https://doi.org/10.25143/socr.21.2021.3

Rīgas Stradiņa universitāte

Socrates

2021, Nr. 3 (21)

Rīgas Stradiņa universitātes
Juridiskās fakultātes
elektroniskais juridisko
zinātnisko rakstu žurnāls

Rīga Stradiņš University
Faculty of Law
Electronic Scientific
Journal of Law

RĪGA • 2021 • RSU

Socrates: Rīgas Stradiņa universitātes Juridiskās fakultātes elektroniskais juridisko zinātnisko rakstu žurnāls = Rīga Stradiņš University Faculty of Law Electronic Scientific Journal of Law. Rīga: RSU, 2021, Nr. 3 (21). 244 lpp. https://doi.org/10.25143/socr.21.2021.3

Visi žurnālā ievietotie raksti ir recenzēti, izmantojot dubultaklu salīdzinošu novērtējumu.
All journal articles are reviewed in a double-blind peer review.

Citējot atsauce uz izdevumu ir obligāta.
Upon citing the journal article, reference to the journal is mandatory.

Autoru viedoklis var nesaskanēt ar redkolēģijas viedokli.
Opinion of authors may not coincide with the editorial views.

Par faktu pareizību atbild autori.
The authors are held responsible for the truthfulness of the facts.

IPD-1568

Redaktori / Editors: Ināra Mikažāne (latviešu valodā), Jānis Zeimanis (angļu valodā)
Priekšvārda tulkojums angļu valodā: Jānis Zeimanis
Datorgrafiķe / Layout: Ilze Stikāne

ISSN 2256-0548

Saturs / Contents

Priekšvārds

Žurnāla *Socrates* 2021. gada noslēdzošais izdevums ir tapis Covid-19 apstākļos, kas uzskatāmi ir ietekmējis rakstu autoru produktivitāti un radošumu, kā arī atsevišķus autorus ievirzījis ar pandēmiju saistīto problēmu izpētē. Žurnālā ietverto problēmu analīze var būt interesants izziņas process tiesisko parādību un procesu apzināšanā un izvērtēšanā.

Ļoti būtiska Latvijas Republikas Satversmes regulējuma analīzei savu rakstu ir veltījis Latvijas Universitātes profesors *Dr. iur.* **Ringolds Balodis**. Mūsu valstī izteikti liela nozīme ir Satversmes 4. pantā noteiktajam, ka valsts valoda Latvijas Republikā ir latviešu valoda. Autors pilnīgi pamatoti secina, ka valsts valoda ir latviešu nācijas saistošais elements. Tas ir kā tilts, kas saista gan iepriekšējās paaudzes ar nākamajām, gan ārpus Latvijas robežām dzīvojošos un latviešu tautai piederīgos ar dzimtenē dzīvojošiem tautiešiem. Neapšaubāmi, ka latviešu valoda ir viena no mūsu valsts neatņemamām vērtībām.

Covid-19 ietekme sabiedrībā, tās negatīvo seku mazināšanas pasākumi pašreizējā laikā ir īpaši aktuāli. Lietuvas tiesību zinātnieces **Erika Statkienė** un **Renata Šliažienė** ir veikušas kvalitatīvu salīdzinošo analīzi par vakcinēšanas pret Covid-19 Lietuvas Republikas tiesiskā regulējuma atbilstību ES rezolūcijai 2361 (2021). Autores secina, ka piespiedu vakcinācija varētu nebūt produktīva, lai sasniegtu pandēmijas pārvaldības mērķi. Rakstā pamatoti tiek atzīts, ka tiesiskais regulējums, kas samazina izvēles brīvību, var mazināt motivāciju un izraisīt neproduktīvu psiholoģisku reakciju uz brīvprātīgu vakcināciju. Normatīvais regulējums, kas nosaka ierobežojumus, piemēram, pakalpojumu saņemšanai – piekļuvei lielveikaliem, ārstniecības iestādēm, darba vietām vai bezmaksas veselības pakalpojumu saņemšanai, rada atšķirības starp sociālajām grupām un pieļauj diskriminējošas izpausmes. Cilvēktiesību un brīvības ierobežošana neatbilst ES rezolūcijai par Covid-19 vakcīnām. Rakstā paustās atziņas ir pilnībā attiecināmas arī uz Latvijā noteiktajiem Covid-19 ierobežošanas pasākumiem, tai skaitā attiecībā uz imperatīvo vakcinēšanas procedūru.

Covid-19 negatīvās ietekmes atsevišķās problēmas, maksātnespējas procesa, stāvokļa un seku analīzei savā rakstā ir pievērsies jaunais tiesību zinātnieks **Valdis Savickis**. Jāatzīst, ka pandēmijai ir samērā dramatiska ietekme uz valsts ekonomiku un atsevišķiem tās sektoriem, un tā arī nosaka juridisko un fizisko personu maksātspēju. Likumdevējs šādos apstākļos pilnīgi pamatoti ieviesa tā saucamo "moratoriju" maksātnespējas jomā. Pēc pandēmijas perioda atjaunotā tiesiskā kārtība šajā jomā sekmēja jaunu efektīvu procedūru

ieviešanu ekonomisko attiecību subjektiem. Autors pozitīvi vērtē to, ka tika mēģināts līdzsvarot kreditoru un parādnieku intereses situācijās, kad bija ieviests aizliegums kreditoriem izmantot vienu no to aktīvu aizsardzības tiesiskajiem mehānismiem – parādnieka maksātnespējas rosināšanu.

Virkne žurnālā ietverto rakstu ir veltīti starptautiskajām tiesībām un politoloģiskiem aspektiem. Jaunais tiesību zinātnieks zinātņu doktors **Giga Abuseridze** savā rakstā par Pasaules Tirdzniecības organizācijas (PTO) lomu starptautiskajā tirdzniecības procesā ekonomikas ilgtspējīgas attīstības kontekstā secina, ka PTO ir sekmīgi regulējusi transnacionālo saimniecisko sadarbību visā pasaulē. PTO uzmanības lokā ir ienākušas salīdzoši jaunas jomas, tostarp sadarbība intelektuālā īpašuma aizsardzībā, vides aizsardzībā, investīciju piesaistē. PTO sniedz lielu ieguldījumu starptautiskās tirdzniecības un ekonomiskās ilgtspējas attīstībā. *Dr. sc. pol.* **Gunda Reire** no politoloģiska un tiesiska aspekta analizē mazo valstu spējas ietekmēt un efektīvi darboties Apvienoto Nāciju Organizācijas Drošības padomē. Autore secina, ka mazo valstu starptautiskās ietekmes juridiskos un konceptuālos ierobežojumus var samazināt tikai atbalstošā tiesiski noteiktā starptautiskā sistēmā, kur nav apdraudēta mazo valstu fiziskā drošība un teritoriālā integritāte.

Saistībā ar pieaugošajiem bruņoto konfliktu draudiem aktuāls ir tiesību zinātnieku profesora **Vitolda Zahara** un tiesību zinātnes doktores **Vitas Upenieces** raksts par Latvijas tiesiskā regulējuma ierobežojumiem personu dalībai bruņotos konfliktos. Autori piedāvā veikt virkni grozījumu Latvijā spēkā esošajos tiesiskajos aktos, precizējot iespējamo konfliktu dalībnieku loku. Pamatoti ir izstrādātie priekšlikumi grozījumiem Pilsonības likumā, Nacionālās drošības likumā un citos tiesiskajos aktos.

Sociālo zinātņu maģistrs **Olevs Nikers** analizē sabiedrības iesaistes tiesiskos aspektus Latvijas valsts aizsardzības sistēmā. Autors atzīst – kaut gan politiskās plānošanas un tiesiskā regulējuma dokumentos sabiedrības iesaiste valsts aizsardzībā ir paredzēta un noteikta, tomēr sabiedrības un indivīdu reālā iesaiste ir nepilnīga un pat birokrātiska. Izpildvaras institūcijas, tostarp Aizsardzības ministrija, paredz, ka ikvienam Latvijas pilsonim un iedzīvotājam ir obligāti jāiesaistās valsts aizsardzībā, tomēr likumdevēja tiesiskās iniciatīvas nav pietiekamas. Autors uzskata, ka minētajā jomā ir būtiski izkropļots izpildvaras un likumdošanas varas līdzsvars.

Lietuvas Kazimiera Simonavičus Universitātes tiesību zinātņu doktora grāda pretendents **Karolis Kaklys** analizē pašvaldību darbības aspektus no politiskās opozīcijas veidojumu aspekta. Politisko opozicionālo, minoritāšu tiesību un interešu ignorēšana izpaužas kā autokrātiskas pārvaldības modelis. Autors pievērš uzmanību tam, ka lēmumi par administratīvo kontroli atsevišķās pašvaldībās var būt pieņemti selektīvi. Rakstā tiek atklāti ieteikumi, kas varētu attiecīgās nepilnības novērst.

Lasītāju interesi izraisīs raksti, kas veltīti atsevišķu tiesībsargājošo jomu darbības analīzei. *Dr. iur.* **Sandra Joksta** ir apskatījusi specifiskus advokāta profesijas darbības aspektus, kas saistīti ar naudas atmazgāšanas, terorisma finansēšanas un ieroču izplatīšanas novēršanu. Advokāts kā tiesvedības procesa dalībnieks ir neatkarīgs, un viņam

pieejamā informācija demokrātiskas valsts ietvarā ir konfidenciāla. Naudas atmazgāšanas novēršanas (*AML*) tiesiskais regulējums ir zināmā pretrunā ar Advokatūras likumu. Autore atzīst, ka pastāv kolīzija starp advokāta pamattiesībām uz profesionālo noslēpumu un konfidencialitāti un pienākumu ziņot par aizdomīgu darījumu.

Jaunie tiesību zinātnieki **Gerda Kläviņa** un **Ansis Zanders** sniedz ieskatu maz pētītā un tajā pašā laikā no teorētiskā un praktiskā aspekta nozīmīgā problēmā, t.i., tiesu spējā vērtēt pierādījumus, kuri iegūti operatīvās darbības laikā un var saturēt arī ar valsts noslēpumu saistītus objektus. Līdz ar to tiesai var būt noteikta speciāla prasība – tiesībām piekļūt valsts noslēpuma objektam, lai šādu informāciju varētu pilnvērtīgi novērtēt kā pierādījumu. Autori pamatoti ierosina: ja operatīvo pasākumu laikā iegūtā informācija tiek izmantota kā pierādījums krimināllietā, tiesai būtu jāpārbauda operatīvie materiāli, kas nav pievienoti krimināllietai un attiecas uz pierādīšanas priekšmetu. Savukārt tiesību zinātņu doktors **Aleksandrs Matvejevs** analizē policijas darbības problēmas sabiedriskās drošības nostiprināšanā**.** Autors atzīst, ka ir dažādas pieejas sabiedriskās drošības būtības interpretācijā. Nav apšaubāma rakstā paustā atziņa par to, ka sabiedrības drošība balstās uz sabiedrisko mieru un nosacījumiem par spējām aizsargāt sociālās vērtības, neitralizēt jebkādus draudus, un tās nodrošināšanā īpaša vieta ir policijai.

Latvijā aktuālas ir tiesiska rakstura problēmas, kas saistītas ar būvniecību. Atsevišķus šo problēmu aspektus padziļināti ir skatījuši Rīgas Tehniskās universitātes tiesību zinātņu doktors **Jānis Bramanis** un Biznesa augstskolas "Turība" profesors **Jānis Načisčionis**. Būvniecības tiesiskajā regulējumā nozīmīgas ir būvniecības projektu un to īstenošanas procesa ekspertīzes. Autori pievērš uzmanību iespējamajiem grozījumiem Publisko iepirkumu likumā, kuros liela nozīme ir paredzēta ekspertīzēm, kas būtiski varētu mainīt autoruzraudzības un būvuzraudzības sistēmu. Autori secina, ka tas varētu radīt tiešu risku sabiedrisko ēku drošībai.

Atsevišķos rakstos iezīmētas jaunas problēmas medicīnas tiesību jomā. Tā Baltijas Starptautiskās akadēmijas jaunais tiesību zinātnieks **Anatolijs Litviņenko** (*Anatoliy A. Lytvynenko*) ir sniedzis ieskatu samērā inovatīvā problēmā – par normatīvā regulējuma pilnveidošanas iespējām pierādījumu iesniegšanā tiesās no pacientiem ar ierobežotām sazināšanās spējām, izmantojot komunikācijas tehnoloģiskos palīglīdzekļus. Autora rakstā ilustrētā Itālijas judikatūras prakse liecina par to, ka šādi pierādījumi var būt pieļaujami. Var tikai pievienoties autora viedoklim par to, ka pētījumiem saistībā ar pacienta gribas izteikšanu ar alternatīviem līdzekļiem ir perspektīvas tālākai zinātniskai izpētei. Ukrainas Poltavas Tiesību institūta zinātnieki *Ph.D.* **Vitālijs Paškovs** (*Vitalii Pashkov*), *Dr. med.* **Aleksejs Solovjovs** (*Oleksii Soloviov*), *Ph.D.* **Andrejs Harkuša** (*Andrii Harkusha*) ir pētījuši jaunu tehnoloģiska rakstura procesu tiesiskā regulējuma problēmas. Mēs ik dienas saskaramies ar plašu interneta pakalpojumu un preču piedāvājuma pieaugumu. Šo piedāvājumu lokā ietilpst arī tiešsaistes farmaceitiskie produkti, pieaug nelegālā aptieku tirgus apjomi. Rakstā tiek uzsvērts, ka, pieaugot tiešsaistes farmaceitisko produktu izplatībai, veidojas globāli draudi sabiedrības veselībai ar potenciāli negatīvām sekām gan pacientu drošībai, gan valsts ekonomikai. Tiešsaistes aptiekas sekmē farmaceitisko,

tostarp viltotu, produktu bezrecepšu izsniegšanas risku. Vienlaikus paplašinās pacientu neierobežota piekļuve farmaceitiskajiem produktiem digitālajā vidē. Neapšaubāmi, ka digitālais mārketings, interneta aptieku izplatība nosaka nepieciešamību veikt attiecīgu tiesiskā regulējuma pilnveidošanu.

Socrates kārtējā izdevumā ir iekļautas saistošas Ukrainas tiesību zinātnieku publikācijas, kas veltītas ekspertu darba specifikai. Ukrainas Bokariusa Kriminālistikas institūta zinātniece **Inese Ovsjaņņikova** (*Inessa Ovsiannykova*) savā pētījumā analizē tiesu ekspertu darbību tās efektivitātes uzlabošanas aspektā. Sabiedrības pilnveides un tiesiskās sistēmas transformācijas procesa stadijā tiesu ekspertīžu iestāžu darbībā veidojas virkne metodisku, praktisku un administratīva rakstura problēmjautājumu, kas prasa efektīvu to risināšanu. Autore uzskata, ka atbilstošas problēmas ir jāapzina, raugoties caur tiesu ekspertu, tiesu ekspertīžu iestāžu noteikto mērķu un uzdevumu sasniegšanas efektivitātes prizmu.

Kultūrvēsturiskā, dabas un vides mantojuma saglabāšanai ir liela nozīme nacionālā un starptautiskā līmenī. Ukrainas Bokariusa Kriminālistikas institūta zinātniece **Katerina Siļjonoka** (*Kateryna Sylenok*) ir pētījusi tiesu vēsturiskās un arheoloģiskās ekspertīzes izteikti pieaugošo lomu arheoloģiskā mantojuma saglabāšanā. Spēkā esošais starptautiskais un nacionālais tiesiskais regulējums nosaka pieminekļu aizsardzības mehānismu, taču tā praktiskā īstenošana nav pietiekami efektīva. Autore atzīst, ka kriminālistisko vēsturisko un arheoloģisko pētījumu attīstība Ukrainā un aktīva to pielietošana praksē ir būtisks elements arheoloģisko pieminekļu aizsardzības saglabāšanas mehānismā. Paaugstinot tās efektivitāti, būtu jāizstrādā un jāievieš jaunas pētnieciskās metodikas.

Tiesību zinātnes doktora grāda pretendente **Lidija Rozentāle** ir pievērsusies jēdziena "mājsaimniecība" Latvijas tiesiskā regulējuma problemātikai. Autore secina, ka normatīvajā sistēmā nav skaidri un visaptveroši definēti kritēriji, kas dotu iespēju viennozīmīgi identificēt mājsaimniecības veidojumu. Līdz ar to var būt grūti piemērot noteikumus par administratīvo atbildību saistībā ar Covid-19 ieviesto ierobežojošo pasākumu pārkāpumiem. Mājsaimniecību ietvarā var konstatēt arī dažādas partnerattiecību struktūras. Pozitīvi ir vērtējams tas, ka autore piedāvā savu partnerattiecību definīciju, kas ietver divu pretēja dzimuma personu ilgstošas un stabilas attiecības vai noteiktās situācijās arī viena dzimuma partneru kopdzīvi, kuras mērķis ir nodibināt sociāli nozīmīgu saikni starp partneriem un viņu radiniekiem, nereģistrējot laulību.

Specifiskai tēmai par transporta pakalpojumu sniegšanu atbilstoši romiešu tiesībām darba līguma ietvaros ir pievērsies civiltiesību zinātņu autoru kolektīvs – *Dr. iur.* **Allars Apsītis** un tiesību zinātņu doktora grāda pretendenti **Dace Tarasova, Jolanta Dinsberga** un **Jānis Joksts**. Autori izpētījuši, ka romiešu tiesībās par darba līgumu, saskaņā ar ko darbuzņēmējam / darbiniekam kā nomniekam bija pienākums veikt pakalpojumus vai noteiktu darbu, tika uzskatīta arī vienošanās par preču vai pasažieru pārvadāšanu. Rakstā tiek skarti arī jautājumi par ceļu servitūtiem. Raksts noteikti varētu būt saistošs romiešu tiesību un tiesību vēstures interesentiem.

Kārtējā visnotaļ apjomīgajā elektroniskajā juridiskajā žurnālā *Socrates* ir iekļauti raksti no dažādām tiesību zinātnes apakšnozarēm, tostarp arī publikācijas, kam ir starpdisciplinārs raksturs. Autori pārstāv dažādus Eiropas reģionus un valstis, kas sniedz iespēju iepazīties ar starptautisko pieredzi daudzveidīgās tiesiskās problēmās un to risināšanas pieredzē. Raksti pārsvarā ir angļu valodā, kas dod iespēju ar to saturu iepazīties plašam lasītāju lokam visā pasaulē. Paldies autoriem par pausto viedokli, kas var raisīt tālākas zinātniskas diskusijas.

Sirsnīga pateicība un cildinājums redakcijas kolektīvam, kurš *Socrates* izdevumam ļāvis būt pieejamam elektroniskajā vidē, kā arī redaktoriem, tulkotājiem, maketētājiem.

Rīgas Stradiņa universitātes
Juridiskās fakultātes profesors
Andrejs Vilks

Foreword

The final edition of Socrates in 2021 has been developed in the context of COVID-19, which has had a significant impact on the productivity and creativity of the authors, as well as guiding some authors into pandemic issues. The analysis of the problems included in the journal may be used as an interesting cognitive process in identifying and evaluating legal phenomena and processes.

Professor *Dr. iur.* **Ringolds Balodis**, of the University of Latvia, has devoted his article to analysis of a very important regulation of the Constitution of the Republic of Latvia. In Latvia, the provisions of Article 4 of the *Satversme* (Constitution) that the official state language in the Republic of Latvia is Latvian are of great importance. The author quite rightly concludes that the state language is the binding element of the Latvian nation. It resembles a bridge that connects both previous generations with future and those living outside Latvia and belonging to the Latvian people with compatriots living in their homeland. Undoubtedly, the Latvian language is one of the integral values of the country.

The effects of COVID-19 on society and its mitigation measures are currently particularly relevant. Lithuanian law scholars **Erika Statkienė** and **Renata Šliažienė** have performed a qualitative comparative analysis on compliance of the legislation of the Republic of Lithuania on vaccination against COVID-19 with the EU Resolution 2361 (2021). The authors conclude that compulsory vaccination may prove not to be productive in achieving the goal of pandemic management. The article rightly acknowledges that legislation that reduces freedom of choice can reduce motivation and lead to an unproductive psychological response to voluntary vaccination. Legislation that imposes restrictions on, for example, access to services – supermarkets, medical facilities, workplaces, or free health care – creates differences between social groups and allows for discriminatory manifestations. Restrictions on human rights and freedoms are not compliant with the EU resolution on COVID-19 vaccines. The findings expressed in the article are fully applicable to the measures taken in Latvia to control the spread of COVID-19, including the mandatory vaccination procedure.

Valdis Savickis, a young legal scholar, focuses on the analysis of the state and consequences of certain problems of the negative impact of COVID-19 – the insolvency process. It must be acknowledged that the pandemic has a relatively dramatic impact on the national economy and some of its sectors, and it also affects the solvency of legal and natural persons. In such circumstances, the legislature quite rightly introduced the so-called "moratorium" on insolvency. After the pandemic period, the renewed legal

framework facilitated the introduction of new effective procedures for economic operators in this area. The author welcomes the fact that an attempt was made to balance the interests of creditors and debtors in situations where creditors were prohibited from using one of the legal mechanisms for the protection of their assets – incitement of the debtor to insolvency.

A number of articles in this edition are devoted to international law and political science. In his article on the role of the World Trade Organization (WTO) in the international trade process in the context of sustainable economic development, **Giga Abuseridze**, a young lawyer, concludes that the WTO has successfully regulated transnational economic cooperation around the world. Relatively new areas have come to the attention of the WTO, including cooperation on intellectual property protection, environmental protection, and investment attraction. The WTO makes a major contribution to the development of international trade and economic sustainability. *Dr. sc. pol.* **Gunda Reire** analyses political and legal aspects of the ability of small states to influence and operate effectively in the United Nations Security Council. The author concludes that legal and conceptual constraints on the international influence of small states can only be reduced in a supportive legally established international system where physical security and territorial integrity of small states is not compromised.

In connection with the growing threat of armed conflict, an article by **Vitolds Zahars**, a Professor of Law, and **Vita Upeniece**, a Doctor of Law, on limitations of Latvia's legal framework for participation of persons in armed conflict is relevant. The authors propose to make several amendments to the legal acts in force in Latvia, specifying the range of possible participants in conflicts. Proposed amendments to the Citizenship Law, the National Security Law and other legal acts have been substantiated.

Olevs Nikers, Master of Social Sciences, studies legal aspects of public involvement in the Latvian national defense system. The author acknowledges that although involvement of the public in national defense is envisaged and determined in the documents of political planning and legal regulation, the real involvement of the public and individuals is incomplete and rather bureaucratic. Executive authorities, including the Ministry of Defense, stipulate that every Latvian citizen and resident must be involved in national defense, but the legislator's legal initiatives are not sufficient. The author considers that the balance between executives and legislature has been significantly distorted in the area.

Karolis Kaklys, *Ph.D.* candidate in Kazimierz Simonavičius University of Lithuania, studies aspects of local municipality activities from the perspective of political opposition formations. Ignoring the rights and interests of the political opposition and minorities manifests itself as a model of autocratic governance. The author highlights the fact that decisions on administrative control in some municipalities may be made selectively. The article reveals suggestions that could address these shortcomings.

Readers will be interested in articles dedicated to analysis of individual law enforcement areas. *Dr. iur.* **Sandra Joksta** has looked at specific aspects of the legal profession related to prevention of money laundering, terrorist financing and proliferation of arms.

The lawyer, as a party to the proceedings, remains independent, and the information available to him in a democratic state is confidential. The legal framework for the prevention of money laundering (Anti-Money Laundering, hereinafter *AML*) to some extent is in contradiction with the Law on Advocacy. The author acknowledges that there is a conflict between a lawyer's fundamental right to professional secrecy and confidentiality and the obligation to report a suspicious transaction.

The new legal scholars **Gerda Klāviņa** and **Ansis Zanders** provide an insight into a little-studied yet a theoretically significant problem, i.e. the ability of courts to evaluate the evidence obtained during operational activities, which may also contain objects related to state secrets. Consequently, the court may have a special requirement – the right to access the object of a state secret, so that such information can be fully assessed as evidence. The authors rightly suggest that if the information obtained during the operative measures is used as evidence in a criminal case, the court should examine the operative materials that are not attached to the criminal case but relate to the evidence. **Aleksandrs Matvejevs**, Doctor of Laws, however, analyses the problems of police activity in strengthening public security**.** The author acknowledges there to be diverse approaches to interpreting the nature of public safety. The article undoubtedly presents that public security is based on public peace and conditions to protect social values, counteract any threats and that the police have a special role ensuring this.

Problems of a legal nature related to construction are topical in Latvia. Some aspects of these problems have been studied by **Jānis Bramanis**, Doctor of Laws at Riga Technical University, and **Jānis Načisčionis**, Professor of "Turība" University. Expertise of construction projects and their implementation process are important in the legal regulation of construction. The authors highlight possible amendments to the Public Procurement Law, focusing on the importance of expertise, which could significantly change the system of author supervision and construction supervision. The authors conclude that this could pose a direct risk to the security of public buildings.

Several articles highlight new challenges in the field of medical law. For instance, **Anatoliy A. Lytvynenko**, a young legal scientist at the Baltic International Academy, has provided insight into a relatively innovative problem: possibilities for improving the regulatory framework for presenting evidence in courts from patients with disabilities using communication technology. The Italian case-law illustrated in the article shows that such evidence may be admissible. One can only agree with the author's view that research on the expression of a patient's will by alternative means has prospects for further scientific research. Scientists from the Poltava Law Institute of Ukraine *Ph.D.* **Vitalii Pashkov**, *Dr. med.* **Alexei Solovyov**, *Ph.D.* **Andrii Harkusha** has studied the problems of legal regulation of new technological processes. Society faces a large increase in the supply of Internet services and goods on a daily basis. These offers also include online pharmaceutical products; the size of the illegal pharmacy market is growing. The authors emphasise that as proliferation of online pharmaceutical products grows, there is a global threat to public health with potentially negative consequences for both patient safety and national

economy, including online pharmaceutical products, and the growing size of illegal pharmacy market. Online pharmacies contribute to the risk of over-the-counter dispensing of pharmaceuticals, including counterfeit goods. Simultaneously, patient unrestricted access to pharmaceutical products in digital environment is expanding. Undoubtedly, digital marketing and the spread of online pharmacies determine the need to improve the relevant legal framework.

The current edition of *Socrates* includes binding publications of Ukrainian legal scholars dedicated to the specifics of the expert work. **Inessa Ovsiannykova**, a scientist at the Bokarius Forensic Science Institute in Ukraine, studies the work of forensic experts in terms of improving its efficiency. At the stage of the process of improvement of the society and transformation of the legal system, a number of methodological, practical and administrative problems arise in the operation of forensic institutions, which require their effective solution. The author believes that appropriate problems should be identified through the prism of the effectiveness of achieving the goals and tasks set by forensic experts and forensic institutions.

Preservation of cultural, historical and environmental heritage is of great importance at the national and international level. **Kateryna Sylenok**, a scientist at the Bokarius Forensic Science Institute in Ukraine, has studied the growing role of historical forensic and archaeological expertise in preserving archaeological heritage. The current international and national legal framework provides for a mechanism for the protection of monuments, but its practical implementation is not sufficiently effective. The author acknowledges that the development of forensic historical and archaeological research in Ukraine and its active application in practice is an essential element in the mechanism of preservation of protection of archaeological monuments. To increase its effectiveness, new research methodologies should be developed and introduced.

Candidate for the degree of Doctor of Laws **Lidija Rozentāle** has addressed the issue of the legal regulation of the concept "household" in Latvia. The author concludes that the regulatory system does not clearly and comprehensively define the criteria that would allow unambiguous identification of the household structure. Consequently, it may be difficult to apply rules on administrative liability for breaches of restrictive measures imposed by COVID-19. Various partnership structures can also be identified within households. The author's offer of a definition of a partnership that includes a lasting and stable relationship between two people of the opposite sex or, in certain situations, cohabitation between the same sex, with the aim of establishing a socially significant bond between the partners and their relatives without registering the marriage is praiseworthy.

A specific topic on the provision of transport services compliant with the Roman law within the framework of an employment contract has been addressed by a team of authors of civil law sciences – *Dr. iur.* **Allars Apsītis** and *Ph.D.* candidates **Dace Tarasova**, **Jolanta Dinsberga**, and **Jānis Joksts**. The authors have identified that in the Roman law, an employment contract under which the contractor / employee was obliged as a lessee

to perform services or perform certain work was also considered to be an agreement for the carriage of goods or passengers. The article also addresses the issue of road easements. It could certainly be of interest to those interested in the Roman law and the history of law.

The consecutive, rather voluminous, issue of the *Socrates* contains articles from various sub-disciplines of law, including publications of interdisciplinary nature. The authors represent various European regions and countries, which provide an opportunity to get acquainted with the international experience of various legal problems and the experience of solving them. Since the articles are predominantly in English, it grants the opportunity to a wide range of readers around the world to familiarise with their content. I would like to express my gratitude to the authors for their views shared, which may lead to further scientific discussions.

Sincere gratitude and praise to the editorial staff, editors, translators, layout designers that have made the *Socrates* edition available in the electronic format.

Andrejs Vilks,
Professor at the Faculty of Law,
Rīga Stradiņš University

https://doi.org/10.25143/socr.21.2021.3.016-052

Latvijas Republikas Satversmes 4. panta pirmā teikuma "Valsts valoda Latvijas Republikā ir latviešu valoda" zinātnisko komentāru papildinājums

Supplement to Scientific Comments of the First Sentence of Article 4 of the Satversme of the Republic of Latvia "The Official State Language in the Republic of Latvia is the Latvian Language"

Dr. iur., profesors ***Ringolds Balodis***
ORCID: 0000-0002-7139-9907
Latvijas Universitāte, Juridiskā fakultāte, Latvija
Ringolds.Balodis@lu.lv

Abstract

The Latvian language is an essential element of constitutional identity of the Republic of Latvia, without which the Latvian constitutional system and the system of Constitution cannot be imagined, as such. Since 2021, the Official Language Day on 15 October has been celebrated. According to the President of Latvia Egils Levits the Official Language Day may serve as another opportunity to spread awareness and promote the use of the Latvian language as one of the main constitutional values of our state and nation. The Official Language Day is a meaningful contribution to the future tradition of celebrating the official language across society.

The current study focuses on the issue of the official language in Latvia and its importance from the perspective of constitutional law. The experience of the Republic of Latvia is divided into two periods. The first – covers the period 1918–1940, when it was interrupted by the Soviet occupation. Consequently, after the restoration of independence in 1990, the second period can be defined: 1990–currently. If during the pre-war period the Latvian language was only enshrined in law, during the second period the official language has been enshrined in the Constitution (*Satversme*). The official language of the Latvian Constitution is specified in Section 4. The given

article is designed to supplement the scientific comments of Section 4, which was issued in 2014.

Keywords: Constitution (*Satversme*), Latvian language, official language, language policy, national minorities.

Ievads

Latviešu valoda ir valsts pārvaldes oficiālā valoda Latvijas valstī kopš Latvijas Republikas proklamēšanas, lai gan tajā pašā laikā parlamentā, pašvaldībās, par privāto sfēru nemaz nerunājot, faktiski pastāvēja trīsvalodība (latviešu, vācu un krievu valoda), kā arī bija latgaliešu izloksnes brīva lietošana Latgalē. Tikai pēc tam, kad 1932. gadā Ministru kabinets izdeva "Noteikumus par valsts valodu", kuriem bija likuma spēks, var runāt par valsts valodas tiesisku regulējumu valsts līmenī, kā arī likumiskiem nosacījumiem mazākumtautību valodu lietošanai.

Latviešu valodas un mazākumtautību valodu jautājumam ir visai gara vēsture. Piemēram, Tautas padomes valdošais viedoklis bija šāds: vispirms konstitucionāli jānosaka valsts valodas statuss latviešu valodai un tikai pēc tam jānoregulē mazākumtautību valodu lietošanas nosacījumi. Šis bija galvenais arguments mazākumtautību valodu likuma noraidīšanai Tautas padomē (1919).

Savukārt Satversmes sapulce valsts valodas klauzulu ietvēra Satversmes otrās daļas projekta 115. pantā, kura pirmajā teikumā (virsteikumā) paredzēja latviešu valodas kā valsts valodas statusu, bet otrajā daļā paredzēja speciāla likuma pieņemšanu par mazākumtautību valodām. Šis jautājums Satversmes sapulcei izrādījās neatšķetināms Gordija mezgls, kurā par galveno šķērsli izrādījās nevis mazākumtautību prasības, bet paša konstitucionālā likumdevēja ieskats par latviešu valodas lietošanu, kas nepieļāva mazākās konstitucionālās atkāpes no literārās latviešu valodas.

Līdz ar padomju okupāciju, latviešu valoda kļuva par mazākumtautību valodu, kuru, tāpat kā citu PSRS tautu valodas, pakļāva rusifikācijas politikai. PSRS sabrukuma priekšvakarā – pagājušā gadsimta 80. gadu beigās – latviešu nacionālā atmoda ar pretenzijām pēc autonomijas nāca roku rokā ar lingvistiskām prasībām. 1988. gada 6. oktobrī Latvijas Padomju Sociālistiskās Republikas (turpmāk – LPSR) Augstākā padome pieņēma vēsturisku lēmumu par valsts valodu, un jau pēc pusgada tika veikti grozījumi LPSR Konstitūcijā un pieņemts LPSR Valodu likums. Tā 1. pantā bija noteikts, ka saskaņā ar Latvijas PSR Konstitūciju valsts valoda ir latviešu valoda. Tas gan nenozīmē, ka šis tiesību akts bija orientēts uz divvalodības novēršanu, šis regulējums drīzāk uzskatāms par latviešu valodas saglābšanas pasākumu kopumu. Likums aizsāka ilgstošu valodu hierarhijas maiņas procesu par labu latviešu valodai un bija priekšvēstnesis tām izmaiņām, kas sekoja pēc Neatkarības deklarācijas pieņemšanas (1990). Grozījumi LPSR Valodu likumā (1992) būtiski mainīja Valodu likumu, un tie patiesībā jāuzskata par jaunu likumu, kas orientēts uz latviešu valodas dominanci valsts pārvaldē un publiskajā telpā.

1995. gada novembrī tika aizsākts jauna Valsts valodas likuma veidošanas posms, kas noslēdzās vien pēc četru gadu ilga dinamiska likumdošanas procesa. Likumprojekts tika skatīts vairākās Saeimās, un tas pārdzīvoja starptautisko ekspertu skarbu kritiku un Valsts prezidenta veto. Šī likumprojekta liktenis ir neparasts, un Saeimas likumdošanas aktu arhīvā parastās vienas dokumentu mapītes vietā tas aizņem palielu plauktu ar vairākiem desmitiem mapju. Kad ar likuma spēkā stāšanos (2000) spēku zaudēja iepriekšējais Valodu likums, daudzi politiķi jutās pamatīgi vīlušies un atzina, ka salīdzinājumā ar iepriekšējo šis likums sanācis "krietni maigāks" un "vājinot latviešu valodas pozīcijas", līdz ar to "mazinājusies ir latviešu valodas juridiskās aizsardzības kvalitāte". Nākas secināt, ka centieni izstrādāt jaunu likumu, nevis uzlabot veco, bija liela stratēģiska kļūda. Latviešu valoda kā valsts valoda tika nostiprināta arī Satversmē (1998). Valodas jautājums nezaudēja savu sabiedriski politisko aktualitāti. Tika organizēts "valodas referendums" par krievu valodu kā otru valsts valodu (2012). Politiskās elites atbilde bija tautas nobalsošanas prasību sarežģīšana un pastiprināšana, kas referendumus padara par vien teorētisku iespējamību.

Pateicoties Satversmes grozījumiem, Satversmes tiesas un Augstākās tiesas judikatūrai, kā arī, protams, tiesību zinātnieku rakstiem, kuros attīstītas tiesību doktrīnas atziņas, Satversme, par spīti tās respektablajam vecumam, atsevišķu normu senajam skanējumam un formulējumu lakonismam, joprojām saglabā "jaunību",[1] un tai ir spēja reģenerēties arī visaptverošas datortehnikas un interneta laikmetā. Satversmes zinātniskie komentāri kā sistematizēts, metodoloģiski veidots un padziļināts pētniecisks materiāls, bez šaubām, ir ieskaitāms šai Satversmes "jaunības saglabāšanas līdzekļu" komplektā. Lai gan Latvijas tiesību sistēma ir neliela, tomēr tā atrodas pastāvīgā attīstībā, tāpēc vien dažus gadus pēc atsevišķu komentāru nodaļu izdošanas tās lasāmas tikai kopā vai, ļoti vēlams, – kopā ar jaunākajām tiesu atziņām un zinātniskām publikācijām. Piemēram, Satversmes 4. panta komentāru[2] ieteicams lasīt kopā ar Satversmes tiesas 2015. gada 2. jūlija spriedumu lietā Nr. 2015-01-01,[3] savukārt Satversmes 15. panta komentāru[4] izlasot, vajadzētu ieskatīties arī Satversmes tiesas 2021. gada 12. marta spriedumā lietā Nr. 2020-37-0106, Satversmes 21. panta komentāru[5]

---

[1] Gehtmane-Hofmane, I. (2021). Satversmes komentāri – zinātnisks traktāts ar praktisku pielietojumu. *Zinātņu Vēstnesis. 3(608)*, 29.03.2021.; Balodis, R. (2020). Līdz ar Satversmes II nodaļas komentāru izdošanu noslēdzies Satversmes zinātnisko komentāru projekts. *Jurista Vārds. 36(1146)*, 08.09.2020.

[2] Druviete, I., Kārkliņa, A., Kusiņš, G., Pastars, E., un Pleps, J. (2014). Satversmes 4. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi.* Aut. kol. prof. R. Baloža zin. vad. Rīga: Latvijas Vēstnesis, 295–330.

[3] Satversmes tiesas 2015. gada 2. jūlija spriedums lietā Nr. 2015-01-01, secinājumu daļas 11.4 un 15.2 punkts.

[4] Kusiņš, G. (2020). Satversmes 15. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima. Aut. kol. prof. R. Baloža zin. vad. Rīga: Latvijas Vēstnesis,* 243–351.

[5] Pleps, J. (2020). Satversmes 21. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima. Aut. kol. prof. R. Baloža zin. vad. Rīga: Latvijas Vēstnesis,* 343–363.

lasot, vēlams ieskatīties Satversmes tiesas 2019. gada 23. decembra spriedumā lietā Nr. 2019-08-01, Satversmes 99. panta komentāru[6] noteikti vajadzētu skatīt kopā ar Satversmes tiesas 2011. gada 18. marta spriedumu lietā Nr. 2010-50-03 un Satversmes tiesas 2018. gada 26. aprīļa spriedumu lietā Nr. 2017-18-01, bet Satversmes 110. panta komentārs[7] ir jāaplūko ne tikai kopā ar Satversmes tiesas 2020. gada 11. novembra spriedumu lietā Nr. 2019-33-01, bet noteikti arī ar Satversmes tiesas tiesneša Alda Laviņa atsevišķo viedokli[8] šai lietā. Judikatūra, protams, sniedz svarīgu informāciju par tiesību normu piemērošanas praktiskajiem aspektiem,[9] taču uz vietas nestāv arī konstitucionālo institūciju veiktā interpretācija, kas dažos gadījumos ir pat visai būtiska.[10]

Par impulsu šā raksta tapšanai kalpoja žurnāla "Jurista Vārds" redakcijas lūgums sagatavot nelielu juridisku eseju par valsts valodu, sagaidot Satversmes simtgadi. Pēc fundamentālas iegremdēšanās valodas tematikā kļuva skaidrs, ka daudz kas samērā nozīmīgs Satversmes komentāros ir palicis nepateikts. Tomēr šis raksts nav uzskatāms kā "komentārs par komentāru" vai "atsevišķs viedoklis" par Satversmes 4. panta zinātnisko komentāru. 2014. gadā izdotais zinātniskais komentārs ir rūpīgi izstrādāts un pārdomāts,[11] taču pat tik apjomīgs darbs, ko veica ievērojams autoru kolektīvs, nespēj pilnībā aptvert visu valodas sadaļas ģenēzi. Ar saviem papildinājumiem vēlos paplašināt šo komentāru ar jauniem, neaplūkotiem vai nepietiekami dziļi analizētiem faktiem un apsvērumiem. Papildinājumi padziļina zinātnisko komentāru skatījumu un sniedz skaidrāku pirmā un nedaudz arī otrā neatkarības laika valsts valodas tiesiskā regulējuma attīstību. Jautājums par valsts valodu un tās aizsardzību, kā arī normatīvo regulējumu ir viens no būtiskajiem nacionālas valsts pamatjautājumiem. Satversmes 4. panta komentētājs, Latvijas Universitātes Juridiskās fakultātes Tiesību teorijas un vēstures katedras vadītājs docents Jānis Pleps pamatoti ir norādījis, ka ikvienam tiesību elementam, ar kuru mēs šodien

---

[6] Balodis, R. (2011). Satversmes 99. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Aut. kol. prof. R. Baloža zin. vad. Rīga: Latvijas Vēstnesis,* 319–342.

[7] Dupate, K., Reine, I. (2011). Satversmes 110. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Aut. kol. prof. R. Baloža zin. vad. Rīga: Latvijas Vēstnesis,* 571–510.

[8] Satversmes tiesas tiesneša Alda Laviņa atsevišķās domas lietā Nr. 2019-33-01 "Par Darba likuma 155. panta pirmās daļas atbilstību Latvijas Republikas Satversmes 110. panta pirmajam teikumam".

[9] Satversmes tiesas 2012. gada 1. novembra spriedums lietā Nr. 2012-06-01, 7.2 punkts.

[10] Piemēram, Valsts prezidents Egils Levits ir ievērojami paplašinājis Satversmes normā noteikto Valsts prezidenta aizvietotāju loku, vienlaikus mainot arī pašu prombūtnes izpratni (runa ir par tiesiski nenoteiktā jēdziena "vai citādi kavēts pildīt savu amatu" izpratni), tādējādi mūsdienīgojot kopš Satversmes pieņemšanas brīža negrozīto Satversmes normu (sk. Valsts prezidenta Egila Levita 2019. gada 5. augusta paziņojumu Nr. 3 "Par Latvijas Republikas Satversmes 52. panta piemērošanu").

[11] Matule, S. (2014). Satversmes komentāros padziļināti izvērsti arī valsts pamati. *Jurista Vārds. 46(849)*, 08.09.2014.

darbojamies, vienmēr klātesoša ir vēstures un nākotnes perspektīva. Saskaroties ar kādas tiesību normas iztulkošanu, būtiski ir ņemt vērā vēsturiskā likumdevēja gribu un vēsturisko kontekstu, kurā norma radusies un attīstījusies,[12] un tieši par to šai komentāra papildinājumā arī ir runa.

Latvijas Republikas Satversmes 4. panta komentāra papildinājums[13] par B daļas (Panta ģenēze) pirmo sadaļu (Karoga un valsts valodas regulējums pagaidu satversmēs)

Valsts valoda Latvijas Republikā ir latviešu valoda. Latvijas karogs ir sarkans ar baltu svītru.

> "Latvijas pagaidu satversmēs valsts karogs un valsts valoda konstitucionāli nebija reglamentēta. Ar pagaidu satversmju starpniecību valsts dibinātāji risināja citus aktuālos konstitucionālās politikas jautājumus. Savukārt gan valsts karoga krāsas, gan arī latviešu valoda kā valsts valoda tika uztvertas kā aksiomas, kuru papildu deklarēšana pagaidu satversmēs nebija nepieciešama. Kā Latvijas Tautas padomē norādījis K. Pauļuks: "Visas Tautas padomes frakcijas atzina, ka Latvijā latviešu valoda ir valsts valoda." Zīmīga situācija par pašsaprotamu lietu izpratni vērojama Latvijas Tautas padomes 1919. gada 27. augusta sēdē, kurā tika izskatīts likums par valodu tiesībām. Debatējot par šo likumprojektu, tika izteiktas iebildes, jo tajā neesot norādīts, ka latviešu valoda ir valsts valoda. Viens no komisijas locekļiem, skaidrojot situāciju, norādīja, ka tas notika "uz komisijas latviešu tautības locekļu priekšlikumu, kas ieskatīja, ka tā nav mūsu darīšana, pašu par sevi saprotamu lietu jums vēl sevišķi apstiprināt"."[14]

Arī Satversmes teksts tika izstrādāts latviešu valodā.

