recognizes in the September 10, 1991 on the readiness to establish diplomatic relations with Latvia and support for the independence of Latvia: “Like on January 15, 1929, when my State concluded a friendly agreement with the Republic of Latvia, now I also declare that my State is ready to establish diplomatic relations with the Republic of Latvia” (*Documents on Recognition of Latvia, pp. 311*). Similarly, the Republic of Austria stated in the letter of its Minister of Foreign Affairs: “I relate this announcement with the hope for a friendly continuation of relationships that already exist between the Republic of Austria and the Republic of Latvia. When continuing these relationships Austria shall base on the principle of continuity in relation to the agreements of the states and expresses its readiness to apply it mainly in the pragmatic manner” (*Documents on Recognition of Latvia, pp. 250*).

Consequently, Latvia has consequently held to the position that agreements signed before June 17, 1940 are valid and shall be reviewed according to modern requirements not only regarding relationships with Russia but also regarding other bilateral and multilateral relationships. An essential difference is that other states have agreed to such legal position of Latvia, but Russia has consequently resisted it by indicating that the Peace Treaty is no more valid (*see: Documents on*

Recognition of Latvia, pp. 209). For instance, Russia has not fulfilled its liabilities that it has undertaken in relation to the Baltic States when acceding to the Council of Europe (*see: Parliamentary Assembly Opinion No. 193(1996); Recommendation Nr. 1392 (1998) of the Parliamentary Assembly of Council of Europe*).

I would like to emphasize that the practice of Latvia and the international community, rather than the interpretation of the Declaration of Independence provided by E. Levits, confirms the fact that not only a separate part of the Peace Treaty, but the Treaty *in toto* is binding on the State of Latvia according to the doctrine of continuity.

8. Then the Constitutional Court justifies its opinion by the fact that “E. Levits, in his commentary, quotes Article 9 of the Declaration of Independence close to the text that had been accepted in the versions of March 24 and April 3, 1990 of the Declaration” and indicates that E. Levits has participated in the working groups of the Declaration until my departure on April 10 (*see: Para 66.2 of the Judgment*). The Court indicates Article 9 was considerably amended on April 12, 1990, when it was supplemented by a subordinate clause “in which the independence of Latvia has been recognised for all time”. Moreover, it was also supplemented by the second sentence regarding negotiations with the USSR (*see: Para 66.2 of the Judgment*).

8.1. The Argument that E. Levits has not participated in the meetings for discussing the draft Declaration of Independence after April 10, 1990 does not convince that he has not taken into account the final version of the Declaration of Independence and has not understood what has been written therein, when providing his commentaries. I cannot agree with the arguments of the Court also because the reference to the Peace Treaty in General appeared already before elaboration of the Declaration of Independence. Such point of view has been established in the February 3, 1990 platform of the Latvian People’s Front for the elections of the Supreme Council, wherein it was indicated: “By observing the interests of the Republic of Latvia and the Peace Treaty of August 11, 1920 between Latvia and Russia, the Supreme Council of Latvia must immediately initiate negotiations regarding *de facto* restoration of the Republic of Latvia”.

I would like to draw attention to a document of that time that the Court has quoted in the Judgment but the position expressed therein was not assessed in relation to the content of Article 9 of the Declaration of Independence. “The Platform for Negotiations on Restoration of Independence of the Republic of Latvia” that was reviewed in the April 4, 1990 meeting of the Latvian People’s Front of the Supreme Court provided: “In the basis of relations between the Republic of Latvia and the USSR there must be the Peace Treaty of August 11, 1920 signed by the Republic of Latvia and the USSR. The Republic of Latvia is to be restored in the borders of 1940 (including Abrene area).” (*4. maijs. Rakstu, atmiņu un dokumentu krājums par Neatkarības deklarāciju. Rīga: Fonds Latvijas Vēsture, 2000, pp. 399*).

Also the participants of the Diplomatic and Consular Agency in the Western States formulated the following fundamental principle in the meeting of April 23 – 24, 1990 in Washington: “Existence of the Republic of Latvia is still based on the Peace Treaty of August 11, 1920 between Latvia and Russia and the Satversme of February 15, 1922” (*see: Documents on Recognition of Latvia, pp. 168*). The diplomatic agency of Latvia is the only institution of the Republic of Latvia that has functioned without interruption since foundation of the State in 1918. Activities of this agency is real legal evidence of succession of the State of Latvia and it serves as an example for international recognition of continuity of the State (*see: Lerhis A. Latvijas Republikas Ārlietu dienests. 1918 – 1941. Rīga: Latvijas vēstures institūta apgāds, 2005, pp. 284 – 285*). In 1990 it was the only internationally recognized institution of the Republic of Latvia (*see Ziemeļe I. State Continuity and Nationality: The Baltic States and Russia. Past, Present and Future as Defined by International Law. Leiden: Martinus Nijhoff Publishers, 2005, p. 33*). Finally, the Message to the USSR people and democratic movements that the Supreme Council adopted on May 4, 1990, declared that “the basis of the relationships between the USSR and the Republic of Latvia should be the Peace Treaty of August 11, 1920 between Latvia and the Soviet Russia”.

