

ESCE

Electoral System Change in Europe since 1945



Electoral System Change in Europe since 1945: Latvia

Authored by: Helen Hardman and Alan Renwick

Compiled with the assistance of:

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Section 1: Overview of Latvian Electoral System Changes since 1988

In December 1988, the Communist Party of the Soviet Union radically amended the Soviet Union's electoral laws, introducing some competition into elections and holding what have been interpreted as the first semi-contested elections in the Soviet Union, to the Union-wide Congress of People's Deputies, in 1989. Following the unsuccessful August Coup in Moscow in 1991, Latvia declared its independence from the Soviet Union and a year later adopted a new law in October 1992, establishing an open-list PR electoral system, based on the law in force at the time of 1922.¹ Since the introduction of the 1992 law, there have been no substantial changes to the Latvian electoral system (Mikkil & Pettai 2004, 339). Although a new law was introduced in 1995, and there have been a number of amendments to this law since then, these amendments relate more to the administration of elections than to the system itself. While the Latvian electoral system has thus remained in essence unchanged, the rules regarding who may participate in elections have been a matter for considerable debate in Latvia. The instability of the Latvian government since 1992 may give rise to future more substantive electoral reform (Mikkil and Pettai, 2004).

¹ Ringolds Balodis (2004?), *The Constitution of Latvia*, University of Latvia, http://www.irp.uni-trier.de/typo3/fileadmin/template/pdf/26_balodis.pdf



Section 2: Relevant Electoral System changes in Latvia since 1945

The following table summarises electoral laws that have been introduced and their amendments since 1990. The data in the rightmost column indicates whether or not these laws are relevant to the present research.

Table 1. Summary of Latvian Electoral Laws and Amendments since 1945 – relevant to this project

Law	Amendment	Date of enactment	Location	Relevant
<i>Law on the elections of People's Deputies of the USSR, 1.12.1988².</i>		1.12.1988	http://bestpravo.ru/ussr/data01/tex11440.htm	Yes
<i>Law on the Fifth Parliamentary Election</i> [Reporter 46, 03.12.1992; shall enter into force 20.10.1992; lapsed 6.07.1995] ³		20.10.1992	http://www.likumi.lv/doc.php?id=66524&from=off Although the title is different, an English translation is here: http://www2.essex.ac.uk/elect/database/legislationAll.asp?country=latvia&legislation=lv92	Yes
<i>The Saeima Election Law⁴</i>		07.07.1995	http://www.likumi.lv/doc.php?id=35261&version_date=07.06.1995	Yes
	<i>Amendments to the Saeima Election Law⁵</i>	21.04.1998	http://www.likumi.lv/doc.php?id=47584	
	<i>Amendments to the Saeima Election Law⁶</i>	12.06.1998	http://www.likumi.lv/doc.php?id=48626	
	<i>Amendments to the Saeima Election Law⁷</i>	23.05.2002	http://www.likumi.lv/doc.php?id=62321	Yes

² Soiuz Sovetskikh Sotsialiticheskikh Soiuz, *Zakon o vyborakh narodnykh deputatov SSSR* 1.12.1988.

³ Likums "Par 5. Saeimas vēlēšanām" (Ziņotājs, 46, 03.12.1992.) [stājas spēkā 20.10.1992.; zaudējis spēku 07.06.1995.]

⁴ Saeimas vēlēšanu likums

⁵ Grozījumi Saeimas vēlēšanu likumā

⁶ ibid

⁷ ibid



	<i>Amendments to the Saeima Election Law</i> ⁸	27.06.2002	http://www.likumi.lv/doc.php?id=63177	
<i>On Compliance of Paragraph 2, Article 2 of the Saeima Election Law with Article 6, 8 and 91 of the Constitution of the Republic of Latvia</i> [Latvian Constitutional Court judgment on the non-compliance of Article 2 of the Saeima Election Law with Articles 6 and 8 of the Constitution of the Republic of Latvia 06.03.2003]. ⁹		06.03.2003	http://www.likumi.lv/doc.php?id=72099	Yes
	<i>Amendments to the Saeima Election Law</i> ¹⁰	11.09.2003	http://www.likumi.lv/doc.php?id=78771	
	<i>Amendments to the Saeima Election Law</i> ¹¹	06.04.2006	http://www.likumi.lv/doc.php?id=131058	Yes
	<i>Amendments to the Saeima Election Law</i> ¹²	09.05.2006	http://www.likumi.lv/doc.php?id=133537	