> "Satversme ar savu pastāvēšanu apliecināja tautas gribu un izvēli savas valsts pamatus pasludināt latviešu valodā, kas ir neatņemama konstitucionāla vērtība, kas iekļauj savas tautas domāšanas stilu, pasaules uzskatu un apvieno nāciju."[15]

Tādēļ par pilnīgi pamatotu atzīstams uzskats, ka "valoda, kurā konstitūcija tiek pieņemta, ir uzskatāma par valsts valodu".[16]

> "Satversmes komisijas sagatavotais Satversmes 115. pants paredzēja: Latviešu valoda ir valsts valoda. Mazākuma tautību piederīgiem ir garantēta viņu valodas brīva lietošana kā runā, tā arī rakstos. Kādas mazākuma tautību valodas un cik tālu pielaižamas valsts pašvaldības un tiesu iestādēs, noteic sevišķs likums.

---

[12] Pleps, J. (2021).Vēstures nozīme tiesībnieka darbā. *Jurista Vārds. 32(1194)*, 10.08.2021.

[13] Druviete, I., Kārkliņa, A., Kusiņš, G., Pastars, E., Pleps, J. (2014). Satversmes 4. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi.* Aut. kol. prof. R. Baloža zin. vad. Rīga: Latvijas Vēstnesis, 295–330.

[14] Turpat, 298.

[15] Turpat, 299.

[16] Turpat.

> Latvijas Satversmes sapulcē šā panta piedāvājums izraisīja plašas diskusijas, kas bija saistīts ar latgaliešu rakstu valodas jautājumu. Vairāki Satversmes sapulces locekļi bija iesnieguši priekšlikumu noteikt, ka Latgales apgabalā par oficiālu valodu tiek atzīta latgaliešu izloksne [..]." [17]

> "Tā kā Satversmes II daļu nepieņēma, valsts valodas regulējums tika saglabāts zemāka juridiskā spēka tiesību aktu līmenī. Latviešu valodas pozīcijas pilnā mērā nostiprināja 1935. gada Likums par valsts valodu."[18]

Tautas padome (turpmāk – TP vai priekšparlaments) 1918. gada 6. decembrī pieņēma pagaidu nolikumu "Par Latvijas tiesām un tiesāšanās kārtību",[19] kurā kā "darīšanu valoda tiesās un tiesu iestādēs" tika noteikta latviešu valoda, vienlaikus dodot likumisku pamatu arī krievu un vācu valodas brīvai lietošanai.[20] Šis solis iezīmēja sākumu faktiskai trīsvalodībai un jaunās valsts lingvistiskai tolerancei attiecībā uz lielāko mazākumtautību valodu lietošanu. Ielūkojoties tā laika statistikā, ir redzams visai izteikts krievu, taču ne vācu mazākumtautības īpatsvars salīdzinājumā ar citām mazākumtautībām. Saskaņā ar 1920. gada statistikas datiem Latvijā bija 1 596 131 iedzīvotājs, no tiem 72,8 % bija latvieši. Starp lielākajām mazākumtautībām ir minēti lielkrievi un baltkrievi – 12,6 %, ebreji – 5 %, vācieši – 3,6 % un poļi – 3,4 %.[21] Iedzīvotāji gan nebija vienmērīgi izvietojušies visā valsts teritorijā – dati liecina, ka latviešu skaits laukos vietām sasniedza pat 90 % un vairāk, tomēr pilsētās šī proporcija bija pilnīgi cita. Tā Rīgā latviešu bija vien nedaudz vairāk par pusi jeb 55,12 %. Līdzīga situācija bija arī Liepājā – 52,29 %, bet Latgales pilsētās, piemēram, Rēzeknē latviešu bija vien 19,26 %, Daugavpilī pat vēl mazāk – 5,15 % (!).[22] Ļoti neviendabīgs bija mazākumtautību iedzīvotāju izvietojums dažādos reģionos. Vācu valodas izplatība plašāka bija Kurzemes pusē, bet krievu valodas – Latvijas dienvidaustrumos. Ir jāatzīst, ka Latvijā pagājušā gadsimta

---

[17] Druviete, I., Kārkliņa, A., Kusiņš, G., Pastars, E., Pleps, J. (2014). Satversmes 4. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi.* Aut. kol. prof. R. Baloža zin. vad. Rīga: Latvijas Vēstnesis, 300.

[18] Turpat, 301.

[19] Par Latvijas tiesām un tiesāšanās kārtību: Tautas padomes pagaidu nolikums. *Pagaidu Valdības Vēstnesis*. 1918. g. 14 (1.) decembris; *Latvijas Pagaidu Valdības Likumu un Rīkojumu Krājums. 1*, 15.07.1919.

[20] Svarīgi piebilst, ka šis Tautas padomes darbības otrajā mēnesī pieņemtais nolikums, ar kuru Latvija pārņēma Krievijas tiesu iekārtu, saglabājās arī pēc Latvijas Republikas Satversmes pieņemšanas, jo balstījās uz Krievijas 1864. gada Tiesu iekārtas likumu (ar tā grozījumiem līdz 1917. gada 1. augustam), kas savulaik tika uzskatīts par labāko Eiropā. Sk. Krūmiņa, V. (2013). Ievads Latvijas Republikas Satversmes VI nodaļas komentāram: tiesu varas evolūcija Latvijā. No: *Latvijas Republikas Satversmes komentāri. VI nodaļa. Tiesa. VII nodaļa. Valsts kontrole*. Aut. kol. prof. R. Baloža zin. vad. Rīga: Latvijas Vēstnesis, 11–12.

[21] Skujenieks, M. (1925). *Otrā tautas skaitīšana Latvijā*. Rīga, 52. Citēts pēc: Sosāre, M. (1992). Valodu likumdošanas jautājumi Latvijas Republikas pastāvēšanas sākuma posmā. *Latvijas Zinātņu Akadēmijas Vēstis*. A daļa, *4*, 01.04.1992.

[22] Turpat, 58.

20.–30. gados krustojās lielu tautu kultūras un politikas iespaids un liela iedzīvotāju daļa prata vairākas valodas, ko īpaši var teikt par pilsētniekiem, kuri "lielā skaitā runāja divās, trīs un pat četrās valodās".[23]

Profesore Ina Druviete, kas ir arī viena no 4. panta komentētājām, savā publikācijā "Latvijas valodu politika Eiropas Savienības kontekstā" pamatoti norāda, ka pasaules vēsture ir arī nepārtrauktas valodu cīņas vēsture (valodu darvinisms). Valodu kontakti, pēc zinātnieces ieskata, nozīmē valodu konfliktus, un valodu attiecībās vienmēr ir valdījusi un valdīs konkurence.[24] Patiešām, Latvijā pirmajā (un vēlāk arī otrajā) neatkarības periodā par valodas statusu notika skarba politiskā cīņa, kurā latviešu valoda ir izcīnījusi sev valsts valodas statusu.

Satversmes komentāros ir citēti divu TP delegātu – Latviešu zemnieku savienības frakcijas locekļa Kārļa Vilhelma Pauļuka un Vācbaltiešu demokrātiskās partijas (*Deutsch-Baltische Demokratische Partei*) frakcijas un Nacionālo lietu komisijas priekšsēdētāja Paula Šīmaņa – izteikumi 1919. gada 27. augusta sēdē. Ja Satversmes komentāros citētie izteikumi tiek atrauti no sēdes debates konteksta, tie var radīt nepareizu iespaidu par tā laika reālo situāciju jautājumā par latviešu valodu kā valsts valodu. Senās priekšparlamenta sēdes stenogramma spēcīgi ilustrē mazākumtautību un latviešu pārstāvju cīņu, par ko iepriekš runā Ina Druviete. Latviešu valodai pienākošos vietu neviens neuzlūkoja *per se*. Krievu valoda bija impērijas valoda, bet vācieši Latvijā gadu simteņiem bija elites statusā. Bijušo muižas zemnieku, mājkalpotāju, kučieru un strādnieku valodai pēkšņa kļūšana par valsts pārvaldes oficiālo valodu viņiem vēl nebija arguments, lai necīnītos par krievu un vācu valodas privilēģijām. Šo aspektu labi raksturo TP 1919. gada 27. augusta sēdē barona Eduarda fon Rozenberga (pirmā Latvijas Republikas valsts kontroliera) teiktā runa, kuras fragments izsaka pašu šo domāšanas būtību (runāja vāciski): "Ja jūs, kungi, no mums prasāt latviešu valsts valodas prašanu, tad jūs prasāt no mums neiespējamo, jo šo valodu mēs, par nožēlošanu, nekad savās skolās neesam mācījušies. Bet jūs visi protat mūsu valodas, vai nu vāciski, vai krieviski, tādēļ mēs no jums nekā neiespējama neprasām!"[25]

Zīmīgs ir Kārļa Vilhelma Pauļuka sēdē teiktais, kas citēts 4. panta Satversmes komentārā: "Visas Tautas padomes frakcijas atzina, ka Latvijā latviešu valoda ir valsts valoda." Sevišķi tas ir nozīmīgs tāpēc, ka turpat viņš arī saka: "Ar šā likuma pieņemšanu agrākie vispārīgie nosacījumi krīt nost, jo šis projekts satur speciālu noteikumu par valodu tiesībām. [..] Bet tas nav izpildāms. No mums minoritātes prasa to, ko mēs nevaram izpildīt."[26]

---

[23] Sosāre, M. (1992). Valodu likumdošanas jautājumi Latvijas Republikas pastāvēšanas sākuma posmā. *Latvijas Zinātņu Akadēmijas Vēstis*. A daļa, *4*, 01.04.1992.

[24] Druviete, I. (1998). *Latvijas valodu politika Eiropas Savienības kontekstā*. Rīga: LU Latviešu valodas institūts, LZA Ekonomikas institūts, 147.

[25] Tautas padomes 4. sesijas 8. sēdes 1919. gada 27. augustā stenogramma.

[26] Turpat.

Izlasot Satversmes komentāros citēto Pauļuka runas fragmentu, kurā viņš runā par kādu agrāku vienošanos (nosacījumiem), rodas jautājums, par ko runā Pauļuks un kāds tam sakars ar konkrēto TP sēdi? Atbilde meklējama Tautas padomes kompozīcijā (veidošanā) un nosacījumos par darba organizāciju (arī valodas lietošanu) priekšparlamentā. Sēdē tika skatīts Mazākumtautību valodu likuma (turpmāk – MVL) projekts, kas cieši saistīts ar latviešu valodas lietošanu. Mazākumtautību delegāti TP bija iesnieguši apspriešanai pirmajā lasījumā MVL projektu. Tas bija izstrādāts TP Nacionālo lietu komisijā, un sēdē to komisijas vārdā prezentēja minētās komisijas priekšsēdētājs baltvācietis Pauls Šīmanis, kurš paziņoja, ka uzstājas TP mazākumtautību vārdā un ka tās "[..] neprasa vairāk, kā tikai to, ka ierēdņi prastu vēl citas valodas, lai neviens valsts pilsonis latviešu valodas neprašanas dēļ netiktu ierobežots savās tiesībās".

Pret likumprojektu asi iestājās latviskās partijas, piemēram, Zemnieku savienība, kuras pārstāvis Pauļuks MVL nodēvēja par "cittautībnieku programmu", norādot, ka caur MVL minoritātes savām valodām faktiski prasa valsts valodas statusu un šādā veidā latviešu valodu kā valsts valodu cenšas apiet. Uz pārmetumu, ka MVL dīvainā kārtā netiek runāts par valsts valodu, Šīmanis teica, arī 4. panta komentārā citētos, zīmīgos vārdus, ka tas nav mazākumtautību pienākums par valsts valodu domāt... Ir skaidrs, ka baltvācieša, kas sēdē principiāli runāja tikai vācu valodā, paustais ir vien politiska atrunāšanās, jo Pauļuka teiktajā bija liela daļa taisnības. Kā var pieņemt likumu par valodu lietošanu Latvijas valstī, ja tajā nav iestrādāts valsts valodas noregulējums?

Lai arī MVL nav saglabājies, sēdes stenogrammā ir fiksēti tā svarīgākie principi. Pirmkārt, likumprojekta pamatprincips bija "dažādās Latvijas vietās dažādām valodām dažādas tiesības".

Otrkārt, no stenogrammmas var saprast būtisku MVL ietvertu algoritmu, kas bija sasaistīts ar attiecīgā valsts administratīvā reģiona minoritāšu apdzīvotības blīvumu. Tā, piemēram, ja pilsētā 20 % vai attiecīgā pagastā dzīvo 50 % mazākumtautības iedzīvotāju, tad minoritātes valoda bauda tur valsts valodas statusu. No Mazākumtautību valodu likuma projekta izrietēja īpašas tiesības vācu valodai pilsētās valsts centrālajā daļā, bet krievu valodai sevišķs statuss Latgalē un vēl četrās valsts pilsētās.

Satversmes komentāros pamatoti ir teikts, ka, aizstāvot MVL projektu, par argumentu norādīts, ka "komisijas latviešu tautības locekļi" ir atbalstījuši MVL.[27] Patiešām, šāds apgalvojums bija, un, visticamāk, tas izraisīja pamatīgu politisku traci. Latviešu pārstāvji TP Nacionālo lietu komisijā taisnojās, ka darbs tajā galvenokārt noticis svešvalodā, bez viņu aktīvas iesaistes u. tml. Tam nekavējoši sekoja Latviešu zemnieku savienības frakcijas paziņojums, ka tā atsauc savus pārstāvjus no Nacionālo lietu komisijas, to vietā nozīmējot citus. Viens no atsauktajiem bija arī dzejnieks Kārlis Skalbe, kuru kauninā ja, –

[27] Druviete, I., Kārkliņa, A., Kusiņš, G., Pastars, E., Pleps, J. (2014). Satversmes 4. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi.* Aut. kol. prof. R. Baloža zin. vad. Rīga: Latvijas Vēstnesis, 298.

kā viņš, tik pārliecināts latviešu patriots būdams, būtu varējis apstiprināt pret latviešu valodu vērstu likumprojektu.[28]

1919. gada 27. augusta debates par MVL bija pirmā nopietnā diskusija TP par valsts valodu Latvijas valstī. Latgaliešu delegātu ieskatā MVL projekts esot "Bābeles torņa būvēšana".[29] Debates noslēdzās ar Pauļuka diplomātisko viedokli, ka valodu jautājums nav priekšparlamenta kompetencē. TP tomēr esot "kārtības nodibināšanai", bet valodas jautājums esot jāatstāj Satversmes sapulces ziņā. MVL projekts tika noņemts no dienaskārtības. Dažus mēnešus pēc tikko aplūkotajām debatēm kā savdabīga atbalss sekoja Tautas padomes kārtības ruļļa grozījums (38. pants), ar kuru latviešu valoda ieguva apzīmējumu "valsts valoda". Zīmīgi, ka jaunais regulējums pieļāva jebkādu tulkošanu TP sēdes laikā tikai uz krievu, bet ne uz vācu valodu.[30]

Atgriežoties pie jautājuma par aplūkotajās debatēs Pauļuka minēto vienošanos attiecībā uz latviešu valodu kā valsts valodu, ir jāieskatās TP veidošanās pamatprincipos.

TP bija nevēlēts, revolucionāri pašorganizēts pagaidu veidojums, kas tika radīts valsts izveidošanai. Latviešu politiskās organizācijas, dibinot TP, nostiprināja šādu apņemšanos: "Pie Latvijas Tautas Padomes piedalās ar saviem deputātiem: a) politiskas partijas, b) nacionālās minoritātes un c) tie Latvijas novadi, t. i., Kurzeme un Latgale, kuros šimbrīžam nepastāv politiskas partijas".[31]

Viens no Tautas padomes dibinātājiem Spricis Paegle, kas bija piedalījies arī TP dibināšanas sēdē 1918. gada 17. novembrī, norādīja, ka, TP dibinot, tika lemts 20 % no kopējā TP locekļu skaita atvēlēt nacionālajām minoritātēm ("pa visām tautībām kopā").[32] Šo apgalvojumu zināmā mērā apstiprina arī kāds cits tā laika notikumu aculiecinieks Ādolfs Klīve, kura atmiņās var lasīt, ka Kārlis Ulmanis, kas bija TP īstenais veidotājs un arhitekts, "nacionālām minoritātēm rezervēja pārstāvību proporcionāli latviešu skaitam [?] bez tuvākiem noteikumiem".[33]

---

[28] Vēlāk dzejnieks bija viens no aktīvākajiem latviešu kā valsts valodas aizstāvjiem 1922. gadā Satversmes sapulces debatēs par Satversmes 115. pantu un arī 4. Saeimas diskusijā par 1932. gada speciālā valsts valodas likuma normām.

[29] Tautas padomes 4. sesijas 8. sēdes 1919. gada 27. augustā stenogramma.

[30] "Pārlabojumi un jautājumi, kuri ierosināti pa sēdes laiku un ceļami uz balsošanu uz Tautas Padomes locekļa – valsts valodas nepratēja – lūgumu, pārtulkojami krievu valodā. Tulkošanu prezidents var uzticēt sevišķam tulkam." Sk. Latvijas Tautas padomes kārtības rullis 23.08.1919., 38. panta otrā daļa. No: *Likumu un Valdības Rīkojumu Krājums. 11*, 1919.

[31] Tautas padomes politiskā platforma: pieņemta Latvijas Tautas padomes sēdē 17.11.1918., 3. panta otrā daļa. *Valdības Vēstnesis. 1*, 14.12.1918.

[32] Paegle, S. (1939). *Kā Latvijas valsts tapa*. Otrais izd. Rīga: Liepājas Burtnieks, 212.

[33] Savās atmiņās Ādolfs Klīve norāda, ka Ulmanis, "atstājot minoritātēm deputātu sūtīšanu uz Tautas padomi pēc neierobežota pašu ieskata", esot pieļāvis būtisku "inkonsekvenci". Klīve pārmet Ulmanim, ka "dažas latviešu konservatīvās partijas Tautas padomē neuzņēma, bet vācieši un citas minoritātes konservatīvos polītiķus uz TP varēja sūtīt bez ierobežojuma". No: Klīve, Ā. (1969). *Brīvā Latvija: Latvijas tapšana: atmiņas, vērojumi un atzinumi*. Bruklina: Grāmatu Draugs, 234, 242.

Ir jānorāda, ka Tautas padomē jauni locekļi tika uzņemti kooptācijas kārtībā, kas nozīmē, ka priekšparlaments jaunus locekļus uzņēma, tos apstiprinot ar balsu vairākumu. Šāda kārtība tika praktizēta no TP nodibināšanas sākuma un vēlāk, 1919. gada 23. augustā, tā tika nostiprināta arī TP kārtības rullī.[34] TP darbības laikā (1918–1920) tās locekļu skaits būtiski pieauga, kas ietekmēja attiecīgi arī minoritāšu pārstāvniecību. TP dibināja 40 delegāti 1918. gada 17. decembrī, un starp viņiem nebija neviena mazākumtautību pārstāvja, bet pēc pāris nedēļām, sanākot kopā uz pirmo sesiju, TP piedalījās 53 latviešu deputāti, pieci vācu un trīs ebreju tautības pārstāvji.[35] TP darbību noslēdzot, tajā bija 245(!), pēc citiem datiem – 297 dalībnieki. Tas nozīmē, ka TP prezidijam vajadzēja rūpīgi izvērtēt katru jaunu partijas iesniegumu par uzņemšanu TP. Ņemot vērā to, ka priekšparlaments ne tikai teicami tika galā ar izsvērtu likumdošanu, bet arī spēja gādāt par normālu parlamenta pienākumu veikšanu (TP spēja nodrošināt labu darba organizāciju), ir pamats domāt, ka TP prezidijam izdevās salāgot sākotnēji pielemtās proporcijas un piedāvāto kandidātu kvalifikāciju. Pamatdarba valoda bija latviešu valoda, un lietvedība tika kārtota latviešu valodā, tādējādi var pieņemt, ka, mazākumtautību delegātus apstiprinot, notika arī Pauļuka 1919. gada 27. augusta sēdē minētā vienošanās par latviešu valodu kā oficiālo valodu.

Tas ir gluži saprotami, ka Latvijas Republikā latviešu valoda ir oficiālā saziņas valoda, taču intereses vērts ir fakts, ka līdztekus latviešu valodai kā parlamentā, tā arī pašvaldībās savu vietu pirmajā neatkarības laikā ieņēma krievu un vācu valoda.[36] Šeit svarīgi ir piebilst, ka latviešu valodas tiesiskais stāvoklis nebija noteikts Satversmē. Līdz 1932. gadam krievu un vācu valodai bija priviliģētāks statuss iepretīm citām svešvalodām. Tautas padomē sākās, Satversmes sapulcē turpinājās, bet starpkaru Saeimās deputātu savstarpējā saziņā nostiprinājās faktiska trīsvalodība. Lietvedība Saeimā tika kārtota tikai latviešu valodā,[37] tomēr deputāti, pēc izvēles, sēdēs varēja runāt latviešu, krievu, vācu valodā, kā arī latgaliešu izloksnē. Latgaliešu runas jau stenografējot pārveidoja literārā latviešu valodā, bet krievu un vācu valodā teiktās runas (pareizāk, to atreferējumus)

---

[34] Pirmkārt, attiecīgā partija vēršas ar lūgumu Tautas padomes prezidijā (norādot konkrētus delegātus). Otrkārt, prezidijā tiek izskatīts šis lūgums. Treškārt, Tautas padomes kopsēdē ar balsu vairākumu tiek lemts par partijas virzīto delegātu mandātu atzīšanu (kooptācija). Sk. Latvijas Republikas Tautas Padomes kārtības rullis: 23.08.1919., 1. un 2. pants. *Likumu un Valdības Rīkojumu Krājums*. *11*, 1919.

[35] Paegle, S. (1939). *Kā Latvijas valsts tapa*. Otrais izd. Rīga: Liepājas Burtnieks, 228.

[36] Balstoties uz Saeimas stenogrammu izpēti, var izdarīt visai pārliecinošu pieņēmumu, ka daļa minoritāšu deputātu nevis nemācēja, bet politisku iemeslu dēļ nevēlējās runāt latviešu valodā, savukārt panākt tikai latviešu valodas lietošanu parlamentā un pašvaldībās nebija izteiktas politiskas gribas. Saeimas sastāvs, līdzīgi kā mūsdienās, bija visai sadrumstalots. Koalīcijas bija vājas un nevienam nebija spēka iegūt uz "sava kakla" organizētas piecu, sešu cilvēku lielas vācu minoritātes frakcijas deputātus un tikpat daudz krievu tautības pārstāvju...

[37] "Katrs Saeimai priekšā ceļams iesniegums rakstiski formulējams latviešu valodā un no iesniedzēja parakstāms". Sk. Saeimas kārtības rullis: 26.03.1923., 45. pants. *Valdības Vēstnesis*. *65*, 27.03.1923. https://tzpi.lu.lv/likumdeveja-kartibas-rullis/

saskaņā ar Saeimas kārtības rulli (1923. un 1929.)[38] pašiem runātājiem bija jāiesniedz stenogrammu nodaļā.[39] Izņēmums (to var uzskatīt par tā laika konstitucionālu parašu) bija referentu pienākums runāt latviešu valodā valsts budžetu pieņemot.[40] Faktisko trīsvalodību saziņā krietni samazināja, taču pilnībā to neatcēla arī 1932. gada Valsts valodas noteikumi ar likuma spēku[41] un pat ne 1935. gada Valsts valodas likums.

Latviešu valodas juridiskais statuss līdz pat 1932. gadam bija nenoteikts par spīti vairākiem normatīvajiem aktiem, kuros latviešu valoda tika saukta par valsts valodu. Pirmo reizi latviešu valoda par valsts valodu ir nosaukta 1918. gada 16. decembra Pagaidu nolikumā par Latvijas tiesām un tiesāšanās kārtību (10. pants)[42] un vēlāk arī citos tiesību aktos, piemēram, 1919. gada 23. augusta Tautas padomes kārtības rullī (38. pants), 1919. gada 8. decembra likumā "Par Latvijas izglītības iestādēm" (8. pants),[43] 1921. gada 22. novembra Ministru kabineta noteikumos "Par ierēdņu pārbaudīšanu valsts valodas

---

[38] Saeimas 1923. gada kārtības rullī un arī tā aizvietotājā – 1929. gada Saeimas kārtības rullī – tika noteikts, ka gadījumā, ja deputāts sēžu laikā runā vāciski vai krieviski, tad tautas priekšstāvim pašam ir jānodrošina runas tulkojuma iesniegšana Saeimas stenogrammu birojā. No paša deputāta, kas izvēlējās runāt šajās valodās, bija atkarīgs, vai sēdē sacītais parādījās stenogrammās. Sk.: Saeimas kārtības rullis: 26.03.1923., 146. pants. *Valdības Vēstnesis. 65*, 27.03.1923.; Saeimas kārtības rullis: 20.03.1929., 147. un 148. pants. *Valdības Vēstnesis. 79*, 10.04.1929. *Tiesību zinātņu pētniecības institūts*. https://tzpi.lu.lv/likumdeveja-kartibas-rullis/
Par šā regulējuma darbību viegli var pārliecināties, ielūkojoties stenogrammās. Tā piemēram, 1. Saeimas sēžu stenogrammās pie deputāta Markusa Nuroka (frakcijas "Agudas Izrael" loceklis) teiktā var lasīt stenogrāfistu piezīmi, ka runātājs ir uzstājies vācu valodā un tālāk zemsvītras atsaucē piebilsts, ka teksts ir runas atreferējums latviešu valodā. To pašu var redzēt, ieskatoties deputāta Maksa Lazersona (frakcija "Ceire Cion") runas tekstā. Tur gan rakstīts, ka viņš runā krievu valodā. Sk. Latvijas Republikas 1. Saeimas 1. sesijas 7. sēdes 1922. gada 13. decembrī stenogrammu. *Tiesību zinātņu pētniecības institūts*. http://tzpi.lu.lv/pirmais-neatkaribas-laiks/saeimas-stenogrammas/

[39] Ja runu atreferējumi netika iesniegti, stenogrammā tie arī neparādās. Piemēram, stenogrammā pie Saeimas deputāta Leonīda Jeršova (Strādnieku un zemnieku frakcija) uzvārda nav runas teksta, bet lasāma piezīme, ka deputāts uzstājies krievu valodā un "runas atreferējums nav iesniegts". Sk. Latvijas Republikas 3. Saeimas 8. sesijas 1. sēdes 1931. gada 20. janvārī stenogrammu. *Tiesību zinātņu pētniecības institūts*. http://tzpi.lu.lv/pirmais-neatkaribas-laiks/saeimas-stenogrammas/

[40] Piemēram, 1929. gada 8. februāra sēdē Saeimas deputātam V. Piguļevskim, kuram bija jāziņo par 1928./29. gada budžeta nodokļu atlaidi sakarā ar plūdiem, krusām un neražām. Stenogramma liecina, ka viņš runu uzsāka krievu valodā, taču pēc starpsaucieniem zālē un sēdes vadītāja aizrādījuma pārgāja uz latviešu valodu, ko, spriežot pēc stenogrammas, referents pārvaldīja teicami. Sk. Latvijas Republikas 3. Saeimas 2. sesijas 6. sēdes 1929. gada 8. februāra stenogrammu. *Tiesību zinātņu pētniecības institūts*. http://tzpi.lu.lv/pirmais-neatkaribas-laiks/saeimas-stenogrammas/

[41] Noteikumi par valsts valodu (izdoti Latvijas Republikas Satversmes 81. panta kārtībā): 18.02.1932. *Valdības Vēstnesis. 39*, 18.02.1932.

[42] Par Latvijas tiesām un tiesāšanās kārtību: Tautas padomes pagaidu nolikums, 10. pants. *Latvijas Pagaidu Valdības Likumu un Rīkojumu Krājums. 1*, 15.07.1919.

[43] Likums par Latvijas izglītības iestādēm: 08.12.1919. *Likumu un Valdības Rīkojumu Krājums. 13*, 31.12.1919.

prašanā",[44] 1923. gada 4. oktobra Satversmes 81. panta kārtībā izdotajos noteikumos ar likuma spēku "Noteikumi par Latgales apgabaltiesas vecākā notāra darbības atjaunošanu attiecībā uz aktu apstiprināšanu"[45] un 1924. gada 17. novembra likumā "Par virsnieku un kara ierēdņu pārbaudīšanu valsts valodas prašanā".[46] Likumos ir manāma arī nekonsekvence jēdziena lietošanā, piemēram, 1923. gada 18. jūlija Likumā par sapulcēm[47] tika runāts par sapulcēm, ko sarīko ārzemnieki, kā arī par "valodas brīvību", taču tajā nav jēdziena "valsts valoda". Līdzīgi ir arī 1923. gada 23. aprīļa likumā, kas apstiprināja Latvijas Universitātes Satversmi. Satversmes 3. punktā tika runāts par latviešu valodu, nevis par valsts valodu,[48] kas, kā zināms, ļāva pamatpriekšmetus mācīt gan vācu, gan krievu valodā. Spilgts piemērs ir vienā dienā – 1919. gada 8. decembrī – pieņemtais likums "Par Latvijas izglītības iestādēm" un "Par mazākuma tautību skolu iekārtu Latvijā".[49] Vienā likumā parādās jēdziens "valsts valoda", bet otrā no tā lietošanas likumdevējs ir izvairījies. Tas skaidrojams ar to, ka tiesību normu hierarhijā nebija noteikts valsts valodas statuss un nebija arī konsekventas valsts valodas politikas. Situācija mainījās tikai pēc tam, kad 1932. gada 18. februārī tika pieņemti Valsts valodas noteikumi ar likuma spēku un beidzot tika noteikts latviešu valodas statuss. No šī brīža sāka mainīties attieksme pret valodu lietošanu ne tikai pašā valsts pārvaldē, bet arī ārpus tās.

Satversmes sapulcei caurskatot Satversmes otro daļu, mazākumtautības debatēt par 115. pantu[50] negāja. To var izskaidrot ar apstākli, ka šā panta otrais teikums[51] ietvēra apņemšanos izstrādāt speciālu MVL, pie kura tieši tobrīd noritēja aktīvs darbs

---

[44] Noteikumi par ierēdņu pārbaudīšanu valsts valodas prašanā: 22.11.1921. *Valdības Vēstnesis. 269*, 28.11.1921.

[45] Noteikumi par Latgales apgabaltiesas vecākā notara darbības atjaunošanu attiecībā uz aktu apstiprināšanu (izdoti Latvijas Republikas Satversmes 81. panta kārtībā): 04.10.1923. *Valdības Vēstnesis. 222*, 08.10.1923.

[46] Likums par virsnieku un kara ierēdņu pārbaudīšanu valsts valodas prašanā: 17.11.1924. *Valdības Vēstnesis. 262*, 22.11.1924.

[47] Likums par sapulcēm: 18.07.1923. *Valdības Vēstnesis. 152*, 18.07.1923.

[48] Latvijas Universitātes Satversme: 27.04.1923., 3. punkts. *Valdības Vēstnesis. 66*, 28.03.1923.

[49] Likums par mazākuma tautību skolu iekārtu Latvijā: 08.12.1919. *Likumu un Valdības Rīkojumu Krājums. 13*, 31.12.1919.

[50] Sākotnējā Satversmes 115. panta redakcija tika pieņemta Satversmes otrās apakškomisijas sēdē 1921. gada 29. aprīlī, piedaloties četriem apakškomisijas locekļiem: Fricim Jansonam, Andrejam Kuršinskim, Paulam Kalniņam un Jakovam Helmanim (kā mazākumtautību pārstāvim). Sēdē bez jebkādām diskusijām pieņēma un ieprotokolēja jaunu Satversmes projekta normu: "Latviešu valoda ir valsts valoda. Mazākuma tiesību piederīgiem tiek garantēta viņu valodas svabada lietošana kā runā, tā arī rakstos." Sk. Satversmes 2. apakškomisijas 1921. gada 29. aprīļa sēdes protokolu Nr. 60. Nav publicēts.

[51] Satversmes otrās daļas projekta 115. panta redakcija bija šāda: "Latviešu valoda ir valsts valoda. Mazākuma tautību piederīgiem ir garantēta viņu valodas brīva lietošana kā runā, tā arī rakstos. Kādas mazākuma tautību valodas un cik tālu pielaižamas valsts pašvaldības un tiesu iestādēs, noteic sevišķs likums."

Satversmes izstrādes komisijā.[52] No komentāriem sēdes laikā vairījās pat Pauls Šīmanis, kurš Satversmes komisijā nesekmīgi bija centies 115. panta otrajā teikumā mainīt, pēc viņa domām, abstrakti interpretējamu juridisku jēdzienu "mazākuma tautības" pret konkrētu tautību uzskaitījumu (ebreju, vācu un krievu).[53] Arī šie MVL projekti līdz mūsu dienām nav saglabājušies, taču galvenās iezīmes ir redzamas Satversmes izstrādes komisijas protokolos.[54] Regulējums tajos pārspēj iepriekš aprakstīto TP projektu. Vairs netiek runāts par algoritmiem, kas balstītos uz divdesmit vai piecdesmit procentiem, bet uz piecdesmit vai pat desmit procentiem (kā kurā likumprojektā) mazākumtautību dzīvojošo attiecīgajā pašvaldībā. Piemēra pēc var ieskatīties Lielkrievu likumprojekta 45. panta redakcijā, kas pilnā apjomā tiek citēta komisijas protokolā: "Visās tanīs Latvijas pašvaldības vienībās, kurās lielkrievi sastāda ne mazāk kā 10 % no vispārējā iedzīvotāju skaita, iedzīvotājiem ir tiesība griezties pie visiem – tiesu, valsts un pašvaldības iestādēm – kā mutiski, tā arī rakstiski lielkrievu valodā." Likumprojekta nākamajā, t. i., 46. pantā, noteikts: "Visi vietējie valdības un pašvaldības iestāžu rīkojumi publicējami vispārējai zināšanai arī krievu valodā." Bet savukārt 49. pantā rakstīts, ka "tiesu iestādēs prāvniekiem atļauts rakstos un vārdos lietot lielkrievu valodu". Grūti pateikt, kādi būtu bijuši algoritmi, ja komisijas MVL projekts būtu nonācis līdz Satversmes sapulces pirmajam lasījumam, taču tam nebija lemts notikt.

Kad kļuva skaidrs, ka iecere par Satversmes otro daļu ir pilnīgi izgāzusies un latviešu valoda netiks konstitucionāli noteikta, un tādējādi nebūs arī pie 115. panta piebildes par mazākumtautību valodu speciālajiem likumiem, tika pielikts punkts MVL projektam. Satversmes komisijas 1922. gada 14. jūlija sēdē,[55] noslēdzot komisijas darbu, tās priekšsēdētājs Marģers Skujenieks, atvadoties no Satversmes komisijas locekļiem, sacīja: "Nav ko domāt, ka šis likums [MVL] komisijā šinī [Satversmes sapulces] sesijā vēl varētu tikt pieņemts, kamdēļ tas no dienas kārtības tiek noņemts." Protokolā ir fiksēts Skujenieka

[52] Sākumā bija ideja gatavot vairākus MVL – krieviem savu, vāciešiem savu un ebrejiem savu. Šāda pieeja tika atbalstīta Satversmes komisijā, kurā MVL skatīja trīs lasījumos un gatavoja iesniegšanai Satversmes sapulces prezidijam tālākai virzībai sēdē. No Satversmes komisijas protokolos piefiksētajiem fragmentiem ir saprotams, ka Šīmanis bija galvenais šo likumu virzītājs un turpināja savas jau TP iesāktās iestrādes šai virzienā. Komisijas protokolos lasāms, ka komisija pēc Šīmaņa ieteikuma nolēma dažādu mazākumtautību likumus apvienot vienā ("vācu un lielkrievu valodu likumus" savienot vienā likumprojektā un izdarīt to trešajā lasījumā), par ko komisija iebildumus necēla. Sk. Satversmes komisijas 1921. gada 3. novembra sēdes protokolu Nr. 58; Satversmes komisijas 1922. gada 8. jūlija sēdes protokolu Nr. 70 un Satversmes komisijas 1922. gada 14. jūlija sēdes protokolu Nr. 77. *Tiesību zinātņu pētniecības institūts*. https://tzpi.lu.lv/satversmes-sapulces-komisijas-sezu-protokoli/

[53] Satversmes komisijas 1921. gada 3. novembra sēdes protokols Nr. 58. *Tiesību zinātņu pētniecības institūts*. https://tzpi.lu.lv/satversmes-sapulces-komisijas-sezu-protokoli/

[54] Satversmes komisijas 1922. gada 8. jūlija sēdes protokols Nr. 70. *Tiesību zinātņu pētniecības institūts*. https://tzpi.lu.lv/satversmes-sapulces-komisijas-sezu-protokoli/

[55] Satversmes komisijas 1922. gada 14. jūlija sēdes protokols Nr. 77. *Tiesību zinātņu pētniecības institūts*. https://tzpi.lu.lv/satversmes-sapulces-komisijas-sezu-protokoli/

paskaidrojums. Darbs netiek turpināts, jo apakškomisija nespēj sanākt uz sēdi, lai nolemtu par MVL trešo lasījumu. Protokolā ir ierakstīts, ka "komisijas priekšsēdētājs vēl konstatē, ka Satversmes komisija ir veikusi savu darbu un tamdēļ tās sēdes ir pārtraucamas." [56]

Īstais iemesls, visticamāk, nav saistāms ar komisijas darba organizāciju, drīzāk jau ar to apstākli, ka latviešu valoda tā arī netika nostiprināta valsts pamatlikumā par valsts valodu, un līdz ar to tālāk netika virzīti arī mazākumtautību atsevišķie valodu regulējumi. Jautājumu par latviešu valodu kā valsts valodu turpmākos desmit gadus Latvijas likumdevējs vairs nekustināja.

Latgalieši Satversmes sapulces 1922. gada 7. februāra sēdē iesaistījās asās debatēs par 115. pantu. Satversmes sapulces loceklis latgalietis Francis Kemps iesniedza priekšlikumu 115. panta pirmo teikumu "latviešu valoda ir valsts valoda" papildināt ar vārdiem "pie kam Latgales apgabalā par oficiālo valodu tiek atzīta latgaliešu izloksne". Šis priekšlikums tika noraidīts, tāpat kā visi citi latgaliešu priekšlikumi.[57] Latgalē ievēlētie Satversmes sapulces locekļi nepārprotami apvainojās un neskopojās izteikumos, debatēs paužot lielu satraukumu par asimilācijas politiku, ko pārējā Latvija realizē pret latgaliešiem. Franča Kempa ieskatā "latgaliskā izloksne" ir skaista un bagāta[58] un smiešanās par to esot [pārējo latviešu] šovinisma izpausme. Tas nav "patriotisms" un nav arī "nopietna valsts būvēšana", bet tas ir "šovinisms pašas tautas iekšā", no Saeimas tribīnes sacīja Kemps.[59] Viņš skumji secināja, ka izskatoties, ka pēc Satversmes pieņemšanas šādā redakcijā latgalieši atradīšoties daudz sliktākā situācijā nekā nacionālās minoritātes. Pārmetumi tika adresēti ne tikai ierēdņiem, kas lemj par Latgales lietām, bet arī kolēģiem, Satversmes sapulces locekļiem:

> "Mūsu izloksne nav tik saprotama un nav tik mīļa, kā mēs domājam, jo bieži vien mēs novērojam, ka, latgaliešiem nākot runāt, sapulce pa lielākai daļai atstāj zāli. [..] no visām pusēm dzirdam un jūtam, ka to [latgaliešu izloksni] izsmej, izķēmo, izjoko, pat noliedz." [60] [..]

---

[56] Satversmes komisijas 1922. gada 14. jūlija sēdes protokols Nr. 77. *Tiesību zinātņu pētniecības institūts*. https://tzpi.lu.lv/satversmes-sapulces-komisijas-sezu-protokoli/

[57] Latgaliešu sarūgtinājums, skatot vienu no pēdējiem Satversmes likumprojekta pantiem, bija liels, un tas krājās jau ilgi. Sākumā, 1921. gada 5. oktobrī Satversmes sapulces kopsēdē otrajā lasījumā caurskatot Satversmes pirmo daļu, tika noraidīts latgaliešu priekšlikums Satversmes 4. pantu izteikt šādi: "Latgale bauda apgabala pašvaldības tiesības, kuras nosakāmas ar atsevišķu likumu." Toreiz latgaliešiem Marģers Skujenieks bija paskaidrojis, ka šāds jautājums var tikt aplūkots otro Satversmes daļu skatot. 1922. gada 4. aprīlī Satversmes sapulces kopsēdē trešajā lasījumā tika noraidīts otrais latgaliešu mēģinājums papildināt ar līdzīgu satura redakciju Satversmes 99. pantu: "Latgale bauda plašas apgabala pašvaldības tiesības, kuras robežas nosaka atsevišķs likums".

[58] Satversmes sapulces 4. sesijas 8. sēdes 1921. gada 5. oktobrī stenogramma. No: *Latvijas Satversmes sapulces stenogrammu izvilkums (1920–1922). Latvijas Republikas Satversmes projekta apspriešana un apstiprināšana*. Rīga: Tiesu namu aģentūra, 2006.

[59] Turpat.

[60] Satversmes sapulces 4. sesijas 1921. gada 4. un 5. oktobra sēdes stenogramma. No: *Latvijas Satversmes sapulces stenogrammu izvilkums (1920–1922). Latvijas Republikas Satversmes projekta apspriešana un apstiprināšana*. Rīga: Tiesu namu aģentūra, 2006.

> "Dažās citās lietās, kā skolu un pašvaldību lietās, mēs [latgalieši] esam nostādīti zemāk nekā minoritātes un mums jau tagad vajadzīgs prasīt minoritāšu tiesības. Šai jautājumā mēs negribam arīdzan būt zemāki par minoritātēm."[61]

Protams, latgaliešiem blakus to latviskajai nacionāli kulturālai identitātei, kas ir kopēja visai latviešu nācijai, pastāv arī to specifiskā kultūrvēsturiskā identitāte.[62] Bezspēcīgajām dusmām par viņu visu likumdošanas iniciatīvu bloķēšanu vajadzēja kaut kā izlauzties uz āru, un trešajā lasījumā viņi atturējās balsojumā par Satversmes otro daļu. Saskaitot visas balsis, izrādījās, ka pietrūkst vien sešu balsu.[63] Tas nozīmēja, ka pat ar pusi no organizēto latgaliešu balsīm[64] būtu pilnīgi pieticis, lai Satversmes otrā daļa kļūtu par Satversmes neatņemamu daļu. Atšķirībā no Satversmes sapulces vairākuma, kas balsojumā atturējās vai balsoja pret likumprojektu, latgalieši izvēlējās nākt klajā ar paziņojumu (motivāciju). Satversmes sapulcei pēc balsojuma bija jāuzklausa latgaliešu paziņojums, ka viņi "atturējās tāpēc, ka, minēto Satversmes daļu caurskatot, tika noraidīts priekšlikums par Latgales apgabala pašvaldību, kā arī nepieņemti citi uz Latgali attiecošies pārlabojumi un papildinājumi".[65] Šai paziņojumā nešaubīgi jaušams savs dramaturģijas elements, jo, kā jau minēts, puses organizēto latgaliešu balsu būtu pilnīgi pieticis, lai šim Latvijas konstitucionālismam svarīgajam balsojumam būtu pozitīvs iznākums. Tā latgalieši pielika punktu divus gadus ilgušajai Satversmes otrās daļas rakstīšanai, līdz ar to par Satversmes pieņemšanas datumu kļuva 1922. gada 15. februāris.[66]

Latgaliešu centieniem ietvert Satversmes normās atsauces uz Latgales autonomiju un tiesībām uz izloksni nebija lemts piepildīties, līdz Zigfrīda Annas Meierovica vadītais Ministru kabinets to valdības noteikumu līmenī atrisināja Satversmes izstrādes laikā. 1921. gadā valodas jomā tika pieņemti vairāki noteikumi, kas attiecās arī uz Latgali vai tikai uz Latgales reģionu. Lai arī vairs nav iespējams pārliecināties par visu šo valdības

---

[61] Satversmes sapulces 4. sesijas 7. sēdes 1921. gada 4. oktobrī stenogramma. No: *Latvijas Satversmes sapulces stenogrammu izvilkums (1920–1922). Latvijas Republikas Satversmes projekta apspriešana un apstiprināšana*. Rīga: Tiesu namu aģentūra, 2006.