I hold that such position regarding restoration of the State border between Russia and Latvia would not have been expressed if such claim were included in the Declaration of Independence under elaboration. Hence it is possible to

consider that the viewpoint of the authors of the Declaration of Independence and deputies has swiftly changed.

8.2. It must be indicated that the first sentence of Article 9 of the Declaration of Independence was, in fact, included into all draft projects thereof. The draft project of March 20, 1990 provided that “Relations with the USSR shall hereinafter be regulated by the Peace Treaty of August 11, 1920 between Latvia and Russia that provides for friendly relations and collaboration with the USSR” (*4. maijs, pp. 465*). The next wording provided that “the relationships of the Republic of Latvia and the USSR shall hereinafter be regulated by the Peace Treaty of August 11, 1920 between Latvia and Russia” (*4. maijs, pp. 471*). The draft project of April 3, 1990 provided: “The relationships between the Republic of Latvia and the USSR shall hereinafter be formed in accordance with the Peace Treaty of August 11, 1920 between Latvia and Russia”. Article 9 of the April 9 draft project is expressed as follows: “The relationships of the Republic of Latvia with the USSR shall hereinafter be regulated by the effective Peace Treaty of August 11, 1920 between Latvia and Russia” (*4. maijs, pp. 476*). The draft project of April 17 provides: “The relations of the Republic of Latvia with the USSR shall hereinafter be formed in accordance with the effective Peace Treaty of August 11, 1920 between Latvia and Russia, which has for ever recognized independence of the State of Latvia. A Government commission shall be formed for conducting negotiations with the USSR.” (*4. maijs, pp. 479*). Article 9 of the wording of April 28 provided: “The relations of the Republic of Latvia with the USSR shall be formed in accordance with the [effective] Peace Treaty of August 11, 1920 between Latvia and Russia that has for ever recognized independence of the State of Latvia. A Government commission shall be formed for conducting negotiations with the USSR.” (*4. maijs, pp. 486*). On April 30, 1990, its wording was again changed by providing: “The relationships of the Republic of Latvia with the USSR shall be formed in accordance with the [renewed] effective Peace Treaty of August 11, 1920 between Latvia and Russia. A Government commission shall be formed for conducting negotiations with the USSR.” (*4. maijs, pp. 488*). The wording of May 2, as well as the wording of May 3, 1990 of Article 9 of the Declaration remained non-amended (*4. maijs, pp. 197*). The second sentence of Article 9 of the Declaration of Independence was added only on April 9, 1990.

The second sentence of Article 9 of the Declaration of Independence is coordinated with Article 5 that was formulated on April 28, 1990 by introducing a transition period and by providing for a gradual restoration of independence by means of negotiations (*see: Levits E. 4. maija Deklarācija Latvijas tiesību sistēmā, pp. 62 – 63*). However, the first sentence of Article 9 of the Declaration of Independence forms a single regulation together with the Preamble and Article 1 of the Declaration. Therefore the claim for restoration of the territory of the Republic of Latvia within the borders of 1940 follows from the doctrine of continuity of the Republic of Latvia (*see: Levits E. 4. maija Deklarācija Latvijas tiesību sistēmā, pp. 57*). If the Republic of Latvia continues its statehood suspended in 1940, then this succession also concerns the territory of Latvia and the body of citizens.

The documents elaborated before adoption of the Declaration of Independence and the order of approval of the Declaration of Independence shows that the authors thereof were not intended to narrow the field of application of the Treaty. As to the Peace Treaty, it is indicated in Article 9 of the Declaration of Independence that the Peace Treaty is effective *in toto*, but not a part of it. Such wording can be observed almost in all draft projects of the Declaration. To my opinion, the words “which recognizes the independence of Latvia for all time” of Article 9 of the Declaration marks only the essence of the Peace Treaty and they are included into the text of the Declaration of Independence for the purpose to inform a reader on quintessence of such treaty, as well as to emphasize that Latvia is not a new State, but it is the same State that was recognized by the Soviet Russia already in 1920. This part of the first sentence of Article 9 of the Declaration of Independence must be read conjointly with the Preamble of the Declaration, which concretizes the claim of continuity regarding Russia and *expressis verbis* “reproaches” the USSR for its unlawful action in 1940.

8.3. The Constitutional Court indicates that Article 9 of the declaration of Independence covers only Article 2 of the Peace Treaty. The Court agrees to one of the possibilities of Mārtiņš Paparinskis for grammatical interpretation of this Article in the manner that “the Peace Treaty, in this particular case, is to be regarded only as a normative framework for one thesis – regarding independence of the State of Latvia” (*see: Para 66.3 of the Judgment*).