⁸ ibid

⁹ Par Saeimas vēlēšanu likuma 2.panta 2.punkta atbilstību Latvijas Republikas Satversmes 6., 8. un 91.pantam

¹⁰ Grozījumi Saeimas vēlēšanu likumā

¹¹ ibid

¹² ibid



<p>Constitutional Court Judgment No. 2005-13-0106 “On the Compliance of Section 5 (Items 5 and 6) of the Saeima Election Law and Section 9 (Items 5 and 6 of the first Paragraph) of the City Dome, District Council and Rural District Council Election Law with Sections 1, 9, 91 and 101 of the Republic of Latvia Satversme (Constitution) as well as with Sections 25 and 26 of the International Covenant on Civil and Political Rights”.</p>	15.06.2006	http://www.satv.tiesa.gov.lv/upload/2005-13-0106E.rtf	Yes
<p><i>Amendments to the Saeima Election Law</i>¹³</p>	28.06.2007	http://www.likumi.lv/doc.php?id=158774	
<p><i>Amendments to the Saeima Election Law</i>¹⁴</p>	01.04.2009	http://www.likumi.lv/doc.php?id=189303	Yes
<p><i>Amendments to the Saeima Election Law</i>¹⁵</p>	04.05.2010	http://www.likumi.lv/doc.php?id=208270	
<p><i>Amendments to the Saeima Election Law</i></p>	24.03.2011	<p>English translation: http://www.saeima.lv/en/about-saeima/saeimas-velesanas-1/saeimas-velesanu-likums-1 http://www.likumi.lv/doc.php?id=227548 </p>	Yes

¹³ ibid

¹⁴ ibid

¹⁵ ibid



Section 3: Details of previous electoral systems and electoral system changes.

3.1 The 1992 Law

According to Mikkel and Pettai, as stated earlier, while the electoral system of SMDs was preferred by those, such as former Communists, wishing to run independently without party affiliation, those from other parties favoured a PR party list system (Mikkel & Pettai 2004). The preamble to the October 1992 law describes the provisions as based on those in operation at the time of the 9 June 1922 elections.¹⁶ The 1992 law increased the threshold from two per cent, as set in the 1922 law, to four per cent.¹⁷ (Mikkel & Pettai 2004 p 338) This same threshold applies equally to both parties and coalitions.

Allocation of mandates The number of representatives to be elected to the lower house of Parliament, the Saeima, was set at 100 in the Latvian Constitution.¹⁸ Mandates were distributed according to the system in operation in 1922, which allocated seats using the Sainte-Laguë method of proportional representation. This method applies a series of odd-numbered divisors (1, 3, 5, 7, 9 etc.) to each party's total number of votes, sequentially allocating seats in each instance to the party with the largest quotient.¹⁹ Sainte-Laguë is rarely used, and aside from Latvia, it is only used in its pure form in New Zealand (Gallagher and Mitchell, 2005: 585). This system provides a greater level of proportionality than the PR system in operation in the other Baltic States (Mikkel & Pettai 2004 p.334).