[62] Levits, E. (2019). *Valstsgriba. Idejas un domas Latvijai 1985–2018*. Rīga: Latvijas Vēstnesis, 556–557.

[63] Balsojumā piedalījās 130 sapulces locekļi, no tiem tikai 62 balsoja par Satversmes pieņemšanu. Lai gan pret bija tikai seši un atturējās 62, faktiski pret bija 68 balsis, jo atturējušos deputātu balsis tika pieskaitītas pret balsojušo skaitam. Saskaņā ar Latvijas konstitucionālo tradīciju atturēties būtībā nozīmēja balsot pret, tikai izteikt to "maigākā formā". Šeit ir nepieciešams paskaidrot balsojuma "atturēties" nozīmi parlamentārismā. Atturēties balsojumā nenozīmē būt pasīvam. Latgaliešu deputāti, tāpat visi pārējie sapulces locekļi, kas atturējās liktenīgajā balsojumā, nebija pret Satversmes otro daļu principā, jo šādā gadījumā viņi izvēlētos balsotu pret. Šādi balsojot, politiķi izrādīja attieksmi pret lēmumprojektu vai konkrētā gadījumā – likumprojektu. Ja balsojumā politiķi atturas, tad, visbiežāk, viņi vēlas parādīt, ka nav gatavi atbalstīt priekšlikumu, taču, ja priekšlikums būtu kvalitatīvāk izstrādāts, deputāti to atbalstītu.

[64] Satversmes sapulces balsojumu analīze liecina, ka latgaliešiem bija 17 vai 18 balsis, kas nozīmē, ka pat mazāk par pusi latgaliešu balsu būtu pilnīgi pieticis Satversmes otrās daļas pieņemšanai.

[65] Latvijas Satversmes sapulces 5. sesijas 34. sēdes 1922. gada 5. aprīlī stenogramma.

[66] Balodis, R. (2021). Kā cīņa par latgaliešu valodu ietekmēja latviešu valodas statusu. *Jurista Vārds*. *38*, 21.09.2021.

noteikumu efektivitāti, tomēr valdību var uzteikt par stingro politisko gribu sakārtot latgaliešu jautājumu valdības noteikumu līmenī. Tāpat bez papildu informācijas ir grūti spriest, kādēļ ar šiem noteikumiem nepietika un latgaliešiem šķita, ka viņu jautājums tomēr nav tiesiski noregulēts, un viņi atturējās izšķirošajā balsojumā par Satversmes otro daļu.

1921. gada 22. novembrī tika pieņemti Ministru kabineta "Noteikumi par ierēdņu pārbaudīšanu valsts valodas prašanā",[67] kuros bija paredzēts, ka tiem, "kuri pietiekoši nepārvalda valsts valodu, bet vēlas palikt valsts iestādes dienestā", ir iespēja gada laikā iemācīties tekoši runāt latviski. Pēc noteiktā termiņa viņu prasmes novērtēs īpaša komisija. Latgalei termiņš tika pagarināts, nosakot pārbaudes laiku pēc diviem gadiem.

1921. gada 11. jūnijā tika pieņemti Ministru kabineta "Noteikumi par latgaliešu izloksnes lietošanu",[68] kuros bija noteikts, ka "visām valsts iestādēm un amata personām" turpmāk jāpieņem iesniegumi, kas rakstīti latgaliešu izloksnē. Tādējādi tika pieļauta atkāpe no latviešu literārās valodas lietošanas Latgales reģionā. Noteikumi gan bija visai lakoniski, sastāvoši tikai no diviem punktiem, tomēr to pozitīvā ietekme bija ievērojama. Tajos bija paredzēts, ka turpmāk amatpersonām, valsts un pašvaldības iestādēm ir "tiesība lietot latgaliešu izloksni darbvedībā un sarakstoties, kā arī sludinājumos, uz izkārtnēm u. t. t.".

1921. gada 30. jūnijā tika pieņemti Ministru kabineta "Noteikumi par Latgales lietu pārzināšanu",[69] kuri reglamentēja, ka Iekšlietu ministrijas (turpmāk – IeM) Latgales lietu departamenta vietā, kas bija izsaucis latgaliešu neapmierinātību, tiek izveidota augstākas pakāpes ierēdņa – IeM ministra biedra Latgales lietās – amata vienība. Šai amatpersonai bija paredzēta plaša kompetence tieši Latgales lietās, kas ietvēra tiesības pieprasīt no jebkuras ministrijas un iestādes ziņas par tās resora darbību Latgalē. Tāpat šajos noteikumos bija paredzēta IeM ministra biedra Latgales lietās kompetence sniegt atsauksmes par ierēdņu iecelšanu Latgales reģionā.

1921. gada 26. jūlijā Ministru kabinets izdeva arī "Noteikumus par ierēdņu iecelšanu Latgalē",[70] kuros faktiski tika papildināti jau 30. jūnijā izdotie noteikumi. Saskaņā ar šiem noteikumiem valsts "centrālām iestādēm" bija pienākums saskaņot ar IeM biedru Latgales lietās visus ierēdņus, kas tiek iecelti "Latgales vajadzībām". Noteikumos bija paredzēts, ka, ieceļot ierēdņus Latgalē, "priekšrocīb[a] jādod tiem kandidātiem, pie citām līdzīgām īpašībām, kas prot latgaliešu izloksni un pazīst vietējos apstākļus".

Pēc tam, kad 1922. gada 5. aprīlī trešo lasījumu nepārvarēja Satversmes otrā daļa, Satversmes sapulcei cits neatlikta, kā 1922. gada 15. februārī apstiprināto Satversmes pirmo daļu 1922. gada 30. jūnijā izsludināt kā Satversmes pamattekstu. Mazākumtautību juristi Satversmi nodēvēja par *Rumpf-Verffassung*[71] (ir rumpis, taču nav galvas), ko var saprast

---

[67] Noteikumi par ierēdņu pārbaudīšanu valsts valodas prašanā: 22.11.1921. *Valdības Vēstnesis. 269*, 28.11.1921.

[68] Noteikumi par latgaliešu izloksnes lietošanu: 11.08.1921. *Valdības Vēstnesis. 183*, 17.08.1921.

[69] Noteikumi par Latgales lietu pārzināšanu: 30.06.1921. *Valdības Vēstnesis. 177*, 10.08.1921.

[70] Noteikumi par ierēdņu iecelšanu Latgalē: 26.07.1921. *Valdības Vēstnesis. 174*, 06.08.1921.

[71] Lazdiņš, J. (2014). Rechtspolitische Besonderheiten bei der Entstehung des lettischen Staates und seiner Verfassung. *Law. 7*, 17.

divējādi: no vienas puses, kā konstitūciju, kurai nav galvenās cilvēku pamattiesību sadaļas; no otras puses, kā latviešu Latvijas Republikas titulnācijas nespēju noteikt savai valodai augstāko konstitucionālo rangu. Lai gan netika pārtraukta bruņoto spēku un civildienesta pamatsastāva normatīvā regulējuma pilnveidošana attiecībā uz valsts valodas prasmju pārbaudīšanu,[72] tomēr desmit gadus valsts valodas jautājums pirmajās trijās Saeimās cilāts netika. Kad 4. Saeima 1931. gada decembrī apstiprināja Marģeru Skujenieku par Ministru prezidentu, valsts valodas jautājums tika pacelts no jauna. Skujeniekam šī bija otrā reize, kad viņš tika apstiprināts par premjerministru. Pieredzējušais politiķis savas politiskās karjeras sākumposmā bija sociāldemokrāts mazinieks, bet laika gaitā kļuva par visai labēju politiķi, kas realizēja nacionālu politiku. Satversmes sapulcē viņš vadīja Satversmes izstrādes komisiju un 1931. gadā, uzreiz pēc kļūšanas par Ministru prezidentu, aktivizēja latviešu valodas valstiskošanas jautājumu. Tika izmantota bēdīgi slavenā[73] Satversmes 81. panta iespēja izdot valdības noteikumus ar likuma spēku ("laikā starp Saeimas sesijām Ministru kabinetam ir tiesība, ja neatliekama vajadzība to prasa, izdot noteikumus, kuriem ir likuma spēks"). Ministru kabinets "Noteikumus par valsts valodu" pieņēma 1932. gada 18. februārī Satversmes 81. panta kārtībā.[74] Saeimā debates par šo regulējumu notika 1932. gada 23. februāra sēdē,[75] kurā mazākumtautību politiķi vienoti iestājās pret jauno regulējumu, uzskatot to par savu tiesību ierobežošanu. Pret latviešu valodu kā valsts valodu iestājās arī sociāldemokrātu frakcija, kuras deputāts Fricis Menderis paziņoja, ka sociāldemokrātiem tuvākas ir minoritāšu tiesības, nevis latviešu pilsonība ar "savām interesēm". Pauls Šīmanis tiesību aktu dēvēja par "tautību naidu izsaucošu", kas pēc būtības esot "valsts paziņojums minoritātēm, ka tās ir svešas valstij [..]", un, pēc viņa domām, tas esot vien "veikls valdības gājiens", kas domāts, lai novērstu uzmanību no valdības muitas un nodokļu politikas.[76] Sēdē nesnauda arī komunisti, kas visiem pa vidu neveiksmīgi centās provocēt latgaliešu izloksnes

[72] Likums par virsnieku un kara ierēdņu pārbaudīšanu valsts valodas prašanā: 17.11.1924. *Valdības Vēstnesis. 262*. 22.11.1924.

[73] Smiltēna, A. (2016). *Deleģētas likumdošanas pirmsākumi Eiropā un Latvijā*: promocijas darbs. Rīga: Latvijas Universitāte, 24.; Satversmes tiesas 2005. gada 16. decembra spriedums lietā Nr. 2005-12-0103, Secinājumu daļa, 17. punkts.

[74] Noteikumi par valsts valodu: izdoti Latvijas Republikas Satversmes 81. panta kārtībā: 18.02.1932. *Valdības Vēstnesis*. 39, 18.02.1932.

[75] Latvijas Republikas 4. Saeimas 2. sesijas 2. sēdes 1932. gada 23. februārī stenogramma. *Tiesību zinātņu pētniecības institūts*. https://tzpi.lu.lv/pirmais-neatkaribas-laiks/saeimas-stenogrammas/

[76] Pauls Šīmanis, laikraksta "Rīgas Apskats" (*Rigische Rundschau*) vadītājs, kā publicists vēl sarunāja daudz ko un runu noslēdza ar dramatisku nelatviešu situācijas aprakstu: "Pretēji pārējām Baltijas valstīm Latvija ir ieguvusi sev ārzemēs pat zināmu slavu tādā ziņā, ka ar katru, kas neprot valsts valodu, šeit apietas slikti, un tam rodas visādas grūtības. [..] Svešā valodā rakstīti materiāli visupirms jāpārtulko, iekams ierēdnis tos drīkst lietot, vienalga, vai viņš svešo valodu prot vai nē. Kas grib lietot ielas dzelzceļu [tramvaju], bet neprot latviski, lai ņem sev līdzi ceļojumā tulku." Jāpiezīmē, ka šo runu, tāpat kā visas citas, Šīmanis Saeimā norunāja vāciski. Sk. Latvijas Republikas 4. Saeimas 2. sesijas 2. sēdes 1932. gada 23. februārī stenogrammu. *Tiesību zinātņu pētniecības institūts*. https://tzpi.lu.lv/pirmais-neatkaribas-laiks/saeimas-stenogrammas/

tematiku. Valodas noteikumus metās aizstāvēt pats Ministru prezidents Skujenieks, kurš no Saeimas tribīnes runāja par jaunu paaudzi, kas izaugusi brīvajā Latvijā un nemaz neprot citādi runāt kā tikai latviski. Šī paaudze gaidot jaunā regulējuma pieņemšanu. Valsts jaunā latviešu paaudze grib atvērt ceļu dzīvē, tādēļ Skujenieks lūdza Saeimu atbalstīt noteikumus. Ministru prezidents minēja konkrētus gadījumus, ka latviešu jaunieši tikuši diskriminēti un nepieņemti darbā tāpēc vien, ka tie neprotot krievu vai vācu valodu. Sēdē savu viedokli pauda arī Kārlis Skalbe sakot, ka šis

> "[..] likums izdodams aiz vienkāršas cieņas pret mūsu valsti. Ja mēs cienām savu valsti, tad mēs cienām valsts valodu. Kur ir valsts, tur ir valsts valoda. Šī valsts valoda Latvijā nevar būt cita kā latviešu valoda, jo latviešu tauta šeit ir lielā vairākumā. [..] Latvija var būt tikai latviska! [..] Katrai valstij ir zināms mugurkauls, un šis mugurkauls ir vairākuma tauta, viņas valoda un kultūra."[77]

Noteikumiem ir likuma spēks, kas nozīmē to, ka tiesību sistēmā starp šiem noteikumiem un likumu nav atšķirības juridiskā spēka ziņā. Pirmo reizi Latvijas valsts pastāvēšanas vēsturē tika noteikts, ka valsts valoda ir latviešu valoda. Noteikumi reglamentēja obligātu valsts valodas lietošanu Latvijas bruņotajos spēkos, valsts un pašvaldības iestādēs un uzņēmumos, kā arī "visos privātos iestādījumos ar publiski tiesisku raksturu". Regulējums privātajā sektorā pieļāva mazākumtautībām kārtot iekšējo lietvedību citā valodā, savukārt saziņu ar valsts institūcijām (atskaites u. tml.) paredzēja tikai valsts valodā. Noteikumi ar likuma spēku pieļāva krievu un vācu valodas lietošanu pašvaldībās, nosakot 2. pantā algoritmu, kas pieļauj krievu un vācu valodas lietošanu pašvaldībās, vajadzēja gan ievērot nosacījumu, ka tajās vismaz puse iedzīvotāju runā kādā no minētajām valodām. Šis piemērs labi ilustrē vācu un krievu valodas patiesās lietošanas apjomu tā laika Latvijas atsevišķās pašvaldībās. Regulējums arī liecina par visai liberālu valodas politiku attiecībā uz minētajām divām svešvalodām pirmā neatkarības perioda laikā. Bija noteikts, ka gadījumā, ja pašvaldības sēde norit svešvalodā un kādam no sēdes dalībniekiem šī svešvaloda nav saprotama, tad attiecīgai pašvaldībai ir jānodrošina tās tulkojums valsts valodā. Pēdējais nozīmē, ka likumdevējs bija identificējis šādus gadījumus, kurus var atrisināt tikai ar likumā paredzētu obligātu nosacījumu.

Līdz ar Kārļa Ulmaņa apvērsumu aktualizējās arī valsts valodas regulējums. Vien mēnesi pēc apvērsuma valdība pieņēma grozījumus 1932. gada 18. februāra noteikumos ar likuma spēku. Šajos 1934. gada 14. jūnija grozījumos[78] tika noteikti bargi sodi par valsts valodas noteikumu pārkāpumiem. Turpmāk par tiem Iekšlietu ministrija varēja piemērot naudas sodu līdz pat tūkstoš latiem un personu arestu uz laiku līdz pat sešiem mēnešiem,[79]

---

[77] Latvijas Republikas 4. Saeimas 2. sesijas 2. sēdes 1932. gada 23. februārī stenogramma. *Tiesību zinātņu pētniecības institūts*. https://tzpi.lu.lv/pirmais-neatkaribas-laiks/saeimas-stenogrammas/

[78] Pārgrozījumi un papildinājumi noteikumos par valsts valodu. *Valdības Vēstnesis. 132*, 16.06.1934.

[79] Lai saprastu tā laika lata vērtību, ir jāpiebilst, ka kvalificēts strādnieks vai jaunsaimnieks ar 100 latu ienākumiem mēnesī, kaut ļoti pieticīgi, varēja nodrošināt pamata iztiku sievai un vienam vai diviem bērniem.

vai pat piemērot abus sodus reizē. Par likuma darbību personīgi kļuva atbildīgs iekšlietu ministrs. Ņemot vērā, ka valstī tika izsludināts kara stāvoklis, šie likuma grozījumi ievērojami sekmēja valsts valodas lietošanu. Savukārt 1935. gada 5. janvāra Valsts valodas likums [80] juridiskā ziņā bija tehniska 1932. gada 18. februāra Satversmes 81. panta kārtībā pieņemto Ministru kabineta noteikumu un 1934. gada 14. jūnija Ulmaņa valdības grozījumu konsolidēta vesija, kas savā ziņā bija arī valdības propagandas solis. Likums, ko Ulmaņa autoritārā valdība izdeva nedaudz vairāk nekā pusgadu pēc varas pārņemšanas, bija jaunā režīma "simboliskais likums", kas raksturo rūpes par latviešu nāciju. Likums lieliski der šai "latviskās politikas" simbolizēšanas lomai, lai gan daži jauni nosacījumi likumā ir līdz tam nebijuši. Piemēram, likuma 6. pantā paredzēts, ka rakstiskiem līgumiem, dāvinājuma aktiem, vekseļiem, parādu un citiem saistību rakstiem, ja tos Latvijā pēc 1935. gada l. februāra slēdz Latvijas pilsoņi, ir saistības un pierādījuma spēks vienīgi tad, ja tie rakstīti valsts valodā. Atbildīgu par likuma efektīvu darbību, tai skaitā sodiem, režīms noteica iekšlietu ministru. Kara stāvokļa apstākļos, nešaubīgi, tam bija stindzinošs efekts. Visticamāk, sava loma bija arī Marģeram Skujeniekam, kurš tobrīd bija viens no režīma vadoņiem, – Ministru prezidenta biedrs. 1935. gada 5. janvāra Valsts valodas likums ir izcils Ulmaņa sabiedrisko attiecību speciālistu un juristu sadarbības kopdarbs, kas parlamentārā laikā paveiktu darbu spēja padarīt par autoritārās varas panākumu.[81]

Papildinājums Satversmes 4. panta komentārā minētajam par mūsdienu periodu

Satversmes 4. panta komentāra sadaļā "Valsts valodas statusa atjaunošana un latviešu valodas statusa nostiprināšana" ir norādīts:

> "Latviešu valoda sāka atgūt savu statusu pagājušā gadsimta 80. gadu beigās. 1988. gada 6. oktobrī tika pieņemts LPSR Augstākās padomes Lēmums par latviešu valodas statusu, bet 1989. gada 5. maijā LPSR Konstitūcija tika papildināta ar 73.[1] pantu, kurā paredzēts, ka "Latvijas Padomju Sociālistiskajā Republikā valsts valoda ir latviešu valoda". [..] 1992. gada 31. martā tika pieņemts Latvijas Republikas likums "Par grozījumiem un papildinājumiem LPSR Valodu likumā". Šajos grozījumos un papildinājumos atspoguļojās pārmaiņas Latvijas valstiskajā statusā un tika nostiprināta valodu juridiskā hierarhija. [..] Valodu likumā tika noteikta latviešu valodas un citu valodu lietošana valsts, tautas saimniecības un sabiedriskās darbības sfērās, pilsoņu valodas izvēles tiesības un valodu aizsardzības pasākumi. Atsevišķas likuma normas stājās spēkā tikai trīs gadu laikā pēc likuma stāšanās spēkā. Pakāpeniskums latviešu valodas funkciju atjaunošanā bija nepieciešams, lai radītu materiālo bāzi latviešu valodas mācīšanai

[80] Likums par valsts valodu: LR likums: 05.01.1935. *Valdības Vēstnesis. 7*, 09.01.1935.

[81] Balodis, R. (2021). Par nepieciešamību valsts valodai atrast politisku aizbildni. *Jurista Vārds. 42*, 19.10.2021.

> un lietošanai valsts varas un pārvaldes institūcijās, kā arī [lai] panāktu psiholoģisko lūzumu sabiedrībā."[82]
>
> "Valsts valodas likums tika pieņemts 1999. gada 9. decembrī, un tas ir secīgs posms Latvijas valodas politikā un galvenais instruments latviešu valodas statusa nodrošināšanā. Likumu papildina vairāki Ministru kabineta noteikumi, kas precizē atsevišķu pantu normas."[83]

Minētajā Satversmes komentāra daļā pareizi ir iezīmēts Augstākās padomes 1988. gada 6. oktobra Lēmums par valsts valodu,[84] un, lai gan netiek aplūkota 1989. gada 5. maija LPSR Valodu likuma pieņemšana, ir pieminēts 1992. gada 31. marta Latvijas Republikas likums "Par grozījumiem un papildinājumiem LPSR Valodu likumā". Tam ir liela nozīme, un faktiski abi šie normatīvie akti jāuztver kā jauns likums gan pēc savas formas, gan satura. Tieši šis likums sekmīgi darbojās pirmajos gados pēc neatkarības atgūšanas, pilnībā nodrošinot visus tiesiskos nosacījumus, kas izriet no latviešu valodas kā valsts valodas.

Vai lietderīgi un politiski tālredzīgi bija censties šo likumu nomainīt ar jaunu likumu tieši tajā laikā, kad, Latvijai uzsākot sarunas par iestāšanos Eiropas Savienībā, nācās savu tiesību sistēmu harmonizēt, pakļaujot to dažnedažādu ekspertu analīzei? Tas ir jautājums, kurš liek aizdomāties par Latvijas kā nacionālas valsts spēju pieskaņot taktisku rīcību, nosakot stratēģiskus mērķus. 1999. gada 9. decembra Valsts valodas likums ir labs atgādinājums konstitucionālās politikas jomā par to, ka bieži vien labāk ir iztikt ar senāku tiesību aktu, kas lieliski pilda savas funkcijas, nevis censties visiem spēkiem to nomainīt ar jaunāku.

Pagājušā gadsimta 80. gadu beigās Padomju Savienība sāka neatvairāmi tuvoties savam sabrukumam. Latvijā, tāpat kā pārējās divās Baltijas valstīs – Igaunijā un Lietuvā, varēja novērot nacionālo atmodu visās tās izpausmēs: cilvēki sāka publiski lietot nacionālo simboliku, arī padomju laikā iznīcinātos savu valstu nacionālos karogus un ģerboņus. Veidojās neatkarības kustības, no kurām Latvijā lielākā neapšaubāmi bija Latvijas Tautas fronte. Vietējā, republiku reģionālā padomju nomenklatūra, kuras varas leģitimitāte sakņojās komunistiskās partijas Maskavas centrālās varas orgānos, bija nopietnas izvēles priekšā, ko tālāk iesākt, – turēties pie vecajām "pārbaudītajām vērtībām", kas nopietni sāka šķobīties, vai mainīt "kažoku uz otru pusi", nostājoties pārmaiņu procesa priekšgalā un tā saglabājot varu. Atbildes uz jaunajiem izaicinājumiem nespēja sniegt nedz centrālie PSRS institūti, nedz arī Valsts drošības komiteja. Republikas padomju nomenklatūra bija spiesta manevrēt, sākumā pieņemot kompromisa lēmumus, bet vēlāk

---

[82] Druviete, I., Kārkliņa, A., Kusiņš, G., Pastars, E., Pleps, J. (2014). Satversmes 4. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi.* Aut. kol. prof. R. Baloža zin. vad. Rīga: Latvijas Vēstnesis, 302.

[83] Turpat, 303.

[84] Lēmums par latviešu valodas statusu: Latvijas PSR Augstākās padomes lēmums: 06.10.1988. Valsts valodas komisija. http://www.vvk.lv/index.php?sadala=135&id=167

ļaujoties straumei, kas aiznesa valsts neatkarības virzienā. Valodas jautājums ir minētā spilgts piemērs. Laikraksts "Padomju Jaunatne" 1988. gada 30. augustā publicēja Latvijas Zinātņu akadēmijas Valodas un literatūras institūta Latviešu valodas nodaļas vadītājas Ainas Blinkenas rakstu, kas bija veltīts latviešu valodas statusa noteikšanai.[85] Profesore aicināja lasītājus, kuriem rūp latviešu valodas nākotne, desmit dienu laikā nosūtīt atbalsta vēstules Augstākajai padomei, jo tur izšķiroties latviešu valodas liktenis. Divu nedēļu laikā padomju republikas parlaments saņēma vairāk nekā deviņus tūkstošus vēstuļu, ko bija parakstījuši vairāk nekā trīssimt piecdesmit tūkstoši cilvēku! Tas notika gandrīz mēnesi pirms Latvijas Tautas frontes (turpmāk – LTF) dibināšanas kongresa.

1998. gada 6. oktobrī Augstākā padome (turpmāk arī – AP) pieņēma lēmumu par latviešu valodas kā valsts valodas atzīšanu LPSR teritorijā. Lēmumā cita starpā ir teikts, ka:

> "[..] latviešu valoda ir atzīstama par republikas valsts valodu. [..] Latvijas PSR Augstākā Padome uzskata, ka šāds viedoklis atbilst ļeņiniskās nacionālās politikas principiem un PSKP XIX Vissavienības konferences rezolūcijām, kas paredz visu nacionālo valodu brīvu un vispusīgu funkcionēšanu un attīstību. [..] Republikā līdz šim netika veltīta pienācīga uzmanība tautas garīgo vērtību, tai skaitā latviešu valodas, aizsardzībai. [..] pēdējās desmitgadēs ievērojami samazinājusies latviešu valodas lietošana, sarukušas tās funkcijas."

Lēmums tapa liela sabiedriskā spiediena / pieprasījuma rezultātā, AP sākot konkurēt ar vēl nenodibināto LTF. Lēmumā tika noteikts trīs mēnešu termiņš (līdz 1989. gada 1. janvārim) attiecīga regulējuma izstrādei. Interesanti, ka Augstākās padomes lēmums tika pieņemts vien divas dienas pirms LTF dibināšanas kongresa, kurš notika 8. oktobrī.[86] LTF kongresa lēmums uzkrītoši – gan pēc stila, gan pēc satura – atgādināja AP lēmumā noteikto. Turklāt zīmīgi, ka abos dokumentos identiska bija nostādne krievu valodas lietošanas jautājumā.[87] Šī tendence – AP konkurēt un apsteigt

---

[85] Blinkena, A. (1988). *Par latviešu valodas statusu – esošo un vēlamo. Padomju Jaunatne. 165, 30.08.*1988.

[86] Kongresā skanēja emocionāli aicinājumi latviešu valodai piešķirt valsts valodas statusu. Lūk, divu spilgtāko runu fragmenti. Bijušais leģionārs, vēlākais politiķis Visvaldis Lācis izpelnījās vētrainus aplausus, kad teica: "Latviešu valoda ir vienīgā valsts valoda republikā, tā ir valdošā valoda, kā to uzsvēris Rainis. Un arī lietvedības pamatvaloda. (Aplausi.) [..] Krievu valodai, es uzskatu, nekādas privilēģijas nav vajadzīgas un nav dodamas. Jo pretējā gadījumā tas ir šovinisms. (Aplausi.)" Pazīstamais latviešu kinoaktieris Harijs Liepiņš kongresā cita starpā savukārt paziņoja: "Mums piešķīra mūsu valsts valodas statusu. Tas ir labi, kaut arī mēs aplaudējām ar aizlauztu pašcieņu. Tagad jāizstrādā dzelžains likums par tās aizstāvību, lai mēs to saglabātu uz visiem laikiem, lai man vairs nekad nebūtu jādzird par suņu un fašistu valodu. Lai manu valodu sargātu stingrs likums. (Aplausi.)" Sk. *Latvijas tautas fronte. Gads pirmais*. Rīga: Latvijas Tautas fronte, 1989, *77, 188*.

[87] LTF kongresā 8. oktobrī tika apstiprināta programma, kuras ceturtajā nodaļā "Nacionālais jautājums" 4. punkts ļoti atgādina Augstākās padomes pieņemtā lēmuma tekstu. Latviešu valodai tiek ierādīta valsts valodas vieta, paredzot izstrādāt speciālu valsts valodas likumu un pieņemt

ārpusparlamenta spēkus – turpinājās arī pēc tam, kad 1990. gadā tika ievēlēta AP ar lielu LTF pārstāvniecību. Tad konkurence notika ar Pilsoņu kongresu par neatkarības pasludināšanu.[88]

1989. gada 5. maijā Augstākā padome pieņēma LPSR Valodu likumu.[89] Likumu gatavojot, bija vērojama neticami liela tautas iesaiste un interese. Augstākā padome saņēma vairāk nekā divdesmit septiņus tūkstošus priekšlikumu, kurus bija parakstījuši gandrīz trīs simti trīsdesmit divi tūkstoši cilvēku![90]

Likuma 1. pantā bija rakstīts, ka saskaņā ar Latvijas PSR Konstitūciju Latvijas PSR valsts valoda ir latviešu valoda, tomēr likuma 17. un 20. pantā bija saglabāta iespēja latviešu tekstu dublēt krievu valodā, piemēram, iestāžu, uzņēmumu un organizāciju nosaukumos vai to zīmogos. Jāteic, ka lielākajās LPSR rūpnīcās un uzņēmumos strādāja, galvenokārt, no citām padomju republikām iebraukušie cittautieši, un pēc likuma pieņemšanas viņi varēja neraizēties par latviešu valodas nezināšanu, jo likums pieļāva plašu divvalodību. Likuma 9. pantā noteikts, ka "saziņā ar pilsoņiem lieto abām pusēm pieņemamu valodu", kā arī tas, ka uz "pilsoņu iesniegumiem un sūdzībām atbild tajā valodā, kurā persona pie tiem griezusies, vai citā, abām pusēm pieņemamā valodā".

Faktiski LPSR Valodu likumu 1989. gada 5. maija redakcijā nevar uzskatīt likumu, kas Latvijā iedibinātu latviešu valodu par valsts valodu, jo tas pieļāva plašu divvalodību. Šis likums drīzāk uzskatāms par latviešu valodas saglābšanas pasākumu kopumu, kas "aizsāka ilgstošu valodu hierarhijas maiņas procesu par labu latviešu valodai".[91]

---

attiecīgus LPSR Konstitūcijas grozījumus. Šajā LTF programmas punktā vēl bija rakstīts, ka latviešu valodai ir jābūt Latvijas PSR valsts orgānu un iestāžu lietvedības valodai, bet krievu valoda izmantojama kā federatīvo attiecību valoda. Pilsoņu saskarsmē ar Latvijas PSR valsts orgāniem, uzņēmumiem, iestādēm un organizācijām var izmantot kā latviešu, tā krievu valodu un pēc savas izvēles saņemt šajās valodās oficiālus dokumentus. Sociālās aprūpes sfērā pilsoņiem jānodrošina brīva latviešu un krievu valodas izmantošana. LTF 1989. gada 10. jūnijā domes sēdē pieņemtajā rezolūcijā Latvijas PSR Augstākajai padomei tika prasīts LPSR Konstitūcijas 85. pantu izteikt šādā redakcijā: "Tautas deputātu vēlēšanas ir vispārējas: aktīvās un pasīvās vēlēšanu tiesības ir visiem Latvijas PSR iedzīvotājiem, kas uz vēlēšanu dienu sasnieguši 18 gadu vecumu un nodzīvojuši republikas teritorijā ne mazāk par 10 gadiem. Valsts valodas pārvaldīšana ir obligāts pasīvo vēlētāju tiesību realizācijas priekšnoteikums." Sk. *Latvijas tautas fronte. Gads pirmais*. Rīga: Latvijas Tautas fronte, 1989, 213, 257.

[88] Balodis, R., Kārkliņa, A. (2010). Divdesmit gadi kopš Latvijas Neatkarības deklarācijas: valststiesību attīstības tendences un risinājumi. ***Jurista Vārds. 17/18***, 27.04.2010.

[89] Latvijas Padomju Sociālistiskās Republikas valodu likums: 05.05.1989. *Latvijas Padomju Sociālistiskās Republikas Augstākās Padomes un Valdības Ziņotājs. 20*, 18.05.1989. http://valoda.ailab.lv/latval/vidusskolai/VALODA/v9-6.htm

[90] Jundzis, T. (1998). Tiesību reformu loma neatkarības atjaunošanā. No: Blūzma, V., Celle, O., Jundzis, T., Lēbers, D. A., Levits, E., Zīle, Ļ.(1998). *Latvijas valsts atjaunošana 1986.–1993.* Rīga: LU žurnāla "Latvijas Vēsture" fonds, 156.

[91] 1988. gadā latviešu valodu atzīst par valsts valodu.

Neapšaubāmi, pateicoties šim likumam, būtiski paplašinājās latviešu valodas lietošana. Piemēram, likuma 16. pantā noteikts, ka vietu nosaukumi veidojami un dodami latviešu valodā, u. tml. Īpaša loma ierādīta arī latgaliešu izloksnei.[92] Par lielu sasniegumu tajā laikā jāuzskata likuma preambula, kurā likumdevējs secina, ka valodas lietošana pēdējos gadu desmitos ievērojami samazinājusies un šādu aizsardzību tai var garantēt valsts valodas statuss. Likums sākas ar preambulu, kurā likumdevējs uzsver, ka Latvija ir vienīgā etniskā teritorija pasaulē, kuru apdzīvo latviešu tauta, kuras viens no galvenajiem eksistences un kultūras pastāvēšanas un attīstības priekšnosacījumiem ir latviešu valoda. Šeit jāpiebilst, ka likuma preambula saturēja arī reveransu krievu valodai, kura tika pieminēta kā LPSR otrā "visplašāk lietotā valoda", kas turklāt ir "viena no starpnacionālās saziņas valodām".

1992. gada 31. martā LPSR Valodu likums tika grozīts,[93] un tas darbojās līdz pat 2000. gada 1. septembrim. Lasot 1992. gada likuma grozījumus un iedziļinoties AP stenogrammās, rodas iespaids, ka likumdevējs pārejas laikā pēc neatkarības atjaunošanas ir pieņēmis jaunu likumu, jo būtiski tika mainīta iepriekšējā likuma redakcijā atzītās krievu valodas loma.[94] Par "jauna likuma pieņemšanu" runāja deputāti, uzstājoties debatēs, piemēram, Dzintars Ābiķis,[95] Oļegs Ščipcovs un Anatolijs Gorbunovs.[96] Arī pēc formas grozījumi drīzāk atgādina jaunu likumu, jo redakcionāli tika grozīti nevis atsevišķi panti,

---

[92] Latvijas Padomju Sociālistiskās Republikas Valodu likuma 15. pants bija šāds: "Latvijas Padomju Sociālistiskajā Republikā ir garantēta latviešu valodas, arī izlokšņu un latgaliešu rakstu valodas lietošana visās kultūras jomās. Valsts garantē arī lībiešu kultūras saglabāšanu un attīstīšanu lībiešu valodā. Latvijas Padomju Sociālistiskajā Republikā tiek nodrošināta citu nacionālo kultūru attīstīšana dzimtajā valodā."

[93] Par grozījumiem un papildinājumiem Latvijas Padomju Sociālistiskas Republikas Valodu likumā: 31.03.1992. *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs. 15/16*, 16.04.1992.

[94] Jauno pieeju vislabāk raksturo 4. panta jaunā redakcija: "Lai realizētu iedzīvotāju valodas izvēles tiesības, visiem valsts varas un valsts pārvaldes institūciju, kā arī iestāžu, uzņēmumu un organizāciju darbiniekiem ir jāprot un jālieto valsts valoda un citas valodas tādā apjomā, kāds nepieciešams viņu profesionālo pienākumu veikšanai. Valodu zināšanu apjomu, kāds nepieciešams šiem darbiniekiem, nosaka Latvijas Republikas Ministru Padomes apstiprināts nolikums."

[95] Latvijas Republikas Augstākās padomes 1992. gada 24. marta rīta sēdes stenogramma.

[96] To apliecina arī Anatolija Gorbunova teiktais, ka "likums [jaunais] atšķirībā no iepriekšējā tiešām vairs nepieļauj nekādu kompromisu" un ka "valsts valodas lietošana ir strikti un vienozīmīgi noteikta šajā likumā. Likums neizslēdz pretrunu starp latviešu un krievu valodu, kas paliks, jo gandrīz puse runā krievu valodā, un pilsētās šī krievvalodīgā vide būs. Bet, atspēkojot apgalvojumu, ka šis likums diskriminē krievu valodā runājošos, es apgalvoju to pašu, ko jau teicu tad, kad pieņēmām iepriekšējo likumu. Diemžēl situācija ir tāda, ka krievu valodā runājošajiem ir jāuzņemas papildu grūtības un papildu saistības pret latviešu valodu un latviešu tautu. Jo tieši vai netieši visi tie, kuri nezināja, negribēja zināt, nelietoja vai vienkārši nemācēja latviešu valodu, ir piedalījušies šīs situācijas izveidošanā un rusifikācijā, kura ir notikusi." Sk. Latvijas Republikas Augstākās padomes 1992. gada 24. marta vakara sēdes stenogrammu.

bet ar nosaukumu "grozījumi" tika pārjaunots pilnībā viss likums.[97] Ņemot vērā, ka AP saglabāja sākotnējo tiesību akta nosaukumu, svītrojot vien abreviatūru LPSR, deputāts Indulis Strazdiņš rosināja nomainīt likuma nosaukumu uz "Par valsts valodu", tomēr viņa priekšlikums netika atbalstīts. Pret grozījumiem protestēja krievu valodas aizstāvji, kas pieprasīja sākotnējās likuma redakcijas saglabāšanu, uzskatot, ka atteikšanās no "valodas izvēles" ir nepieļaujama un fundamentāla likuma būtības pārveidošana.[98] Interesanti, ka sēdē attiecībā uz minoritāšu valodu lietošanu no krievu tiesību aizstāvju puses izskanēja aicinājumi sekot pirmskara Valodas likumā ietvertajām kvotām. Tas netika atbalstīts. AP Valodu komisijas priekšsēdētāja Dzintara Ābiķa ieskatā pirmā neatkarības perioda situācija nav salīdzināma, jo tolaik latvieši nebija minoritāte savā dzimtenē. Viņš aicināja likumdevējiem būt prasīgākiem: "Citādi, ja tagad mēs, latviešu nācija, neaizsargāsim latviešu valodu ar likumu, tad reāli apdzīvotajās vietās, kurās latvieši ir izteikta minoritāte, latviešu valoda neizbēgami ir lemta iznīcībai."[99] Par spīti deputāta Oļega Ščipcova aicinājumam atlikt likuma grozījumu spēkā stāšanos uz gadu, jo tik strauji atsakoties no krievu valodas lietošanas situācija kļūšot par "sprādzienbīstamu",[100] parlaments likumu pieņēma galīgajā lasījumā. Līdz ar likuma pieņemšanu, tika izveidota arī Valodas inspekcija, kuras galvenais uzdevums, pēc Ābiķa vārdiem, bija uzraudzība par Valodu likuma normu ievērošanu reālajā dzīvē,[101] jo, ja nebūs inspekcijas, tad "būs ārkārtīgi sarežģīti ieviest likumu. [..] Protams, tai būtu jābūt nelielai inspekcijai, paredzot arī sabiedrisko inspektoru institūciju."[102]

1995. gada 23. novembrī, pusotru mēnesi pēc 6. Saeimas vēlēšanām, Māra Gaiļa (partija "Latvijas Ceļš") vadītais Ministru kabinets, kuru bija izveidojusi iepriekšējā 5. Saeima, iesniedza jaunievēlētās Saeimas izskatīšanai likumprojektu "Latvijas Republikas Valsts valodas likums". Šādu prioritāti neatrast valdības deklarācijā,[103] sabiedriskā pie-

---

[97] Šāds risinājums balstījās uz Dzintara Ābiķa priekšlikumu, kuru balsojumā atbalstīja AP, – "kā redzam, tad lielāki vai mazāki grozījumi ir gandrīz katrā Valodu likuma pantā. [..] es redzu, ka arī deputātiem ir grūtības uztvert šos labojumus kā vienotu likumu. Man ir tāds lūgums – vai nevarētu uz trešo lasījumu labojumus Valodu likumā formulēt tādējādi, ka, respektīvi, mēs sagatavotu Valodu likumu šādā redakcijā un publicētu visus likuma pantus tādus, kādi tie ir pirmajā redakcijā, lai, lasot avīzē, cilvēkiem uzreiz būtu skaidrs, par ko ir runa." Sk. Latvijas Republikas Augstākās padomes 1992. gada 24. marta vakara sēdes stenogrammu. https://www.saeima.lv

[98] Latvijas Republikas Augstākās padomes 1992. gada 24. marta rīta sēdes stenogramma. https://www.saeima.lv

[99] Latvijas Republikas Augstākās padomes 1992. gada 24. marta rīta sēdes stenogramma. https://www.saeima.lv

[100] Latvijas Republikas Augstākās padomes 1992. gada 31. marta rīta sēdes stenogramma. https://www.saeima.lv

[101] Latvijas Republikas Augstākās padomes 1992. gada 24. marta vakara sēdes stenogramma. https://www.saeima.lv

[102] Latvijas Republikas Augstākās padomes 1992. gada 31. marta rīta sēdes stenogramma. https://www.saeima.lv

[103] Ziņojums par kabineta sastādīšanu un valdības deklarāciju. *Latvijas Republikas Ministru kabinets*. 08.12.2020. https://www.mk.gov.lv/lv/ministru-kabineta-vesture

prasījuma šāda likuma pieņemšanai nebija. Nopietnas pārdomas raisa arī likumprojekta iesniegšanas datums Saeimā.[104] Valsts valodas likumprojekts "nogulēja" par to atbildīgajā Izglītības, kultūras un zinātnes komisijā veselu pusotru gadu. Par likumprojektu sāka izskanēt kritiskas piezīmes. Latvijas Cilvēktiesību un etnisko studiju centra direktora Nila Muižnieka ieskatā vairāki likumprojekta panti bija pretrunā ar Latvijas starptautiskajām saistībām. 1996. gada Latvijas Universitātes Juridiskās fakultātes izdevumā viņš rakstīja, ka, atjaunojot valsts valodas statusu valsts pārvaldē, sabiedrībā un izglītības sistēmā, ir rūpīgi jāseko līdzi, lai latviešu lingvistisko cilvēktiesību veicināšana nenonāktu pretrunā ar citām tiesībām un brīvībām.[105] Likumprojekts piedzīvoja grūtu likteni un vairākas Saeimas. Pārskatāmības labad vajag izsekot likumprojekta apstiprināšanas gaitai hronoloģiski.

Pirmais lasījums notika 6. Saeimā 1997. gada 5. jūnijā (pusotru gadu pēc tā iesniegšanas!). Māra Gaiļa valdība likumprojektu nomainīja ar komisijas izstrādātu alternatīvu likumprojektu, pamatojot šādu rīcību ar to, ka valdības iesniegtajā likumprojektā ir daudz juridisku pretrunu un nepreciziātšu.[106] Visvairāk tika debatēts par izglītības sadaļu, jo tajā bija paredzēta pilnīga pāreja uz latviešu valodu arodizglītības iestādēs. Jāatzīmē, ka jau pirms pirmā lasījuma bija pilnīgi skaidrs, ka pret nepieciešamību pieņemt jaunu valodas likumu iestāsies Baltijas jūras valstu padome, EDSO un Eiropas Padome,[107] kā arī Amerikas Savienotās Valstis. ASV vēstnieks Larijs Nepers ļoti tieši to norādīja Saeimas atbildīgajai komisijai. Viņš nosūtīja vēstuli, kurā apšaubīja jauna likuma pieņemšanas nepieciešamību un norādīja: "[..] vismaz ceram, ka Saeima atturēsies pieņemt šo likumprojektu tā pašreizējā formā."[108]

Otrais lasījums notika 6. Saeimā 1998. gada 23. aprīlī. Šai pašā dienā Saeima saņēma arī ASV vēstnieka Larija Nepera vēstuli, kurā viņš rakstīja, ka "Amerikas Savienoto Valstu valdība ir norūpējusies par negatīvajām sekām, kādas varētu izraisīt topošā valodas likuma pieņemšana Saeimā."[109] ASV vēstnieks pirms tam bija nosūtījis divas vēstules arī Saeimas

---

[104] Likumprojektu, kas vēlāk četrus gadus tika vētīts Saeimā, aizejošā "tehniskā valdība" iesniedza 1995. gada 23. novembrī, dienā, kad notika balsojums par Valsts prezidenta izvirzīto apvienības ""Tēvzemei un Brīvībai"/LNNK" Ministru prezidenta Māra Grīnblata kandidatūru. Sk. Balsojums par Māra Grīnblata iesniegto valdības sastāvu. *Latvijas Vēstnesis. 183*, 24.11.1995. https://www.vestnesis.lv/ta/id/27707. Jaunievēlētajā Saeimā koalīcijas veidošana notika smagi un bija skaidrs, ka Ministru prezidenta kandidāts nenāks no partijas "Latvijas Ceļš" rindām. Valsts prezidents Guntis Ulmanis centās atrast tādu Ministru prezidenta amata kandidātu, kurš iegūtu Saeimas vairākuma balsis.