This statement is inexplicit from the point of view of the doctrine of State continuity because the doctrine also provides for continuous validity of international treaties, and this is established in Article 9 of the Declaration. Restoration of independence of the State of Latvia can not be separated from the validity of the Peace Treaty unless this treaty is substituted by any other more recent provision of treaty or a legal norm of a higher legal force, or unless the object of the Treaty is lost (*see: Opinion of March 14, 2005 of the professor Ineta Ziemele to the Cabinet of Ministers regarding the Republic of Latvia and the Russian Federation Treaty on Signing and Ratification of the State Borders of Latvia and Russia, case materials, Vol. 6, pp. 215*). The fact that Article 9 of the Declaration of Independence would by means of the subordinate clause narrow or rather reduce the 1920 Peace Treaty up to its Article 2 is possible. If it would have been the intention of the authors of the Declaration of Independence, then it had to be provided for *expressis verbis*. Based on the process of elaboration of the Declaration of Independence, I cannot conclude that the authors of the Declaration of Independence would have had such intention. I would also like to emphasize that the Constitutional Court did not take the opportunity to invite the authors of the draft project of the Declaration of Independence to express their opinion by thus acquiring wide and authoritative information about both, the content of the Declaration of Independence and the history of elaboration thereof.

8.4. The consequent position of Latvia regarding the Abrene area is determined by the choice of Latvia and other Baltic States to gain independence by means of the legal aspect of the existence of statehood. Existence of the Baltic states during the interwar period was a relevant argument to substantiate the necessity to continue the previous statehood that was maintained for several decades rather than to create a new state (*see: Eglītis O. Par vispārcilvēciskajām vērtībām domājot. Baltijas valstu likumīgā pastāvēšana turpinās // Atmoda, July 24, 1989*).

It is also manifested by the subsequent legal practice of Latvia where the reference to the Peace Treaty and the Abrene area fully emerges.

Article 9 of the Declaration of Independence remained valid also after adoption of the Constitutional Law of the Republic of Latvia “On the Statehood of the Republic of Latvia” passed on August 21, 1991 (hereinafter – the

Constitutional Law). The Constitutional Law establishes a transitional period until the status of Russia is determined in order to be able to define the relations of Latvia and Russia, namely, the interstate relations. As to the Declaration of Independence, only the fact that it is unclear whether it will be possible to solve the issue by means of negotiations with the USSR changes, because in 1990 when the declaration was adopted there was no knowing that Russia would be recognized as the successor of the USSR.

It was confirmed by one of the authors of the Constitutional Law Andrejs Krastiņš, as well as the Preamble of the Constitutional Law. A. Krastiņš indicated that “[I]t has become impossible to fulfil our requirements of the Declaration of Independence regarding restoration of independence by means of negotiations. Therefore we must determine the status of our State and elaborate action programme in these conditions. We or anybody else cannot anticipate how would the USSR develop, but we must determine the legal basis and policy of our activities already today. Therefore these conditions are included in the Preamble of the draft project, which serves as the basis for adoption of the Constitutional Law, whilst Article 1 of the Law declares the legal status of the Republic of Latvia, which is based on the respective wording of the Satversme of February 15, 1922 and the Satversme.” (*see: Transcript of the plenary meeting of August 21, 1991 of the Supreme Council of the Republic of Latvia*). Neither of these persons states that it would be impossible to fulfil the requirements of the first sentence of Article 9 of the Declaration of Independence.

The Constitutional Court agrees to it by referring to the opinion of the professor Inta Ziemele (*see: Para 64.3 of the Judgment*), and it is indicated by a range of opinions of international organizations that confirms continuity of Russia, and wherein Russia is obligated to solve the border dispute in accordance with the international principles and effective treaties (*see: Parliamentary Assembly of the Council of Europe, Opinion No. 193 (1996) on Russia’s request for membership of the Council of Europe*).

8.5. The reference to the unsettled border issue can be found in several more acts of national rights. Section 2 of the Law “On Frontier of the Republic of Latvia” provided: “The frontier of the Republic of Latvia shall be established by the interstate agreements of the Republic of Latvia concluded and ratified before

June 16, 1940 and bilateral agreements on restoration of frontier concluded later with neighbouring countries.” This means that until a new agreement is concluded, the State border between Latvia and Russia shall be established by Article 3 of the Peace Treaty.

The Resolution of November 4, 1992 of the Supreme Council “On the Order of Coming into Force of the Law of the Republic of Latvia “On privatization vouchers”:

“[t]o establish that up to the moment when the status of the town of Abrene and the Kacēni, Upmale, Linava, Purvmala, Augšpils un Gauri parishes, as well as harm to property and order of compensation of the harm done to the properties of the citizens of the Republic of Latvia located in the town of Abrene and the abovementioned parishes has not been determined in interstate agreements, no privatization vouchers shall be assigned to persons who are constantly registered in the abovementioned territory unless these persons are citizens of the Republic of Latvia.”

A similar provision can be found also in the Resolution of March 30, 1993 of the Supreme Council “On the Order of Coming into Force of the Law of the Republic of Latvia “On Restoration of Property Rights to Enterprises and other Property Objects”.