District Magnitude The number of mandates for each district is decided on the basis of the size of the electorate within each of the five constituencies.²⁰ This number was also the maximum number of candidates that contending parties (etc.) could propose on their respective lists.²¹

Preference votes "The ranking of the candidates on the ballot paper is only a hint from the parties as to their most preferred candidates. It is the voter who makes the final choice, as any mandate that the party wins in the district goes to the candidate with the highest net score of 'positive' and 'negative' votes in that district." (Mikkel & Pettai 2004 p.333)

Voters are presented with a choice of ballots, each listing the respective parties' (etc.) candidates. Although voters may vote for only one party (etc.), they have considerable power of intra-party choice of candidates through exercising their right to express preference votes. Voters are invited to mark with a '+' those candidates they favour, or put a line through those names of candidates they wish to de-select. Alternatively they need express no preference over candidates, and place the unmarked ballot of their choice in the envelope, expressing

¹⁶ The opening preamble of the law reads: "Latvijas Republikas Augstākā Padome nolemj: Piemērot 5. Saeimas vēlēšanām Latvijas Republikas 1922. gada 9 jūnija «Likumu par Saeimas vēlēšanām» šādā redakcijā", see: <http://www.likumi.lv/doc.php?id=66524&from=off>.

¹⁷ Article 51, 1992 law

¹⁸ Article 5, The Latvian Constitution, 21 March 1933 (readopted and revised 27 January 1994)

¹⁹ Article 51, 1992 law; Article 38, 2007 law.

²⁰ Article 17, 1992 law

²¹ Article 18, 1992 law



simply their support for a particular party or coalition etc.²² These markings are counted and the order in which candidates are allocated mandates from each list is sequenced entirely on the basis of the electorate's preference votes. The formula for ranking candidates is as follows. Each candidate receives as many votes as the total number cast for that candidate list minus the number of times this candidate's name is crossed out on the list, plus the number of times the candidate's name has been marked positively.²³ Where a candidate has competed in more than one district and subsequently wins in more than one of these constituencies, then (s)he is allocated the mandate where (s)he has received the most preference votes, and the candidate (from the same party list) with the next largest number of preference votes is allocated the seat.²⁴

Table 2. Districts and district magnitude

Name of District	No. of mandates allocated according to the size of electorate in each constituency						
	5.Saeima ²⁵ 1993	6.Saeima ²⁶ 1995	7.Saeima ²⁷ 1998	8.Saeima ²⁸ 2002	9.Saeima ²⁹ 2006	10.Saeima ³⁰ 2010	11.Saeima ³¹ 2011
Rīga	24	27	28	28	29	29	30
Vidzeme	26	25	25	26	26	27	27
Latgale	20	19	18	17	16	16	15
Kurzeme	14	14	14	14	14	13	13
Zemgale	16	15	15	15	15	15	15
Range	14-26	14-27	14-28	14-28	15-29	13-29	13-30
Mean	20						

Eligibility to vote Whereas at the 1990 elections Soviet conscripts stationed in Latvia and permanent residents had the right to vote, the 1992 law restricted voting to only Latvian citizens.³² The introduction of this requirement in 1992 served to disenfranchise as much as one third of the population between the 1990 and the first post-soviet elections of 1993, as

²² Article 35, 1992 law

²³ Article 56(1), 1992 law

²⁴ Article 56(2), 1992 law

²⁵ Saeimās vēlēšanu oficiālie rezultāti. II daļa. Mandātu skaitu sadalījums starp sarakstiem F-18-31 (Rīga: Latvijas Republikas Centrālās vēlēšanu komisijas pasūtījums, 1993)

²⁶ Latvijas Republikas 6. Saeima = the 6th Saeima (parliament) of the republic of Latvia (Rīga: Saeimas Kancelija pasūtījums, 1996), 49-98. The range in district magnitude is confirmed on p. 19 as 14-27

²⁷ [Centrālā vēlēšanu komisija](http://www.cvk.lv/cgi-bin/wdbcgiw/base/base.vel7.sa3) (Central Electoral Commission)

<http://www.cvk.lv/cgi-bin/wdbcgiw/base/base.vel7.sa3>

²⁸ Central Electoral Commission <http://web.cvk.lv/pub/public/28965.html>

²⁹ Central Electoral Commission <http://www.cvk.lv/cgi-bin/wdbcgiw/base/saeima9.GalRezS9.vis>