[105] Muižnieks, N. (1996). Aktuāli cilvēktiesību jautājumi Latvijā: praktiķa vērtējums. *Cilvēktiesību Žurnāls. 3*, 14.

[106] Latvijas Republikas 6. Saeimas pavasara sesijas 1997. gada 5. jūnija sēdes stenogramma.

[107] No Latvijas Republikas Ārlietu ministrijas valsts sekretāra p. i. A. Vovera 1997. gada 25. septembra vēstules Nr. 42/682-60003 Saeimas Izglītības, kultūras un zinātnes komisijas priekšsēdētājam Dz. Ābiķim. Nepublicēta. Saeimas arhīvs.

[108] Amerikas Savienoto Valstu vēstnieka L. Nepera 1998. gada 23. aprīļa vēstule Saeimas Izglītības, kultūras un zinātnes komisijas priekšsēdētājam Dz. Ābiķim. Nepublicēta. Saeimas arhīvs.

[109] Amerikas Savienoto Valstu vēstnieka L. Nepera 1998. gada 23. aprīļa vēstule Saeimas Izglītības, kultūras un zinātnes komisijas priekšsēdētājam Dz. Ābiķim. Nepublicēta. Saeimas arhīvs.

priekšsēdētājam Alfrēdam Čepānim, uzstājīgi aicinot likumprojekta izskatīšanu sākt tikai pēc Eiropas Padomes un Baltijas jūras valstu padomes atsauksmju saņemšanas.[110] Viņš aicināja atlikt otro lasījumu, lai varētu iesniegt papildu priekšlikumu, un izteica cerību, ka viņa viedoklis tiks ņemts vērā. EDSO vispirms iebilda pret to, ka likumprojektā paredzētais privātām organizācijām kārtot jautājumus ar privātpersonām valsts valodā aizskar personas pamattiesības un brīvības.[111] Starptautiskais spiediens bija ievērojams, un šajās norisēs tika iesaistīta arī Latvijas valdība. Ministru kabinets 1998. gada 15. aprīlī ārkārtas sēdē nolēma atbalstīt EDSO rekomendācijas. Ārlietu ministrija vēstulē atbildīgajai komisijai norādīja uz vairākām nepilnībām, paužot uzskatu, ka likumā ietverta nepamatoti plaša valsts iejaukšanās privātajā sfērā, liekot privātiem uzņēmumiem lietot valsts valodu.[112] Saeimas sēdes debatēs par likumprojektu politiska spiediena esamību nenoliedz arī atbildīgās komisijas priekšsēdētājs Dzintars Ābiķis, kurš stāstīja par dienu iepriekš notikušu mēģinājumu kārtējo reizi pagarināt priekšlikumu iesniegšanu termiņu līdz 6. maijam. Ābiķis no Saeimas tribīnes sacīja, ka tas "faktiski nozīmētu likumprojekta, tā teikt, noņemšanu no izskatīšanas",[113] jo pavisam tuvu bija 7. Saeimas vēlēšanas. Trešais lasījums 6. Saeimā tā arī nenotika. Likumprojekts šai lasījumā ieguva nosaukumu "Valsts valodas likums". Parādījās doma par Satversmes 4. panta papildināšanu ar valsts valodas klauzulu.[114]

Atgriešanās pie pirmā lasījuma notika 7. Saeimā 1998. gada 10. decembrī, kad jaunievēlētā 7. Saeima, pārvērtējot iepriekšējās Saeimas atstāto likumdošanas "mantojumu", nolēma skatīt Valsts valodas likuma projektu.

Otrais lasījums notika 7. Saeimā 1999. gada 18. martā. Atbildīgās komisijas sēdēs, kā 6., tā 7. Saeimā, bieži dalībnieki bija EDSO eksperti, kas iedziļinājās, skaidroja un komentēja likumprojekta normas un deputātu priekšlikumus.[115] Komisija vairākkārt tikās arī ar pašu EDSO komisāru Maksu van der Stūlu.

---

[110] Amerikas Savienoto Valstu vēstnieka L. Nepera 1998. gada 11. marta vēstule 6. Saeimas priekšsēdētājam A. Čepānim; Amerikas Savienoto Valstu vēstnieka L. Nepera 1998. gada 23. aprīļa vēstule 6. Saeimas priekšsēdētājam A. Čepānim. Nepublicētas. Saeimas arhīvs.

[111] Eiropas Drošības un sadarbības organizācijas Augstā komisāra nacionālo minoritāšu biroja 1998. gada 23. marta atzinums par Latvijas Republikas Valsts valodas likuma projekta atbilstību Latvijas starptautiskajiem pienākumiem un saistībām. Nepublicēts. Saeimas arhīvs.

[112] Latvijas Republikas Ārlietu ministrijas valsts sekretāra p. i. A. Vovera 1997. gada 25. septembra vēstule Nr. 42/682-60003 Saeimas Izglītības, kultūras un zinātnes komisijas priekšsēdētājam Dz. Ābiķim. Nepublicēta. Saeimas arhīvs.

[113] Turpat.

[114] Latvijas Republikas 6. Saeimas pavasara sesijas 1998. gada 23. aprīļa sēdes stenogramma. https://www.saeima.lv

[115] Piemēram, 6. Saeimas Izglītības, kultūras un zinātnes komisijas 1998. gada 25. augusta sēdes protokols Nr. 161; 6. Saeimas Izglītības, kultūras un zinātnes komisijas 1998. gada 31. marta sēdes protokols Nr. 132; 7. Saeimas Izglītības, kultūras un zinātnes komisijas 1998. gada 31. marta sēdes protokols Nr. 132; 7. Saeimas Izglītības, kultūras un zinātnes komisijas 1999. gada 11. janvāra sēdes protokols Nr. 1.

Trešais lasījums 7. Saeimā notika 1999. gada 8. jūlijā.[116] Pirms šī lasījuma EDSO komisārs vēstulē Saeimai rakstīja, ka nav ņemti vērā EDSO aizrādījumi attiecībā uz valodas likuma iejaukšanos privātajā sfērā. Komisārs EDSO vārdā norādīja, ka privātā sfēra tomēr ir jānodala no valsts sfēras, bet latviešu valodas aizsardzību vajadzētu risināt, neizmatojot likuma noteikumus un tajā paredzētus aizliegumus. Tika piedāvāts strādāt pie latviešu valodas lietošanas veicināšanas, sagatavojot plašu valodas apgūšanas programmu.[117] Likumprojekts par spīti ievērojamai pretestībai un politiskam spiedienam tomēr tiek pieņemts trešajā lasījumā.

Valsts prezidente likumu neizsludināja un atgrieza to Saeimā otrreizējai caurlūkošanai. Ārlietu ministrs Indulis Bērziņš darbu pie Valsts valodas likuma izstrādes raksturoja kā "vienu no aktuālākajiem 1999. gada jautājumiem gan iekšpolitikā, gan ārpolitikā".[118] Patiešām, likumprojekts bija smags pārbaudījums politiskajai elitei, kura nonāca neapskaužamā situācijā. Tā laika sociālajos medijos var lasīt par EDSO komisāra van der Stūla rakstisku vēstuli Valsts prezidentei.[119] Valsts prezidente Vaira Vīķe-Freiberga, izmantojot Satversmē noteiktās pilnvaras, likumu atgrieza Saeimai pārstrādāšanai,

---

[116] Visus likuma garā ceļa pagriezienus ir pārlieku apjomīgi piefiksēt. Šeit, piemēram, viens no tiem. 1999. gada 16. jūnijā vajadzēja notikt likumprojekta trešajam lasījumam, taču Saeima, balstoties uz Saeimas prezidija priekšlikumu, to atlika. Īstais iemesls stenogrammās nav lasāms (likumprojekts vēl neesot bijis gatavs trešajam lasījumam, to vēl jāuzlabo), taču patiesais iemesls, protams, bija EDSO iebildumi, par kuriem var lasīt gan tā laika plašsaziņas līdzekļos, gan tie atspoguļoti stenogrammās. Var saprast, ka atbildīgās komisijas vadītājs Dzintars Ābiķis intensīvi konsultējās ar ekspertiem, lai panāktu kompromisu atsevišķās Valsts valodas likumprojekta normās. Par to liecina viņa paša izteikumi debatēs. Piemēram, "komisija izskatīja šo jautājumu, un, ņemot vērā to, ka tikšanās reizē ar van der Stūla kungu tika panākta vienošanās, ka van der Stūla kungam nebija principiālu iebilžu pret to, ka likumprojekts varētu tikt skatīts otrajā lasījumā, bet tika ierosināts izveidot kopēju darba grupu ar Eiropas drošības un sadarbības organizācijas ekspertiem un rūpīgi piestrādāt pie likumprojekta vēl laika posmā starp otro un trešo lasījumu." Sk. Plamše, K. (1999). EPPA ziņotāji par Latviju kritiskāki nekā Makss van der Stūls. *Diena*. 25.06.1999. https://www.diena.lv/raksts/pasaule/krievija/eppa-zinotaji-par-latviju-kritiskaki-neka-makss-van-der-stuls-10472191; Van der Stūlam nav skaidri valodas likuma izpildes noteikumi. *Delfi*. 09.08.2000. https://www.delfi.lv/news/national/politics/van-der-stulam-nav-skaidri-valodas-likuma-izpildes-noteikumi.d?id=430454; Latvijas Republikas 6. Saeimas pavasara sesijas 1998. gada 23. un 29. aprīļa sēžu stenogrammas.

[117] Eiropas Drošības un sadarbības organizācijas augstā komisāra nacionālo minoritāšu jautājumos Maksa van der Stūla 1998. gada 14. augusta vēstule Saeimas Izglītības, kultūras un zinātnes komisijas priekšsēdētājam Dz. Ābiķim. Nepublicēta. Saeimas arhīvs.

[118] Latvijas Republikas Ārlietu ministra I. Bērziņa 1999. gada 29. oktobra vēstule Nr. 33/230-7460 Saeimas Izglītības, kultūras un zinātnes komisijas priekšsēdētājam Dz. Ābiķim. Nepublicēta. Saeimas arhīvs.

[119] Valsts prezidente Vaira Vīķe-Freiberga saņēma EDSO komisāra minoritāšu jautājumos Maksa van der Stūla vēstuli. (12.07.1999.). Latvijas Valsts prezidents [Latvijas Valsts prezidenta mājaslapa]. https://www.president.lv/lv/jaunums/valstsprezidente-vaira-vike-freiberga-sanema-edso-komisara-minoritasu-jautajumosmaksa-van-der-stula-vestuli?utm_source=https%3A%2F%2Fwww.google.com%2F.

iebildes bija gandrīz tādas pašas kā EDSO. Ārlietu ministrs atbildīgajai komisijai rakstīja, ka "Latvijas partneriem jābūt pārliecinātiem, ka Valsts valodas likums atbilst politiskajiem dalības kritērijiem. Pilntiesīga dalība Eiropas Savienībā būs viena no svarīgākajām garantijām Latvijas valstiskuma neatgriezeniskumam un tā neatņemamā atribūta – latviešu valodas – attīstībai."[120]

Otrreizēja Valsts valodas likuma caurlūkošana. Saeima 1999. gada 9. decembrī, balstoties uz Valsts prezidentes ieteikumiem, likumu precizēja.

Valsts valodas likums tika izsludināts 1999. gada 21. decembrī[121] un stājās spēkā 2000. gada 1. septembrī; tad spēku zaudēja Latvijas Republikas Valodu likums. Jaunais likums tika dēvēts par secīgu jeb nākamo soli valsts valodas statusa nostiprināšanā,[122] taču liela prieka par jaunā likuma pieņemšanu nebija. No Saeimas nacionālā spārna politiķiem izskanēja izteikums par "piedegušu biezputru".[123] Deputātu Egila Baldzēna un Violas Lāzo ieskatā šis likums salīdzinājumā ar 1992. gadā grozīto 1989. gada likumu bija sanācis "krietni maigāks" un pat "vājinot latviešu valodas pozīcijas", līdz ar ko "mazinājusies ir latviešu valodas juridiskās aizsardzības kvalitāte".[124] Šādam viedoklim nevar nepiekrist, un, lasot stenogrammas, tajās bieži redzams deputātu neviltots sašutums par to, ka kārtējo reizi nav izdevies saglabāt līdzšinējās (1989. gada likuma) redakcijas vairākos pantos. Stratēģiski politiska kļūda bija šī likuma skatīšana nepiemērotā laikā, jo starptautisko ekspertu kritiku saņēma arī 1989. gada likuma regulējums, kurš bija ietverts jaunajā likumprojektā.[125] Valsts bija kļuvusi neatkarīga, un ar tautas mandātu apveltītais likumdevējs bija tiesīgs rīkoties pēc saviem ieskatiem,[126] tomēr, kad nacionālas valsts

---

[120] Latvijas Republikas ārlietu ministra I. Bērziņa 1999. gada 29. oktobra vēstule Nr. 33/230-7460 Saeimas Izglītības, kultūras un zinātnes komisijas priekšsēdētājam Dz. Ābiķim. Nepublicēta. Saeimas arhīvs.

[121] Valsts valodas likums: LR likums. *Latvijas Vēstnesis. 428(433)*, 21.12.1999.

[122] Druviete, I. (2013). Latviešu valoda pēc neatkarības atgūšanas: valodas situācija un valodas politika. No: *Latvieši un Latvija. Akadēmiski raksti. III sējums. Atjaunotā Latvijas valsts*. Galv. red. J. Stradiņš. Rīga: Latvijas Zinātņu akadēmija, 261.

[123] Latvijas Republikas 7. Saeimas rudens sesijas 1999. gada 9. decembra sēdes stenogramma. https://www.saeima.lv

[124] E. Baldzēns sēdē norādīja, ka pie visa vainīgas esot latviešiem tipiskās īpašības – "vēlme nodrošināties pret visu" un lielā "centība lielvaru priekšā", kas konkrētā gadījumā samazināja latviešu valodas juridiskās aizsardzības kvalitāti. Sk. Latvijas Republikas 7. Saeimas rudens sesijas 1999. gada 9. decembra sēdes stenogrammu. https://www.saeima.lv

[125] "Latviešu valoda netiek pietiekami lietota uzņēmumos, bankās, skolās, uz ielām, ģimenēs utt. Vēl 1989. gadā pieņemtais likums nav spējis sekmēt vai arī vairs nesekmē latviešu valodas lietošanu Latvijā. Tātad tā ir kvantitatīva problēma. [..] 1989. gadā tika izmantoti valstiskie piespiedu mehānismi un latviešu valoda tika iecelta valsts valodas statusā. [..] Mūsu pieredze pēdējo astoņu gadu laikā rāda, ka piespiedu kārtā latviešu valodu par dabisku nepieciešamību Latvijas valstī nepadarīsi." Sk. Ziemele, I. (1998). Valodas lietošanas dilemma Latvijā: pienākums un nepieciešamība. *Mazākumtiesību rokas grāmata. Cilvēktiesību žurnāls. 7/8*, 33.

[126] Latvijas Republikas 6. Saeimas pavasara sesijas 1998. gada 23. aprīļa sēdes stenogramma.

valodas jautājums tika likts vienos svaru kausos ar Latvijas uzņemto ārpolitikas kursu, realitāte izrādījās gaužām rūgta. Secinājumam, ka valodas politika ir grūti saskaņojama ar citiem politikas virzieniem, ir ļoti liela ticamība, atskatoties uz konkrēto likumdošanas procesu un tā rezultātu.[127]

Vairāku gadu garajā likumprojekta apstiprināšanas laikā visām valdībām to deklarācijās galvenais akcents tika likts uz valsts uzņemto ārpolitisko kursu, t. i., virzību uz Eiropas Savienību un NATO. Valstij, izvirzot savu lielo stratēģisko mērķi par dalību ES un NATO, nācās būt "dzirdīgai" pret Rietumu ekspertu padomiem. Šī iemesla dēļ valsts valodas oponentu[128] sākotnējais retoriskais jautājums: "Vai mums no valsts puses ir jālien iekšā privātajā sektorā?" beigu beigās pārvērtās par uzstādījumu: "Ir jānodala valodas lietošanā valsts sfēra no privātā sektora!"[129]

Latviešu kā valsts valodas aizstāvji likumdošanas procesā nespēja noturēt stingru pozīciju par latviešu valodas lietošanu privātajā sfērā. Jaunpieņemtais likums sagādāja lielu vilšanos tiem, kas cerēja, ka Latvija spēs nosargāt savu pozīciju valodu jautājumā un realizēt patstāvīgāku politiku. Valodas aizstāvjiem nācās pieņemt, ka, neskatoties uz neatkarīgas, nacionālas valsts pastāvēšanu, tās politika ir cieši saistīta un pat atkarīga no "lielās politikas nospraustās dienaskārtības",[130] un likumdevēja pienākums ir ne tikai formāli, tehniski pildīt likumdevēja pienākumus, bet tam jābūt arī tālredzīgam stratēģim, jāizjūt pareizais laiks konkrētām likumdošanas iniciatīvām.

Ieskatam – atsevišķi Saeimas deputātu izteikumi no 1999. gada 9. decembra sēdes debatēm par Valsts valodas likumu:[131]

Dzintars Ābiķis: "Cienījamie kolēģi! Komisijas vārdā es gribu atgādināt, ka mēs esam iesnieguši vienu likumprojektu, jo, klausoties debatēs, liekas, ka vieni saka: "Likums ir nacionālistisks!", bet otri saka: "Tas absolūti neievēro nacionālās intereses!" Man ir tāda sajūta, ka mēs esam iesnieguši divus likumprojektus."

---

[127] Druviete, I. (2010). Skatījums. No: *Valoda, Sabiedrība, Politika*. LU Akadēmiskais apgāds, 80.

[128] Jāatzīst, ka valsts valodas oponenti publiski gan runāja par to, ka "valsts valoda ir jāzina visiem Latvijas iedzīvotājiem. Latviešu valodai jāvieno sabiedrība un jāveicina tajā saskaņa. [..] Valsts valoda ir galvenais sabiedrības integrācijas instruments." Taču tajā pašā laikā norādīja, ka nav pareizi likumprojektā krievu valodas lietošanu izslēgt valsts un pašvaldību iestādēs, tiesās u. tml. Tas radīšot grūtības risināt problēmas cilvēkiem, kas vāji zina valsts valodu, un tādējādi Valsts valodas likums veicinās nevis mūsu sabiedrības integrāciju, bet piespiedu asimilāciju, kā arī negatīvi ietekmēs Latvijas tagadni un nākotni. (Saskaņā ar Kārtības ruļļa 144. pantu, politisko organizāciju apvienības "Par cilvēka tiesībām vienotā Latvijā" frakcijas paziņojums par balsošanas motīviem, balsojot par likumprojekta "Valsts valodas likums" pieņemšanu otrajā lasījumā.) Sk. Latvijas Republikas 7. Saeimas ziemas sesijas 1999. gada 18. marta sēdes stenogrammu. https://www.saeima.lv

[129] Latvijas Republikas 7. Saeimas ziemas sesijas 1999. gada 18. marta sēdes stenogramma. https://www.saeima.lv

[130] Valsts valodas centra vadītāja Dzintra Hirša: Latviešu valoda okupācijas seku spīlēs. *Latvijas Vēstnesis. 406/407*, 08.12.1999. https://www.vestnesis.lv/ta/id/14414

[131] Latvijas Republikas 7. Saeimas rudens sesijas 1999. gada 9. decembra sēdes stenogramma.

Jānis Jurkāns: "Neļausim nacionālistiskām metastāzēm pārņemt mūsu likumdošanu!"

Jakovs Pliners: "Strādājot pie likumprojekta, deputātu vairākums nedomāja par gandrīz 900 tūkstošiem Latvijas cittautiešu."

Pēteris Tabūns: "Dažiem latviešiem ir tāda pārcenšanās tieksme – darīt to, ko neprasa, pārcensties un uztaisīt vēl sliktāk pašam priekš sevis."

Juris Dobelis: "Valsts valodas likuma pieņemšanu saistīt ar iestāšanos Eiropas Savienībā ir vienkārši smieklīgi. [..] Tā ir uzspiesta izrunāšanās, jo labi zināms, ka, lielajiem procesiem virzoties uz priekšu, neviens tādas lietas īpaši neievēros."

Rišards Labanovskis: "Latvijā pastāv valodu konkurence. [..] valodai sagaidāmi grūti laiki un tā var izrādīties zaudētāja šajā konkurences cīņā."

Komentāra C daļas "Valsts valoda" 1. sadaļā "Valsts valodas statusa atjaunošana un latviešu valodas statusa nostiprināšana Satversmē" pēdējā rindkopā rakstīts: "Satversmes 78. panta kārtībā rīkotajā tautas nobalsošanā Latvijas pilsoņu kopums ar konstitucionālo balsu vairākumu (Satversmes 79. panta pirmā daļa) noraidīja priekšlikumu noteikt krievu valodai otras valsts valodas statusu. 2012. gada 18. februārī notikušajā tautas nobalsošanā "Par Satversmes grozījumu pieņemšanu" balsoja 273 347 vēlētāji (24,88 %), bet pret grozījumu pieņemšanu Satversmē bija 821 722 vēlētāji (74,8 %)."[132]

Valodas jautājums izrādījās liktenīgs ne tikai Satversmes otrajai pamattiesību daļai starpkaru periodā, bet arī tautas nobalsošanām otrajā neatkarības periodā. Latvijas Republikas pilsoņiem 2012. gada 18. februārī tautas nobalsošanā bija jāizšķiras par otru valsts valodu tā saucamajā "valodas referendumā". Tautas nobalsošana notika par likumprojekta "Grozījumi Latvijas Republikas Satversmē" pieņemšanu. Likumprojektā bija paredzēts mainīt Satversmes 4., 18., 21., 101. un 104. pantu, iekļaujot tajos nosacījumu par krievu valodu kā otru valsts valodu, nosakot, ka arī pašvaldības darba valodas ir latviešu un krievu valoda un ikvienam ir tiesības saņemt informāciju latviešu un krievu valodā. Tautas nobalsošanas zīmē bija jautājums: "Vai jūs esat par likumprojekta "Grozījumi Latvijas Republikas Satversmē" pieņemšanu, kas paredz krievu valodai noteikt otras valsts valodas statusu?" Iespējamie atbilžu varianti bija šādi: "par" un "pret".[133]

Referendums parādīja politiskās elites samulsumu. Valsts prezidents Andris Bērziņš demonstratīvi boikotēja referendumu, tā rādot piemēru referendumu neapmeklēt nolūkā "noraut kvorumu", turpretī Saeimas pozīcijas partijas, kas vienlaikus bija arī tā sauktās latviskās partijas, aicināja pilsoņus piedalīties tautas nobalsošanā[134] un balsot

---

[132] Druviete, I., Kārkliņa, A., Kusiņš, G., Pastars, E., Pleps, J. (2014). Satversmes 4. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi.* Aut. kol. prof. R. Baloža zin.vad. Rīga: Latvijas Vēstnesis, *305*.

[133] Par grozījumiem Latvijas Republikas Satversmē (2012). *Centrālā vēlēšanu komisija*. https://www.cvk.lv/lv/tautas-nobalsosanas/par-grozijumiem-latvijas-republikas-satversme-2012

[134] Prezidents: referendums par valodu nebūs gada svarīgākais notikums. *Tvnet*. 20.12.2011. https://www.tvnet.lv/4739059/prezidents-referendums-par-valodu-nebus-gada-svarigakais-notikums

pret krievu valodu kā otru valsts valodu. 2012. gada valodas referenduma sekas bija "Satversmes kodola koncepcijas" radīšana, ko paveica Egila Levita vadītā Valsts prezidenta Konstitucionālo tiesību komisija,[135] bet Saeima pieņēma Grozījumus likumā "Par tautas nobalsošanu, likumu ierosināšanu un Eiropas pilsoņu iniciatīvu".[136] Šie grozījumi, bez visa cita, likuma 22. pantā noteiktos 10 000 balsstiesīgos Latvijas pilsoņus, kuriem bija tiesības iesniegt Centrālajā vēlēšanu komisijā likumprojektu, nomainīja pret algoritmu "viena desmitā daļa vēlētāju", kas bija apmēram 150 000 balsstiesīgie Latvijas pilsoņi.[137] Kopš šiem grozījumiem tautas nobalsošanas vairs nav notikušas. Tas liek pievienoties ekspertu viedoklim, ka pēc Satversmes grozīšanas referenduma jautājumā tautas nobalsošana kļūst vien par teorētisku iespējamību.[138] Valodas referendums, tā radītā situācija un sekas labi sasaucas ar pavisam neseno Ukrainas Konstitucionālās tiesas secinājumu, ka valsts valodas aizsardzība ierindojama nacionālo drošības jautājumu lokā.[139]

Minētā sakarā arī ir vērts piebilst, ka citas Latvijas kaimiņvalsts – Lietuvas – Konstitucionālā tiesa ir atzinusi, ka valsts valoda ir valsts suverenitātes izpausme, kas atklāj valsts integritāti un nedalāmību.[140]

Secinājumi

Valsts valodai nemainīgi ir jābūt valsts, konkrēti Valsts prezidenta, Saeimas un valdības, prioritāšu lokā. Tikai cienot sevi, savu valodu un valsti, spēsim pacelt savu nacionālo pašapziņu. Latviskumā stipriem esot, būsim spēka avots arī mazākumtautībām, veidojot piederību Latvijas valstij.[141] No šī gada (2021) Latvijā ir jauna atzīmējamā diena – Valsts valodas diena. Likumā "Par svētku, atceres un atzīmējamām dienām",

---

[135] Konstitucionālo tiesību komisija: Viedoklis par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu. 2012. Rīga: Latvijas Vēstnesis, 17.09.2012.

[136] Grozījumi likumā "Par tautas nobalsošanu, likumu ierosināšanu un Eiropas pilsoņu iniciatīvu": 08.11. 2012. *Latvijas Vēstnesis*, *186*, 27.11.2012.

[137] Ņikona, L. (2021). Vai Latvijā ir iespējams sarīkot iedzīvotāju iniciētu referendumu? *LV*. 31.08.2021. https://lvportals.lv/viedokli/331821-vai-latvija-ir-iespejams-sarikot-iedzivotaju-inicietu-referendumu-2021?fbclid=IwAR3AnKtRn4HoM_QvMae3_8344txkn3eHMsJFEeCXPjmBr9EMUjIpBvwxfJ0

[138] Balodis, R. (2021). Par tautas tiesībām un faktiskām iespējām grozīt Latvijas Republikas Satversmi. Tiesības un tiesiskā vide mainīgos apstākļos. No: *Latvijas Universitātes 79. starptautiskās zinātniskās konferences rakstu krājums*. Rīga: LU Akadēmiskais apgāds, 416–417. https://www.apgads.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/Juridiskas-konferences/JUZK-79-2021/juzk.79.46_sBalodis.pdf

[139] Ukrainas Konstitucionālās tiesas 2021. gada 14. jūlija spriedums lietā Nr. 1-p/2021. *Gov.ua*. https://zakon.rada.gov.ua/laws/show/v001p710-21#Text

[140] Lietuvas Konstitucionālās tiesas 2006. gada 10. maija spriedums lietā Nr. 25/03, secinājuma 4. punkts.

[141] Balodis, R. (2021). Pārdomas Valsts valodas dienas gaidās. *Telos*. https://telos.lv/pardomas-valsts-valodas-diena/

pateicoties Valsts prezidenta Egila Levita iniciatīvai, par Vasts valodas dienu ir noteikts 15. oktobris.[142] Iniciatīvas autora ieskatā tieši šis datums vislabāk akcentēs latviešu valodas kā vienīgās valsts valodas simbolisko un konstitucionālo vērtību Latvijas valsts iekārtā, kā arī vienlaikus stiprinās valodas pozīcijas un veicinās modernas, atvērtas latvietības koncepcijas iedzīvināšanu, sekmēs mazākumtautību iesaisti.[143] Valsts valoda ir latviešu nācijas saistošais elements. Tilts, kas saista iepriekšējās paaudzes ar nākamajām un ārpus Latvijas robežām dzīvojošos, latvju tautai piederīgos ar dzimtenē dzīvojošiem tautiešiem. Tas, ka Latvijā valsts valoda ir latviešu valoda, ir pašsaprotami, tomēr vienmēr jāatceras, ka tā nav dāvināta, bet izcīnīta nacionāla vērtība, par kuru jāturpina būt modriem un pastāvīgi jārūpējas. Priekšlikums, pareizāk, aicinājums, ko nesen izvirzīja Valsts prezidents Egils Levits, par atbildīgo Ministru kabineta locekļu ikgadēju ziņojumu Saeimas sēdē par valsts valodas situāciju un iecerētajiem darbiem šajā jomā ir atbalstāms, tāpat kā doma, ka šim ziņojumam par valsts valodas situāciju jākļūst par nozīmīgu parlamentārās diskusijas elementu, tā veicinot Saeimas iesaisti valsts valodas politikas formulēšanā un sabiedrības līdzdalību tajā.[144] Vai Saeima kārtējo reizi šo ierosinājumu, tāpat kā daudzus citus vērtīgus valsts prezidentu ierosinājumus, neatstās novārtā, redzēsim jau pavisam drīz – 2022. gada 15. oktobrī, kas interesantā kārtā iekrīt jau pēc 14. Saeimas vēlēšanām.

Avoti un literatūra

Tiesību akti

1. Grozījumi likumā "Par svētku, atceres un atzīmējamām dienām": Latvijas Republikas likums. *Latvijas Vēstnesis. 118*, 19.06.2021. https://likumi.lv/ta/id/324120-grozijumi-likuma-par-svetku-atceres-un-atzimejamam-dienam
2. Grozījumi likumā "Par tautas nobalsošanu, likumu ierosināšanu un Eiropas pilsoņu iniciatīvu": Latvijas Republikas likums. *Latvijas Vēstnesis. 186*, 27.11.2012. https://likumi.lv/ta/id/58065-par-tautas-nobalsosanu-likumu-ierosinasanu-un-eiropas-pilsonu-iniciativu
3. Valsts valodas likums: LR likums. *Latvijas Vēstnesis. 428(433)*, 21.12.1999. https://likumi.lv/ta/id/14740-valsts-valodas-likums

Vēsturiski tiesību akti

4. Latvijas Padomju Sociālistiskās Republikas Augstākās padomes lēmums par latviešu valodas statusu: 06.10.1988. http://www.vvk.lv/index.php?sadala=135&id=167

[142] Grozījumi likumā "Par svētku, atceres un atzīmējamām dienām": LR likums: 16.06.2021. *Latvijas Vēstnesis*. 118, 03.07.2021.

[143] Latvijas Valsts prezidenta Egila Levita 2019. gada 1. oktobra vēstule Nr. 212 Saeimas Cilvēktiesību un sabiedrisko lietu komisijai. Nepublicēta. Saeimas arhīvs; Valsts prezidenta Egila Levita 2021. gada 5. maija paziņojums Nr. 11. *Latvijas Vēstnesis. 84 B*, 05.05.2021.

[144] Levits, E. (2021). Egils Levits: 15. oktobris – mūsu valsts valodas diena. *Delfi*. 15.10.2021. https://www.delfi.lv/news/versijas/egils-levits-15-oktobris-musu-valsts-valodas-diena.d?id=53681383&fbclid=IwAR2WmbywM56vA7TaUzy5rRCMJ-ySdRkCuwrZJmfzzp0mxTYORGIcPNajKow

5. Latvijas Padomju Sociālistiskās Republikas valodu likums: 05.05.1989. *Latvijas Padomju Sociālistiskās Republikas Augstākās Padomes un Valdības Ziņotājs. 20*, 18.05.1989. http://valoda.ailab.lv/latval/vidusskolai/VALODA/v9-6.htm
6. Latvijas Tautas Padomes kārtības rullis: LV likums: 23.08.1919. *Likumu un Valdības Rīkojumu Krājums. 11*, 1919. https://tzpi.lu.lv/likumdeveja-kartibas-rullis/
7. Likums par Latvijas izglītības iestādēm: 08.12.1919. *Likumu un Valdības Rīkojumu Krājums. 13*, 31.12.1919. http://periodika.lv/periodika2-viewer/?lang=fr#panel:pa|issue:354805|article:DIVL50|query:Latvijas%20Likums%20par%20izglitibas%20iest%C4%81des%20
8. Likums par sapulcēm: 18.07.1923. *Valdības Vēstnesis. 152*, 18.07.1923.
9. Likums par valsts valodu: 05.01.1935. *Valdības Vēstnesis. 7*, 09.01.1935.
10. Likums par virsnieku un kara ierēdņu pārbaudīšanu valsts valodas prašanā: LR likums: 17.11.1924. *Valdības Vēstnesis. 262*, 22.11.1924.
11. Noteikumi par ierēdņu iecelšanu Latgalē: 26.07.1921. *Valdības Vēstnesis. 174*, 06.08.1921.
12. Noteikumi par ierēdņu pārbaudīšanu valsts valodas prašanā: 22.11.1921. *Valdības Vēstnesis. 269*, 28.11.1921.
13. Noteikumi par Latgales apgabaltiesas vecākā notara darbības atjaunošanu attiecībā uz aktu apstiprināšanu (izdoti Latvijas Republikas Satversmes 81. panta kārtībā): 04.10.1923. *Valdības Vēstnesis. 222*, 08.10.1923.
14. Noteikumi par Latgales lietu pārzināšanu: 30.06.1921. *Valdības Vēstnesis. 177*, 10.08.1921.
15. Noteikumi par latgaliešu izloksnes lietošanu: 11.08.1921. *Valdības Vēstnesis. 183*, 17.08.1921.
16. Noteikumi par valsts valodu (izdoti Latvijas Republikas Satversmes 81. panta kārtībā): 18.02.1932. *Valdības Vēstnesis. 39*, 18.02.1932.
17. Par grozījumiem un papildinājumiem Latvijas Padomju Sociālistiskas Republikas Valodu likumā: LR likums: 31.03.1992. *Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs. 15/16*, 16.04.1992. https://likumi.lv/ta/id/65484-par-grozijumiem-un-papildinajumiem-latvijas-padomju-socialistiskas-republikas-valodu-likuma
18. Par mazākuma tautību skolu iekārtu Latvijā: LR likums: 08.12.1919. *Likumu un Valdības Rīkojumu Krājums. 13*, 31.12.1919.
19. Par Latvijas tiesām un tiesāšanās kārtību: Tautas padomes pagaidu nolikums. *Pagaidu Valdības Vēstnesis*. 14.(1.)12.1918.; *Latvijas Pagaidu Valdības Likumu un Rīkojumu Krājums. 1*, 15.07.1919.
20. Par Latvijas tiesām un tiesāšanās kārtību: Tautas padomes pagaidu nolikums. *Latvijas Pagaidu Valdības Likumu un Rīkojumu Krājums. 1*, 15.07.1919.
21. Pārgrozījumi un papildinājumi noteikumos par valsts valodu: 14.06.1934. *Valdības Vēstnesis. 132*, 16.06.1934.
22. Saeimas kārtības rullis 26.03.1923. *Valdības Vēstnesis. 65*, 27.03.1923. *Tiesību zinātņu pētniecības institūts.* Likumdevēja kārtības rullis. Tiesību zinātņu pētniecības institūts (lu.lv).
23. Saeimas kārtības rullis: 20.03.1929. *Valdības Vēstnesis. 79*, 10.04.1929. *Tiesību zinātņu pētniecības institūts.* Likumdevēja kārtības rullis. Tiesību zinātņu pētniecības institūts (lu.lv)
24. Tautas padomes politiskā platforma: 17.11.1918. *Valdības Vēstnesis. 1*, 14.12.1918.

Judikatūra

25. Lietuvas Konstitucionālās tiesas 2006. gada 10. maija spriedums lietā Nr. 25/03.
26. Satversmes tiesas 2005. gada 16. decembra spriedums lietā Nr. 2005-12-0103.
27. Satversmes tiesas 2012. gada 1. novembra spriedums lietā Nr. 2012-06-01.
28. Satversmes tiesas 2015. gada 2. jūlija spriedums lietā Nr. 2015-01-01.

29. Ukrainas Konstitucionālās tiesas 2021. gada 14. jūlija spriedums lietā Nr. 1-p/2021. *Gov.ua*. https://zakon.rada.gov.ua/laws/show/v001p710-21#Text

Protokoli

30. Satversmes komisijas 1921. gada 3. novembra sēdes protokols Nr. 58. https://tzpi.lu.lv/satversmes-sapulces-komisijas-sezu-protokoli/
31. Satversmes komisijas 1922. gada 8. jūlija sēdes protokols Nr. 70. https://tzpi.lu.lv/satversmes-sapulces-komisijas-sezu-protokoli/
32. Satversmes komisijas 1922. gada 14. jūlija sēdes protokols Nr. 77. https://tzpi.lu.lv/satversmes-sapulces-komisijas-sezu-protokoli/
33. 6. Saeimas Izglītības, kultūras un zinātnes komisijas 1998. gada 25. augusta sēdes protokols Nr. 161. Saeimas arhīvs.
34. 6. Saeimas Izglītības, kultūras un zinātnes komisijas 1998. gada 31. marta sēdes protokols Nr. 132. Saeimas arhīvs.
35. 7. Saeimas Izglītības, kultūras un zinātnes komisijas 1998. gada 31. marta sēdes protokols Nr. 132. Saeimas arhīvs.
36. 7. Saeimas Izglītības, kultūras un zinātnes komisijas 1999. gada 11. janvāra sēdes protokols Nr. 1. Saeimas arhīvs.

Stenogrammas

37. Latvijas Satversmes sapulces 4. sesijas 7. sēdes 1921. gada 4. oktobrī stenogramma. No: *Latvijas Satversmes sapulces stenogrammu izvilkums (1920–1922). Latvijas Republikas Satversmes projekta apspriešana un apstiprināšana*. Rīga: Tiesu namu aģentūra, 2006.
38. Latvijas Satversmes sapulces 4. sesijas 8. sēdes 1921. gada 5. oktobrī stenogramma. No: *Latvijas Satversmes sapulces stenogrammu izvilkums (1920–1922). Latvijas Republikas Satversmes projekta apspriešana un apstiprināšana*. Rīga: Tiesu namu aģentūra, 2006.
39. Latvijas Satversmes sapulces 5. sesijas 34. sēdes 1922. gada 5. aprīlī stenogramma. Iegūts no: https://tzpi.lu.lv/pirmais-neatkaribas-laiks/saeimas-stenogrammas/
40. Latvijas Republikas 3. Saeimas 2. sesijas 6. sēdes 1929. gada 8. februārī stenogramma. https://tzpi.lu.lv/pirmais-neatkaribas-laiks/saeimas-stenogrammas/
41. Latvijas Republikas 3. Saeimas 8. sesijas 1. sēdes 1931. gada 20. janvārī stenogramma. https://tzpi.lu.lv/pirmais-neatkaribas-laiks/saeimas-stenogrammas/
42. Latvijas Republikas 4. Saeimas 2. sesijas 2. sēdes 1932. gada 23. februārī stenogramma. https://tzpi.lu.lv/pirmais-neatkaribas-laiks/saeimas-stenogrammas/
43. Latvijas Republikas Augstākās padomes 1992. gada 24. marta rīta sēdes stenogramma. https://www.saeima.lv
44. Latvijas Republikas Augstākās padomes 1992. gada 24. marta vakara sēdes stenogramma. https://www.saeima.lv
45. Latvijas Republikas Augstākās padomes 1992. gada 31. marta rīta sēdes stenogramma. https://www.saeima.lv
46. Latvijas Republikas 6. Saeimas pavasara sesijas 1997. gada 5. jūnija sēdes stenogramma. https://www.saeima.lv
47. Latvijas Republikas 6. Saeimas pavasara sesijas 1998. gada 23. aprīļa sēdes stenogramma. https://www.saeima.lv
48. Latvijas Republikas 6. Saeimas pavasara sesijas 1998. gada 29. aprīļa sēdes stenogramma. https://www.saeima.lv

49. Latvijas Republikas 7. Saeimas rudens sesijas 1999. gada 9. decembra sēdes stenogramma. https://www.saeima.lv
50. Latvijas Republikas 7. Saeimas ziemas sesijas 1999. gada 18. marta sēdes stenogramma. https://www.saeima.lv
51. Tautas padomes 4. sesijas 8. sēdes 1919. gada 27. augustā stenogramma.

Sarakste

52. Amerikas Savienoto Valstu vēstnieka L. Nepera 1998. gada 11. marta vēstule 6. Saeimas priekšsēdētājam A. Čepānim. Saeimas arhīvs.
53. Amerikas Savienoto Valstu vēstnieka L. Nepera 1998. gada 23. aprīļa vēstule 6. Saeimas priekšsēdētājam A. Čepānim. Saeimas arhīvs.
54. Amerikas Savienoto Valstu vēstnieka L. Nepera 1998. gada 23. aprīļa vēstule Saeimas Izglītības, kultūras un zinātnes komisijas priekšsēdētājam Dz. Ābiķim. Saeimas arhīvs.
55. Eiropas Drošības un sadarbības organizācijas Augstā komisāra nacionālo minoritāšu biroja 1998. gada 23. marta atzinums par Latvijas Republikas Valsts valodas likuma projekta atbilstību Latvijas starptautiskajiem pienākumiem un saistībām. Saeimas arhīvs.
56. Eiropas Drošības un sadarbības organizācijas augstā komisāra nacionālo minoritāšu jautājumos Maksa van der Stūla 1998. gada 14. augusta vēstule Saeimas Izglītības, kultūras un zinātnes komisijas priekšsēdētājam Dz Ābiķim. Saeimas arhīvs.
57. Latvijas Republikas ārlietu ministra I. Bērziņa 1999. gada 29. oktobra vēstule Nr. 33/230-7460 Saeimas Izglītības, kultūras un zinātnes komisijas priekšsēdētājam Dz. Ābiķim. Saeimas arhīvs.
58. Latvijas Republikas Ārlietu ministrijas valsts sekretāra p. i. A. Vovera 1997. gada 25. septembra vēstule Nr. 42/682-60003 Saeimas Izglītības, kultūras un zinātnes komisijas priekšsēdētājam Dz. Ābiķim. Saeimas arhīvs.
59. Latvijas Valsts prezidenta Egila Levita 2019. gada 1. oktobra vēstule Nr. 212 Saeimas Cilvēktiesību un sabiedrisko lietu komisijai. Saeimas arhīvs.

Literatūra

60. Balodis, R. (2021). Kā cīņa par latgaliešu valodu ietekmēja latviešu valodas statusu. *Jurista Vārds. 38*, 21.09.2021.
61. Balodis, R. (2020). Līdz ar Satversmes II nodaļas komentāru izdošanu noslēdzies Satversmes zinātnisko komentāru projekts. *Jurista Vārds. 36*, 08.09.2020.
62. Balodis, R. (2021). Par nepieciešamību valsts valodai atrast politisku aizbildni. *Jurista Vārds. 42*, 19.10.2021.
63. Balodis, R. (2021). Par tautas tiesībām un faktiskām iespējām grozīt Latvijas Republikas Satversmi. Tiesības un tiesiskā vide mainīgos apstākļos. Latvijas Universitātes 79. starptautiskās zinātniskās konferences rakstu krājums. Rīga: LU Akadēmiskais apgāds.
64. Balodis, R. (2011). Satversmes 99. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Zin.vad. R. Balodis. Rīga: Latvijas Vēstnesis.
65. Balodis, R., Kārkliņa, A. (2010). Divdesmit gadi kopš Latvijas Neatkarības deklarācijas: valststiesību attīstības tendences un risinājumi. *Jurista Vārds. 17/18*, 27.04.2010.
66. Blinkena, A. (1988). Par latviešu valodas statusu – esošo un vēlamo. *Padomju Jaunatne. 165*, 30.08.1988.
67. Druviete, I. (2013). Latviešu valoda pēc neatkarības atgūšanas: valodas situācija un valodas politika. No: *Latvieši un Latvija. Akadēmiski raksti*. 3. sēj. Atjaunotā Latvijas valsts. Galv. red. J. Stradiņš. Rīga: Latvijas Zinātņu akadēmija.