In order to express its opinion regarding the Abrene area, the Supreme Council, on January 22, 1992, passed the Resolution “On the Non-Recognition of Annexation of the Town of Abrene and Six Parishes of the Abrene Area” (hereinafter – the Abrene Declaration), wherein the Council has indicated:

“The basis of the interstate relations of Latvia and Russia shall be determined by the still valid August 11, 1920 Peace Treaty between Latvia and Russia. Article 3 of this Treaty establishes the State border between Latvia and Russia. The interstate legal relations with the USSR were established by the Treaty Concluded between Latvia and the USSR concluded in Riga, on February 5, 1932. Both contracting parties declared that this Treaty is concluded based on the August 11, 1920 Peace Treaty between Latvia and the Russian Socialist Federative Soviet Republic, which is effective in the entire territory of the USSR, and all its provisions shall not be amended and shall serve as the basis for the relations of both contracting parties for all times. [..]

Taking into consideration the fact that by annexation of the town of Abrene and the six parishes of the Abrene area of the Republic of Latvia to the RSFSR, the August 11, 1920 Peace Treaty between Latvia and Russia and the Treaty between Latvia and the USSR concluded in Riga, on February 5, 1932 are violated, as well as reposing on the fact that annexation of this territory was fulfilled during the occupation of Latvia, the Supreme Council of the Republic of Latvia shall resolve:

1. To recognize the Decree of August 23, 1944 of the Presidium of the Supreme Council of the USSR "On Location of the Pleskava Are into the Territory of the RSFSR" as anti-constitutional and to invalidate its provisions from the moment of adoption thereof in relation to annexation of the territories of the town of Abrene of the Republic of Latvia, the Kacēni, Upmale, Linava, Purvmala, Augšpils and Gauri parishes of the Abrene area to the territory of the RSFSR.
2. To recognize as invalid the Resolution of August 22, 1944 of the Presidium of the Supreme Council of the Latvian SSR "On Annexation of the Višgorod, Kačanovo and Tolkovo Parishes to the Territory of the RSFSR" from the moment of adoption thereof.
3. To recognize as invalid the Resolution of October 5, 1946 of the Presidium of the Supreme Council of the Latvian SSR "On Establishment of Frontiers between the Latvian SSR and the RSFSR" and Decree of October 19, 1946 of the Presidium of the Supreme Council of the USSR "On Confirmation of the Change of Frontier between the Latvian SSR and the RSFSR".
4. To approve that the State border of the Republic of Latvia and the Russian Federation shall still be established by Article 3 of the August 11, 1920 Peace Treaty between Latvia and Russia.
5. To instruct the delegation of the Republic of Latvia to solve the Abrene issue in the interstate negotiations with the Russian Federation, as well as to determine the amount of the material harm done to the property of the citizens of the Republic of Latvia living in the town of Abrene and the six parishes of the Abrene area and to establish the order of compensating thereof."

The aforesaid is also approved by two more declarations adopted by the Saeima.

The Declaration of August 22, 1996 “On Latvia’s Occupation” provided that “In 1944, a part of the Abrene area (about 2000 km. sq) were unlawfully annexed to the territory of Russia. [...] Russia has not recognized the occupation of Latvia carried out by the USSR and it does not want to reside on August 11, 1920 Peace Treaty between Latvia and Russia, wherewith Russia has waived for all times its claim to the territory of Latvia”. On June 11, 1990, a special Statement of the Saeima was adopted in relation to the Declaration “On Latvia’s Occupation”. According to the abovementioned Statement, the Cabinet of Ministers shall ensure that the diplomatic agencies introduce the respective states with the Declaration “On Latvia’s Occupation” and the documents that confirm its content. The Declaration was also sent to the United Nations Organization.

Already in May 12, 2005 the Saeima adopted the Declaration “On Condemnation of the Totalitarian Communist Occupation Regime Implemented in Latvia by the Union of Soviet Socialist Republics”, wherein, by referring to the Peace Treaty concluded between the Republic of Latvia and the RSFSR, the Saeima of the Republic of Latvia called on the Russian Federation “to acknowledge the universally known fact of Latvia’s occupation by the USSR; to take into account the legal and political consequences arising from this fact and to honour the Peace Treaty concluded between Latvia and Russia on 11 August 1920, which, in conformity with international legal norms, is still in force and which states that Russia forever abandons its claims to Latvia”.

8.6. The content of Article 9 of the Declaration of Independence can also be found out by means of systemic method – by finding out its meaning in relation to other legal norms. Vasilijš Sinaiskis, the founder of the theory of legal method has written in relation to the Systemic method of interpretation: “Many disputes arise because of one and the same section of a law just because the interpretation of the section constitutes the end in itself. But, when applied to the entire legal system [...], a section of the law immediately acquires an adequate place and unarguable meaning” (*Juridiskās metodes pamati. 11 soļi tiesību normu piemērošanā. Rīga: Ratio iuris, 2003, pp. 117*).

To my mind, the Constitutional Court has not applied the method of systemic interpretation in the Judgment. For determination of the content of Article 9 of the Declaration of Independence, no other normative acts adopted by

the Supreme Council were taken into consideration. If the Constitutional Court would have taken into account these normative acts in interpretation of Article 9 of the Declaration of Independence, then, according to my mind, it would have made a the same conclusion as reflected in this Dissenting Opinion. Therefore I cannot agree to the opinion of the Constitutional Court that Article 9 of the Declaration of Independence narrows the binding force of the Peace Treaty of that it does not regulate the State frontiers of Latvia and Russia.