³⁰ Central Electoral Commission <http://web.cvk.lv/pub/public/29780.html>

³¹ Central Electoral Commission <http://web.cvk.lv/pub/public/30063.html>

³² According to Article 1 of the 1995 law and this remains in force at time of writing, June 30 2011



evident from the sharp reduction in the size of the electorate from 1,960,639 to 1,243,956 (Mikkel & Pettai 2004 p 335). Since 1992 the law has provided non-resident Latvian citizens, abroad, with the right to vote.³³

Restrictions on who can run as candidates There are also considerable restrictions on who may run as a candidate in the elections to the Saeima. The 1992 law stipulated that Soviet era security service personnel and anyone affiliated to the Latvian SSR or USSR, were prohibited from competing as candidates.³⁴ This provision remains, at time of writing, in the 1995 law.³⁵ Commentators have noted that this provision penalised, in particular, the Social Democrat party, whose leader, Juris Bojars, had served in the KGB (Mikkel & Pettai 2004 p 336). Various complaints have been lodged with the Latvian Constitutional Court and European Court, but both courts have to date issued judgments that have upheld the Latvian Government's right to retain this unusual restriction, as discussed later in Section 8.

At the same time, the law provides considerable latitude to candidates in other respects. The 1992 law provided candidates with the right to compete simultaneously in more than one electoral district, so long as they run as candidates for the same party etc. in each.³⁶ It follows from this, that the law does not require candidates to be residents of the electoral district where they are competing.³⁷

Vacant mandates In the event that a seat becomes vacant during a parliamentary session, the 1992 law provided that the next candidate on the same candidate list should take over the position.³⁸ In the event that there is no such other candidate on the relevant list, then another party list is selected according to the Sainte-Laguë method, as described in Article 51, and the candidate with the highest number of preference votes on that list selected.³⁹

3.2 The 1995 Law

The 1995 law retained the same system as articulated in the 1992 law, but introduced some new restrictions on candidates and raised the threshold for competing parties and coalitions to secure mandates. At the same time, the new law removed the restriction that citizens must vote in their constituency of residence, and instead provided citizens the right to vote in any constituency.⁴⁰

³³ Article 59-67, 1992 law

³⁴ Article 21, 1992 law

³⁵ Article 5(5-6), 1995 law

³⁶ Article 19, 1992 law

³⁷ Article 21, 1992 law

³⁸ Article 57, 1992 law

³⁹ Article 58, 1992 law

⁴⁰ Article 3, 1995 law



Thresholds

The new 1995 law raised the thresholds for competing parties and coalitions to a minimum of five per cent of total votes cast.⁴¹

Eligibility to run as candidates New provisions placed significant restrictions on individuals' rights to run as candidates: only those fluent in the Latvian language could do so.⁴² This restriction was considered discriminatory by the large Russian minority and was also criticised by the OSCR and ODIHR in 1998 and 1999 as a violation of fundamental rights as enshrined in international human rights conventions (Mikkel & Pettai 2004 p 335-6).

3.3 May 2002 Amendments to the 1995 Law

In May 2002, this language requirement for candidates was revoked.⁴³ At the same time, a new provision was introduced requiring candidates to declare their level of proficiency in the Latvian language to the electoral commission when submitting their lists.⁴⁴ This information about the candidates, although not included on the ballot paper,⁴⁵ is published in the newspaper "*Latvijas Vestnesis*."⁴⁶

3.4 The Constitutional Court judgment of 2003 regarding the eligibility to vote

In 2003, the Constitutional Court issued a judgment, which stated that denying detainees in police custody the right to vote, as articulated in the 1995 law⁴⁷, did not comply with Articles 6 and 8 of the Constitution.⁴⁸ This provision in the law was immediately revoked, without any action by the legislature, as, according to the Constitution, the Constitutional Court has the power to declare laws or sections thereof invalid.⁴⁹

⁴¹ Article 38, 1995 law

⁴² Article 13 (5-7), April 1998 amendment to 1995 law.

⁴³ May 2002 amendment, deleting Articles 5(7), 11(5) and Article 13(7)

⁴⁴ Article 11(4 g), May 2002 amendment.