68. Druviete, I. (1998). *Latvijas valodu politika Eiropas Savienības kontekstā*. Rīga: LU Latviešu valodas institūts, LZA Ekonomikas institūts.
69. Druviete, I. (2010). *Skatījums: valoda, sabiedrība, politika*. LU Akadēmiskais apgāds.
70. Druviete, I., Kārkliņa, A., Kusiņš, G., Pastars, E., Pleps, J. (2014). Satversmes 4. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi.* Zin. vad. R. Balodis. Rīga: Latvijas Vēstnesis.
71. Dupate, K. Reine, I. (2011). Satversmes 110. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības*. Zin.vad. R. Balodis. Rīga: Latvijas Vēstnesis.
72. Gehtmane-Hofmane, I. (2021). Satversmes komentāri – zinātnisks traktāts ar praktisku pielietojamu. *Zinātņu Vēstnesis*. *3*, 29.03.2021.
73. Hirša, Dz. (1999). Latviešu valoda okupācijas seku spīlēs. *Latvijas Vēstnesis*. *406/407*, 08.12.1999.
74. Jundzis, T. (1998). Tiesību reformu loma neatkarības atjaunošanā. No: Blūzma, V., Celle O., Jundzis, T., Lēbers, D. A., Levits, E., Zīle, Ļ. *Latvijas valsts atjaunošana 1986.–1993*. Rīga: LU žurnāla "Latvijas Vēsture" fonds.
75. Klīve, Ā. (1969). *Brīvā Latvija: Latvijas tapšana: atmiņas, vērojumi un atzinumi*. Bruklina: Grāmatu draugs.
76. Krūmiņa, V. (2013). Ievads Latvijas Republikas Satversmes VI nodaļas komentāram: tiesu varas evolūcija Latvijā. No: *Latvijas Republikas Satversmes komentāri. VI nodaļa. Tiesa. VII nodaļa. Valsts kontrole*. Zin.vad. R. Balodis. Rīga: Latvijas Vēstnesis.
77. Kusiņš, G. (2020). Satversmes 15. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima.* Zin.vad. R. Balodis. Rīga: Latvijas Vēstnesis.
78. *Latvijas tautas fronte. Gads pirmais*. (1989). Rīga: Latvijas Tautas fronte.
79. Lazdiņš, J. (2014). *Rechtspolitische Besonderheiten bei der Entstehung des lettischen Staates und seiner Verfassung. Law, 7.*
80. Levits, E. (2021). Egils Levits: 15. oktobris – mūsu valsts valodas diena. *Delfi*. 15.10.2021. https://www.delfi.lv/news/versijas/egils-levits-15-oktobris-musu-valsts-valodas-diena.d?id=53681383&fbclid=IwAR2WmbywM56vA7TaUzy5rRCMJ-ySdRkCuwrZJmfzzp0mxTYORGIcPNajKow
81. Levits, E. (2019). *Valstsgriba. Idejas un domas Latvijai 1985–2018*. Rīga: Latvijas Vēstnesis.
82. Matule, S. (2014). Satversmes komentāros padziļināti izvērsti arī valsts pamati. *Jurista Vārds*. *46*, 08.09.2014.
83. Muižnieks, N. (1996). Aktuāli cilvēktiesību jautājumi Latvijā: praktiķa vērtējums. *Cilvēktiesību Žurnāls*. *3*. Rīga: Latvijas Universitātes Juridiskās fakultātes Cilvēktiesību institūts.
84. Ņikona, L. (2021). Vai Latvijā ir iespējams sarīkot iedzīvotāju iniciētu referendumu? *LV*. 31.08.2021. https://lvportals.lv/viedokli/331821-vai-latvija-ir-iespejams-sarikot-iedzivotaju-inicietu-referendumu-2021?fbclid=IwAR3AnKtRn4HoM_QvMae3_8344txkn3eHMsJFEeCXPjmBr9EMUjIpBvwxfJ0.
85. Paegle, S. (1939). *Kā Latvijas valsts tapa*. Otrais izd. Rīga: Liepājas Burtnieks.
86. Plamše, K. (1999). EPPA ziņotāji par Latviju kritiskāki nekā Makss van der Stūls. *Diena*. 25.06.1999. https://www.diena.lv/raksts/pasaule/krievija/eppa-zinotaji-par-latviju-kritiskaki-neka-makss-van-der-stuls-10472191
87. Pleps, J. (2020). Satversmes 21. panta komentārs. No: *Latvijas Republikas Satversmes komentāri. II nodaļa. Saeima*. Zin. vad. R. Balodis. Rīga: Latvijas Vēstnesis.
88. Pleps, J. (2021). Vēstures nozīme tiesībnieka darbā. *Jurista Vārds*. *32*, 10.08.2021.
89. Prezidents: referendums par valodu nebūs gada svarīgākais notikums. *Tvnet*. 20.12.2011. https://www.tvnet.lv/4739059/prezidents-referendums-par-valodu-nebus-gada-svarigakais-notikums

90. Skujenieks, M. (1925). *Otrā tautas skaitīšana Latvijā*. Rīga.
91. Smiltēna, A. (2016). *Deleģētas likumdošanas pirmsākumi Eiropā un Latvijā: promocijas darbs*. Rīga: Latvijas Universitāte.
92. Sosāre, M. (1992). *Valodu likumdošanas jautājumi Latvijas Republikas pastāvēšanas sākuma posmā. Latvijas Zinātņu Akadēmijas Vēstis*. A daļa, *4*, 01.04.1992.
93. Valoda. 1988. gadā latviešu valodu atzīst par valsts valodu. *Providus*. 03.01.2012.
94. Van der Stūlam nav skaidri valodas likuma izpildes noteikumi. *Delfi*. 09.08.2000. https://www.delfi.lv/news/national/politics/van-der-stulam-nav-skaidri-valodas-likuma-izpildes-noteikumi.d?id=430454
95. Ziemele, I. (1998). Valodas lietošanas dilemma Latvijā: pienākums un nepieciešamība. Mazākumtiesību rokasgrāmata. *Cilvēktiesību Žurnāls. 7/8*. Rīga: Latvijas Universitātes Juridiskās fakultātes Cilvēktiesību institūts.

Citi materiāli

96. Jaunas Latvijas valdības gaidīšanas laiks turpinās: Balsojums par Māra Grīnblata iesniegto valdības sastāvu. *Latvijas Vēstnesis. 183*, 24.11.1995. https://www.vestnesis.lv/ta/id/27707
97. Konstitucionālo tiesību komisija: Viedoklis par Latvijas valsts konstitucionālajiem pamatiem un neaizskaramo Satversmes kodolu. 2012. Rīga: Latvijas Vēstnesis, 17.09.2012.
98. Latvijas Universitātes Satversme: 27.04.1923. 3. punkts. *Valdības Vēstnesis. 66*, 28.03.1923.
99. Ministru kabineta vēsture: Ziņojums par kabineta sastādīšanu un valdības deklarāciju. *Latvijas Republikas Ministru kabinets*. 08.12.2020. https://www.mk.gov.lv/lv/ministru-kabineta-vesture
100. Par grozījumiem Latvijas Republikas Satversmē (2012). *Centrālā vēlēšanu komisija*. 05.03.2012. https://www.cvk.lv/lv/tautas-nobalsosanas/par-grozijumiem-latvijas-republikas-satversme-2012
101. Satversmes tiesas tiesneša Alda Laviņa atsevišķās domas lietā Nr. 2019-33-01 "Par Darba likuma 155. panta pirmās daļas atbilstību Latvijas Republikas Satversmes 110. panta pirmajam teikumam".
102. Valsts prezidenta Egila Levita 2021. gada 5. maija paziņojums Nr. 11. *Latvijas Vēstnesis. 84 B*, 05.05.2021.
103. Valsts prezidente Vaira Vīķe-Freiberga saņēma EDSO komisāra minoritāšu jautājumos Maksa van der Stūla vēstuli. (12.07. 1999.). *Latvijas Valsts prezidents* [LV prezidenta mājaslapa]. https://www.president.lv/lv/jaunums/valstsprezidente-vaira-vike-freiberga-sanema-edso-komisara-minoritasu-jautajumosmaksa-van-der-stula-vestuli?utm_source=https%3A%2F%2Fwww.google.com%2F

https://doi.org/10.25143/socr.21.2021.3.053-069

Compliance of Legal Regulation of the Republic of Lithuania with the EU Resolution on COVID-19 Vaccines

Ph.D. candidate ***Erika Statkienė***
Institute of Public Law of Mykolas Romeris University
Klaipėda municipality, Lithuania
erstatkiene@stud.mruni.eu

Assoc. Professor ***Renata Šliažienė***
Lithuania Business University of applied sciences
Klaipėda municipality, Lithuania
renata.sliaziene@ltvk.lt

Abstract

The aim of this article is to evaluate compliance of the legal regulation of the Republic of Lithuania with the EU resolution on Covid-19 vaccines. The main goal is to investigate the government implemented extraordinary legal measures to control the pandemic situation in Lithuania by processing the goal of planned COVID-19 vaccination quantities and to evaluate their compliance with the EU resolution on COVID-19 vaccine. By using qualitative analysis of scientific literature and documents, statistical data analysis, comparative method of legal acts analysis, the purpose to identify the possible consequences of inadequate legal regulation implementation, affecting observance of human rights and fundamental freedoms, have been exceeded. The article aims to indicate whether there are any unreasonable, over excessive, legal measures in Lithuanian government decisions in trying to control the epidemic and distribution of vaccinations, by implementing legal restrictions against non-vaccinated people. Also, whether legal measures are objectively discriminatory and what the risks of such implementation are. The goal of the research is to indicate the main imposing restrictions, such as non-provision of services, accessing them and getting free health services, not limiting employees to continue their work without the vaccination certificate, not allowing customers in supermarkets or restaurants etc., which causes certain differences between social groups, allowing a reasonable doubt for discriminatory manifestations to be raised, therefore indicating the violation of human rights and fundamental freedoms in the process.

Keywords: Lithuania, COVID-19, vaccination, restrictions on human rights.

Introduction

On March 15, 2020, the beginning of a quarantine was announced for the first time in Lithuania due to the outbreak of COVID-19 infectious disease. Therefore, Lithuanian government adopted hasty decisions and ensured the duration of the quarantine regime and the restrictions imposed by by-laws. Attempts to control the pandemic caused various discussions both for violation of Lithuanian citizens human rights and freedoms and for not complying with the unified legal acts adopted by the European Union during the pandemic in order to control it.

It should be noted that the first signs of possible human rights violations were observed among the disabled and other particularly sensitive social groups. Institutions for the disabled, such as care homes, nursing homes, etc. were closed to control the pandemic; relatives and other persons could not enter these institutions or visit their relatives; thus, such restriction did not help to control the pandemic in these institutions either.

By analysing various cases and the ongoing vaccination of the Lithuanian population, it is important to maintain a balance between restrictive legal measures and protection of human rights and freedoms. Human rights violations were also raised in the civil service when civil servants approached various law enforcement unions to report possible violations due to their forced vaccination. Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms provides that the exercise of the rights and freedoms recognised therein shall be without discrimination on grounds of sex, race, colour, language, religion, political or other opinion, national or social origin, membership of a national minority or property, birth or other grounds (European Convention on Human Rights, 2010, No. 96-3016). Discrimination occurs when a person is treated differently in the media or in the state without any objective reason, when this has not previously caused any legal problems in assessing or the person is vaccinated or not.

The article analyses the situation with human rights in Lithuania to determine whether the government introduced compulsory vaccinations comply with a common EU approach to vaccine security and vaccination campaigns. Deviations from obligations under the European Convention on Human Rights in the context of the COVID-19 pandemic were analysed not only by lawyers, doctors, politicians and scientists, but also by people affected by the pandemic.

Implementation of Proper Legal Regulation on COVID-19 Vaccines in Lithuania and Abroad

Analysis of political and legal decisions of other countries in the implementation of the set vaccination goals have shown problems related to proper implementation according to the EU observance of ethical principles which guarantees human rights and fundamental freedoms. According to Indrani G. and Rama B., "both science and public policies

around vaccines are fraught with uncertainties and ethical concerns. The COVID-19 pandemic itself has been marked by uncertainties across multiple domains – nature of the virus, alternative treatment options, clinical outcomes and prevention methods" (Indrani & Rama, 2020).

Though, there are still no acceptable and adequate scientific and legal implementations to be constituted in most countries. Therefore, under the circumstances and the need for vaccines to stop the spread of pandemic, almost all countries started their vaccination process without researching further implications of the vaccine due to the seriousness of the extreme situation. The scientific community as well as entire population have raised reasonable concerns for safety of vaccines, availability, and equality problems, as well as accountability of distribution costs.

The vaccination process and implementation of legal regulation in this matter raises a lot of uncertainties in Lithuania – questions of financing the vaccines, effectiveness of those, considering that new virus strains have been detected and remaining active despite vaccination, as well as probable side effects of the vaccines, and the legality of implementation of legal restrictions for non-vaccinated people to maintain and obtain their human rights.

Therefore, there are various discussions considering implementation of massive vaccination taking into account emergency measures which have an impact on fundamental human rights (European Union Agency for Fundamental Rights, 2021). It has affected all human rights and allowed governments to impose restrictions. Thus, the question still remains who will ensure that granting Lithuanian government extraordinary decision-making power will not go beyond the necessary measures to protect human well-being, and there will be no excessive restriction in the field of freedom of movement, the right to access goods and services or the right to work and conduct business.

Legal and Ethical Aspects of COVID-19 Vaccination in Context of Lithuanian Legislation

On January 19, 2021, the European Commission adopted a communication, calling on Member States to step up the use of vaccines across the EU. The goal indicated that until 2021 at least 80 % of vaccines should be use for vaccination in every Member State by the end of March. This would concern people over the age of 80 and at least 80 % of health and social care professionals (Communication from the Commission Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, 2020). Until 2021, Member States should have vaccinated at least 70 % of the adult population by summer. Therefore, during the five months of vaccination, 988.5 thousand people were vaccinated against coronavirus with one or two doses of the vaccine, which constitutes 35 % of the Lithuanian population. According to the data of the first week of August, 46.55 % were vaccinated in Lithuania, of the entire population of Lithuania (Lithuanian department of statistics, 2021).

As it can be seen from the mentioned figures, Lithuania is not reaching the set limit by the European Union. Four manufacturers of vaccines against COVID-19 were approved in Lithuania and still are in use: Vaxzevria (formerly AstraZeneca), Pfizer-BioNTech, Moderna, Johnson & Johnson (On Approval of the Description of the Procedure for Organising Vaccination of the Population with COVID-19 Disease (Coronavirus Infection) Vaccine with State Budget Funds, 2021). This procedure provides full course of vaccination, facilities to implement it, and priority groups of persons who have priority for vaccination. It should be noted that throughout the pandemic period, Lithuanian legal framework did not adopt a single special COVID law which was implemented in other countries. Lithuania has limited itself to introducing many by-laws and updating the Law on the Prevention and Control of Communicable Diseases of the Republic of Lithuania (Republic of Lithuania Law On Prevention and Control of Communicable Diseases of Humans, 2001, current wording as of March 26, 2021).

In order to scrutinise the limitations of the situation of COVID-19 in Lithuania, it is necessary to review several amendments introduced by the Government of the Republic of Lithuania regarding the declaration of an emergency situation. The approved Resolution No. 152 "On the Amendment of the State Emergency Declaration" indicated which contact services, commercial and non-commercial cultural, entertainment, sporting events, celebrations, fairs, festivals or other temporary gatherings of people in a public place for a certain period of time meet the criteria set by the Government. The criteria stated that individuals must have received one of the mentioned vaccines for coronavirus infection; they may have had a history of disease of coronavirus infection; may have received a positive (less than 60 days ago) anti-S, anti-S1 or anti-RBD IgG antibodies to SARS-CoV-2) quantitative or semi-quantitative serological immunological test, unless the serological test is performed after vaccination; a person who has tested negative for a COVID-19 test has been subjected to a SARS-CoV-2 PCR test not earlier than 48 hours (from the time of sampling). Therefore, the Emergency State Operations Manual of the Ministry of Health of the Republic of Lithuania set out new requirements which have to be implemented since September 13, 2021, restricting the control of non-compliant individuals (i.e., unvaccinated or lacking any of the test results listed above).

Institutions are obliged to constantly control and supervise, report on compliance with restrictions when all contact services and economic activities are carried out and events are organised (except for established exceptions) only for persons who meet the criteria of the Opportunity Passport (The Emergency State Operations Manual of the Ministry of Health of the Republic of Lithuania, 2020). This new regulation stipulates that people who do not have a passport or do not meet the criteria will not be able to visit and shop in stores with an area of less than 1,500 square meters, in stores with separate entrance. Also, such non-immune people will not be able to visit beauty salons, catering establishments, entertainment venues, events, except for outdoor events with a maximum of 500 participants. There is also a new restriction that in addition to the passport in Lithuania, visits to veterinary services, museum expositions and exhibitions are shortened,

libraries can be visited only for the purpose of collecting and returning books, contact must last no longer than 15 minutes.

These discriminatory aspects are not in line with the principles of international law in the assessment of the EU's recommendations stated in the EU resolution on COVID-19 vaccines. It should be noted that one aspect of the discriminatory legal framework concerns the reimbursement of COVID-19. This raises a number of questions, for example, the legal regulation considering foreigners who will be able to receive treatment from the state treasury, while Lithuanian citizens who do not meet the above requirements will not be reimbursed for treatment with COVID-19. Therefore, in the 2021 report of the Director of the State Health Insurance Fund under the Ministry of Health on August 17 order No. 1K-241, which replaces the June 30, 2005 order No. 1K-81 "On Isolation of Personal Health Care Services and Services Provided in Health Programs Paid from the Budget of the Compulsory Health Insurance Fund", in which one of the classifications is on services paid from state funds to foreigners illegally crossing the state border of the Republic of Lithuania due to COVID-19 sickness service (Director of the State Health Insurance Fund under the Ministry of Health on Isolation of Personal Health Care Services and Services Provided in Health Programs Paid from the Budget of the Compulsory Health Insurance Fund, 2017).

However, the next decision conducted on June 29, 2021 order No. V-1493 "On the Procedure for Organising a COVID-19 Disease (Coronavirus Infection) Vaccine Acquired from the State Budget for Vaccination of the Population" provides a target group to which compulsory health insurance must be provided from the state budget – only such citizens of the Member States and their family members who have come to reside in the Republic of Lithuania for more than 3 months in the six-months period and have acquired the right of residence in the Republic of Lithuania, foreign citizens and stateless persons who have been issued a document granting the right of residence in the Republic of Lithuania, upon arrival to live in the Republic of Lithuania, persons who have been issued a national visa, persons accredited and residing in Lithuania and other persons. It should be noted that based on the submitted by-laws, manifestations of discrimination can be seen because the introduction of the opportunity passport requirement, which is obtained only after vaccination or re-vaccination with COVID-19, will prevent non-compliant people from receiving relevant services.

It must be stated that the resolution of the European Union always emphasises that the duty of the state to ensure the freedom of choice of a person; however, after the introduction of certain by-laws, such freedom of choice may be discriminated against in Lithuania. The resolution of the European Union also emphasises that the state must clearly inform citizens of its country that they can choose to be vaccinated or not, while doubts remain as to whether these requirements are ensured and implemented in Lithuania. Lithuanian government is trying to control the epidemic and increase vaccination rate by implementing some legal restriction against non-vaccinated is not a discriminatory but a legal regulation that will impose restrictions such as non-provision

of services, access to shops and getting free health services, causes certain differences between social groups, allows a reasonable opinion to be formed about discriminatory manifestations indicating violation of human rights.

In order to scrutinise the limitations of the situation of COVID-19 in Lithuania, it is necessary to review several amendments introduced by the Government of the Republic of Lithuania regarding the declaration of an emergency situation, mention should be made of Resolution No. 152 "On the Amendment of the State Emergency Declaration", which provides for contact services, commercial and non-commercial cultural, entertainment, sporting events, celebrations, fairs, festivals or other temporary gatherings of people in a public place for a certain period of time to meet the criteria set by the Government. The criteria state that individuals must have received one of the stated vaccines for COVID-19 (coronavirus infection); they may have had a history of COVID-19 disease (coronavirus infection); have received a positive (less than 60 days ago) anti-S, anti-S1 or anti-RBD IgG antibodies to SARS-CoV-2) quantitative or semi-quantitative serological immunological test, unless the serological test is performed after vaccination COVID-19 disease (coronavirus infection) vaccine; a person who has tested negative for a COVID-19 test has been subjected to a SARS-CoV-2 PCR test not earlier than 48 hours (from the time of sampling).

The State-level Emergency State Operations Manual of the Ministry of Health of the Republic of Lithuania sets out new requirements that will apply from September 13, 2021 (Emergency State Operations Manual of the Ministry of Health of the Republic of Lithuania, 2020) restricting control of non-compliant individuals (i.e., unvaccinated or lacking test results listed above). Institutions are obliged to constantly control and supervise, report on compliance with restrictions when all contact services and economic activities are carried out and events are organised (except for established exceptions) only for persons who meet the criteria of the Opportunity Passport. This new regulation stipulates that people who do not have a passport or do not meet the criteria will not be able to visit and shop in stores with an area of less than 1,500 square meters, in stores with separate entrance. Also, such non-immune people will not be able to visit beauty salons, catering establishments, entertainment venues, events, except for outdoor events with a maximum of 500 participants. There is also a new restriction that in addition to the passport in Lithuania, visits to veterinary services, museum expositions and exhibitions are shortened, libraries can be visited only for the purpose of collecting and returning books, contact must be kept under 15 minutes. These discriminatory aspects are not in line with the principles of international law in the assessment of the EU's recommendations stated in the EU resolution on COVID-19 vaccines (Council of Europe "Covid-19 vaccines: ethical, legal and practical considerations" Resolution 2361, 2021).

It should be noted that one aspect of the discriminatory legal framework concerns reimbursement of COVID-19. This raises several questions, as the legal regulation on this issue stipulates those foreigners will be able to receive treatment from the state

treasury, while Lithuanian citizens who do not meet the above requirements will not be reimbursed for treatment with Covid-19. This is noted in the August 17, 2021 report of the Director of the State Health Insurance Fund under the Ministry of Health, order No. 1K-241, which replaces the June 30, 2005 order No. 1K-81 "On Isolation of Personal Health Care Services and Services Provided in Health Programs Paid from the Budget of the Compulsory Health Insurance Fund", in which one of the classifications is on services paid from state funds to foreigners illegally crossing the state border of the Republic of Lithuania due to COVID-19 sickness service.

However, in the next June 29, 2021 order No. V-1493 "On the Procedure for Organising a COVID-19 Disease (Coronavirus Infection) Vaccine Acquired from the State Budget for Vaccination of the Population" provides a target group to which compulsory health insurance must be provided from the state budget – only such citizens of the Member States and their family who have come to reside in the Republic of Lithuania for more than 3 months within the period of six months and have acquired the right of residence in the Republic of Lithuania, foreign citizens and stateless persons who have been issued a document granting the right of residence in the Republic of Lithuania, upon arrival to live in the Republic of Lithuania, persons who have been issued a national visa, persons accredited and residing in Lithuania and other persons.

It should be noted that based on the submitted by-laws, manifestations of discrimination can be seen, because the introduction of the opportunity passport requirement, which is obtained only after vaccination or re-vaccination with COVID-19, will prevent non-compliant people from receiving relevant services, which can be considered discrimination, as well as the formation of appropriate negative attitudes towards them, both through media and in society.

It must be stated that the resolution of the European Union emphasises the duty of the state to ensure the freedom of choice of a person; however, after the introduction of certain by-laws, in Lithuania such freedom of choice may be discriminated against. The resolution of the European Union also emphasises that the state must clearly inform its citizens to freely choose to be vaccinated or not, while doubts remain as to whether these requirements are ensured and implemented in Lithuania. Lithuanian government is trying to control the epidemic and increase the vaccination rate by implementing some legal restrictions against the non-vaccinated, which is not considered discriminatory but a legal regulation that will impose restrictions such as non-provision of services, access to shops and getting free health services, causing certain differences between social groups, allowing a reasonable opinion to be formed about discriminatory manifestations indicating violation of human rights.

Rateesh Sareen notes that "adverse reaction to vaccines have been reported from various countries with scepticism about their efficacy and safety as the vaccines has been developed in short time with limited availability of data on safety and efficacy" (Sareen, 2021). The same worries occurred in Lithuania as well. There is reasonable doubt for the not cleared vaccines and the not completed process of clinical trials. It should take a lot of years

to develop a vaccine for other diseases; therefore, in currently COVIDd-19 vaccines are likely created by demand and supply proportions raising the question of safety and benefit to all humanity if the outcomes in several years after vaccination will arise.

The question is raised of who will take responsibility in this case and who will be responsible for spending unreasonable sums of money for a vaccine which has untreatable side effects or will not be effective after other virus strains attack. Sareen indicates that

> "justice refers to ethical obligation to treat each person in accordance with what is morally right and proper and to give each person what is due to him or her. We are well aware that in clinical trials patients are subjected to untested new treatment and are expressed to unknown risks. The guidelines make it mandatory to obtain free and informed consent by participants. Free consent is the one that is not being procured by fraud, misrepresentation or coercion" (Sareen, 2021).

Therefore, who will ensure that informed consent will be provided properly to each and every person, informing the participant of negative reaction, effects of vaccine and probable risks. Sareen raises a reasonable question which is relevant in Lithuania as well whether the self-interest of political governance of the country for effective COVID-19 control could make them persuasive.

It should be noted that the analysis of the European Union resolution indicates that the state must disseminate clear information on safety of vaccines and possible side effects on human health. According to Debbie Porteous

> "If the patient is on anticoagulants, they need to be advised of the risk of haematoma and the vaccinator should take care to apply pressure after vaccination. Previous allergic reactions including anaphylaxis may result in a different vaccine being selected or the administration being delayed. Before giving a COVID-19 vaccine, vaccinators must ensure that they have obtained informed consent from the patient or that a best interest decision has been made if the patient does not have mental capacity at the time of vaccination. To be able to consent to vaccination, the vaccinee should receive an explanation of the treatment and its benefits and risks, ideally verbally from a clinician." (Porteus, 2021)

Thus, the European Commission states that the Commission will promote the COVID-19 vaccine as a global public good. The question arises as to whether the current vaccine is already a common good. Currently, there are no long-term research indicating side effects, fertility or birth rates in healthy children; in case side effects appear, it is questionable whether the vaccine will still be considered a common good and who will then take responsibility – the European Commission, pharmaceutical companies or the countries themselves that already have implemented the vaccination process to ensure the common good. Under the signed agreements, Member States are required to procure specific doses of vaccines according to a set schedule, assuring Pfizer, for example, that it will irrevocably and unconditionally comply with the terms of this Agreement, including liability for damages, which again raises the question whether this can be considered an appropriate way to achieve the common good.

According to the Action brought on 19 May, 2021 against the European Commission, the applicants, Heidi Amort (Jenesien, Italy) and 22 other applicants, represented by

R. Holzeisen, a lawyer, brought actions for annulment of the contested implementing decision, its amendments and additions, in relation to the action of 11 March, 2021. The European Commission Implementing Decision C (2021) 1763 grants a conditional marketing authorisation pursuant to Regulation (EC) No. 726/2004 of the European Parliament and of the Council for the medicinal product for human use "COVID-19 Vaccine Janssen – COVID-19 Vaccine (Ad26.COV2-S [recombinant])" (Case T-267/21, 2021). The action is based on the ground that the contested implementing decision infringes Article 2 (1) and (2) of Regulation (EC) No. 507/20061. According to the applicants, it has been scientifically proven that the worldwide scaremongering about the allegedly high mortality rate associated with SARS-CoV-2 infection is unfounded. Moreover, the WTO and the EU have incorrectly identified the critical situation as a public health risk.

Second plea in law alleging that the contested implementing decision infringes Article 4 of Regulation (EC) No. 507/2006 in that the balance between the risks and benefits of the medicinal product as referred to in Article 1 (28a) of Directive 2001/83/EC2 has not been established; and the condition in Article 4 (1) (b) of Regulation (EC) No. 507/2006 is not satisfied, as it appears that the applicant will not be able to provide complete clinical data. The application states that the condition in Article 4 (1) (c) of Regulation (EC) No. 507/2006 is not fulfilled, as the needs of persons for whom there are no suitable medicines will not be met, and that the condition in Article 4 (1) (d) of Regulation (EC) No. 507/2006 is not fulfilled.

The other plea in law alleges infringement of Regulation (EC) No. 1394/20073, Directive 2001/83/EC and Regulation (EC) No. 726/20044, as well as a grave breach of Articles 168 and 169 TFEU and Articles 3, 35 and 38 of the EU Charter. As the decision is pending, but it can be expected that many more similar statements on the above grounds may be made, the validity of the decisions and their compliance with fundamental principles and international law should be considered before making relevant decisions in relation to the Covid pandemic.

According to the New York Times,

> "Pfizer-BioNTech and Moderna both increased the price of their coronavirus vaccines in their latest contracts with the European Union. [...] Clément Beaune, did not specify the exact rises in price. But as the more contagious Delta variant continues to spread across the continent, he said that the increases were justified [...]. His comments followed an article in the Financial Times on Sunday that said the price for a Pfizer-BioNTech shot had risen to $ 23 from about $ 18.50 in the contracts, and that Moderna's had risen to $ 25.50, up from $22.60." (Pronczuk & Gallois, 2021)

All these solutions would be appropriate if we assume that the COVID-19 pandemic will continue for at least another three years, during which time people should be vaccinated with the vaccine at least eight times, even though a third dose is not currently registered in Pfizer indications. Considering that the vaccines currently in use only have a conditional registration granted by the European Medicines Agency under exceptional, pandemic conditions, implemented under a special legal regime in force in country, it can

be stated that, depending on the situation and the measures adopted, until the vaccine is developed and registered, Lithuania and other EU Member States which have signed agreements with pharmaceutical companies, will have to maintain special legal regime, to proceed with the use of the vaccines.

Therefore, there is a direct link between the obligation to use these vaccines and the need for quarantine or other special legal regimes in the Member States that restrict human rights and other constitutional values. Such redemption of vaccine doses in the future is potentially contrary to implementation of the principles of international law and could turn the European Union and its Member States into hostages of pharmaceutical companies for at least a few years with no possibilities to withdraw from the signed contracts or liability for possible harm to human health from developed vaccines. The extent of the restriction of human rights and freedoms must be objectively assessed and weighed against the relevant limits of the constitutional principle of proportionality in the rule of law, in accordance with applicable law, assessing the possible consequences. As long as there are no science-based, adequate measures without isolation, vaccinations or masks to protect society from the spread of the pandemic, all these restrictions are justified, but if vaccinated and non-vaccinated people are restricted to access free medical care when contributions to the compulsory social insurance fund are paid, it is not considered an appropriate legal regulation because it violates a person's constitutional rights and restricts freedoms inappropriately. In the analysed case, it is necessary to properly identify what a legal public greater good really is and weigh the chosen means to achieve and ensure it.

Opinions often differ on the purchase and use of pharmaceuticals and vaccines and their positive impact on pandemic management. In one case, multinational pharmaceutical companies, supplying vaccines to the Member States of the European Union, have legitimate safeguarding of the common good. As the virus has already identified strains in which the vaccines ordered do not work or at least do not work as effectively, there is reasonable doubt that ordering large quantities of vaccines and justifying such costs in the general interest is unclear or will be guaranteed.

According to the results of investigation of Abas Khan and Mohd Sarwar Mir, the main problem of refusal to vaccinate were addressed to "concerned about the side effects (40 %), safety and lack of information regarding the vaccine (20 %). Some were not willing to accept vaccination due to religious (8.8 %) and cultural (4.8 %) reasons, belief in traditional remedies (3 %) and fear of injection (16.1 %)" (Khan & Sarwar, 2021). All the stated reasons, unlike in Lithuania, were subjective, not based on political decisions, threatening to deprive unvaccinated persons of certain rights, or additional costs related to medical expenses, testing and other measures restricting pressure affecting and influencing the freedom of choice.

Analysing the situation in Africa, the reasons for resistance to be vaccinated were the concerns that the vaccines were too new and there were worries about possible side effects; concerns have been extensively documented in studies on COVID-19 vaccine

acceptance in other settings and the vaccine hesitancy literature more broadly (Khan, Sarwar, 2021). These apprehensions may, however, be heightened for COVID-19 vaccines due to the unprecedented speed at which they were developed and approved as well as their novelty. The latter has indeed been the case for other new vaccines, to cure other diseases.

Thus, the research of Sara Cooper, Heidi van Rooyen and Charles Shey Wiysonge have identified several main problems for the implementation of the foreseen goals of vaccination. Political decision making was the most influenced factor for "not trusting the government's capability in ensuring that the vaccine is safe and effective, and believing that politics played too much of a role in the vaccine development process, accounted for 14% and 8% of the total reasons for not wanting to get COVID-19 vaccination respectively" (Cooper et al., 2021). It should be noted that there is no denying that measures are worthwhile, but legal implementation of vaccination process must respect the EU rules indicating that everyone is free to choose whether or not to be vaccinated not only because of their state of health, but also since this choice should not discriminate against anyone in the same way as freedom of choice neither in political, economic nor legal matter with no pressure applied.

Nevertheless, provisions of the resolution are not compliable in the Lithuanian legislation, which imposes mandatory reimbursement of medical expenses for COVID and non-vaccinated persons to be treated, or a compulsory 7-day check of SARS-CoV-2 test at one's own expense to get accepted to work, or failure to provide appropriate services without providing proof of completed vaccination even if there is a case of naturally obtained immunity or personal reasons not to vaccinate. It should be noted that utilitarianism alone cannot be relied upon to restrict human rights, which must be based on the constitutional principle of proportionality, encompassing all components of the content and restriction of human rights. Thus, when testing people who cannot be vaccinated due to their health condition or other objective reasons, even simply because they do not want to be vaccinated (which the EU resolution must ensure without discrimination without pressure), their tests must be paid for by all taxpayers. In this case, ensuring appropriate free treatment in medical institutions.

It should be noted that Robert Böhm's research results indicated that the introduction of partially compulsory vaccination and its externality effects on voluntary vaccination have significant importance (Böhm, 2016). Thus, factors that reduce freedom of choice may decrease motivation and lead to a counterproductive psychological response to voluntary vaccination. The study showed that forced vaccination increased people's anger levels, i.e., negative attitudes towards vaccination, whereas voluntary vaccination did not. These results should be considered before combining legal legislation mechanism, which is based on restriction, penalties and creating an emotional fare of society. This resulted a 39% reduction in vaccination demand during the second voluntary vaccination (reactivity). Taking into consideration that this negative effect was particularly pronounced in those who were reluctant to vaccinate from the beginning, there could

be a threat for public hesitation increase due to harms of compulsory vaccination. Thus, introduction of compulsory vaccination may have a detrimental effect when compared to voluntary vaccination.

Analysis of the results of Martins and Teixeira article also indicated that the factors which reduce freedom of choice can affect motivation and lead to a counter-psychological reaction to voluntary vaccination (Martins & Teixeira, 2020). In the study, the authors identified that forced vaccination increased people's anger levels, as well as negative attitudes towards vaccination, whereas voluntary vaccination did not. The data from the experiment showed that this has a particular effect (increased anger) on people who were reluctant or hesitant to vaccinate. Thus, introduction of compulsory vaccination may have a detrimental effect when contrasted to voluntary vaccination.

It should be mentioned that before changing the legal legislation or creating it to the benefit of greater good for vaccination implementation, the historical data analysis is required as well. Historical research data suggests historical fact analysis comparing Brazil as a country in 1904 when it implemented compulsory vaccination against smallpox (Giubilini & Alberto, 2020). Only those who had been vaccinated were allowed to enter employment contracts, obtain travel documents, study, enrol in universities, etc. This compulsory vaccination showed that, even with the rising number of smallpox cases in Rio de Janeiro, some of the population still rejected the vaccination, spreading rumours and causing a backlash, because forced vaccination provokes anger among the population rather than encouraging them to get vaccinated in the first place. In this case, historical facts show that the smallpox epidemic was not contained by forced vaccination, but rather by a counterproductive approach that the Brazilian government had to abandon. It was only later, as the epidemic intensified that people voluntarily vaccinated themselves. Therefore, Lithuania could follow the experience of such counties and take into consideration the ways of managing the pandemic situation without legally forcing, using restriction to non-vaccinated people, not to get some services or other benefits.

The above-mentioned research indicates the analogy and parallel of situation with vaccination and taxation policy. According to the author's opinion, refusal to vaccinate could be compared with tax evasion. It is argued that compulsory vaccination is withholding of valuable social goods or services from families who choose not to vaccinate their children for non-medical reasons. However, there are also reasons that justify a legal rather than merely moral obligation to pay taxes; when public and collective goods have an important function in maintenance of society, it is legitimate to require individuals in the community to fulfil their moral obligations. Paying taxes to finance these goods is not only an immoral obligation but it should also be, as indeed it usually is, a legal obligation. With the exception of certain liberal circles, the idea that it is legitimate to legally require people to pay taxes, at least those needed to fund "supposedly useful" fairly widespread goods and are regarded as indisputable. Harm to others and benefit to others are moral reasons for adopting certain behaviours; thus, in current case, they justify a collective moral responsibility to grasp herd immunity. The moral duty to vaccinate should become

a legal obligation, still argued that compulsory vaccination cannot be made on the basis of harm to others alone. Instead, compulsory vaccination is reinforced by considerations of justice. Therefore, it could be noted that refusing a vaccine is morally tantamount to tax evasion and could be legally treated as tax evasion. The author believes that it should be illegal not to vaccinate unless there are medical reasons for not doing so.

Thus, the comparison and analogy have its adequate insights. The previous research indicating non effectiveness of compulsory vaccination should be considered; taxation system and health, life, and interests of society, as well as expenses of buying vaccines have differences in the sphere and severity of the situation; therefore, could be applied as analogy creating reasonable doubt of the efficacy of compulsory tax burden.

Analysis of ethical and legal issues related to the implementation of vaccination in other countries have shown that it is not only Lithuania having difficulties in ensuring proper implementation of legal regulations that would not violate human rights and freedom to make decisions related to health. There are other problems and risks to be examined before proceeding with the global vaccination, as stated in the article "Pregnant women are at higher risk of severe COVID-19 disease with an associated risk of pre-term birth. Clinical trial data is insufficient currently to assess safety and efficacy of COVID-19 vaccinations in pregnant women, or indeed to recommend routine use in pregnancy". Thus, vaccination could be equally presumed to be unsafe for solid individuals as well, similarly to the research based on safety of vaccination for expectant women since current researches are is still ongoing. Before implementing legal instruments for ensuring high rate of vaccination in the country, it should be considered whether it will have an influence on a person's individual decision making with no pressure or risk to be discriminated for their decision, restricted to use of their rights, or being influenced by economical encumbrance which could be conditioned due to their self-determination.

At the EU level, civil liability of a producer of immunological medicinal products is defined by the Directive the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (hereinafter in the text: Directive 85/374), which establishes a specific system of producer liability for defective products. One of the prerequisites for producer liability is a product defect, which is determined by evaluation of the consumer expectations of the product based on the safety approach (Article 6 of Directive 85/374). The effect of a drug is inseparable from physiological properties of the consumer, and side effects are the result of interaction of the drug with the chemical processes in the human body. Therefore, the same drug can have different effects on individual consumers with a variety of possible side effects and levels of harm associated with those risks.

It is also important to keep in mind that a medicinal product itself, as a particular product, is always characterised by complexity and intricacy, which distinguishes it from any conventional products used by the consumer. A consumer without expert knowledge will objectively not have an opportunity to determine whether a particular medicinal product could be considered defective and therefore would not be able to make

a reasonable assessment of the safety they are entitled to expect in relation to a particular medicinal product. In these circumstances, it is assumed that the basis of consumer expectations for medicinal products (including vaccines) should be different from that for other products (Kisielytė-Reches, 2021).

Conclusions

For Lithuania to properly implement the vaccination process, ensuring proper implementation of human rights and freedoms, it is necessary to use the Constitution and the fundamental constitutional values such as the rule of law, democracy and protection of human rights and fundamental freedoms. It should be noted, that decisions on the purchase of vaccines must comply with the principles of openness and transparency, organising consultations with the population, medical personnel, legal representatives and scientists rather than operating and implementing a one-sided decision made by the government authorities. The treatment method and all precautions chosen must be influenced by coercive political methods, but on the basis of a reasonable scientific factual finding through the medium which practises and works according to the principle of neutrality. The implemented measures should ensure compliance with the norms established by the Constitution of the Republic of Lithuania, European Human Rights and Fundamental Freedoms convention, EU resolution on COVID-19, which oblige to protect the rights, fundamental freedoms, non-discrimination of their choice, ensuring proper information before obtaining the consent of a duly informed person. As long as there are no adequate measures without isolation, vaccinations or masks to protect society from the spread of the pandemic, all these restrictions are justified. However, in the case of vaccinated and non-vaccinated people segregation, by using restriction to use their rights to free medical care, receiving services, ensuring employment, the legal regulation considered must be compliant with the EU legal regulations, and cannot be justified for the violation of a person's constitutional rights and restriction of freedoms.

Historical research data indicates that the implemented compulsory vaccination against smallpox by using restrictions such as entering employment contracts, obtaining travel documents, studying, enrolling in universities, does not help to contain the pandemic situation. Forced vaccination could have a counterproductive approach for seeking the goal to manage the pandemic. The factors which reduce freedom of choice may decrease the motivation and lead to a counterproductive psychological response to voluntary vaccination. The study showed that forced vaccination increases people's anger levels, forms negative attitudes towards vaccination; voluntary vaccination, however, does not. Thus, the results should be considered before implementing legal restriction into legislation of Lithuania, based on restriction, penalties and creating an emotional fare of society. A negative effect could be particularly pronounced in those who are reluctant to vaccinate, there could be a threat for public hesitation increase, due to harms

of compulsory vaccination, leading to the danger that implementation of compulsory vaccination may have a detrimental effect.

The Action brought against European Commission for annulment of the contested implementing decision, its amendments, and additions relating to them being scientifically proven that the worldwide scaremongering about the allegedly high mortality rate associated with SARS-CoV-2 infection is unfounded. Moreover, the European Union has incorrectly identified the critical situation as a public health risk, alleging that the contested implementation of decision infringes the balance between the risks and benefits of the medicinal product, which has not been established according to the legislation of the European Union. The application states that the condition in Regulation is not fulfilled, as the needs of persons for whom there are no suitable medicines will not be met, and that infringement of Regulations and Directives breach the EU legislation provisions. Thus, decision is pending, but it can be expected that more statements on the above grounds could be presented in the future. Therefore, validity of national legal decisions and their compliance with fundamental principles and international law should be evaluated before implementation of such decisions.

Therefore, in one way, on acting on behalf of legitimate cause, to achieve the addressed vaccination goals by ensuring the control of epidemic using the implementation of approved legal restriction against non-vaccinated persons could be not considered as a sure case of discrimination. Legal regulation, which will impose restrictions such as non-provision of services, access to supermarkets, medical institution, work place, or getting free health services, causes certain differences between social groups, and allows for a reasonable argument considering discriminatory manifestations, indicating violation of human rights and freedoms to choose with no pressure involved, which mismatches the compliance with the EU resolution on COVID-19 vaccines.