Hence the narrowed interpretation of Article 9 of the Declaration of Independence does not comply with the consequent practice of Latvia in the national rights that emphasizes validity of the 1920 Peace Treaty at its full extent.

9. The Constitutional Court holds that, in fact, E. Levits has expressed such opinion: the treatment of the mutual relations of Latvia and Russia follows from Article 9 of the Declaration of Independence; while Article 9 of the Declaration has not been repealed, Latvia is entitled to form its treaty relations with Russia only by ensuring that the later treaties are not in conflict with the 1920 Peace Treaty (*see: Para 66.4 of the Judgment*). The Court draws attention to the 1969 Vienna Convention on the Law of Treaties, which permits conclusion of new agreements, and emphasizes that the Peace treaty is “a simple treaty” and therefore it is possible to conclude a new agreement, as well as it concludes that Article 9 of the Declaration of Independence does not restrict Latvia in this context. According to the opinion of the Constitutional Court, clear indications to the objective of the legislator are necessary to approve the opinion of E. Levits, which the Court has not found (*see: Para 66.5 of the Judgment*).

9.1. I cannot agree to the interpretation of the Constitutional Court. E. Levits does not express anything more in his comment on the Declaration of Independence than that what follows from the doctrine of State continuity, and he does not eliminate a possibility as such to conclude a new treaty. Three conclusions follow from the comment of E. Levits:

First of all, the 1920 Peace Treaty is valid at its full extent and it is as such included in Article 9 of the Declaration of Independence;

Second, when concluding new agreements with Russia, it is necessary to establish their compliance with the still valid 1920 Peace Treaty and,

Third, when concluding a new border treaty, it is necessary to make sure that both parties are concluding it in good faith as an amendment of Article 3 of the existent Peace Treaty.

As to the first conclusion, the opinion of E. Levits and that of the Court differs in relation to the scope of Article 9 of the Declaration of Independence, because in general the Court agrees to the validity of the Treaty (*see: Para 54 of the Judgment*). The second conclusion of E. Levits indicates that Latvia is obligated to take care of honest fulfilment of its international liabilities. Hence, before new contractual commitments are undertaken, it is necessary to take into account existing commitments. This is a universally known mechanism for solving international conflicts of legal norms that can be applied to international contractual commitments that form the content of Article 68 of the Satversme (*see: Fragmentation of International Law. United Nations International Law Commission, Report on the work of its fifty-sixth session, 3 May to 4 June and 5 July to 6 August 2005, General Assembly Official Records, Fifty-ninth session, Supplement No. 10, A/59/10, p. 301*). The third conclusion as to the difference in opinions is decisive, because exactly in this context the difference in opinions leads to different summaries. According to the opinion of E. Levits, it is necessary to ensure that all subsequent treaties were compliant with the 1920 Peace Treaty. States can eliminate possible conflicts if they mutually agree on the fact that amendments must be made to existent treaties. Hence Latvia, by observing present contractual commitments, had to agree with Russia on amendments to the Peace Treaty in relation to the status and belonging of Abrene and its adjacent parishes. This is an issue of international contractual law, but in correlation with the Declaration of Independence of May 4, 1990 and the first part of Article 68 of the Satversme, which, according to the view of the Constitutional Court, also covers the norms of the 1969 Vienna Convention on the Law of Treaties, it becomes also an issue of State constitutional rights.

9.2. Finally, the Constitutional Court, when referring to the statements of one of the member of the Parliament, Rolands Rikards, during the discussions of

1992 on the Abrene Declaration, concludes that the Abrene issue was activated only in 1992 (*see: Para 66.5 of the Judgment*).

I cannot agree to this conclusion of the Constitutional Court. Adoption of the Declaration in 1992 shows a repeated statement of the State position rather than activation of the issue. The State that holds to its claim on continuation of statehood is obligated to do it consequently [*Case concerning certain phosphate lands in Nauru (Nauru v. Australia), Preliminary objections, International Court of Justice 26 June 1992, paras 31 – 38*]. If the state neglects it or if it explicitly waives its claim of continuity of the statehood, then it forfeits its right to demand. It must be indicated in relation to the Abrene Declaration that it complies with Article 9 of the Declaration of Independence. The Abrene Declaration confirms that Latvia is still holding to its claim for its rights to the Abrene territory. Hence the Supreme Council, when adopting this Declaration, has confirmed that, although the independence has been restored, the claim of Latvia for *de facto* restoration of the territory at its full extent is still valid.

The mandate included in Article 9 of the Declaration of Independence, that covers the entire Peace Treaty and approves continuity, means that Latvia can introduce amendments to the frontiers established in the Border Treaty without affecting continuity. Hence Latvia, if it passes the territory to Russia, must be sure that the other party, namely, Russia evaluates this legal situation identically, i.e. that by means of the Border Treaty Latvia passes and Russia accepts *de iure* Abrene area, or the both parties must draw attention to the different position in the context of continuity of Latvia.