⁴⁵ See Article 14, 1995 law.

⁴⁶ Article 15, 1995 law

⁴⁷ Article 2, 1995 law, as also in Article 3, 1992 law.

⁴⁸ [Constitutional Court Judgment, 6.03.2003] On Compliance of Paragraph 2, Article 2 of the Saeima Election Law with Article 6, 8 and 91 of the *Constitution of the Republic of Latvia* <http://www.likumi.lv/doc.php?id=72099>

⁴⁹ Article 85, The Latvian Constitution, 21.03.1933, as amended 3.05.2007



3.5 April 2006 Amendments to the 1995 Law

The restriction that the number of candidates proposed by parties on their respective lists could not exceed the number of mandates to be allocated to that district, was amended so that parties could list up to a further three candidates in excess of the number of contested seats.⁵⁰ Further provisions were included, specifying the procedure for dealing with cases of malpractice by parties during the campaign, and how a seat would be reallocated in the instance that a court finds a candidate guilty of malpractice.⁵¹ The number of days within which a candidate could appeal the Central Electoral Commission's final decision was reduced from a week to three days.⁵²

3.6 The Constitutional Court judgment of 2006 regarding restrictions on candidates

In 2005, 20 deputies and the leader of the Social Democrat Party, Juris Bojārs, filed a Constitutional complaint regarding the provision in the 1995 law:

Article 5: "Persons are not to be included in the candidate lists and are not eligible to the Saeima if they...

5) belong or have belonged to the regular staff of the USSR, Latvian SSR or foreign state security, intelligence or counterintelligence services;

6) after January 13, 1991 have been active in CPSU (CP of Latvia), Working People's International Front of the Latvian SSR, the United Board of Working Bodies; Organization of War and Labour Veterans; All-Latvia Salvation Committee or its regional committees."

In June 2006, the Constitutional Court decided that these provisions should no longer apply to Juris Bojārs, although they should remain in force in the law, for reasons of security. The Constitutional Court referred to the European Court case of *Ždanoka v Latvia*⁵³ in support of their decision. The applicant, Ms Ždanoka, had complained that her disqualification from standing for election to the Saeima, on the ground that she had actively participated in the CPL after 13 January 1991, constituted a violation of Article 3 of Protocol No. 1, which provides:

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.⁵⁴

The European Court decided, in March 2006, albeit with some dissent, that the Latvian Government should be allowed to retain these restrictions on candidates in the 1995 law and that they had been reasonably applied in Ms Ždanoka's case because of her active participation as a member of the CPL, and her stance towards the events of 1991.⁵⁵

⁵⁰ Article 10(2), April 2006 amendment to the 1995 law

⁵¹ Articles 52 and 54, April 2006 amendment to the 1995 law

⁵² Article 51, April 2006 amendment to the 1995 law

⁵³ European Court of Human Rights, Grand Chamber judgment, 58278/00, 16.03.2006

⁵⁴ European Court of Human Rights, Grand Chamber judgment, 58278/00, 16.03.2006, para. 73.

⁵⁵ European Court of Human Rights, Grand Chamber judgment, 58278/00, 16.03.2006, para. 132.



3.7 April 2009 Amendments to the 1995 Law

The provision that candidates could run in more than one constituency was amended so that they could only run in one (and on one party list); at the same time, there is still no requirement that they run in their constituency of residence.⁵⁶ Voters continue to be allowed to vote in any constituency.⁵⁷ Millard (2011) argues that this was an important change from the point of view of personalization: previously, the system's potential to allow voters to determine their representatives had not been realized, as so many of those in fact elected were not those who had received most votes in the district.

3.8 Conclusion: the system in 2011

The electoral system in Latvia has in essence remained the same since 1992. Those features of the system that are still contested to date are those regarding the franchise, and requirements that candidates must meet in order to compete in the elections.

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⁵⁶ Article 10(3), April 2009 amendment to the 1995 law

⁵⁷ Article 3, 1995 law (at time of writing, 5 July 2011).