Bibliography

1. Betsch, C., & Böhm, R. (2016). Detrimental effects of introducing partial compulsory vaccination: experimental evidence. *European Journal of Public Health*, *26*(3), 378–381. https://academic.oup.com/eurpub/article/26/3/378/2467110.
2. Communication from the Commission Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (2020/C 91 I/01). https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020XC0320(03)&from=LT.
3. Cooper, S., Rooyen, H., & Wiysonge, Ch. (2021). COVID-19 vaccine hesitancy in South Africa: how can we maximize uptake of COVID-19 vaccines?", UK Limited, trading as Taylor & Francis, *Expert Review of Vaccines*. https://www.tandfonline.com/doi/full/10.1080/14760584.2021.1949291.
4. Council of Europe "Covid-19 vaccines: ethical, legal and practical considerations" Resolution 2361, 2021. https://pace.coe.int/en/files/29004/html.
5. Court of Justice of the European Union CAS 2021, Amort and Others v Commission, Case T-267/21. https://op.europa.eu/en/publication-detail/-/publication/c442f878-dd74-11eb-895a-01aa75ed71a1.

6. Director of the State Health Insurance Fund under the Ministry of Health on Isolation of Personal Health Care Services and Services Provided in Health Programs Paid from the Budget of the Compulsory Health Insurance Fund (2017). https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.289872/asr.
7. Dubé, E., Gagnon, D., MacDonald, N., Bocquier, A., Peretti-Watel, P., & Verger, P. (2021). Underlying factors impacting vaccine hesitancy in high inco,me countries: a review of qualitative studies. *Expert Rev Vaccines*. https://pubmed.ncbi.nlm.nih.gov/30359151/.
8. European Union Agency for Fundamental Rights. (2021). The Fundamental Rights Report 2021. Luxembourg: Publications Office of the European Union. https://fra.europa.eu/en/publication/2021/fundamental-rights-report-2021.
9. European Commission Decision on approving the agreement with Member States on procuring Covid-19 vaccines on behalf of the Member States and related procedures, Brussels, (2020) 4192 final. https://ec.europa.eu/info/sites/default/files/annex_to_the_commission_decision_on_approving_the_agreement_with_member_states_on_procuring_covid 19_vaccines_on_behalf_of_the_member_states_and_related_procedures_.pdf.
10. Fournet, N., Mollema, L., Ruijs, W. L., ... & van Steenbergen, J. E. (2018). Under-vaccinated groups in Europe and their beliefs, attitudes and reasons for non-vaccination; two systematic reviews. *BMC Public Health*, *18*(1), 196. https://pubmed.ncbi.nlm.nih.gov/29378545/.
11. Giubilini, A. (2019). An Argument for Compulsory Vaccination: The Taxation Analogy. *Journal of Applied Philosophy, 37*(3), 446–466. https://onlinelibrary.wiley.com/doi/full/10.1111/japp.12400.
12. Gupta, I., & Rama, B. (2020). Economics & ethics of the COVID-19 vaccine: How prepared are we? *Indian J Med Res*, 152, 153–155. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7853278/.
13. Khan, A., & Sarwar, M. (2021). Acceptance of COVID 19 Vaccine in India. *Biomedical Journal of Scientific & Technical Research.* https://biomedres.us/pdfs/BJSTR.MS.ID.006044.pdf.
14. Kisielytė-Reches, U. (2021). Consumer confident: the case of the Baltic states during Covid-19. *The 9th International Scientific Conference for Young Researchers*. Mykolas Romeris University STICS 2021, Vilnius, No. 3–4. https://repository.mruni.eu/bitstream/handle/007/17641/CROMA_2021_9_2_15-24.pdf?sequence=1.
15. Lithuanian Department of Statistics. https://experience.arcgis.com/experience/cab84dcfe0464c2a8050a78f817924ca.
16. Marshall, S., Fleming, A., Moore, A. C., & Sahm, L. J. (2019). Views of parents regarding human papillomavirus vaccination: a systematic review and meta-ethnographic synthesis of qualitative literature. *Res Soc Admin Pharm*, *15*(4), 331–337. https://pubmed.ncbi.nlm.nih.gov/29804879/.
17. Martins, C. M, & Teixeira, J. C. (2020). Compulsory Vaccination: The Limit between Public and Private. *Thieme Medical Publishers*, *42*(12/2020). https://pubmed.ncbi.nlm.nih.gov/33348393/.
18. Porteous, D. (2021). COVID-19 vaccines and vaccine administration. *British Journal of Nursing (Mark Allen Publishing*). https://www.magonlinelibrary.com/doi/full/10.12968/bjon.2021.30.6.344.
19. Pronczuk, M., & Gallois, L. (2021). Pfizer and Moderna raised their vaccine prices in their latest E.U contracts. *Journal The New York Times. https://www.nytimes.com/2021/08/02/world/pfizer-and-moderna-raised-their-vaccine-prices-in-their-latest-eu-contracts.html.*
20. Republic of Lithuania Law on the Prevention and Control of Communicable Diseases of Humans. 2010, current wording as of 26 March 2021. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.373789?jfwid=nz8qn82xx&fbclid=IwAR2GLw6SdtU_VgGFk4i2kJv8y-UxK_DPD_GX1iHPeXoBd3yfRlVhY3AO3oA.

21. Sareen, R. (2021). COVID-19 Vaccination and Ethics. *Journal of Pulmonary Medicine, SciTechnol, International publisher of science, Technology and Medicine, Pathology Department, Memorial Hospital and Research Center*, India. https://www.scitechnol.com/peer-review/covid19-vaccination-and-ethics-jECI.php?article_id=14377.
22. Smith, D., Attwell, K., & Evers, U. (2021). Support for a COVID-19 vaccine man date in the face of safety concerns and political affiliations: an Australian study. *Politics*. https://journals.sagepub.com/doi/10.1177/02633957211009066.
23. The State-level Emergency State Operations Manual of the Ministry of Health of the Republic of Lithuania. 2020, No. V-2347. https://vrm.lrv.lt/uploads/vrm/documents/files/LT_versija/Sprendimas%20Nr_%2010V-64.pdf.

https://doi.org/10.25143/socr.21.2021.3.070-081

Maksātnespējas process Covid-19 pandēmijas ēnā

Insolvency Proceedings in the Shadow of the COVID-19 Pandemic

Mg. iur. ***Valdis Savickis***
ORCID: 0000-0002-3680-0697
Zvērināta advokāta J. Avotiņa birojs, Rīga, Latvija
valdis@zab.lv

Abstract

The author has set two main objectives researching the topic concerning the influence of the COVID-19 pandemic to the insolvency proceedings; the first one being identification how the scope of prohibitions and restrictions impact insolvency proceedings (in particular – legal entities), while the second concerns determining legal and financial instruments that have been implemented on national level, influencing solvency and insolvency proceedings policy during the emergency period.

Using analytical and descriptive methods, normative acts and political planning documents have been studied. The historical method provides insight into evolution and development of regulatory frameworks. The comparative method has been applied by comparing the scope of legal and financial instruments on national level in the sphere of management and suppression of consequences of the spread of COVID-19 infection.

Conducting the research, the author has aimed to establish specifics of crisis management legislation on both executive and parliamentary powers levels, and relationships with the specific legal framework in the field of insolvency proceedings. State, declaring the emergency state, invented scope of prohibitions and restrictions on the one hand, and promoted targeted financial and legal assistance on the other. The extent of bargaining was balanced with support mechanisms also in the sphere of insolvency of legal entities, highlighting clear and predictable insolvency policy. Targeted restrictions on prohibitions for creditors for submission of an application for insolvency proceedings of a legal person were synchronised with both periods of declaration of the emergency

state. A more precise and extended regulation concerning submission of an application for insolvency proceedings of a legal person were invented after the second period of emergency state lasting until 1 March 2021.

Scope of legal and financial instruments, invented on both pandemic periods (Year 2020 Fall and Autumn), in majority of cases were of the same nature, but with a different perspective of implementation and availability. In this particular segment of support mechanisms are evolutionary, inventing more flexible and accessible instruments of pandemic recovery funds.

Keywords: insolvency, COVID-19, state of emergency, prohibition, legal entities.

Ievads

Pamatojoties uz Pasaules Veselības organizācijas (turpmāk – PVO) ģenerāldirektora paziņojumu 2020. gada 11. martā un PVO novērtējumu, Covid-19 infekcijas izplatīšanās tika raksturota kā pandēmija, un atbilstoši PVO Situācijas ziņojumam Nr. 51 (*Coronavirus disease 2019 (Covid-19) Situation Report – 51*, 2020) valstīm bija izplatīti ieteikumi pandēmijas ierobežošanai. Atbilstoša un likumsakarīga bija arī Latvijas Republikas valdības – Ministru kabineta (turpmāk – MK) – rīcība. MK pēc ārkārtas sēdes 2020. gada 12. martā izdeva rīkojumu Nr. 103 "Par ārkārtējās situācijas izsludināšanu", ar kuru visā valsts teritorijā izsludināja ārkārtējo situāciju no lēmuma pieņemšanas brīža līdz 2020. gada 14. aprīlim, lai ierobežotu Covid-19 izplatību ārkārtējās situācijas laikā (Par ārkārtējās situācijas izsludināšanu: MK rīkojums Nr. 103, 2020). Epidemioloģiskajai situācijai neuzlabojoties, ārkārtējās situācijas termiņš tika pagarināts līdz 2020. gada 9. jūnijam (Grozījumi Ministru kabineta 2020. gada 12. marta rīkojumā Nr. 103 "Par ārkārtējās situācijas izsludināšanu", 2020). Savukārt, situācijai stabilizējoties, 2020. gada 10. jūnijā šis rīkojums zaudēja spēku, un valstī pamazām sāka atgriezties ikdienas darba režīms un vispārējā tiesiskā kārtība. Taču vajadzība pēc skaidriem un pārdomātiem atbalsta mehānismiem saglabājās arī šajā diezgan nosacītajā ekonomiskās darbības turpināšanās režīmā, proti, pēc ārkārtējās situācijas (Palkova, Grasis, Kudeikina, 2020). Smagi skartajai tautsaimniecībai bija nepieciešams atbalsts, ko varēja sniegt, ieviešot tiesiskus un finanšu mehānismus. Pēctecīga rīcība no likumdevēja, šajā konkrētajā gadījumā Latvijas Republikas parlamenta jeb Saeimas, sekoja nekavējoties, t. i., 2020. gada 10. jūnijā (nākamajā dienā pēc ārkārtējās situācijas termiņa beigām) spēkā stājās divi normatīvie akti:

1) Covid-19 infekcijas izplatības pārvaldības likums;
2) Covid-19 infekcijas izplatības seku pārvarēšanas likums.

Abi šie normatīvie akti radīja tiesisku pamatu Covid-19 infekcijas radīto seku pārvarēšanai un izplatības pārvaldībai. Paralēli atbalsta pasākumiem ar minētajiem normatīvajiem aktiem tika ieviesti arī vairāki ierobežojumi vai liegumi, kuru mērķis bija pārvarēt un atbalstīt Covid-19 infekcijas izplatības seku (turpmāk arī – Covid-19 izraisītā krīze) skarto valsts ekonomiku.

Covid-19 infekcijas izplatības pārvaldības likuma mērķis tika noteikts šāds:

> "[..] atjaunot vispārējo tiesisko kārtību pēc ārkārtējās situācijas termiņa beigām, paredzot atbilstošu pasākumu kopumu, kas nodrošina ar sabiedrības veselības un drošības interesēm samērīgu privātpersonu tiesību un pienākumu apjomu un efektīvu valsts un pašvaldību institūciju (turpmāk – valsts institūcijas) darbību saistībā ar Covid-19 infekcijas izplatību valstī" (Covid-19 infekcijas izplatības pārvaldības likums, 2020).

Savukārt Covid-19 infekcijas izplatības seku pārvarēšanas likuma pamatuzdevums, kas tika definēts likuma mērķī, tika noteikts šāds:

> "[..] atjaunot vispārējo tiesisko kārtību pēc noteiktā ārkārtējās situācijas termiņa beigām, paredzot atbilstošu pasākumu kopumu Covid-19 infekcijas izplatības seku (turpmāk arī – Covid-19 izraisītā krīze) pārvarēšanai un īpašos atbalsta mehānismus un uzdevumus, kas tieši saistīti ar Covid-19 izplatības ierobežošanu, lai nodrošinātu sabiedrības ekonomiskās situācijas uzlabošanos un veicinātu valsts tautsaimniecības stabilitāti" (Covid-19 infekcijas izplatības seku pārvarēšanas likums, 2020).

Turklāt šajos normatīvajos aktos ir noteikts deleģējums MK ieviest konkrētai faktiskai situācijai atbilstošus un mērķētus pasākumus likumos definēto mērķu sasniegšanai un realizācijai.

Šajā rakstā, izmantojot analītisko un aprakstošo metodi, tiek analizēti normatīvie akti un politikas plānošanas dokumenti, kā arī pētījumi, mērķētu uzmanību pievēršot juridisko personu maksātnespējas procesam. Darbā, izmantojot vēsturisko metodi, tiek sniegts ieskats normatīvā regulējuma evolūcijā un attīstībā. Salīdzinošā metode ir lietota, veicot Latvijas Republikas nacionālā līmeņa juridisko un finanšu instrumentu salīdzināšanu, kā arī vērtējot to darbības dinamiku Covid-19 infekcijas izplatības seku pārvaldībā un pārvarēšanā.

Atjaunotā tiesiskā kārtība maksātnespējas jomā pēc pandēmijas

Lai iegūtu vispusīgu priekšstatu par tiesiskās kārtības piemērošanas īpatnībām juridisko personu maksātnespējas jomā pēc pandēmijas, kā arī daļēji pandēmijas laikā, tiek apskatīti politikas plānošanas dokumenti, kuros definēti dažāda līmeņa mērķi no 2016. līdz 2020. gadam. Analizējamie politikas plānošanas dokumenti, kas tika ieviesti un apstiprināti MK rīkojuma līmenī, pirmo reizi atjaunotās Latvijas Republikas vēsturē noteica maksātnespējas jomas attīstības virzienus un sasniedzamos rezultātus. Maksātnespējas politikas attīstības pamatnostādnes tika izstrādātas kā pakārtots dokuments Latvijas Nacionālajam attīstības plānam 2014.–2020. gadam un tajā paredzētajam rīcības virzienam – izcilas uzņēmējdarbības vides nodrošināšanai (Latvijas Nacionālais attīstības plāns 2014.–2020. gadam, 2012). Turklāt akcentējot, ka tieši maksātnespējas politikas rezultāti raksturo vienu no uzņēmējdarbības izbeigšanas veidiem – maksātnespēju (Par maksātnespējas politikas attīstības pamatnostādnēm 2016.–2020. gadam un to īstenošanas plānu, 2016).

Maksātnespējas politikas attīstības pamatnostādnēs ir noteikts: "Maksātnespējas politikas virsmērķis ir sekmēt komercdarbības un iedzīvotāju ekonomisko aktivitāti, veicināt pievilcīgas uzņēmējdarbības vides veidošanu un investīciju piesaisti" (Par maksātnespējas politikas attīstības pamatnostādnēm 2016.–2020. gadam un to īstenošanas plānu, 2016).

Vēl šajā politikas plānošanas dokumentā ir definēts maksātnespējas politikas mērķis: "[..] veicināt finansiālās grūtībās nonākuša parādnieka saistību izpildi un, ja iespējams, maksātspējas atjaunošanu" (Par maksātnespējas politikas attīstības pamatnostādnēm 2016.–2020. gadam un to īstenošanas plānu, 2016).

Šāda politikas plānošanas dokumentos definētā attīstības virziena iezīmēšana, izmantojot simbiozi starp maksātnespējas politikas mērķī un virsmērķī iekļautiem darbības virzieniem, radīja pamatu pakārtoto maksātnespējas procesa attīstības virzienu izveidei.

Iepriekš minēto politikas plānošanas dokumentos maksātnespējas politikas mērķis ir nesaraujami saistīts ar materiālām tiesību normām, proti, Maksātnespējas likuma 1. pantā iekļauto tiesisko regulējumu, kas maksātnespējas procesam nosaka mērķi "veicināt finansiālās grūtībās nonākuša parādnieka saistību izpildi un, ja iespējams, maksātspējas atjaunošanu, piemērojot likumā noteiktos principus un tiesiskos risinājumus" (Maksātnespējas likums, 2010). Papildus visa normatīvā akta mērķim likumdevējs noteicis arī juridiskās personas maksātnespējas procesa tiesisko ietvaru, kurā cita starpā tas tiek raksturots kā "tiesiska rakstura pasākumu kopums, kura ietvaros no parādnieka mantas tiek segti kreditoru prasījumi, lai veicinātu parādnieka saistību izpildi" (Maksātnespējas likums, 2010).

Lai īstenotu normatīvajā aktā un politikas plānošanas dokumentos noteikto, likumdevējs norādījis arī tiesiskos instrumentus, ar kuru palīdzību gan kreditors (tai skaitā arī parādnieka darbinieki), gan pats parādnieks var īstenot šo likumā noteikto "tiesiska rakstura pasākumu kopumu" un rosināt finansiālās grūtībās nonākušas juridiskās personas maksātnespējas procesu. Kā galvenais instruments Maksātnespējas likumā ir noteikts maksātnespējas procesa pieteikums, kura izsmeļošs tiesiskais regulējums ir ietverts Maksātnespējas likuma 10. nodaļā (Maksātnespējas likums, 2010).

Šajā rakstā ar nodomu netiek apskatīts tiesiskās aizsardzības process, ņemot vērā tā raksturīgo īpašību atšķirību no juridisko personu maksātnespējas procesa un Covid-19 pandēmijas un pēc pandēmijas ietekmes neesamību tiesiskajā regulējumā.

Noteicošā loma galvenā tiesiskā instrumenta – maksātnespējas procesa pieteikuma – izmantošanai ir finansiālās grūtībās nonākušā uzņēmuma jeb parādnieka kvalificēšanās juridiskās personas maksātnespējas procesam, t. i., tā atbilstība likumā noteiktām juridiskās personas maksātnespējas procesa pazīmēm. Šādu izsmeļošu pazīmju uzskaitījums dots Maksātnespējas likuma 57. pantā, kurā noteiktas juridiskās personas maksātnespējas procesa pazīmes. Īpaša uzmanība ir jāpievērš šā panta pirmās daļas noteikumiem, kuros cita starpā ir ietverti priekšnosacījumi (maksātnespējas

procesa pazīmes) personām, kas var iniciēt maksātnespējas procesu, proti, var iesniegt juridiskās personas maksātnespējas procesa pieteikumu. Maksātnespējas procesa pazīmes ir noteiktas šādas:

> "1) piemērojot piespiedu izpildes līdzekļus, nav bijis iespējams izpildīt tiesas nolēmumu par parāda piedziņu no parādnieka; 2) parādnieks – sabiedrība ar ierobežotu atbildību vai akciju sabiedrība – nav nokārtojis vienu vai vairākas parādsaistības, no kurām pamatparāda summa atsevišķi vai kopā pārsniedz 4268 eiro un kurām ir iestājies izpildes termiņš [..]; 3) parādnieks – cits Maksātnespējas likuma 56. pantā minētais subjekts – nav nokārtojis vienu vai vairākas parādsaistības, no kurām pamatparāda summa atsevišķi vai kopā pārsniedz 2134 eiro un kurām ir iestājies izpildes termiņš [..]; 4) parādnieks nav pilnībā izmaksājis darbiniekam darba samaksu, kaitējuma atlīdzību sakarā ar nelaimes gadījumu darbā vai arodslimību vai nav veicis sociālās apdrošināšanas obligātās iemaksas divu mēnešu laikā no izmaksai noteiktās dienas [..]; 5) parādnieks ilgāk nekā divus mēnešus nav nokārtojis parādsaistības, kurām iestājies izpildes termiņš; 6) saskaņā ar likvidācijas sākuma finanšu pārskatu parādniekam nepietiek aktīvu, lai apmierinātu visus pamatotos kreditoru prasījumus, vai arī šis apstāklis atklājas likvidācijas gaitā"; 7), 8), 9) ir iestājušies Maksātnespējas likuma 51. panta otrajā daļā, trešajā daļā vai piektajā daļā minētie apstākļi vai gadījumi (Maksātnespējas likums, 2010).

Personu loks, kas var iesniegt maksātnespējas procesa pieteikumu, ir noteikts Maksātnespējas likuma 60. pantā, un tas ir šāds: kreditors vai kreditori, ja pastāv kāda no Maksātnespējas likuma 57. panta pirmās daļas 1., 2., 3. vai 4. punktā minētajām juridiskās personas maksātnespējas procesa pazīmēm; kreditors vai kreditori, ja pastāv Maksātnespējas likuma 51. panta trešās daļas 2. punktā minētā pazīme; kreditoru vairākums (pārstāvis), ja pastāv kāda no šā likuma 51. panta trešajā daļā minētajām pazīmēm; pats parādnieks, ja pastāv kāda no šā likuma 57. panta pirmās daļas 5., 6. vai 9. punktā minētajām juridiskās personas maksātnespējas procesa pazīmēm, un maksātnespējas procesa administrators galvenajā maksātnespējas procedūrā (Eiropas Parlamenta un Padomes regula Nr. 2015/848, 2015), lai pret parādnieku ierosinātu minētās regulas 3. panta 2. punktā noteikto maksātnespējas procedūru (Maksātnespējas likums, 2010). Minētā tiesību norma kopā ar Maksātnespējas likuma 57. panta pirmajā daļā noteikto rada juridisku pamatu tiesai lemt par maksātnespējas procesa pasludināšanu vai par atteikšanos pieņemt maksātnespējas procesa pieteikumu, ja nepiepildās tiesību normās noteiktie priekšraksti. Iepriekš aprakstītā tiesiskā konstrukcija noslēdz juridiskās personas maksātnespējas procesa ierosināšanas tiesisko ietvaru, kas rezultējas Maksātnespēja likuma 4. panta otrās daļas tiesību normā, kurā ir noteikts: "Juridiskās personas maksātnespējas process tiek uzsākts ar dienu, kad tiesa ar nolēmumu pasludinājusi maksātnespējas procesu, un noris līdz dienai, kad tiesa pieņem lēmumu par maksātnespējas procesa izbeigšanu." (Maksātnespējas likums, 2010).

Tiesas loma maksātnespējas procesā tiek skaidri noteikta ar šo tiesību normu. Pētāmajā jautājumā ir jāakcentē tiesas noteicošā loma – maksātnespējas procesa pasludināšana ar savu nolēmumu. Minētais ir nostiprināts gan materiālajās tiesību normās (Maksātnespējas likums, 2010), gan procesuālajās tiesību normās, proti, – Civilprocesa

likumā. Taču, lai izprastu tiesas lomu šajā civilprocesuālajā kārtībā, kas noteikta Civilprocesa likuma 46.[1] nodaļā (Civilprocesa likums, 1999), jāuzsver imperatīvi noteiktos liegumus procesa ierosinātājiem – kreditoram (vai kreditoru vairākumam) un parādniekam. Tiesību normās paredzēti šādi aizliegumi: abiem subjektiem – "[..] nav pieļaujama maksātnespējas procesa pieteikuma priekšmeta grozīšana"; parādniekam – nav tiesību atsaukt maksātnespējas procesa pieteikumu (Civilprocesa likums, 1999). Turklāt, ievērojot apstākli, ka maksātnespējas procesa lietas skata sevišķās tiesāšanas kārtībā, arī termiņi iesniegto procesa iniciējošo pieteikumu izskatīšanai ir noteikti īsi – tiesai (tiesnesim) jau nākamajā dienā pēc maksātnespējas procesa pieteikuma saņemšanas ir jālemj par tā virzību (Civilprocesa likums, 1999).

Likumdevējs, ieviešot īpašu tiesisko režīmu gan procesuālajā regulējumā, gan materiālajās tiesību normās, ir noteicis atšķirīgu tiesisko kārtību dažādās tautsaimniecības nozarēs, to skaitā maksātnespējas jomā, ar mērķi pārvaldīt Covid-19 infekcijas izplatību un pārvarēt Covid-19 infekcijas izplatības sekas. Šādas īpašas tiesiskas kārtības ieviešanas nepieciešamības priekšnosacījums bija valsts iejaukšanās ierastajā ekonomiskajā situācijā un tiesiskajā kārtībā ar speciālā likuma tai piešķirto mandātu (Civilās aizsardzības un katastrofas pārvaldīšanas likums, 2016). Šāda tiesiskā kārtība bija arī spēkā esošās ārkārtējās situācijas laikā, šī raksta tapšanas laikā (2021. gada janvārī) tā bija noteikta līdz 2021. gada 7. februārim (Par ārkārtējās situācijas izsludināšanu: MK rīkojums Nr. 655, 2020).

Juridiskais regulējums, kurā paredzēta atšķirīga vai precizēta kārtība procesuālajās tiesību normās, iesniedzot juridiskās personas maksātnespējas procesa pieteikumu, tika noteikts šāds: "[..] juridiskās personas maksātnespējas procesa [..] pieteikumu var iesniegt elektroniski, to parakstot atbilstoši Elektronisko dokumentu likuma 3. panta prasībām" (Covid-19 infekcijas izplatības pārvaldības likums, 2020). Ar atšķirīgu regulējumu tika papildināta arī Civilprocesa likuma 363.[7] panta otrajā un trešajā daļā paredzētā tiesiskā kārtība, kas noteic tiesai pienākumu, saņemot maksātnespējas procesa pieteikumu, pārbaudīt pieteikuma iesniedzēja personību, kā arī to, ka maksātnespējas procesa pieteikumu jāreģistrē atsevišķā reģistrā, kurā parakstās gan pieteikuma iesniedzējs, gan saņēmējs (Civilprocesa likums, 1999). Likumdevējs noteica, ka iepriekš Civilprocesa likumā noteiktajos gadījumos ierakstu par elektroniski iesniegta pieteikuma saņemšanu attiecīgā pieteikuma reģistrā veic tikai saņēmējs (Covid-19 infekcijas izplatības pārvaldības likums, 2020), kas ir pretstatā Civilprocesa likumā noteiktajai kārtībai, ka ieraksta izdarīšanai bija nepieciešami gan pieteikuma saņēmēja, gan pieteikuma iesniedzēja paraksti.

Juridiskais regulējums, kas papildināja materiālās tiesību normas, 2020. gada 5. jūnijā tika noteikts šāds:

> "Līdz 2020. gada 1. septembrim kreditoriem aizliegts iesniegt juridiskās personas maksātnespējas procesa pieteikumu, ja pastāv kāda no Maksātnespējas likuma 57. panta pirmās daļas 1., 2., 3. vai 4. punktā minētajām juridiskās personas maksātnespējas procesa pazīmēm." (Covid-19 infekcijas izplatības seku pārvarēšanas likums, 2020).

Mainoties faktiskajai situācijai un nenotiekot uzlabojumiem ekonomikā un uzņēmējdarbības vidē, likumdevējs operatīvi reaģēja un pagarināja iepriekš noteikto aizliegumu kreditoriem iesniegt juridiskās personas maksātnespējas procesa pieteikumu. Juridiskais regulējums 2020. gada 18. decembrī (Grozījumi Covid-19 infekcijas izplatības seku pārvarēšanas likumā, 2020) attiecīgi tika noteikts šāds:

> "Līdz 2021. gada 1. martam kreditoriem aizliegts iesniegt juridiskās personas maksātnespējas procesa pieteikumu, ja pastāv kāda no Maksātnespējas likuma 57. panta pirmās daļas 1., 2., 3. vai 4. punktā minētajām juridiskās personas maksātnespējas procesa pazīmēm." (Covid-19 infekcijas izplatības seku pārvarēšanas likums, 2020).

Veicot salīdzinošo analīzi, tika konstatēts, ka, likumdevējam ieviešot no spēkā esošām tiesību normām atšķirīgo tiesisko regulējumu, kas tika pamatots ar Covid-19 izraisīto krīzi, gan sākotnējā redakcijā, gan arī pēc termiņa pagarinājuma saglabājās konsekvence uzskaitīto maksātnespējas procesa pazīmju sarakstā.

Lai demonstrētu ieviestā tiesiskā regulējuma plašo tvērumu, iepriekš ar nodomu detalizēti tika analizēti un uzskaitīti maksātnespējas procesa pieteikuma iesniegšanas priekšnosacījumi.

Savukārt, lai izprastu ieviesto tiesību normu mērķi, papildus tiek analizēts normatīvā akta – likumprojekta Nr. 864 – sākotnējās ietekmes novērtējuma ziņojums (anotācija) (Likumprojekts "Grozījumi Covid-19 infekcijas izplatības seku pārvarēšanas likumā", 2020, 13). Pēc veiktās analīzes var secināt, ka likumdevējs krīzes situācijā ir izmantojis drošās ostas principu un paplašinājis iepriekš noteikto tiesisko regulējumu ar papildu elementu arī paša parādnieka aizsardzībai. Proti, vispārējā tiesiskā kārtība tika papildināta ar šādu tiesisko regulējumu:

> "Līdz 2021. gada 1. martam parādniekam nav pienākuma iesniegt juridiskās personas maksātnespējas procesa pieteikumu, ja pastāv Maksātnespējas likuma 57. panta pirmās daļas 5. punktā minētā juridiskās personas maksātnespējas procesa pazīme, izņemot gadījumu, kad parādnieks nav pilnībā izmaksājis darbiniekam darba samaksu, kaitējuma atlīdzību sakarā ar nelaimes gadījumu darbā vai arodslimību vai nav veicis valsts sociālās apdrošināšanas obligātās iemaksas divu mēnešu laikā no darba samaksas izmaksai noteiktās dienas [..]" (Covid-19 infekcijas izplatības seku pārvarēšanas likums, 2020).

Analizējot iepriekš minētās tiesību normas konstrukciju, var secināt, ka vienlaicīgi ar darba devēja aizsardzības pasākumiem tika ieviests arī darbinieku aizsardzības mehānisms juridiskās personas faktiskās maksātnespējas stāvoklī.

Viss šeit minētais attiecībā uz papildinātām / precizētām materiālām tiesību normām ļauj secināt, ka tiesas loma tieši maksātnespējas procesa pasludināšanas stadijā vai tieši otrādi – atsakoties pieņemt maksātnespējas procesa pieteikumu –, ņemot vērā likumdevēja ieviesto atjaunoto tiesisko kārtību gan pandēmijas laikā (ārkārtējās situācijas laikā), gan pēc tās, ir kritiska un atšķirīga (arī laika ziņā terminētā) , un tiesiska regulējuma pareiza piemērošana ir vitāli svarīga.

Ieviešot šādas tiesību normas, kas ir terminētas laika ziņā, likumdevējs piešķīra tiesai (tai, kā tika noskaidrots iepriekš, ir noteicošā loma maksātnespējas procesa

pasludināšanā) izņēmuma tiesisku instrumentu, proti, tā drīkst nepieņemt kreditora iesniegto maksātnespējas procesa pieteikumu, ignorējot Maksātnespējas likumā paredzēto tiesisko regulējumu. Likumdevējs arī ir nodrošinājis parādniekam tiesības neiesniegt maksātnespējas procesa pieteikumu, ja ir iestājušies Maksātnespējas likumā noteiktie priekšnosacījumi, vienlaicīgi akcentējot trīs iespējamās situācijas, kurās minētais izņēmuma regulējums nedarbotos, proti, ja netiek pilnā apmērā veikta darba samaksas izmaksa, kaitējuma atlīdzība sakarā ar nelaimes gadījumu darbā vai arodslimību vai nav veiktas valsts sociālās apdrošināšanas obligātās iemaksas divu mēnešu laikā no darba samaksas izmaksai noteiktās dienas.

Analizējot likumdevēja ieviesto tiesisko regulējumu kopsakarā ar iepriekš apskatītajām procesuālajām tiesību normām, var secināt, ka attiecībā uz parādnieku un viņa prerogatīvu iesniegt vai neiesniegt maksātnespējas procesa pieteikumu radās situācija, ka parādnieks, darbojoties proaktīvi un jau iesniedzot savu pieteikumu, vairs nav tiesīgs atsaukties uz Covid-19 infekcijas izplatības seku pārvarēšanas likumā paredzēto tiesisko regulējumu parādnieka aizsardzībai. Secīgi piemērojama ir Civilprocesa likuma 363.[8] panta trešajā daļā paredzētā tiesību norma, kurā noteikts, ka parādnieks nav tiesīgs atsaukt maksātnespējas procesa pieteikumu (Civilprocesa likums, 1999).

Kā ir ar maksātspēju?

Pavisam noteikti šāds jautājums raisītos, pētniekiem iepazīstoties ar šeit sniegto faktiskās un tiesiskās situācijas analīzi, un jautājums būtu absolūti pamatots, jo arī abi jēdzieni – maksātnespēja un maksātspēja – maksātnespējas procesā ir nesaraujami saistīti. Jau šā raksta ievadā tika konstatēts, ka, likumdevējam pieņemot vispārējās tiesiskās kārtības atjaunošanai mērķētus normatīvos aktus (Covid-19 infekcijas izplatības seku pārvarēšanas likums, 2020), tika izveidota deleģējuma platforma Latvijas Republikas valdībai operatīvi lemt par nepieciešamajiem finanšu un tiesiskajiem mehānismiem sabiedrības ekonomiskās situācijas uzlabošanai un valsts tautsaimniecības stabilitātes veicināšanai. MK attiecīgi ar tiesību instrumenta – MK noteikumu – palīdzību ieviesa četru virzienu atbalsta mehānismus, kurus var raksturot no ieviešanas perspektīvas īstermiņā, bet tie ir plānojami arī ilgtermiņā:

1) finanšu instrumenti komersantiem, t. sk. finanšu garantijas un aizdevumi (Noteikumi par garantijām lielajiem komersantiem, kuru darbību ietekmējusi Covid-19 izplatība, 2020);
2) apgrozāmo līdzekļu subsīdijas komersantiem (Noteikumi par atbalstu Covid-19 krīzes skartajiem uzņēmumiem apgrozāmo līdzekļu plūsmas nodrošināšanai, 2020);
3) atbalsts par dīkstāvi (Noteikumi par atbalstu par dīkstāvi nodokļu maksātājiem to darbības turpināšanai Covid-19 izraisītās krīzes apstākļos, 2020);
4) atbalsts algu subsīdijām (Noteikumi par atbalsta sniegšanu nodokļu maksātājiem to darbības turpināšanai Covid-19 krīzes apstākļos, 2020).

Šie atbalsta mehānismi, visticamāk, ir jāskata un jāizvērtē ciešā sakarībā ar šā raksta temata tvērumu, jo atrauta tiesiskā regulējuma ieviešana maksātnespējas jomā nespētu radīt pietiekamu juridisku, finanšu un ekonomisko platformu vispārējās tiesiskās kārtības atjaunošanai nepieciešamo rezultātu sasniegšanai. Proti, šādu pašu atziņu pauž arī likumprojekta Nr. 715 "Covid-19 infekcijas izplatības pārvaldības likums" autori sākotnējās ietekmes novērtējuma ziņojumā (anotācijā): "[..] tiesiskās stabilitātes un sabiedrības drošības nolūkā nepieciešams izstrādāt likuma līmeņa tiesību aktu, kas pēc ārkārtējās situācijas beigām noregulē privātpersonu tiesību un institūciju kompetences un darbības jautājumus" (Likumprojekta "Grozījumi Covid-19 infekcijas izplatības seku pārvarēšanas likumā" sākotnējās ietekmes novērtējuma ziņojums (anotācija), 2020, 13). Turklāt šāda finanšu atbalsta mehānismu regulējuma ieviešana sasaucas arī ar šī raksta pirmajā daļā analizēto politikas plānošanas dokumentu augstāko mērķi, proti, ar izcilas uzņēmējdarbības vides nodrošināšanu Latvijā (Latvijas Nacionālais attīstības plāns 2014.–2020. gadam, 2012).

Var secināt, ka noregulējums ir virzīts tieši uz privātpersonu tiesību noregulēšanu. Līdzīgs pamatojums ir ietverts arī likumprojekta Nr. 864 sākotnējās ietekmes novērtējuma ziņojumā (anotācijā): "[..] izstrādāt jaunu likumu tiesiskās stabilitātes un valsts tautsaimniecības drošības nodrošināšanai, kas pēc ārkārtējās situācijas beigām noregulē pasākumus Covid-19 pandēmijas valsts apdraudējuma un tā seku novēršanai un pārvarēšanai, kamēr būs nepieciešami īpaši pasākumi un atbalsta mehānisms Covid-19 apdraudējuma un tā seku novēršanai" (Likumprojekta "Covid-19 infekcijas izplatības pārvaldības likums" sākotnējās ietekmes novērtējuma ziņojums (anotācija), 2020, 13), kas akcentē īpašu pasākumu ieviešanas nepieciešamību vienlaikus ar īpašiem atbalsta pasākumiem un mehānismiem, lai līdzsvarotu tos ar noteiktajiem ierobežojumiem.

Šeit minēto normatīvo aktu analīze ļauj secināt, ka vienlaikus ar ļoti striktu un ierobežotu laikā aizliegumu kreditoriem izmantot vienu no savu aktīvu aizsardzības tiesiskiem mehānismiem – iespējamā parādnieka maksātnespējas rosināšanu –, pašam parādniekam tika doti četri instrumenti (finanšu rakstura), lai maksimāli izvairītos no faktiskās maksātnespējas iestāšanās. Turklāt MK apstiprinātajā regulējumā tika paredzēts mērķēts atbalsts gan uzņēmumam, kas varētu būt potenciālais parādnieks, gan arī šā uzņēmuma darbiniekiem: finanšu atbalsts par dīkstāvi un / vai atbalsts algu subsīdijām (Noteikumi par atbalstu par dīkstāvi nodokļu maksātājiem to darbības turpināšanai Covid-19 izraisītās krīzes apstākļos, 2020; Noteikumi par atbalsta sniegšanu nodokļu maksātājiem to darbības turpināšanai Covid-19 krīzes apstākļos, 2020). Faktiski tika izveidota labvēlīga bāze iespējamā parādnieka uzņēmuma tālākai darbībai. Savukārt tiešajā finanšu atbalstā darbiniekiem tika paredzēts: "Valsts ieņēmumu dienests pieprasīto atbalstu par dīkstāvi izmaksā piecu darbdienu laikā pēc lēmuma pieņemšanas par atbalsta piešķiršanu, pārskaitot atbalstu uz iesniegumā norādīto darbinieka kontu [..]" (Noteikumi par atbalstu par dīkstāvi nodokļu maksātājiem to darbības turpināšanai

Covid-19 izraisītās krīzes apstākļos, 2020). Tas tika noteikts arī Noteikumos par atbalsta sniegšanu nodokļu maksātājiem to darbības turpināšanai Covid-19 krīzes apstākļos, 2020, un izslēdza iespēju šādu atbalstu saņemt negodprātīgiem darba devējiem. Vēl šis tiesiskais regulējums atturēja darbiniekus no iespējamā maksātnespējas procesa pieteikuma iesniegšanas pret savu darba devēju.

Secinājumi

Valsts saskārās ar vēl nebijušu situāciju – Covid-19 infekcijas izplatību tā sauktajā pirmajā Covid-19 infekcijas vilnī 2020. gada pavasarī –, un bija jārīkojas strauji. Tika izsludināts ārkārtas stāvoklis. Latvijas Republikas valdība ieviesa bezprecedenta aizliegumus un ierobežojumus visā valsts teritorijā. Ārkārtējā situācija un infekcijas Covid-19 izplatības ierobežošanai noteiktie plašie aizliegumi un ierobežojumi tika attiecināti uz kritiskām tautsaimniecības nozarēm, to skaitā uz tūrismu, ēdināšanu, kultūras un sporta pasākumiem, kā arī uz visiem izglītības sistēmas iestāžu līmeņiem. Līdztekus smagi skartajam privātajam sektoram pastāvēja arī valsts iestāžu sniegto pakalpojumu ierobežojumi, kas rezultējās ar valsts un pašvaldību iestāžu, kā arī tiesu sistēmai piederīgo iestāžu slēgšanu.

Apzinoties šeit minēto ieviesto pasākumu dramatisko ietekmi uz valsts ekonomiku un jo īpaši uz privātā sektora juridisko un fizisko personu maksātspēju, likumdevējs bija pieņēmis tiesisko regulējumu, ieviešot tā saukto "moratoriju" maksātnespējas jomā. Līdz ar to aizliegums kreditoram iesniegt juridiskās personas maksātnespējas procesa pieteikumu attiecīgos termiņos – līdz 2020. gada 1. septembrim un līdz 2021. gada 1. martam – tika atbilstoši pakārtots 2020. gada pavasarī un tā paša gada rudenī valstī izsludinātajai ārkārtējai situācijai.

Normatīvais regulējums likuma līmenī tika pilnveidots un laika gaitā papildināts arī attiecībā uz maksātnespējas procesa subjekta – parādnieka – pienākumu iesniegt juridiskās personas maksātnespējas procesa pieteikumu spēkā neesamību. Šis solis raksturo likumdevēja izpratni par maksātnespējas procedūrām kopumā, maksātnespējas politikas mērķiem un virsmērķiem un atspoguļo vēlmi realizēt politikas plānošanas dokumentos un normatīvajos aktos noteikto, ņemot vērā specifisko vispārējo tiesisko kārtību pēc ārkārtējās situācijas un tās laikā.

Atjaunotā tiesiskā kārtība maksātnespējas jomā pēc pandēmijas perioda sekmēja elektronisko dokumentu apriti arī maksātnespējas pieteikuma iesniegšanas stadijā tiesā. Iepriekš pastāvēja iespēja pieteikumu iesniegt tikai un vienīgi tiesas iestādē klātienē, par ko tiesas darbinieks un iesniedzējs izdarīja atbilstošus ierakstus (parakstījās) atsevišķā reģistrā.

Ieviešot valstī pārdomātu četru virzienu finanšu atbalsta mehānismu sistēmu, tika mēģināts līdzsvarot kreditoru un parādnieku intereses situācijā, kad ieviests aizliegums kreditoriem izmantot vienu no to aktīvu aizsardzības tiesiskajiem mehānismiem – parādnieka maksātnespējas rosināšanu.

Abos ārkārtējās situācijas darbības periodos izstrādātā juridisko un finanšu instrumentu darbība vairumā gadījumu bija līdzīgas dabas, bet ar atšķirīgu īstenošanas un pieejamības perspektīvu. Šajā īpašajā atbalsta mehānismu un instrumentu segmentā tā attīstījās, jo tika vērsta uz Covid-19 pandēmijas seku pārvarēšanu, bet atšķirīgs bija konkrētu juridisko un finanšu instrumentu ieviešanas ātrums.

Avoti un literatūra

Tiesību akti

1. Civilās aizsardzības un katastrofas pārvaldīšanas likums: Latvijas Republikas likums. *Latvijas Vēstnesis. 100*, 25.05.2016.
2. Civilprocesa likums: Latvijas Republikas likums. *Latvijas Vēstnesis. 326/330*, 03.11.1998.; *Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs. 23*, 03.12.1998.
3. Covid-19 infekcijas izplatības pārvaldības likums: Latvijas Republikas likums. *Latvijas Vēstnesis. 110A*, 09.06.2020.
4. Covid-19 infekcijas izplatības seku pārvarēšanas likums: Latvijas Republikas likums. *Latvijas Vēstnesis. 110A*, 09.06.2020.
5. Grozījumi Covid-19 infekcijas izplatības seku pārvarēšanas likumā: Latvijas Republikas likums. 18.12.2020. *Latvijas Vēstnesis. 247A,* 22.12.2020.
6. Grozījumi Ministru kabineta 2020. gada 12. marta rīkojumā Nr. 103 "Par ārkārtējās situācijas izsludināšanu": Latvijas Republikas Ministru kabineta 2020. gada 7. maija rīkojums Nr. 254. *Latvijas Vēstnesis. 88A*, 08.05.2020.
7. Latvijas Nacionālais attīstības plāns 2014.– 2020. gadam: Saeimas paziņojums. *Latvijas Vēstnesis. 6*, 09.01.2013.
8. Maksātnespējas likums: Latvijas Republikas likums. *Latvijas Vēstnesis. 124*, 06.08.2010.
9. Noteikumi par atbalsta sniegšanu nodokļu maksātājiem to darbības turpināšanai Covid-19 krīzes apstākļos: Latvijas Republikas Ministru kabineta 2020. gada 10. novembra noteikumi Nr. 675. *Latvijas Vēstnesis. 222A*, 16.11.2020.
10. Noteikumi par atbalstu Covid-19 krīzes skartajiem uzņēmumiem apgrozāmo līdzekļu plūsmas nodrošināšanai: Latvijas Republikas Ministru kabineta 2020. gada 10. novembra noteikumi Nr. 676. *Latvijas Vēstnesis. 222A*, 16.11.2020.
11. Noteikumi par atbalstu par dīkstāvi nodokļu maksātājiem to darbības turpināšanai Covid-19 izraisītās krīzes apstākļos: Latvijas Republikas Ministru kabineta 2020. gada 24. novembra noteikumi Nr. 709. *Latvijas Vēstnesis. 230B*, 27.11.2020.
12. Noteikumi par garantijām lielajiem komersantiem, kuru darbību ietekmējusi Covid-19 izplatība: Latvijas Republikas Ministru kabineta 2020. gada 14. jūlija noteikumi Nr. 454. *Latvijas Vēstnesis. 136*, 17.07.2020.
13. Par ārkārtējās situācijas izsludināšanu: Latvijas Republikas Ministru kabineta 2020. gada 6. novembra rīkojums Nr. 655. *Latvijas Vēstnesis. 216A*, 06.11.2020.
14. Par ārkārtējās situācijas izsludināšanu: Latvijas Republikas Ministru kabineta 2020. gada 12. marta rīkojums Nr. 103. *Latvijas Vēstnesis. 51A*, 12.03.2020.
15. Par maksātnespējas politikas attīstības pamatnostādnēm 2016.–2020. gadam un to īstenošanas plānu: Latvijas Republikas Ministru kabineta 2016. gada 21. septembra rīkojums Nr. 527. *Latvijas Vēstnesis. 186(5758)*, 26.09.2016.
16. Regula Nr. 2015/848: Eiropas Parlamenta un Eiropas Savienības Padomes regula. *Eiropas Savienības Oficiālais Vēstnesis. L141/19*, 05.06.2015.