10. The Constitutional Court concludes that the Peace Treaty, apart from its Article 3, is still valid and according to the newly concluded Border Treaty Latvia has passed the Abrene territory and the adjacent parishes by coming into force of this Treaty (*see: Para 54 of the Judgment*).

10.1. Taking into consideration the fact that the Declaration of Independence contains a reference to the Peace Treaty and its validity in relations with Russia, the Constitutional Court had to assess, in the context of the Border Treaty, whether the Saeima, when passing the Law on Authorization and the Ratification Law, has ensured that the opinion regarding the validity of the Peace

Treaty is preserved. This means that it had to investigate whether Russia has agreed to the position of Latvia or Latvia has taken an adequate care for the fact that the different opinions of both parties remain valid. Hence the Constitutional Court, having concluded that the Ratification Law has been generally adopted observing the requirements of the first part of Article 68 of the Satversme (*see: Para 54 of the judgment*), also had to assess compliance of the Ratification Law with Article 9 of the Declaration of Independence.

Article 9 of the Declaration of Independence contains a constitutional norm which formulates the mandate included therein in an imperative manner and by means of a precise content. This is not a desirability or political objective. If the State of Latvia cannot reach (fulfil) the objective set in Article 9 of the Declaration of Independence, then a new constitutional norm must be passed, which would repeal or amend this norm.

10.2. It has been generally accepted in the customary international law that territorial changes are related to the frontiers established in treaties, but otherwise the regime of treaties remains unchanged. Refusal is a voluntary abandonment of the territory, but cession is regarded as refusal with a certain constraint (*Encyclopedia of Public International Law, pp. 830 – 831*). The Constitutional Court has chosen to speak of cession of the Abrene territory, rather than refusal from it.

In the case of a bilateral agreement it is particularly important that both contracting parties agree on the object and objective of the treaty, as well as on future consequences of it. The rights to take over a certain territory can be conferred by means of a treaty between the party that cedes the territory and the receiver, if the receiver agrees to take the territory over in accordance with the treaty and the treaty provides for a legal basis for sovereignty. Factual cession is not necessary if the receiver already governs the respective territory. However the date of coming into force of the treaty is regarded as the date of cession (*see: Brownlie I. Principles of Public International Law. 6th edition. Oxford: Oxford University Press, 2003, p. 128*). Cession can take place by providing for exchange of territories, compensation or voluntary cession of the territory without additional conditions. The choice of the type of cession, as far as it complies with

constitutional norms, is the issue that should be assessed politically rather than legally.

10.3. The duty of Latvia to express its position follows from the claim of statehood continuity in the international law, as well as from the Declaration of Independence that constitutionally strengthens the doctrine of continuity in relationships with Russia. Consequently, if a treaty related to the issue of continuity is being concluded, then the position of Latvia must be explicitly formulated in the respective treaty or the ratification process. Such formulation of the position is not necessary in the case if a treaty that is not related to the provisions of the Peace Treaty is being concluded.

It follows from the case materials that the delegation of the Ministry of Foreign Affairs has observed the mandate of the Declaration of Independence and has initiated negotiations based on the Peace Treaty. The Constitutional Court must not assess negotiations that cannot be regulated by means of international law, however the subsequent states of conclusion of the treaty are subjected to the provisions of international law. When and whether the State will agree to be bound by a treaty – this is the issue of national institutions established by the constitution (*see: Encyclopedia of Public International Law. Published under the auspices of the Max Planck Institute for Comparative Public Law and International Law, Rudolf Bernhardt ed. Volume 4, pp. 933 – 934*).

Assuming that the parties still preserved different position regarding continuity of Latvia, it was not possible to conclude the Border Treaty by making an imperative declaration. As it was indicated by E. Levits: “Assuming that the Treaty does not contain explicit and unambiguous provisions that would *expressis verbis* provide that Latvia resigns from the territory that was separated from it, then it is open to (different) interpretation. [...] It would be important from the point of view of Latvian constitutional law that it was interpreted in the way that would not affect Article 3 of the Satversme. In this case, first of all, there would be no necessity to submit the Ratification Law of this Treaty to a referendum, second, the Treaty would pragmatically allow to ensure the frontier that, in fact, has continuously existed and to politically settle the issue, however, third, the final regulation of the territorial issue would remain open until it would be possible to settle it in the context of a broader reconciliation.” (*see: Levits E. Piezīmes par*

Satversmes 3. pantu, case materials, Vol. 6, pp. 207). E. Levits holds that such interpretation can be reached by means of interpretative declaration when signing or, at least when ratifying it.

A similar opinion was expressed by I. Ziemele by particularly emphasizing the different position of the parties regarding validity of the Peace Treaty: “Latvia holds that the Treaty is valid. Versions of Russia are as follows: (1) it rejects any involvement of the Peace Treaty in the process of concluding the Border Treaty, because the Border Treaty is of a technical nature. [...] (2) It does not recognize the validity of the Peace Treaty because it holds that Latvia has voluntarily entered the USSR and it has concluded a treaty of the State frontier, which would establish the territorial sovereignty of both States and withdraw any territorial claims from agenda (*profesores Inetas Ziemeles 2005. gada 14. marta atzinums Ministru kabinetam sakarā ar Latvijas Republikas un Krievijas Federācijas līguma par Latvijas un Krievijas valsts robežu parakstīšanu un ratifikāciju, case materials, Vol. 6, pp. 215*). Hence adoption of the Border Treaty, during which Latvia has not expressed its viewpoint regarding the subject and objectives of this Treaty, could make Russia consider that Latvia is a new State (*Paparinskis M. Maisot tiesisko „spageti bļodu” // Jurista Vārds, Nr. 5, 30.01.2007., pp. 37*).

To my mind, this drawback is at a certain extent compensated by the Judgment. The Constitutional Court, as the highest institutions of judicial power, has assessed all necessary factors and justified the opinion of the State of Latvia regarding the events of 1940 and continuity of the State of Latvia, as well as the fact that continuity is not affected by the change of borders. The interpretation included in the Judgment of the Constitutional Court is binding on Latvia (*see; Para 32 of the Judgment*). This interpretation *prima facie* is not binding on other states. But it must be taken into consideration that if the Constitutional Court has interpreted any international treaty or assessed its compliance with the Satversme, then the State of Latvia can apply and interpret this agreement in exactly the same manner as it has been done by the Constitutional Court. Hence the opinion of the Constitutional Court is legally binding and is regarded as the final opinion of the State of Latvia regarding the respective international treaty, and it approves validity of the Peace Treaty.

Hence the Judgment of the Constitutional Court that has been passed by assessing constitutionality of the international treaty expresses understanding of the State of Latvia of this treaty, which is made known to the international community and other contracting parties, and hence the principles of concluding agreements in good faith.

10.4. On April 26, 2005, Latvia annexed a unilateral interpretative declaration to the Border Treaty. Since Russia has rejected this declaration, the government was forwarding the Ratification Law for its adoption, which provides: “Based on the Constitutional law of the Republic of Latvia of August 21, 1991 “On the Status of the Republic of Latvia” passed by the Supreme Council of the Republic of Latvia, as well as observing the internationally recognized State continuity of the Republic of Latvia, to authorize the Cabinet of Ministers to sign the Draft Agreement between the Republic of Latvia and the Russian Federation on the State border between Latvia and Russia initialled on August 7, 1997.”

It is possible to agree with the viewpoint that the claim of continuity of Latvia is ensured by the reference to the Constitutional Law. It is approved by the statements of the State President and the Prime Ministers during the Saeima discussions, as well as the international reaction. When commenting the Law on Authorization, the Prime Minister Aigars Kalvītis said that Latvia, “by passing the Law, changes its form, not content” (*see: broadcast on LTV, “Kas notiek Latvijā?” of January 1, 2007*). The Constitutional Court quotes the speech of the State President of February 1, 2007 (*see: Para 34.3 of the Judgment*), wherein she draws attention to the repeated support of the international society to the continuity claim of the State of Latvia “Our continuity does not depend on the will of Russia to recognize it or not. Moreover, Russia has also recognized Latvia as an independent State that is based on the Constitutional Law, which, in its turn, is based on the principle of legal succession” (*Latvijas Valsts prezidentes V. E. Vairas Vīķes-Freibergas runa Saeimas debatēs par Latvijas – Krievijas robežlīgumu 2007. gada 1. februārī Saeimas namā // Latvija –Krievija –X. Zinātniski pētnieciskie raksti, 2007, Nr. 1(12), 9 – 7.; pp. 11*).

Hence it is possible to conclude: the arguments that Latvia has ever raised territorial claims to Russia are ungrounded. The State cannot raise territorial claims regarding the territory that *de iure* is its constituting part.

The Constitutional court quotes I. Ziemele who has indicated that “The draft decision prepared by the government is sufficiently considerate in the abovementioned legal context with one basic precondition – if the government and the Saeima continue the position that has been expressed in different legal and political forms regarding the issue of continuity of the State of Latvia and questions related thereto with all consequences following from that” (*see: Para 68.4 of the Judgment*). The same opinion was also expressed by M. Paparinskis: “Such reference does not affect the possible collision with the Satversme and the Declaration of Independence; therefore it is possible to work by only adopting a premise compliance of the Border Treaty to the Satversme” (*Paparinskis M. Maisot tiesisko „spageti bļodu” // Jurista Vārds, Nr. 5, 30.01.2007., pp. 31*). However, the Constitutional Court does not assess whether the Saeima has disclaimed its previous position.

Consequently, the Constitutional Court had to assess whether the position of Latvia that has been expressed before adoption of the Law on Authorization has been observed in the Ratification Law.

11. In order to assess compliance of the words of Article 1 of the Ratification Law and hence also compliance of the Border Treaty with Article 9 of the Declaration of Independence, the Court had to assess whether these acts ensure the continuity claim.