Literatūra

17. Coronavirus disease 2019 (COVID-19) Situation Report – 51. *World Health Organization*. 11 March 2020. https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_10.
18. Likumprojekta "Covid-19 infekcijas izplatības pārvaldības likums" sākotnējās ietekmes novērtējuma ziņojums (anotācija): Latvijas Republikas 13. Saeimas likumprojekts Nr. 715. *Latvijas Republikas Saeima*. http://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/C0F7B89859934871C22585770022A499?OpenDocument#B.
19. Likumprojekta "Grozījumi Covid-19 infekcijas izplatības seku pārvarēšanas likumā" sākotnējās ietekmes novērtējuma ziņojums (anotācija): Latvijas Republikas 13. Saeimas likumprojekts Nr. 864. *Latvijas Republikas Saeima*. http://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/FEC37F092702528EC225862B00474DF7?OpenDocument#B.
20. Palkova, K., Grasis, J., Kudeikina, I. 2020. Stratēģiskā komunikācija: tiesiskās problēmas Covid-19. *Rīgas Stradiņa universitāte*. https://lzp.gov.lv/wp-content/uploads/2021/02/34_zinojums_pielik_02.pdf.

https://doi.org/10.25143/socr.21.2021.3.082-089

Role of the WTO in the Development of International Trade and Economic Sustainability

Ph.D. candidate ***Giga Abuseridze***
ORCID: 0000-0003-2868-8719
Rīga Stradiņš University, Faculty of Law, Latvia
giga.abuseridze@rsu.lv

Abstract

In the article, the role of the World Trade Organisation (WTO) in the development of international trade and economic sustainability has been analysed. The author explores specific challenges / factors that affect economic sustainability and fair trade as well as political economy of trade and negotiations as the tools of the WTO. It is argued that economic stability and the process of democratisation are essential to ensure international and fair trade. Under democracies those countries are implied where the rate of economic stability is high according to the principles established by international norms, i.e. where market economy, internal democracy, transparent trade system, human rights, trade neutrality, etc. are observed. Almost every country where these democratic norms are applied has trade partnerships with the others rather than conflicts. For international trade to occur it is essential to have a competitive market system in a country since competition is a characteristic feature of international trade that can be safeguarded through observation of democratic principles and political stability. Development of free trade by the WTO depends precisely on implementation of these fundamental principles. In view of the abovementioned factors, the article quite legitimately studies interconnection between the WTO and economic sustainability.

Keywords: Agreement on Trade-Related Aspects of Intellectual Property Rights, dispute settlement understanding, general agreements on tariffs and trade, regional trade agreements, World Trade Organisation.

Introduction

In the current highly interlinked and globalised world, it is essential for each country to ensure trade, economic and political stability so that both local communities and communities living in the neighbouring countries could feel safe. Against

the backdrop of globalisation, the World Trade Organisation (WTO) plays an important role in ensuring trade stability, economic sustainability, and fair trade. WTO's rules stabilize the world economy by discouraging sharp backward steps in economic policy and by making trade policy more predictable. Trade stability is ensured not only by adequate policies and reforms in the political or social sphere, equally important is the economic sphere with such factors as unemployment, fiscal policy, growth in incomes and inflation. Effective economic development, trade and political stability as the main aims of the WTO can be achieved only if the WTO politicians thoroughly consider factors hindering the development of each WTO member state in terms of legislation, security policy, welfare, economic situation.

The author poses a number of questions about the WTO: What is the role of the WTO Basic Rules in the development of international trade? What challenges and threats is the WTO today facing? Can we assume that the main reason for the success of the WTO lies in its regulation?

To answer such questions, the author will analyse legal, political and economic framework of the WTO, in which the states began to cooperate to create an international mechanism for promoting sustainable world trade / economy.

Rules of WTO for International Trade and Current Challenges

Establishment of the WTO at Uruguay Round was aimed at creating an integrated legal system in world trade relations for free and fair trade. Today, many critics of the WTO claim that the WTO is "pathologically secretive, conspiratorial and unaccountable to sovereign states and their electorate" (Jonquieres, 1999). Developing country members criticise the WTO and object to what they consider to be their marginalisation within the WTO's negotiation and rule-making process. While for many years international trade law was not part of the mainstream of international law, the WTO law is now the "new frontier" of international law. Nobody questions that the WTO law is an integral part of public international law.

Globalisation and international trade need to be properly managed if they are to be of benefit to all humankind. In 1997, former GATT and WTO director-general, Peter Sutherland, wrote: "The greatest challenge facing the world is the need to create an international system that not only maximises global growth but also achieves a greater measure of equity, a system that both integrates emerging powers and assists currently marginalised countries in their efforts to participate in worldwide economic expansion. The most important means available to secure peace and prosperity into the future is to develop effective multilateral approaches and institutions" (Sutherland, 1997).

Yet, the questions remain what exactly the role of legal rules and, in particular, international legal rules in international trade is; how international trade rules allow countries to realise the gains of international trade. There are four related reasons why

there is a need for international trade rules. First, countries must be restrained from adopting trade-restrictive measures both in their own interest and in that of the world economy. International trade rules restrain countries from taking trade-restrictive measures. National policy-makers may come under considerable pressure from influential interest groups to adopt trade-restrictive measures in order to protect domestic industries from import competition. Such measures may benefit the specific, short-term interests of the groups advocating them, but they very seldom benefit the general economic interest of the country adopting them. "Governments know very well that by tying their hands to the mast, reciprocal international pre-commitments help them to resist the siren-like temptations from rent-seeking, interest groups at home" (Bossche & Zdouc, 2013).

Countries also realise that if they take trade-restrictive measures, other countries will do so too. This may lead to escalation of trade-restrictive measures, a disastrous move for international trade and global economic welfare. International trade rules help to avoid such escalation. A closely related reason why international trade rules are necessary is the need of traders and investors for a degree of security and predictability. International trade rules offer such degree of security and predictability. Traders and investors operating or intending to operate in a country that is bound by such legal rules will be able to predict better how that country will act in the future on matters affecting their operations in that country. Another reason is that national governments alone cannot cope with the challenges presented by globalisation. International trade rules serve to ensure that countries only maintain national regulatory measures that are necessary for protection of the above key societal values (Jackson, 1998). Furthermore, international trade rules may introduce a degree of harmonisation of domestic regulatory measures and thus ensure an effective, international protection of these societal values. Moreover, international trade rules are necessary to achieve a greater measure of equity in international economic relations. Without international trade rules, binding and enforceable on the rich as well as the poor, and rules recognising the special needs of developing countries, many of these countries would not be able to integrate fully in the world trading system and derive an equitable share of the gains of international trade (Abuseridze, 2021).

The author claims that nowadays' challenges to the WTO against the background of globalisation make the trading platform unstable. One of the clear examples of trade instability is caused by the Covid-19 pandemic. In the early stage of pandemic, the countries shut down their borders and introduced export restrictions on medical equipment and supplies. Restriction of export which is against WTO rules, occurs only in exceptional circumstances and for limited time. Under current pandemic, demand on some goods and essential supplies increased dramatically, causing supply distortions. Lockdowns and disruption in transportation also caused economic decline. Some countries started to apply protective measures and widely use stimulus packages and subsidies. All these measures are trade distortive measures and create vulnerability for WTO system. In the present

circumstances, it is crucial to return to normality soon to avoid additional difficulties and further damage of multilateral trading system (WTO, 2020).

The author also argues that the biggest threat to the global trade is trade wars that would do serious damage to global economy as protectionist actions escalate. Countries imposing tariffs and countries subject to tariffs would experience losses in economic welfare, while countries on sidelines would experience collateral damage. In order to avoid such scenarios, WTO has dispute settlement mechanism and countries have a possibility to apply it for resolution of their dispute (recently even this mechanism was challenged, thus hindering trade dispute settlements in fair manner). According to the author, following the numbers, it can be observed that every year a growing number of countries is applying for dispute settlement.

In the author's view, the most evident challenge is the Doha Development Round, the current round of multilateral trade negotiations to further liberalise trade and reform the WTO. After a decade of talks, discussions remain at a standstill. The Doha Round is focused on reducing critical trade barriers in areas such as agriculture, industrial goods, and services. This would urge businesses around the world to specialise in production of goods and services, achieve greater economic status, and increase their efficiency and productivity, all of which would permit them to deliver higher quality and cheaper products to international consumers. With the various challenges that lie ahead, new thinking is needed in the WTO. The approaches of twenty years ago are no longer adequate to today's global obstacles. The WTO Secretariat needs to begin a process that will revitalise the organisation and equip it to deal with the changing international economic environment. Regarding the future of the WTO, it has a great opportunity to improve sovereignty, democracy and the market. All three ideas have nonetheless come down to as foundations of modern international society, and to which all members of that society are at least rhetorically devoted. Two of the three concepts are indispensable to multilateral trading system: there could be no WTO without sovereignty and international law, and it would have no purpose without market economics. WTO should be oriented in the future on democracy between members: leadership and burden-sharing, the future of the multilateral trading system depends in part on the ability of negotiators and political leaders to demonstrate the value of trade liberalisation to legislators and representatives of civil society. The author argues that the WTO should focus on Institutional reforms. At issue are the changes members might make in the WTO as an institution, how they might make better use of the information that the system generates, and what new ideas may develop for the trading system.

According to the author, the future of the organisation is determined through identifying existing problems and assessing the challenges in the context of globalisation. However, the latest trade tension has put the WTO's Dispute Settlement function, long referred to as the "jewel" of the WTO under question. Therefore, to ensure credibility of the WTO and its effective work, the author takes the initiative to start procedural actions to eliminate this problem. The author claims that despite some successes in

the first 25 years in terms of negotiated improvements, the WTO's set of agreements are largely reflective of the world in the 1980s. Advances in technology, manufacturing make-up and importance of certain service sectors (e.g., e-commerce, human rights) are not covered by the existing agreements. Therefore, this issue should be considered when talking about the future of the organisation.

Regarding WTO regulations, the author believes that the WTO plays an important role in political and trade stabilisation by setting regulations for all WTO Member States which they need to comply with to integrate with the organisation and effectively collaborate with other WTO Member States. They will coexist with other member countries which share the unified system of values. Hence, sharing of the common values by the member countries, transparent trade rules and dispute settlement mechanism adds to the organisation's stability.

Political Economy of Trade and Negotiations as the Tool of the WTO

In the 21st century, international trade is considered as a multidisciplinary field. Fundamental and systemic analysis clearly demonstrates that international trade regulates trade rules but inherently bears both economic and political content. Any trade war, for example US-China trade war, or trade disputes bear political connotation i.e., a political decision should regulate trade relations. When damage is inflicted, it is already a fact of economic value. Therefore, the author argues that in international trade law economics and politics cohabitate.

Free trade increases wealth and reduces poverty, and, thus, it may contribute to social stability through economics of comparative advantage (Bagwell & Petros, 2011). Both the WTO and World Bank suggest that trade liberalisation is a positive contributor to social stability (Nordström & Winters, 1999).

Trade growth and political stability are deeply interconnected. On the one hand, uncertainty associated with an unstable political environment may reduce investment and pace of economic development (Bartels & Ortino, 2006). On the other hand, poor trade and economic performance may lead to government collapse and political unrest (Dollar & Kraay, 2002). However, political stability can be achieved through oppression or through having a political party in place that does not have to compete to be re-elected. In such cases, political stability can have its favourable and unfavourable consequences. While the peaceful environment that political stability may offer is a desideratum, it could easily become a breeding ground for cronyism with impunity. Such is the dilemma that many countries with a fragile political order have to face (De-Ville & Brügge, 2015).

Democracy and political stability provide conditions for promoting free trade, which in its turn may increase wealth and reduce poverty, and, thus, it may contribute to social stability through the economics of comparative advantage (Abuseridze, 2020).

It is important to note that domestic politics shape countries' strategic decisions to negotiate regional trade agreements (RTAs) and are even more important in determining at the tactical level the kinds of commitments countries seek or grant in these agreements.

To simplify, political scientists who look to domestic political factors in order to explain the countries' choices between openness and closure tend to fall into three general camps. The oldest and perhaps largest school of thought depicts this choice as the outcome of struggles between competing economic interests. Openness represents the triumph of pro-trade interests such as exporters, retailers, and consumers over import-competing industries, labour unions, or others that are typically trade-sceptical. A second category of explanations shifts the locus of conflict from civil society to government, and sees openness as the triumph of pro-trade institutions (e.g. the executive branch in general, the foreign ministry, etc.) over their trade-sceptical rivals (e.g. legislatures or client-oriented ministries). Yet a third approach pays more attention to ideas than to interests. Analysts in this school argue that openness represents victory of liberal ideology over protectionist doctrines. While the debates among the proponents of these three schools of thought are sometimes conducted as if the explanations were mutually exclusive, it is possible that each captures some part of truth. In any given country, the decision to open the market may be influenced by a mixture of sectoral, institutional, and ideological factors.

Regarding negotiations, an important role of the WTO is to house negotiations on trade liberalisation. The author argues that negotiations are inevitably a reflection of different interests of different countries and country groups. On majority of issues, decisions are made by consensus in the WTO, which means that countries should find necessary balance between different interests. The world at the time of the Uruguay Round was different from today's. This is clearly shown on the duration of negotiation rounds in the WTO. The last round of negotiations – "Doha round" was launched in Doha in 2001 and it is still ongoing, the author has described this in detail above (WTO, 2020). Developing countries currently have much more clout than the negotiating agenda and the negotiations themselves demonstrate. Also, the WTO system gives the possibility to defend their trading interests. The TRIPS has been agreed by developing countries, which also protects them (Palkova & Abuseridze, 2020).

In the modern circumstances, negotiations are based on the principles established by international norms, i.e., where free trade, specific market access commitments etc. are observed. The talks can be highly complicated. In some cases, negotiations are almost as large as an entire round of multilateral trade negotiations. For example, when negotiations are underway for membership in the organisation, the new member's commitments are to apply equally to all WTO members under normal non-discrimination rules, even though they are negotiated bilaterally.

The author attaches special importance to the role of the WTO in the process of trade stability. He argues that the role of the WTO as the umpire in trade disputes has

been greatly threatened by the US-China trade war. With the burst of the US-China trade war, it has been observed that there is an urgent need for DSU reform. The author believes that although this would increase trust of the member states in dispute settlement system, it may not be the only solution for preventing trade wars. With the global tension brought about by the trade war between the US and China, there is perfect timing for reforms in the WTO to strengthen the multilateral trading system (WTO, 2021). In the long run, the author views the WTO as an active party in ensuring a successful round of negotiations to address existing challenges. Ultimately, it can be stated that the trade war affected not only the two countries, but also the global economic picture. Global trade was hit 2.5% by the game of tariff barriers between the US and China amid the trade war, according to a 2019 World Bank report. The main economic threat according to the report was the trade dispute between the United States and China (The World Bank, 2019). The author believes that countries should reconsider their economic policies and choose to protect their own market, rather than intervene in global trade processes.

Conclusion

The author has concluded that the WTO, by virtue of its competence, is undoubtedly one of the key organisations that regulate international trade and economic relations almost all over the world. It is also a crucial legislative body in modern international relations, which, despite widespread criticism, is an exemplary successful international organisation.

According to the author, the WTO plays an important role for the intergovernmental community, given its substantial jurisdiction and existence of an effective mechanism for multilateral international agreements concluded within its framework. Its importance in modern international relations is especially evident in view of the list of areas covered by this organisation, including intellectual property, environmental protection, technical barriers to trade, investment mechanisms and other important aspects. One of the reasons for the success of the WTO, in the author's opinion is the effective implementation mechanism of international agreements between the member states, the unimpeded functioning of which has been guaranteed by the Dispute Settlement Mechanism established at Uruguay Round. Its effectiveness is confirmed by interstate disputes in the WTO, the sentences of which are always distinguished by an effective enforcement mechanism. An exception is the recent escalation of trade tensions between the United States and China, of which the author is critical. However, the author argues that the WTO maintains a balance of power since small member states can express their views on the development of world trade, using all mechanisms to protect their interests. These facts allow to conclude that the organisation greatly contributes to interpretation and development of international trade and economic sustainability.

Bibliography

1. Abuseridze, G. (2021). *International Trade in the Context of the COVID-19 Pandemic*. Impact of Infodemic on Organizational Performance. DOI:10.4018/978-1-7998-7164-4.ch013.
2. Abuseridze, G. (2020). Political Stability and Trade Agreements. *Bulletin of the Georgian National Academy of Science. 14*(4), 139–140.
3. Bagwell K. W. & Petros C. (2011). *Mavroidis Preferential Trade Agreements: A Law and Economics Analysis*. Cambridge: Cambridge University Press.
4. Bartels, L., & Ortino, F. (Eds.) (2006). *Regional Trade Agreements and the WTO Legal System*. Oxford Univ. Press. DOI:10.1093/acprof:oso/9780199206995.001.0001
5. Ben-David, D. Nordström, H., & Winters A. (1999). *Trade, Income Disparity and Poverty*. WTO Publications. https://www.wto.org/english/news_e/pres00_e/pov1_e.pdf
6. Bossche, P., & Zdouc W. (2013). *The Law and Policy of the World Trade Organization*. Cambridge: Cambridge University Press.
7. De-Ville, F., & Brügge G. (2015). The Transatlantic Trade and Investment Partnership and the Role of Computable General Equilibrium Modeling: An Exercise in 'Managing Fictional Expectations. *New Political Economy*, 5, 653–678.
8. Dollar, D., & Kraay, A. (2002). Growth Is Good for the Poor. *Journal of Economic Growth*, 7, 195–225.
9. Jackson, J. (1998). Global Economic and International Economic Law. *Journal of International Economic Law*, *1*(1), 1–24. https://doi.org/10.1093/jiel/1.1.1
10. Jonquieres, G. (1999). Prime Target for Protests: WTO Ministerial Conference. *Financial Times*, 24.09.1999.
11. Palkova, K., & Abuseridze, G. (2020). Human Rights and Labour Standards from the Public Health Perspective in the World Trade Organization: Challenges and Possible Solutions. *Journal of Economics Studies and Research*, 2020. https://doi.org/10.5171/2020.423674
12. Sutherland, P. (1997). Beyond the Market, a Different Kind of Equity. *The New York Times*, 20.02.1997.
13. World Bank. (2019). *The World Bank Annual Report 2019: Ending Poverty, Investing in Opportunity.* https://documents.worldbank.org/en/publication/documents-reports/documentdetail/156691570147766895/the-world-bank-annual-report-2019-ending-poverty-investing-in-opportunity
14. World Trade Organization. (2020). *Annual Report.* https://www.wto.org/english/res_e/booksp_e/anrep_e/anrep20_chap1_e.pdf
15. World Trade Organization. (2021). *Panel issues report regarding US tariffs on Chinese goods.* https://www.wto.org/english/tratop_e/dispu_e/543r_conc_e.pdf
16. World Trade Organization. (2020). *Trade set to plunge as COVID-19 pandemic upends global economy*. https://www.wto.org/english/news_e/pres20_e/pr855_e.htm

https://doi.org/10.25143/socr.21.2021.3.090-104

Small States in the United Nations Security Council: Legal and Conceptual Aspects *versus* Practical Perspective

Dr. sc. pol. ***Gunda Reire***
Center for International Studies, Latvia
gunda.reire@gmail.com

Abstract

The article focuses on the prospects for work conducted by small states in the United Nations Security Council (UNSC) and examines two aspects which frame the work of small states in the UNSC – the legal aspect (institutional and procedural) and the conceptual aspect (the concept of small states), comparing them with the work and achievements of small states in praxis.

The aim of the article is to provide qualitative and comparative analysis of small states' work in the UNSC, to outline legal and political interpretation of their activities and to compare legal and conceptual framework with the practical perspective. The research is designed to be relevant for Latvia in the context of its candidature for a non-permanent seat of the UNSC at the elections in 2025, and it analyses cases of Lithuania's and Estonia's membership.

The author of the article argues that despite the minimal role provided for the small states in the UNSC by international law and the theoretical concept, cases of Lithuania and Estonia show that the practical perspective proves a much higher capability, influence and ability of small states to profile themselves actively within the global agenda while at the same time remaining in the aforementioned legal and conceptual boundaries. This can happen under circumstances where there are minor systemic challengers, lack of triggers for security of small states, and overlapping of the international security agenda and their field of expertise.

Keywords: United Nations, Security Council, small states, the Baltic States.

Introduction

Although non-permanent membership in the United Nations Security Council (UNSC) is not comparable with permanent membership in terms of the time period provided for the work, or in terms of power and influence, it is nonetheless widely acknowledged

that being a non-permanent member of the UNSC improves a member state's international prestige and indicates its commitment to multilateralism and UN values. One third of the UN member states, Latvia among them, has never been a part of the UNSC. Latvia will be running for the non-permanent seat of the UNSC at the election in 2025 for the term 2026–2027; therefore, analysis of small states' limitations and opportunities in this international institution not only enrich academic debate about small states' role in global international affairs but is relevant as well for Latvia on a practical foreign policy level.

In contemporary international relations, small states are considered important actors because of the emphasis on the concept of multilateralism, the rise of the role of international institutions and the significant number of small states in the world, which makes them a force to be reckoned with when acting together.

The aim of the article is to provide analysis of prospects for active, effective, and visible work conducted by small states in the UNSC, to outline a legal and political interpretation of their possible and actual activities and to compare the legal and conceptual framework with the practical perspective.

Small states' theoretical concept emphasises that analysis of common behaviour patterns must be carried out by considering not only their physical and quantitative indicators, but also the common historical context and the geopolitical challenges they share. The research is designed to be relevant for Latvia in the context of its candidature for a non-permanent seat of the UNSC at the elections in 2025. Therefore, the article analyses two case studies – UNSC memberships of Latvia's neighbouring countries Lithuania (for the UNSC term 2014–2015) and Estonia (for the UNSC term 2020–2021). Such a choice underlines shared features of small states and allows for drawing conclusions which are relevant for Latvia.

This article is structured in three parts which deal with conceptual aspects of small states role in international relations, the legal aspects of small states' membership in the UNSC, and the practical perspective of their work in the UNSC.

This article, by conducting qualitative, comparative, and legal analysis, shows, that the theoretical prospects for small states of capability, influence, and effective and visible work within the UNSC can be considered as minor because of the intersection of legal (institutional and procedural) and conceptual (the concept of small states) aspects. The legal aspect of the UNSC work is determined by the UN Charter and other UN documents, but the conceptual aspect is characterised by the contemporary understanding of small states' features and limitations in international affairs. Nevertheless, the effect of legal and conceptual aspects on small states' prospects, directing them towards systemic irrelevance, low influence and capabilities, and vulnerability against power asymmetry, is outweighed by the practical perspective that Lithuania and Estonia have taken during their two-year terms in the UNSC.

The research outlines that the objective boundaries of the eventual performance of small states in the UNSC, set by legal and conceptual aspects, can be supplemented with effective and visible work in this institution. Nevertheless, the theoretical aspects can be outweighed by the practical perspective only under circumstances where there is

lack of systemic challengers, lack of triggers negatively impacting the security of particularly small states, and overlapping of the international security agenda with the field of expertise of a particular UNSC non-permanent member during its term of membership.

1 Conceptual Aspects of Small States' International Capacity and Capabilities

In academia, there is no strict consensus about a precise definition of small states and parameters that can be applied to categorise small states as a separate group. However, that does not mean that such term is too vague to operate with. Just on the contrary – the research on small states can be qualified as extensive, and debates about the content of the term are ongoing. The contemporary concept of small states is complex and dynamic, and it has been expanded beyond the pessimistic boundaries of small states' victimhood, extreme vulnerability, smallness, helplessness and systemic irrelevance.

General statistical measurements of small states encompass the size of the territory, population size, gross domestic product, and military expenditure, thus referring to a separate group of states that are not great powers and that lack power in quantitative sense (Wivel et al., 2016). This aspect can be complemented with the characteristic of limited capacity of political, economic, and administrative systems (Baldacchino and Wivel, 2020). It should be noted that such specific parameters are more characteristic of the concept of small states in the 19th–20th centuries whereas nowadays the quantitative aspect of the definition and conceptualization of small states is enhanced by more sophisticated elements of behaviour and capacity regarding dealing with systemic challenges.

General behavioural patterns of small states after the Cold War cover the tendency to adapt to the environment instead of shaping it and seeing the potential of influence in membership of international organisations (Archer and Nugent, 2002; Baldacchino and Wivel, 2020, Panke, 2010; Steinmetz and Wivel, 2010; Wivel et al., 2016). International institutions play the role in platforms of influence and institutional shelter, which are able not only to provide additional dimension to small states' security within the international system, but even replace the state-protector relationships (Bailes & Thorhallson, 2013; Wivel et al., 2016). Growth of international institutions also serves as an influencing factor for an increasing number of working platforms and areas of influence and visibility of small states, simultaneously putting under pressure one of the most important quantitative features of small states – limited and thinly stretched diplomatic and administrative resources (Baldacchino & Wivel, 2020).

Classic theory of relative capabilities underlines four characteristics of (lack of) power: fewer capabilities to preserve autonomy in the context of power politics; narrow range of possible action; scarce options for defining the international agenda and rules that pertain to it; small stake in the international system and low capabilities to act for its sake (Waltz, 1979). These features of the concept of small states emphasise the thinking of the neorealist or structural realist school, and it is often criticised because of the excessive focus on military security (Wivel et al., 2016), leaving out of attention, for example,

such contemporary concepts as human security, economic security, cybersecurity, and environmental security. Nevertheless, in the context of this research, which analyses the prospects of small states in the UNSC, the structural realists' approach is applicable, since the primary responsibility of the UNSC is international peace and security and its composition and decision-making mechanisms reflect realities of the power politics after World War II. Although the human security aspect has become more visible in the UNSC work after the Cold War (Dedring, 2008), it is nevertheless framed in the context of interstate and intra-state conflict.

International challenges that small states face in the 21st century are rarely systemic ones. They are rather related to small states as a weaker part in asymmetric relations (Baldacchino and Wivel, 2020; Wivel et al., 2016), geopolitical situation in the region, challenges and opportunities that are grounded in the historical background and have a specific spacio-temporal context (Wivel et al., 2016; Maass, 2020). Therefore, for analytical and comparative purposes, the quantitative aspect is not sufficient – in order to group small states to uncover their relative possibilities and limitations, the common geopolitical, historical and geographical context is essential. The existing theoretical debate about the division line between microstates, small states, middle powers and great powers is not relevant within this research, as Latvia, Lithuania and Estonia with their parameters do not challenge any of the cut-off lines and for academic purposes are clearly definable as small states.

Therefore, instead of looking for universal parameters of small states, this article focuses on features of small states that are relational, qualitative and revealed in action. These are: (1) systemic dependence; (2) limited (financial, human and administrative) resources; (3) low capabilities for agenda-setting systemically; (4) vulnerability against power asymmetry; (5) a narrow range of action; (6) geopolitical location and historical context; and (7) international institutions as a vehicle of international influence. These features have both analytical and political dimensions, and they allow for distinguishing areas and aspects of the UNSC work where small states' influence is low, and where the scope of visible and effective activities is relatively wide, but options and solutions are available.

2 Institutional and Procedural Aspects of Small States' UNSC Membership

Legal aspects of small states' capability, influence, and effective and visible work within the UNSC can be grouped into institutional and procedural containers, and they are outlined in the UN Charter, two UN General Assembly (UNGA) resolutions – UNGA resolution 1991-XVIII and UNGA Resolution 2847 (XXVI), the Rules of Procedure of the General Assembly and the Provisional rules of procedure of the Security Council.

2.1 Institutional Aspects of Small States' UNSC Membership

From the institutional perspective of small states' activity in the UNSC, Article 23, para. 1 of the Charter of the United Nations provides the most important parameter,

which says that UNSC consists of five permanent members (the five great powers – the winners of World War II – with permanent membership) and ten non-permanent members, therefore providing only one possible UNSC membership option for small states:

> "The Security Council shall consist of fifteen Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics [now – the Russian Federation, successor of the seat – auth.], the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council [..]." (United Nations Charter)

The Charter of the United Nations – Article 23, para. 2 – also regulates the term of non-permanent membership, and it is very short – two years – and does not allow a possibility that a non-permanent member *de facto* works permanently or a longer term than two years, because immediate re-election is excluded:

> "The non-permanent members of the Security Council shall be elected for a term of two years. [..] A retiring member shall not be eligible for immediate re-election." (United Nations Charter)

This clearly highlights the power and influence disproportionality between permanent and non-permanent members. The Charter of the United Nations, Article 23 also provides criteria that UN General Assembly (UNGA) should consider when electing members of the UNSC, one of them being equitable geographical distribution:

> "The General Assembly shall elect ten other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid [..] to equitable geographical distribution." (United Nations Charter)

However, the Charter does not define any parameters or characteristics for the mentioned equitable geographical distribution of the UNSC non-permanent seats. For purposes of UNSC election, the pattern is set out in UNGA resolution 1991-XVIII (let. A):

> "[..] (a) Five from African and Asian States;
> (b) One from Eastern European States;
> (c) Two from Latin American States;
> (d) Two from Western European and other States." (U.N. Doc. A/RES/1991(XVIII))

It is important that the regulation set forth by UNGA resolution 1991-XVIII cannot be considered as an amendment to the Charter, it has never been subject to ratification under Article 108 of the Charter, and this UNGA decision does not have a binding character, though it nevertheless has a legal value and has a typical legal effect of the recommendations of UN organs (Conforti, 2005), and it is regarded as UN customary law.

The UNSC candidates usually announce their intention to run many years ahead before the election by informing their regional group and identifying the two-year term for which it intends to become a non-permanent member. This tradition not only supports good communication environment, but also clearly indicates whether UNSC elections will be contested within the regional group (Reire, 2021). The Baltic Countries belong to the Eastern European Group in the UN (United Nations. Regional…). Lithuania was unanimously elected as a UNSC non-permanent member running unopposed in the 2013 elections. Estonia participated in a contested election against Romania in 2019 and won with 132 UNGA votes (Security Council Report). Latvia will participate in a contested election in 2025 since Montenegro has also announced its interest for the same seat in 2025 (Statement by H.E. …, 2013).

Institutionally, additional feature of membership and international visibility, which may be regarded as having a potential for power and influence, is outlined in the Provisional Rules of Procedure of the Security Council, Rule 18, and speaks about the UNSC Presidency:

> "The presidency of the Security Council shall be held in turn by the members of the Security Council in the English alphabetical order of their names. Each President shall hold office for one calendar month." (U.N. Doc. S/96/Rev.7)

Although the role of the President of the UNSC, according to the Provisional Rules of Procedure of the Security Council, can be viewed strictly as narrow and in the light of chairmanship of the meeting (Rule 19) and approving the UNSC provisional agenda drawn up by the UN Secretary-General (Rule 7) and it does not involve the power to set the agenda, it can be viewed as a granted opportunity in hands of every non-permanent member.

Therefore, institutionally, the only option of UNSC membership for small states is the non-permanent one, with a short term of two years and on strictly rotational basis, but with a granted status of terminated UNSC Presidency.

2.2 Procedural Aspects of Small States' UNSC Membership

The main procedural aspects of small states' UNSC membership are covered by the UN Charter, and the most significant rule concerns the so-called Yalta formula (Conforti, 2005) which demands unconditional agreement of permanent members in substantive questions and confirms the veto power of the permanent members of the UNSC. This rule is outlined in Article 27, para. 3:

> "Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members [..]. (United Nations Charter)

The veto power has been a subject of academic scrutiny for decades since the very first years of the UN. It is generally acknowledged in both academic and political circles

as a non-democratic and exclusive power and instrument, paralysing the UNSC activity and weakening the UNSC capability to ensure its main function – maintenance of international peace and security – effectively.

Moreover, theoretically and in praxis, there exists the problem of the double veto or the option to exercise the veto power outlined in Article 27, para. 3 regarding the preliminary question, when the UNSC cannot decide whether the question brought before the UNSC concerns the procedure or not (Conforti, 2005; Liang, 1949; Rudzinski, 1951), or, in other words – whether para. 2 or para. 3 of Article 23 of the Charter of the United Nations is applicable. Neither the Charter, nor the UNSC praxis provide clear solutions of this problem, but the practice (although there have been few cases) tends more to be in favour of the right of veto, but none of the UN organs has the absolute and sovereign power to interpret the Charter (Conforti, 2005).

The second significant procedural aspect influencing the activity of small states in the UNSC regards the power to define the agenda of the UNSC and therefore – of the global peace and security situation and solutions in general. This aspect is especially important from the point of view of practical policy solutions, since candidate countries often mention it as an argument for the candidacy and the possible gain and positive result from the eventual two-year UNSC membership. The most important conclusion from the procedural point of view here is that convocation of the UNSC must be observed separately from the UNSC's actual performance (Conforti, 2005).

On the one hand, the Charter of the United Nations, Article 35, para. 1 grants any member state the power to seize the UNSC, which theoretically indicates the power to influence the UNSC agenda:

> "Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly." (United Nations Charter)

In addition, when the member state(s), the UNGA or the Secretary-General act on the basis of respective Charter provisions, the UNSC is obliged to meet, as it is regulated by the Provisional Rules of Procedure of the Security Council, Rule 2 and 3:

> "The President shall call a meeting of the Security Council at the request of any member of the Security Council." (U.N. Doc. S/96/Rev.7)
>
> "The President shall call a meeting of the Security Council if a dispute or situation is brought to the attention of the Security Council under Article 35 or under Article 11 (3) of the Charter, or if the General Assembly makes recommendations or refers any question to the Security Council under Article 11 (2), or if the Secretary-General brings to the attention of the Security Council any matter under Article 99." (U.N. Doc. S/96/Rev.7)

On the other hand, the mentioned regulation, which emphasises the possibility of bringing the issue to the attention of the UNSC by any UN member state and UNSC

member, concerns only convocation of the UNSC. Namely, Rule 3 of the UNSC procedure speaks about the situation, where the UNSC must decide whether the conditions of the situation (real danger to peace) are sufficient to exercise its functions, and, if the UNSC decides that conditions are insufficient, the issue will not be included in the actual agenda (Conforti, 2005). In its turn, Rule 2 of the UNSC procedure is relevant only in situations when the UNSC is already considering particular question, or in other words – is already included in the organ's agenda.

Therefore, the procedural aspect further deepens the power projection gap between permanent and non-permanent UNSC members, outlined by the institutional aspect. The main procedural element restraining the small states' performance in the UNSC is the veto power, since it does not allow making a decision without unanimity of permanent members. Moreover, although in the political discourse there exists the thesis that non-permanent membership gives an opportunity to influence the global peace and security agenda, legal provisions clearly show that UNSC agenda cannot be substantially influenced without the consent of the permanent members.

Legal and conceptual aspects of small states and particularly – the Baltic States – membership in the UNSC show a narrow and constrained field of play and seemingly point in the direction towards a pessimistic view of small states' minuteness, helplessness and systemic irrelevance. Therefore, the theoretical prospects for small states of capability, influence and effective and visible work within the UNSC can be considered as minor (Table 1).

Table 1. Legal and Conceptual Aspects of the Baltic States' Membership in the UNSC: Summary

Legal aspects		**Conceptual aspects**
Institutional	**Procedural**	
The only option: non-permanent membership. Membership is strictly rotational. Membership has a short term of two years. Membership grants a status of terminated UNSC Presidency. The Baltic Countries candidate for the seat from the Eastern European Group.	Decisions on substantive matters cannot be taken without unanimity of the permanent members (veto). Double-veto problem. Wide opportunities to bring the issue to the attention to the UNSC and to convoke the council. Narrow opportunities to bring any matter to the actual UNSC agenda without the consent of the permanent members.	Systemic dependence. Limited (financial, human and administrative) resources. Low capabilities of agenda-setting systemically. Vulnerability against power asymmetry. Narrow range of action. Geopolitical location and historical context play a prominent role. International institutions are a vehicle of international influence.

3 Practical Perspective: Lithuania's and Estonia's Work in the UNSC

In this chapter of the article, legal and conceptual aspects are compared with the actual performance of Lithuania (the UNSC term 2014–2015) and Estonia (the UNSC term 2020–2021) during their respective UNSC membership terms in order to determine whether theoretical aspects can be outweighed and compensated by the practical perspective.

3.1 International Institutions as a Tool for Raising International Status

The Baltic States' membership and candidacy for the UNSC emphasises the conceptual aspect of international institutions as a necessary tool for securing small states' positions in the world. The UNSC membership generally can be seen in the light of enhancing international standing and relevance, underscoring the international prestige, advancing a national position, and gaining broader foreign policy objectives (Malone, 2000). It is worth mentioning that while all UNSC non-permanent members have similar expectations towards networking during their term, small states in particular have lower expectations in gaining influence but higher expectations on raising their international status (Raik, 2021).

The aims and conclusions of Baltic States about their UNSC candidacy or membership confirm this conceptual aspect. Estonia has declared that its election as a non-permanent member of the UNSC demonstrates the maturity of Estonian diplomacy, raises Estonia's profile and visibility across the world and its ability to bolster its security and readiness to engage in solving global problems and managing conflicts (Estonia in the…, 2020). Lithuania, by emphasising the focus of UN values – its commitment to protect human rights, promote democracy and enhance cooperation among sovereign and equal states, based upon primacy of international law – has concluded that the two-year diplomatic work on the UNSC "have made us stronger" (Ministry of the…, 2016).

3.2 Candidacy, Term, and Regional Rotation

International ambition is seen as one of the success factors in effectively fulfilling the short two-year term at the UNSC, considering that the next term will most likely not be possible in a foreseeable future because of limited resources and the fact that 6 of 23 UN Eastern European Group members still have not been members of the UNSC (Countries Never Elected…). It must also be noted that Russia, which represents the same regional group, is a permanent member of the UNSC, but two Eastern European Group members – Ukraine and Belarus – have the specific status of UN founding members, although they could not be considered international subjects in 1945 (Conforti, 2005), and have been UNSC non-permanent already during the Cold War period (Countries

Elected Members, 2021). The international ambition in combination with restricted working period as a focal point of the membership has been underlined by Sven Jürgenson, the Permanent Representative of Estonia to the UN. He emphasises that the role of small states in the UNSC depends very much on their level of ambition, and Estonia was aware of the practical implications of the shortness of its two-year term, which is available "once in a generation" and can be fulfilled with the help of being as ambitious and as "active as possible" (Raik, 2021).

A mechanism that supports newly elected UNSC members and is especially important for the Baltic States because of their lack of previous UNSC experience, is a regulation concerning the Working Methods of the UNSC, Article 140, which aims to familiarise the newly elected members with the work of the UNSC and its subsidiary bodies:

> "The Security Council invites the newly elected members of the Council to observe all meetings of the Council and its subsidiary bodies and the informal consultations of the whole for a period of three months, as from 1 October immediately preceding their term of membership. The Council also invites the Secretariat to provide all relevant communications of the Council to the newly elected members during the above-mentioned period" (Handbook on the…, 2021)

From the point of view of the limited resources available to small states, the principle of regional rotation in a UNSC election cannot be evaluated in a-sided manner. On the one hand, this principle ensures higher probability and higher possibilities for small states to be elected to the UNSC. On the other hand, the contested elections drain the limited resources of small states even more. Lithuania ran unopposed in its election as the UNSC non-permanent member in 2013 elections, whereas Estonia participated in a contested election against Romania in 2019 and won by gaining 132 UNGA votes (Security Council Report, 2021).

3.3 Geopolitical Location and Historical Context

International standing and relevance of small states is highly dependent on their geopolitical location, geopolitical situation, and historical context.

First, Lithuania's and Estonia's UNSC membership and Latvia's candidacy for the non-permanent seat reflect both the historic and geopolitical aspects, and the process of growth of the international potential of these three countries. During the Cold War under the Soviet occupation, the Baltic States had neither the possibility to work in the UNSC nor options to gain direct experience in multilateral relations. This experience of integration into international system had to be achieved in the years after the collapse of the Soviet bloc. Therefore, Lithuania started its term as a UNSC member 23 years after regaining independence, Estonia – 29 years, and Latvia in the case of a positive UNGA vote will have a non-permanent UNSC seat for the first time 35 years after regaining independence in 1991. Of all European Union member states, Latvia and Cyprus are the last ones without the UNSC experience (Countries Never Elected…).

Second, cases of Lithuania's and Estonia's membership show that their work in the UNSC gives an opportunity to highlight issues relevant for the security of the Baltic region and gives broader meaning of shared geopolitical and historical patterns with neighbouring countries. Lithuania has acknowledged that standing up in defence of the international community's most fundamental principles: sovereignty, territorial integrity, and freedom in the context of Crimea's illegal annexation by Russia was Lithuania's primary task and duty on the UNSC and shaped its role in this prominent institution (Ministry of the…, 2016). The focus on security issues of the region was further ensured by Estonia by keeping the issues of Belarus, Ukraine, and Georgia high on the agenda. Among all activities it is worth highlighting two UNSC formal meetings (Estonia in the…, 2020) and two informal meetings in 2020 (Human Rights in…, 2020 and 2021 (The Situation in…, 2021) on situation in Belarus. Estonia's example also underlines effective use of the Arria formula, which is a relatively recent praxis that involves inviting participants to informal deliberations within a flexible procedural framework ("Arria-Formula" meetings…, 2002).

Therefore, the conceptual aspect of geopolitical location and historical context in the praxis of small states' UNSC membership can be a facilitating factor in terms of agenda setting, maintaining regional security and shaping a particular country's foreign policy profile. The conceptual aspect of geopolitical and historical context can have a positive potential of effective UNSC membership in cases where there is a stable security situation, because protection from aggression, strong international law and open international economy shape the international environment in a way that is highly supportive for small states (Maass, 2020). Nevertheless, this conceptual aspect has a predominantly negative potential in asymmetric relations and an unstable security environment.

3.4 Presidency and Agenda-setting

The UNSC Presidency is a formal duty, which nevertheless can be regarded as a granted opportunity for a UNSC non-permanent member to become visible and to use an international institution as a tool for shaping its international reputation and profile. Bearing in mind that the UN serves as a platform for influence for those states which are willing and able to focus and prioritise their material and human resources and work through regional groups (Panke and Gurol, 2020), the effective use of this opportunity, however, depends on member states diplomatic professionalism.