The Court does not analyse at all compliance of the Border Treaty with Article 9 of the Declaration of Independence and the doctrine of continuity. Interpretation of the Border Treaty must be carried out by taking into account the methods mentioned in Chapter 3 of the 1969 Vienna Convention on the Law of Treaties, i.e. the Treaty shall be interpreted in good faith according to the usual meaning of notions in the respective context and taking into account the object and the objective of the Treaty. Preparative materials of the Treaty may serve as supplementary materials for interpretation thereof. If implementation of Article 9 of the Declaration of Independence does not explicitly follow from the Border Treaty, then it is necessary to analyse the Ratification Law or other statements of officials of Latvia in relation to ratification of the Border Treaty.

When applying the grammatical method, it is possible to conclude that the Border Treaty contains no reference to State continuity. It cannot be perceived from the text of the Treaty that the parties have come to an agreement as to this issue. When applying the contextual method, it is possible to conclude that the activities of the Constitutional Court was not related to other documents of the Treaty, concluded bilaterally or unilaterally, that would confirm that parties have come to such agreement. On contrary, as it was concluded by the Constitutional Court, in the Saeima discussions and that of the Russian Federation Council (Duma), it is possible to find obvious references to the fact that the parties interpret the Border Treaty as legalization of the 1944 frontier (*see: Para 73 of the Judgment*). The Constitutional Court did not support such interpretation (*see: Para 78 of the Judgment*).

The Constitutional Court, when analyzing the Ratification Law and the reference contained therein to the OSCE principle, draws attention to the duty of the State of Latvia to act so in its relations with Russia, that continuity of the Republic of Latvia would not be endangered (*see: Para 78.1 of the Judgment*). However, after this the Court does not develop this argument by only confining itself to assessment of compliance of the principle to Article 68 of the Satversme. I agree that conclusion of the Border Treaty as such does not affect the continuity claim of Latvia; however Article 9 of the Declaration delegates additional responsibility to Latvia in relations with Russia. Therefore I hold that the Ratification Law without any reference to continuity of the State does not fulfil the mandate established in Article 9 of the Declaration of Independence. Hence the Constitutional Court had to recognize the contested provision as being non-compliant to Article 9 of the Declaration.

Taking into account the abovementioned arguments, in order to avoid any conflict between the international liabilities that Latvia has undertaken and the Declaration of Independence, the State of Latvia had to indicate in the *de lege ferenda* norm of a constitutional rank that the relations of Latvia and Russia are regulated by the still valid Peace Treaty and the new Border Treaty.

12. Although I generally agree to the conclusion of the Constitutional Court regarding interpretation of Article 3 of the Satversme, I would like to express my concern regarding the fact whether the Constitutional Court has used all available sources at their full extent and has eliminated all doubts about its content.

At first, I would like to emphasize that, in the Judgment of the Constitutional Court, I did not find several substantial opinions regarding the scope of Article 3 of the Satversme.

First of all, Balduins fon Disterlo wrote in the review of the Satversme published in 1923: “A referendum must take place [...] when the Saeima amends Articles 1, 2, 3 or 6 of the Satversme, i.e. the basic provisions on the form of administration of Latvia and its sovereign power, the State territory and the principles for electing the Saeima” (*Disterlo B. Juridiskas piezīmes pie Latvijas Republikas Satversmes // Tieslietu Ministrijas Vēstnesis, 1923, Nr.7, pp. 10*).

Second, Pauls Šīmans has written in the commentary on the Satversme published in 1930: “A referendum must be announced by means of such parliamentary laws that provide for amendments to Article 1, 2, 3 and 6 of the Satversme, i.e. changes the State regime, the sovereignty of people, frontiers and the rights of general, direct and equal elections” (*Šīmans P. Latvijas Satversmes astoņi gadi // Šīmans P. Eiropas problēma. Rīga: Vaga, 1999, pp. 41*).

Third, Kārlis Dišlers has written in the manual of constitutional rights published in 1930: “Already during adoption of the Satversme of the Republic of Latvia (February 15, 1922) the frontiers of Latvia were legally established in international treaties and they were partially established by nature, like it was possible to write in Article 3 of the Satversme of the Republic of Latvia: “The territory of the State of Latvia, within the borders established by international agreements, consists of Vidzeme, Latgale, Kurzeme and Zemgale”. It is possible to introduce amendments to this Article only by means of a national referendum.” (*Dišlers K. Ievads Latvijas valststiesību zinātnē. Rīga: A. Gulbis, 1930, pp. 77*).

Hence Article 3 of the Satversme refers to the existent frontiers of the State of Latvia and specific international treaties also included the Peace Treaty in 1920. Similarly, the abovementioned lawyers do not mention any “newly acquired territories”, as well as the fact that Article 3 of the Satversme would establish the entire territory of the State of Latvia.

The Constitutional Court has not mentioned these opinions in the judgment, not it has denied them. This fact raises doubts regarding the fact whether the Court has succeeded in finding out the exact will of the members of the Constitutional Assembly regarding the scope of Article 3 of the Satversme.

Riga, December 5, 2007

Justice of the Constitutional Court

Kristīne Krūma

*Translated by Egija Labanovska,
translator of the Constitutional Court
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