Both Lithuania and Estonia have had two one-month UNSC Presidencies. During its first Presidency in February 2014, Lithuania's focus was relatively broad on the issues of the rule of law, protection of civilians, and cooperation between the UN and regional organisations (Ministry of the…, 2016). However, during last days of this Presidency the conflict in Ukraine was for the first time raised in the UNSC, and the first emergency meeting on the situation in Ukraine was held (U.N. Meeting… (2014). Lithuania acknowledges that the factor of Ukraine's predicament at the time had a strong effect

on the shaping of its role in the UNSC at large (Ministry of the…, 2016). It is a clear example of overlapping of the international agenda with a non-permanent member's expertise and security interests that has enhanced its potential to fulfil its responsibilities as part of the UNSC membership while boosting its international profile and increasing its visibility.

Estonia's profile of the UNSC membership encompasses international law, fundamental values, cybersecurity and working methods of the UNSC (Estonia in the…, 2020). Both Estonia's Presidencies in May 2020 and June 2021 took place in the context of Covid-19 pandemic. During its first Presidency, the UNSC worked remotely and for the first time in history, the UNSC meetings were held in an online format, which overlapped with Estonia's UN profile (digital and cyber-security agenda; working methods of the Security Council). International visibility was also enhanced by the 75th anniversary of the end of the World War II, which was celebrated with the help of a high-level Arria-formula meeting, chaired by Urmas Reinsalu, the Minister of Foreign Affairs of the Republic of Estonia, live-streamed globally (Signature Event on…, 2020b), and powered by Hybridity, an Estonian virtual event platform.

Although, theoretically, agenda-setting possibilities in the UNSC for the small states are limited and their capabilities of agenda-setting systemically can be evaluated as low, a combination of an international agenda dovetailing with national expertise, clear priorities, and creative, flexible use of available instruments and adaption to the international environment has a higher practical potential than the theory provides and predicts.

3.5 Limited Resources and Narrow Range of Action

Conceptually, the aspects of small states' limited financial, diplomatic and administrative resources as well the narrow range of possible action, which directly results from the lack of resources, are objective. They constitute objective boundaries and restrictions in the UNSC membership, which have to be taken into account during the election campaign and the actual membership.

Lithuania's and Estonia's cases show that the solution to this situation is profiling and specialisation. Lithuania's work during its UNSC membership was more focused on general problematics of international security and systemic stability, and this supports the conceptual aspects of systemic dependence and vulnerability against power asymmetry. Lithuania's work became more profiled on Ukraine after Russia's aggression (Ministry of the…, 2016) and became the most prominent feature of Lithuania's membership. It outlines the significance of a small state's ability to react to events of international agenda within the profile of its foreign policy.

Estonia's UNSC priorities are very well defined and precise. These are: international law, rules-based world order, new threats (climate change and cyber security), and working methods of the Council (Raik, 2021), and Estonia is also the co-penholder with Norway on the theme of Afghanistan, which was a major topic on the UNSC agenda already before the withdrawal of the US forces in 2021 (Estonia in the…, 2020).

Estonia's emphasis on upholding international law and a rules-based order not only supports the UN agenda at large but is even more important for Estonia as a small state that benefits from international stability and order. Cyber security falls into the category of Estonia's nation branding profile, while keeping the UNSC agenda corresponding to the digital age. Estonia succeeded in bringing a new aspect into the UNSC work: the cybersecurity agenda. As part of its presidency, for the first time in the UNSC history, Estonia organised a virtual meeting in a format of Arria-formula, focused on stability in cyberspace, cyber norms, and international law (Signature event of…, 2020a), thus contributing both to global and national security agenda.

The aspects of limited resources and narrow range of action emphasise the need for prioritising work of small states at three different levels: global (systemic) level, national foreign policy level and institutional (UN) level. This conclusion underlines the need of small states to minimise the systemic dependence and vulnerability against power asymmetry by contributing to the stability of the international system and the rule of law, because the role of small states is dependent on system-relevant factors and forces beyond the immediate control of small states (Maass, 2020). It also shows the necessity of having a clear national foreign policy brand and priorities to achieve high international visibility.

Conclusions

The article outlines that the legal and conceptual boundaries for small states' capability, influence, and effective and visible work within the UNSC are objective, but they can be outweighed by the practical perspective, as it is outlined in the case studies of Lithuania's and Estonia's membership.

This can be done by: (1) setting forth clear foreign policy priorities and UNSC membership priorities at three levels: systemic (strengthening of the stability of international system and international law), national (profiling of foreign policy in the context of lack of resources), and institutional (strengthening the UN as a shelter against external shocks); (2) using and expanding actively and creatively all possible UNSC work formats, including informal ones; (3) profiling and selectively engaging in those international agenda issues that dominate the UNSC agenda and fall into the purview of the particular state's expertise or geographical proximity. These conclusions and outlined strategies are important for Latvia's candidacy and eventual UNSC membership.

Nevertheless, legal and conceptual constraints of small states' international influence can be minimised only in a supportive international system: where small states' physical security and territorial integrity are not threatened, the rule of law protects from aggression, and systemic challengers and triggers to the security of particular small states are low.

Bibliography

1. Archer, C., Nugent, N. (2002). Introduction: Small States and the European Union. *Current Politics and Economics of Europe*, *11*(1), 1–10.
2. "Arria-Formula" meetings of Security Council members. Background Note. Informal Non-paper XVII, 25 October 2002. (2021). *Handbook on the Working Methods of the Security Council*. https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/handbook_on_the_working_methods_of_the_security_council.pdf.
3. Bailes, A. J. K., Thorhallsson, B. (2013). Instrumentalizing the European Union in Small State Strategies. *Journal of European Integration*, *35*(2), 99–115.
4. Baldacchino, G. Wivel, A. (2020). Small states: concepts and theories. In *Handbook on the Politics of Small States*. Baldacchino, G. Wivel, A. (eds.). Edward Elgar Publishing, pp.2–19.
5. Conforti, B. *The Law and Practice of the United Nations*. Third revised edition. Leiden / Bonston: Martinus Nijhoff Publishers, 2005.
6. Countries Elected Members. *United Nations Security Council*. https://www.un.org/securitycouncil/content/countries-elected-members.
7. Countries Never Elected Members of the Security Council. *United Nations Security Council.* https://www.un.org/securitycouncil/content/countries-never-elected-members-security-council.
8. Dedring, J. (2008). Human Security and the UN Security Council. *Globalization and Environmental Challenges. Hexagon Series on Human and Environmental Security and Peace*, vol 3. Brauch H.G. et al. (eds). Springer, Berlin, Heidelberg. https://doi.org/10.1007/978-3-540-75977-5_46.
9. Estonia in the UN Security Council. (2020). *Ministry of Foreign Affairs of the Republic of Estonia*. https://vm.ee/en/activities-objectives/estonia-united-nations/estonia-un-security-council.
10. Handbook on the Working Methods of the Security Council. (2021). *United Nations Security Council*. https://www.un.org/securitycouncil/sites/www.un.org.securitycouncil/files/handbook_on_the_working_methods_of_the_security_council.pdf.
11. Human Rights in Belarus: UN Security Council Arria meeting. (2020). *Ministry of Foreign Affairs of the Republic of Lithuania (estonianmfa), YouTube.* https://www.youtube.com/watch?v=F4mQE8taqJA.
12. Liang, Y. (1949). The So-Called "Double Veto". *The American Journal of International Law*, *43*(1), 134–144. https://doi.org/10.2307/2193146.
13. Ministry of Foreign Affairs of the Republic of Lithuania. (2016). *Lithuania at the United Nations Security Council 2014–2015.* Vilnius: Eugrimas.
14. Maass, M. (2020). Small states: surviving, perishing and proliferating through history. In *Handbook on the Politics of Small States*. Baldacchino, G. Wivel, A. (eds.). Edward Elgar Publishing, 20–37.
15. Malone, D. (2000). Eyes on the Prize: The Quest for Nonpermanent Seats on the UN Security Council. *Global Governance*. Vol. 6, no. 1 (2000), 3–23.
16. Panke, D. (2010). *Small States in the European Union*. Aldershot: Ashgate.
17. Raik, K. (2021). UN Security Council in Times of Great Power Rivalry: How Can Small States Make a Difference? *The International Centre for Defence and Security (ICDS).* https://icds.ee/en/24-march-un-security-council-in-times-of-great-power-rivalry-how-can-small-states-make-a-difference/.

18. Reire, G. (2021). Attīstības palīdzība kā ekonomisks faktors ANO Drošības padomes vēlēšanās: Mācība Latvijai [Development aid as an economic factor in the United Nations Security Council election: Lessons for Latvia]. *LZA Vēstis, A daļa, 2021.g. 3. numurs,* 13–28.
19. Rudzinski, A. W. (1951). The So-Called Double Veto. *The American Journal of International Law, 45*(3), 443–461. https://doi.org/10.2307/2194543.
20. Rules of Procedure of the General Assembly. *United Nations*. https://www.un.org/en/ga/about/ropga/.
21. Security Council Elections 2021. *Security Council Report.* https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/unsc_elections_2021.pdf.
22. Signature Event of Estonia's UNSC Presidency: Cyber Stability, Conflict Prevention and Capacity Building. (2020a). *Ministry of Foreign Affairs of the Republic of Estonia*. https://vm.ee/en/activities-objectives/estonia-united-nations/signature-event-estonias-unsc-presidency-cyber.
23. Signature Event in the UN: High-Level Meeting on the 75th Anniversary of the End of WWII in Europe (2020b). *Ministry of Foreign Affairs of the Republic of Lithuania (estonianmfa), YouTube.* https://www.youtube.com/watch?v=Ohljz-a1fZE.
24. Steinmetz, R., Wivel, A. (2010). Introduction. In *Small states in Europe: Challenges and Opportunities.* Steinmetz, R., Wivel, A. (eds.) Aldershot: Ashgate, 1–14.
25. The Situation in Belarus: UN Security Council Arria meeting. (2021). *Ministry of Foreign Affairs of the Republic of Lithuania (estonianmfa), YouTube.* https://www.youtube.com/watch?v=nBSw08gJ4J8.
26. U.N. Doc. A/RES/1991(XVIII). https://undocs.org/A/RES/1991(XVIII).
27. U.N. Doc. S/96/Rev.7. Provisional rules of procedure of the Security Council. https://undocs.org/en/S/96/Rev.7.
28. United Nations Charter. United Nations. https://www.un.org/en/about-us/un-charter.
29. United Nations. Regional groups of Member States. *United Nations.* https://www.un.org/dgacm/en/content/regional-groups.
30. U.N. Security Council Meeting on Ukraine. (2014). *C-Span*. https://www.c-span.org/video/?318084-1/russian-intervention-ukraine.
31. Statement by H.E. Milo Djukanovic, Prime Minister of Montenegro, at the General Debate of the 68th Session of the United Nations General Assembly. (2013). *United Nations.* https://gadebate.un.org/sites/default/files/gastatements/68/ME_en.pdf.
32. Waltz, K. N. (1979). Theory of International Politics. New York: McGraw-Hill,194-195.
33. Wivel, A., Bailes, A. J. K., Archer, C. (2016). Small states, survival and strategy. In *Small States and International Security. Europe and beyond.* Archer, C., Bailes, A. J. K., Wivel, A. (eds). Routledge, 3–25.

https://doi.org/10.25143/socr.21.2021.3.105-114

Legislative Restrictions on Participation in Armed Conflicts in Latvia

Dr. iur., Professor ***Vitolds Zahars***
Daugavpils University, Latvia
vitolds.zahars@inbox.lv

Ph.D., ***Vita Upeniece***
Rīga Stradiņš University, Latvia
vita_up@yahoo.com

Abstract

Regulation of the Republic of Latvia ensures limitation of both illegal participation in armed conflicts and gaining unwanted military experience. The article analyses norms of the Criminal Law and the National Security Law which restrict the service in the armed forces of other countries and participation in the armed conflicts. These norms have been studied in connection with the norms of the Citizenship Law and the Law On Participation of Latvian National Armed Forces in International Operations. The purpose of the article is to propose the possible solutions to the identified problems, by analysing the stated regulation, in order to reduce the possible unintentional violation of the regulation by individuals.

The historical, analytical, systemic and teleological methods have been used in the preparation of the article.

Keywords: participation in the armed conflict, military service, Latvian citizenship, non-citizen.

Introduction

The number of armed conflicts in the world continues to grow [1], which raises the question of the quality of national regulation regarding the participation of Latvian citizens and non-citizens in armed conflicts of other countries and the service in the armed forces of other countries.

The amendments to the Criminal Law, which entered into force on 19 February 2015, introduced a prohibition of unlawful participation of Latvian citizens and

non-citizens in an armed conflict (taking place outside the territory of Latvia which is directed against territorial integrity or political independence of a state or is otherwise in contradiction with international law binding upon Latvia, violating laws and regulations or the international agreements binding upon Latvia) and on direct or indirect collection or transfer of financial resources acquired in any way, or other property to a party that is involved in an armed conflict (taking place outside the territory of Latvia and whose action is directed against territorial integrity or political independence of a state or is otherwise in contradiction with international law binding upon Latvia). These amendments to the Criminal Law also prohibit recruitment, training or sending of persons for unlawful participation in an armed conflict taking place outside the territory of Latvia. [2, Article 77.[1], 77.[2]]

Clause 2 of the first part of Article 24 of the Citizenship Law and Clause 4 of the first part of the Article 7 of the Law On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State provide an opportunity for a Latvian citizen and non-citizen to serve in the armed forces of other countries after receiving the permission of the Cabinet of Ministers. This opportunity, according to the authors' opinion, may give the recipient of the permission of the Cabinet of Ministers a false impression that this permission also includes permission to participate in any armed conflict while serving in the armed forces of the concrete state and simultaneously excludes the possible liability provided for in the Criminal Law. It should be also mentioned that the refusal of a person, who has received the stated permission from the Cabinet of Ministers, to participate in an apparently unlawful armed conflict (according to the definition of the Criminal Law) may create grounds for the punishment for failure to observe the military discipline.

According to Article 3.[1] of the National Security Law, Latvian citizens are prohibited from serving in the armed forces, internal security forces, military organisation, information service or security service, police (militia), or services of institution of justice of foreign states or other subjects of the international law or established in their territories, except when a Latvian citizen is serving in the service of the European Union (hereinafter – EU), the North Atlantic Treaty Organisation (hereinafter – NATO), a Member State of the EU, a Member State of the European Free Trade Association, a Member State of the North Atlantic Treaty Organisation, the Commonwealth of Australia, the Federative Republic of Brazil, or New Zealand, or in the service of such country with which Latvia has entered into an agreement regarding recognition of dual citizenship or when a Latvian citizen is serving in the service that is not recognised as voluntary in the country of his or her nationality with which the dual citizenship has occurred in accordance with the conditions of the Citizenship Law. According to the authors, this norm is only partially synchronised with the Citizenship Law, because the list of exceptions to this norm does not include the service in the armed forces of another country with the permission of the Cabinet of Ministers, which is provided for in Article 24, Paragraph 1, Clause 2 of the Citizenship Law.

Meanwhile, Article 3.[1] of the National Security Law prohibits non-citizens, without any exception and conditions, from serving in the armed forces, internal security forces, military organisation, information service or security service, police (militia), or services of institution of justice. But Clause 4 of Part 1 of Article 7 of the Law "On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State" grants a non-citizen the right to obtain permission from the Cabinet of Ministers for the relevant service.

Theoretically, there is a possibility that a citizen or non-citizen, having received permission from the Cabinet of Ministers to service in the armed forces of another country, will start their service, mistakenly believing that this permission excludes the liability provided for in Article 95.[1] of the Criminal Law (criminal liability for violation of Article 3.[1] of the National Security Law).

1 Unlawful Participation in Armed Conflict

On February 19, 2015, amendments to the Criminal Law entered into force. These amendments prohibit Latvian citizens and non-citizens from unlawful participation in an armed conflict, direct or indirect collection or transfer of financial resources acquired in any way or other property to a party that is involved in an armed conflict and from recruitment, training or sending of a person for him or her to unlawfully participate in an armed conflict. [2, *Article 4, 77.[1], 77.[2], 77.[3]*]

The term "unlawful participation in an armed conflict taking place outside the territory of the Republic of Latvia" used in the above-mentioned regulation of the Criminal Law may be interpreted as follows:

By analysing these norms of the Criminal Law in connection with the regulations governing participation of persons in international missions or operations as part of the armed forces of the state. Reading Articles 77^1, 77^2 and 77^3 of the Criminal Law in connection with Article 2 of the Law on Participation of the Latvian National Armed Forces in International Operations, it can be concluded that lawful participation in the contingent of the Latvian National Armed Forces in an international operation means participation in the operations according to the Charter of the United Nations, or in accordance with the international agreements binding to Latvia and laws of Latvia, as well as a decision of the Saeima, of the Cabinet of Ministers or, in the case specifically provided for in the law, of the Minister for Defence on participation of the contingent of the Latvian National Armed Forces in international operations. [3]

Participation in an international mission or operation will be also legal if it is carried out by a person such as civilian expert. According to Article 12 of the Law on International Assistance, a civilian expert participates in international missions and operations based on a resolution, recommendation, or request of those international organisations which Latvia has entered into international agreements with, and also upon the invitation of a Member State the EU or the NATO. The Law on State Border

Guard, the Law on Police and the Fire Safety and Fire-fighting Law offer similar regulations regarding participation of border guards, police officers and officials of the State Fire-fighting and Rescue Service with special service ranks in international operations and missions. [4, 5, 6, 7]

However, by analysing these norms of the Criminal Law in connection with regulations that provide for obtaining permission from the Cabinet of Ministers to serve in the armed forces or military organisation of another country. According to Article 24, Paragraph one, Clause 2 of the Citizenship Law, Latvian citizenship may be revoked for a person if he or she is serving voluntarily in the armed forces or military organisation of another country, except where the person is serving in the armed forces or military organisation of a Member State of the EU, a Member State of the European Free Trade Association, a Member State of the NATO, the Commonwealth of Australia, the Federative Republic of Brazil, New Zealand or in the armed forces or military organisation of a country which Latvia has entered into an agreement with regarding recognition of dual citizenship, without permission from the Cabinet of Ministers, and in the case of revocation of Latvian citizenship the person does not become a stateless person. [8]

A person wishing to use the opportunity (provided by the Citizenship Law) to obtain the permission from the Cabinet of Ministers to serve in the armed forces or military organisation of another country not included in the list of exceptions of Article 24 of the Citizenship Law may be confused by the question whether the Citizenship Law and Article 77.[1] of the Criminal Law are consistent with each other. That is, a person may rightly wonder whether the permission of the Cabinet of Ministers to serve in the armed forces or a military organisation of another country automatically includes permission to perform all military tasks, including participation in any international mission and operation.

A similar question may arise for a person who serves in the armed forces of the country/a military organisation which is included in the list of exceptions of Article 24 of the Citizenship Law (the service in the countries allowed by the Citizenship Law). This person may theoretically be in a situation where they will have to search an answer to the question whether the service in the armed forces, which is allowed by the national law, includes the right to participate in absolutely all missions and operations in these armed forces or military organisation. Also, whether such participation in an armed conflict always be recognized as legal within the meaning of the Criminal Law?

It should also be noted that military service is based on observance of military discipline, which according to Article 4 of the Law On Military Disciplinary Responsibility is explained as observance of procedures and instructions in the military service and in service in the National Guard. [9] In many countries there is a similar understanding of the issue of military discipline. Thus, for example, refusal of the Latvian citizen (who voluntarily serves in the armed forces of an EU member state or with the permission of the Cabinet of Ministers in another country's armed forces) to obey the order to

participate in the mission (because they conclude that this mission is directed against territorial integrity or political independence of another state) may create legal basis for bringing such Latvian citizen to disciplinary responsibility in accordance with the laws and regulations of the country in whose armed forces they serve.

Although Article 24, Paragraph one, Clause 2 of the Citizenship Law and Article 77.[1] of the Criminal Law seem to regulate the same issue, these norms should be distinguished, since each of them concerns the achievement of separate goals. If Article 24, Paragraph one, Clause 2 of the Citizenship Law defines cases when a person may be deprived of Latvian citizenship, the Criminal Law contains a prohibition on participation in armed conflicts outside the territory of Latvia if such participation occurs without observing laws, regulations or binding international agreements. Although the Cabinet of Ministers, when assessing the issue of allowing a Latvian citizen to serve in the armed forces of another country or military organisation, should take into account that a Latvian citizen will be obliged to perform all duties related to the military service, including participation in military missions; according to the authors' opinion, granting of such permission is most likely not to be considered as granting permission to participate in any armed conflict outside the territory of Latvia.

As mentioned above, the main purpose of the Citizenship Law is to define persons who are recognised as citizens of Latvia, while maintaining a set of citizens loyal to Latvia. Citizenship is considered a sensitive issue as it is essentially an expression of national sovereignty and identity. [10, *8*] Article 24, Paragraph one, Clause 2 of the Citizenship Law provides prohibition to the service in the armed forces or military organisations of other countries not included in the list of exceptions of the Clause 2 Part 1 of Article 24. As the punishment for failure to comply with such obligation, the Article provides deprivation of citizenship. But in the case of revocation of Latvian citizenship, the person should not become a stateless person in compliance with the Convention on the Reduction of Statelessness. [11] Thus, if a Latvian citizen who does not have a citizenship of another state violates this regulation, they will most likely not lose Latvian citizenship.

In addition, the Citizenship Law does not oblige a Latvian citizen to obtain the permission from the Cabinet of Ministers to serve in the armed forces or a military organisation of an EU member state, a member state of the European Free Trade Association, a member state of the NATO, the Commonwealth of Australia, the Federative Republic of Brazil, New Zealand or in the armed forces or military organisation of a country with which Latvia has entered into an agreement regarding recognition of dual citizenship.

Neverthless, the aim of Article 77.[1] of the Criminal Law is to prohibit Latvian citizens from participating in an armed conflict taking place outside the territory of Latvia which is directed against territorial integrity or political independence of a state or is otherwise in contradiction with international law binding upon Latvia.

Thus, although the mentioned regulation of both laws contains a reference to service in the armed formations of other countries, the main aims of the two laws are different.

When deciding whether to allow the service in another country's armed forces or military organisation, in the current fast changing world, it would be difficult or impossible for the Cabinet of Ministers to predict in which future armed conflicts exactly this country or military organisation may be involved. It should be noted that the Citizenship Law contains provision on deprivation of citizenship in cases where a person served in the armed forces of another state without the permission of the Cabinet of Ministers since the law has entered into force, that is, since 25 August 1994. On the other hand, prohibition of unlawful participation in an armed conflict taking place outside the territory of Latvia, which is included in Article 77.[1] of the Criminal Law, entered into force on 19 February 2015 – at a time when participation of volunteers in armed conflicts taking peace in other countries became one of the problems in the field of international security. [12]

Similarly to the Citizenship Law, Article 7, Paragraph 1, Clause 4 of the Law "On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State" provides that the non-citizen status of a person shall be revoked if they serve in the armed forces, internal security force, security service, police (militia) of any foreign country, or is in service of judicial institutions without permission of the Cabinet of Ministers. Unlike the Citizenship Law, this Law does not contain a list of countries in which non-citizens have the right to serve without the permission of the Cabinet of Ministers. [13] Therefore, non-citizens who receive the permission from the Cabinet of Ministers to serve in the armed forces of another country or another organisation may also face the mentioned issues.

Consequently, a person who decides to serve in the armed forces of another country or organisation should consider all risks connected with the fulfilment of such decision.

2 Service in the Armed Forces of Foreign Countries

Amendments to the National Security Law and the mentioned amendments to the Criminal Law, which provide additional rules limiting acquisition of military experience, entered into force on January 1, 2017. The National Security Law was supplemented with Article 3.[1] which prohibits a Latvian citizen to serve in the armed forces, internal security forces, military organisation, information service or security service, police (militia), or services of institution of justice of foreign country or other subjects of the international law or established in their territories, except the case when:

1) a Latvian citizen is serving in the service of the EU, the NATO, a Member State of the EU, a Member State of the European Free Trade Association, a Member State of the NATO, the Commonwealth of Australia, the Federative Republic of Brazil, or New Zealand, or in the service of such country with which Latvia has entered into an agreement regarding recognition of dual citizenship;
2) a Latvian citizen is serving in the service that is not recognised as voluntary in the country of their nationality with which the dual citizenship has occurred in accordance with the conditions of the Citizenship Law. [14]

Thus, the mentioned norm prohibits such service which may be related to a special training of military nature with the use of service weapons. In the authors' opinion, this norm is partially synchronised with the Citizenship Law. It does not prohibit the service in those countries where the permission of the Cabinet of Ministers is not required in accordance with Paragraph 2 of the first part of Article 24 of the Citizenship Law. The norm of the National Security Law, observing the obligation arising from the institute of citizenship to be loyal to the country of his or her citizenship and to protect its freedom and independence, does not prohibit the citizen of Latvia (who has established a dual citizenship in accordance with the Citizenship Law regulation) to perform a compulsory military service or service of general military duty in the country of the second citizenship. [15] Simultaneously, the list of exceptions to this norm does not include service in the armed forces of another state with the permission of the Cabinet of Ministers.

In addition, according to Article 3.[1] of the National Security Law, non-citizens are prohibited from serving in the service (serving in the armed forces, internal security forces, military organisation, information service or security service, police (militia), or services of institution of justice) of a foreign country without any exceptions or conditions.

Obedience of the mentioned requirements of the National Security Law is ensured by amendments to the Criminal Law, which entered into force on January 12, 2017. According to Article 95.[1] of the Criminal Law, criminal liability arises for violation of the of prohibition of requirements of laws and regulations to serve in the armed forces, internal security forces, military organisation, intelligence service or security service, police (militia), or services of institution of justice of foreign country or other subjects of the international law or established in their territories. [2]

Moreover, norms of the Citizenship Law and the Law On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State, which requires permission from the Cabinet of Ministers for the service, seem to contradict with the strict restrictions of Article 3.[1] of the National Security Law. Theoretically, there is a possibility that a person, having received the permission of the Cabinet of Ministers mentioned in the Citizenship Law or in the Law On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State, will start and perform this service being convinced that this permission of the Cabinet of Ministers completely excludes liability provided for in Article 95.[1] of the Criminal Law.

The authors provide two possible solutions to prevent such situations.

The first one would be to amend Article 24 of the Citizenship Law and Article 7 of the Law On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State, and to exclude the possibility to serve with the permission of the Cabinet of Ministers in the armed forces, internal security forces, military organisation, intelligence service or security service, police (militia), or services of institution of justice of foreign countries or other subjects of the international law or established

in their territories. The wording of the amendments may be as follows: in the Citizenship Law – "to exclude Clause 2 of the first part of Article 24"; in the Law On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State – "to exclude Clause 4 of the first part of Article 7".

Another proposal it not to amend the Citizenship Law and the Law On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State. These two laws are relatively rarely amended. Since its entry into force on August 25, 1994, the Citizenship Law has been amended only 4 times, and the Law On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State (since its entry into force on May 9, 1995) – 7 times. According to the information report of the Ministry of Justice, "Proposals for reducing the number of amendments to regulatory enactments" adopted at the Cabinet of Ministers on 26 August 2014, despite administrative and financial expenses created by the often drafting of regulatory enactments or their amendments and despite the creation of negative impact on the public's attitude towards such often amended regulatory enactments, the number of both laws and regulations tends to increase. The Ministry of Justice has concluded in this information report that certain regulatory enactments are amended several times even within one year. [16] Thus, taking into account the issue of amendments to regulatory enactments in general, relatively rare amendments to certain laws can confirm either the high quality of the legal framework of them and the full compliance with the purpose of their issuance – the compliance with all life situations covered by them, or the refusal of the legislator to "open" for amendments such laws which regulate sensitive issues in the society.

The Citizenship Law and the Law on the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State are amended relatively rarely. Therefore, as a second solution to the mentioned problem, may be the advice to the Cabinet of Ministers to remember the regulation of the National Security Law and the Criminal Law and to refuse to issue a permit to serve in another country's armed forces or military organisation if a request for such permit is received.

Conclusions

To eliminate the identified shortcomings of synchronisation between Article 24 of the Citizenship Law, Article 7 of the Law on the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State and Article 3.[1] of the National Security Law, the following solutions are possible:

1. To make amendments to Article 24 of the Citizenship Law and Article 7 of the Law On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State, and to exclude the possibility of receiving a permission from the Cabinet of Ministers for the service in another country. The wording of the amendments may be as follows: in

the Citizenship Law – "to exclude Clause 2 of the first part of Article 24"; in the Law On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State – "to exclude Clause 4 of the first part of Article 7".

2. Not to amend the Citizenship Law and the Law On the Status of those Former U.S.S.R. Citizens who do not have the Citizenship of Latvia or that of any Other State. To recommend the Cabinet of Ministers to remember the regulation of the National Security Law and the Criminal Law and to refuse issuing a permit for service in another country's armed forces or military organisation if a request for such permission is received.

Bibliography

1. Sarunas par pasauli 2030. gadā: NBS komandieris ģenerālleitnants L. Kalniņš (Eng. Talks about the world in 2030: NAF Commander Lieutenant General L. Kalniņš). (23.01.2021.) Sargs.lv. https://www.sargs.lv/lv/viedoklis/2021-01-23/sarunas-par-pasauli-2030-gada-nbs-komandieris-generalleitnants-l-kalnins.
2. Latvijas Republikas likums: Krimināllikums (Eng. Law of the Republic of Latvia: Criminal Law), Latvijas Vēstnesis, 199/200, 08.07.1998. https://likumi.lv/ta/id/88966-kriminallikums.
3. Latvijas Republikas likums: Latvijas Nacionālo bruņoto spēku piedalīšanās starptautiskajās operācijās (Eng. Law of the Republic of Latvia: Participation of the Latvian National Armed Forces in International Operations), Latvijas Vēstnesis, 30, 25.02.1995. https://likumi.lv/ta/id/34028-latvijas-nacionalo-brunoto-speku-piedalisanas-starptautiskajas-operacijas.
4. Latvijas Republikas likums: Starptautiskās palīdzības likums (Eng. Law of the Republic of Latvia: Law on International Assistance), Latvijas Vēstnesis, 74, 14.05.2008. https://likumi.lv/ta/id/175254-starptautiskas-palidzibas-likums.
5. Latvijas Republikas likums: Par policiju (Eng. Law of the Republic of Latvia: On the Police), Latvijas Republikas Augstākās Padomes un Valdības Ziņotājs, 31/32, 15.08.1991. https://likumi.lv/ta/id/67957-par-policiju.
6. Latvijas Republikas likums: Ugunsdrošības un ugunsdzēsības likums (Eng. Law of the Republic of Latvia: Law on Fire Safety and Firefighting), Vēstnesis, 165, 13.11.2002. https://likumi.lv/ta/id/68293-ugunsdrosibas-un-ugunsdzesibas-likums.
7. Latvijas Republikas likums: Valsts robežsardzes likums (Eng. Law of the Republic of Latvia: Law on the State Border Guard), Latvijas Vēstnesis, 223, 17.11.2020. https://likumi.lv/ta/id/318741-valsts-robezsardzes-likums.
8. Latvijas Republikas likums: Pilsonības likums (Eng. Law of the Republic of Latvia: Citizenship Law), Latvijas Vēstnesis, 93, 11.08.1994. https://likumi.lv/ta/id/57512-pilsonibas-likums.
9. Latvijas Republikas Likums: Militārās disciplināratbildības likums (Eng. Law of the Republic of Latvia: Law on Military Disciplinary Liability), Latvijas Vēstnesis. 223, 17.11.2020. https://likumi.lv/ta/id/318749-militaras-disciplinaratbildibas-likums.
10. Nationality and Statelessness: A Handbook for Parliamentarians. Handbook for Parliamentarians. UNHCR and IPU. 2005.

11. Starptautisks dokuments: Konvencija par bezvalstniecības samazināšanu (Eng. International document: Convention on the Reduction of Statelessness), Latvijas Vēstnesis, 135, 30.08.2011. https://likumi.lv/ta/lv/starptautiskie-ligumi/id/700.
12. Likumprojekta "Grozījumi Krimināllikumā" sākotnējās ietekmes novērtējuma ziņojums (anotācija) (Eng. Preliminary Impact Assessment Report of the Draft Law "Amendments to the Criminal Law" (annotation)), 13.01.2015. http://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/0/47765D4DD0FD4736C2257DD3002AF17A?OpenDocument.
13. Latvijas Republikas likums: Par to bijušās PSRS pilsoņu statusu, kuriem nav Latvijas vai citas valsts pilsonības (Eng. Law of the Republic of Latvia: On the Status of those Former Citizens of the USSR Who Do Not Have the Citizenship of Latvia or Another State, Latvijas Vēstnesis, 63, 25.04.1995. https://likumi.lv/ta/id/77481-par-to-bijusas-psrs-pilsonu-statusu-kuriem-nav-latvijas-vai-citas-valsts-pilsonibas.
14. Latvijas Republikas likums: Nacionālās drošības likums (Eng. Law of the Republic of Latvia: National Security Law): Latvijas Republikas likums, Latvijas Vēstnesis, 473/476, 25.04.1995. https://likumi.lv/ta/id/77481-par-to-bijusas-psrs-pilsonu-statusu-kuriem-nav-latvijas-vai-citas-valsts-pilsonibas.
15. Likumprojekta "Grozījumi Nacionālās drošības likumā" sākotnējās ietekmes novērtējuma ziņojums (anotācija) (Eng. Preliminary Impact Assessment Report of the Draft Law "Amendments to the National Security Law" (annotation)). 09.08.2016. http://titania.saeima.lv/LIVS12/SaeimaLIVS12.nsf/0/77F50F0F4FEC167FC22580110040293F?OpenDocument.
16. Tieslietu ministrijas izstrādātais informatīvais ziņojums "Priekšlikumi ārējo normatīvo aktu grozījumu skaita samazināšanai" (Eng. Informative report prepared by the Ministry of Justice "Proposals for reducing the number of amendments to external regulatory enactments"), 26.08.2014. http://tap.mk.gov.lv/lv/mk/tap/?pid=40306253&mode=mk&date=2014-08-26.

https://doi.org/10.25143/socr.21.2021.3.115-126

Bureaucratic Policy and Legal Aspects of Societal Engagement in Latvian National Defense

Ma. sc. pol. ***Olevs Nikers***
Rīga Stradiņš University,
Doctoral Programme "Political Science", Latvia
Olevs.Nikers@gmail.com

Abstract

In perfectly functioning democratic civil society, political decisions should be based on competence of elected officials and their knowledge of certain political issues where experts play an important role. The aim of this article is (1) to look at the role of elected officials (legislators) and public administration institutions in determining the governance of rule of law within defense policy in relation to engagement of the members of society in national defense, and (2) to analyse what factors affect sustainability of this policy and under what circumstances it transforms, and how this transformation is reflected in the public law.

Methodologically theoretical / literature overview has been conducted, discussing the role of institutions in the political process and their interaction with legislator within the framework of new institutionalism. Empirically the case of Latvian defense policy towards societal engagement into national defense has been presented and analysed. An important aspect of the empirical study of this issue is interaction among the legislator, public administration institutions, non-governmental sector, and the public. Findings of this analysis leads to argument that Latvian ministry of defense plays a central role in sustainability and transformation of the national policy towards societal engagement into national defense. Legislator does not take necessary initiative in these policies, which is reflected in absence of needed amendments from the perspective of the public law, considering political ambition set by the Ministry of Defense of Latvia.

Required political support of ministry's political initiatives have been granted by the parliament, but as a consequence, this policy in its full extent is not currently properly reflected in the legal acts and regulations.

Keywords: legislation, public law, national defense, institutionalism, bureaucratic policy, decision making, public administration, parliamentarism.

Introduction

Public engagement in the national defense is first and foremost a matter of public law. The Constitution of the Republic of Latvia enshrines independence, freedom and democratic state system of the state. Presently, the persons who are involved in the provision of state defense are very clearly defined in the law. Article 5 of the National Security Law stipulates that every Latvian citizen has a duty to engage in national defense (Nacionālās drošības likums, 2001). Politicians decide how to ensure the participation of citizens in strengthening national security and, if necessary, in national defense, and implementation of this policy is entrusted to public administration, which in case of defense policy is the Ministry of Defense and the National Armed Forces.

After abolition of compulsory military service in 2007, the laws and regulations established two possibilities for the participation of citizens in the national defense – professional military service in the National Armed Forces (Nacionālo bruņoto spēku likums, 1999; Militārā dienesta likums, 2002) and voluntary service in the National Guard (Zemessardzes likums, 2010). In the domain of extra-curricular education, young people have the opportunity to get involved in the Youth Guard. Despite the fact that public, politically elected officials and the Ministry of Defense (hereinafter – MoD) itself have conceptually defined the need and obligation for the public to participate more widely and actively in national defense, the legal framework governing engagement of residents and Latvian citizens in public defense from a legal point of view has remained essentially unchanged.

Dynamics of defense policy endurance and change in both theory and practice are determined by such factors as national threat assessment and changes in the international security situation, participation in international security alliances, setting domestic political priorities and distribution of material resources, competence and involvement of decision-making bodies, and the capacity of the public administration.

Professional and academic literature so far has developed an understanding of how Latvia's membership in the North Atlantic Treaty Organization (NATO) has affected national defense policy. The aim of this article is to take a closer look at theoretical and practical aspects that have determined dynamics of defense policy or its stagnation during Latvia's accession to NATO and how this has been reflected in legislation.

Although political debate in the field of defense often takes place in narrow forums of professionals and decision-makers, the issue of public engagement in the national defense covers the widest range of actors involved in policy-making and implementation. The study of the issue of public engagement in national defense best reveals interaction of the political, bureaucratic and public sectors in determining the sustainability of this policy, legislation and understanding of the processes that lead to transformation of these policies.

The first section of the article provides a brief review of institutionalist literature that provides a theoretical understanding of these issues, looking at the role and

challenges of institutions in a democratic society, while the second and third section examine bureaucratic, political and legal aspects and dynamics of public engagement in national defense.

Institutions in Democratic Society

Theory of new institutionalism emphasises phenomenon of societal and individual impact over a political system and its different powers (Easton, 1953). In certain areas of public administration, institutions enjoy greater public trust and feedback than the others. Defense sector usually is one of the most "trusted" branches of public administration, as long as it is capable of implementing a policy in the interests of national security, which, is adequately reflected in the national legislation.

Interaction between the legislature and bureaucratic policy in the various dimensions of policymaking retains a great deal of interest among researchers in both legal sciences and research within comparative politics and public administration. To define the role of the institution in a democratic society, this section will provide a brief overview of theoretical approaches in state governed bureaucratic organisations as defined by rule of law.

According to the theory of new institutionalism, public administration institutions tend to create their own "business" environment with respect to other parties acting in policy-making and legislation (Thoenig, 2011). Although ideally public administration should be guided by the legislator and public vision that is translated into specific policy projects, public administrations establish a degree of "autonomy" and often determine not only the legislator's agenda but also the content and substance of the policy. The issue of "autonomy" of the branches of public administration is also relevant in the case of Latvia, as Article 6 of the Law of Public Administration stipulates that "public administration is organised in a unified hierarchical system [and] no institution or administrative official may function outside this system" (Valsts pārvaldes iekārtas likums). However, institutions tend to evolve from policy "instrumentalisationists" to "conceptualisers": they generate and implement "policy recipes" that determine how the "game is played" (Hammond, 2003).

Mechanisms of public administration influence the course of individual and public thinking, interpret the facts, act in accordance with their regulations, as well as engage in solving public disputes. Researchers sometimes ask whether the activity of public administration always meets the needs of society and whether it promotes democratic participation. In a legal and democratic society, the very idea that technocracy can determine and control public opinion by "compromising" the legislature's ability to pass laws that serve the best interests of society is not acceptable.

One theoretical approach of the new institutionalism is based on the idea that political choices are made in the process of institution-building or policy-making, and it has a sustainable impact on future decision-making, also called a "path dependence"

that describes "ancient" routes of the presently made decisions (Pierson & Skocpol, 2002; Krasner, 1984).

Culture, experience, competence and vision of the bureaucratic mechanism are placed in the laws and regulations, as far as the legislator allows. Changes in bureaucratic policy routines can often be driven by the influence of external forces, necessitating change and adaptation. It is also a question of predictability of public administration and the search for logic, underlying one or another activity, or rather it is a kind of compromise between the content of the problem to be addressed by officials and the level of uncertainty at the time of decision-making (Peters & Pierre, 2011).

According to Jean-Claude Thoenig, public administration is involved in policymaking. Empirical research here considers three basic dimensions or aspects: (1) different goals of the actors involved, (2) the way information is consolidated, (3) administrative capacity and choice of decision-making processes (Thoenig, 2005). Thus, public administrations act as a political "arena" of force and balance with the "big policy" makers and legislators.

This raises an important question regarding functioning of the bureaucratic mechanism in a democracy: how successfully institutions are integrated into democratic systems, reflecting the nature of democratic decision-making and policy implementation, especially in the field of defense policymaking?

In the course of the development of democracy, society has taken over political power from the hands of autocrats and bureaucrats and handed it over to the elected political representatives (Cooper, Gvosdev & Blankshain, 2018). According to Thomas Hammond, the irony of twentieth-century public administration is that as social and economic responsibilities of democratic governments increase, elected officials are delegating increasing policymaking powers to career officials, returning real political power to technocrats. It would not be an exaggeration to say that bureaucrats in liberal democracies are able to act independently of elected officials. In any case, bureaucracy often has some independent policymaking capacity, whether delegated or not. It is therefore important to create conditions in which bureaucrats are given a greater or lesser role in policymaking and the legislative process in a democratic environment.

One of the main criteria for significance of public service establishment in democratic system is the degree to which legislator is able to exercise control over governmental officials. For example, according to Aberbach and Rockman, in the United States (U.S.) it is a commonsense, that the U.S. Federal Reserve is capable and eligible to operate independently from the Congress, as it shapes U.S. monetary policy, unlike, the International Development Agency of Department of Agriculture which deals with specific international aid projects (Aberbach & Rockman., 2000; Nikers & Tabuns, 2019).

Different levels of bureaucratic autonomy can have important political consequences. The reason is that the political choices of officials do not always reflect priorities of elected officials.

Rebecca Ingber suggests that after the 2016 U.S. presidential election term of a "deep state" emerged in American political terminology. This approach is related to allegation that body of permanent bureaucratic officials work "behind the scenes" to determine U.S. national security policy according to their preferences, ignoring the president and their administration (Ingber, 2018).

There are two main reasons why officials could develop independent policymaking capacity. One of the reasons given by Max Weber is that officials can often be more competent in certain matters than elected officials. Even if officials are not granted policymaking rights, they have access to more information and are endowed with a deeper theoretical understanding and operational experience that can enable them to act independently. Most discussions on bureaucratic autonomy involve asymmetries in information, understanding and competence; less attention is paid to the bureaucratic autonomy that can arise in disputes between elected officials and the public administration system (Nikers & Tabuns, 2019). Another argument why bureaucracy can develop its ability to act independently is associated to its relative "symbiosis" towards elected officials, who are interested in expertise and professional knowledge, which civil servants can provide for politicians, so that legislator would be more capable to perform better politics (Cooper, Gvosdev & Blankshain, 2018; Nikers & Tabuns, 2019).

Empirical research of these issues in the case of Latvia is relevant in the context of political debate and bureaucratic policy, which is reflected on the one hand in public policy models and policy initiatives, and, on the other hand, in legislation, which is the end result of interaction between elected officials and bureaucratic policy.

Sustainability of Bureaucratic Policy

Within three years after Latvia's accession to NATO (2004), compulsory military service was abolished, and a fully professional National Armed Forces was established. Such a policy was determined both by Latvia's accession to the North Atlantic Treaty Organization, Article 5 of which, as it was explained to the public by governmental officials and elected representatives, promised guaranteed support in the event of a military attack, and public "fatigue" from compulsory military service as it was experienced during the Soviet occupation.

During this time, society at large, in obedience to the advice of public administration and politicians, voluntarily "withdrew" from active participation in strengthening national defense, leaving it to politicians, officials and army professionals. The changes gradually appeared only after Russia's aggression in Ukraine in the spring of 2014, but from the point of view of law and legislation, the situation regarding public engagement in national defense has not changed substantially since abolition of compulsory military service in 2007.

There are several levels of national and international significance that influence how defense and security policy is defined, as well as legislation within the national

security domain. Foreign assistance and advice, mainly from Northern Europe, played an important role in the early stages of rebuilding of the defense forces in the 1990s, influencing Latvia's defense and security system and setting the course for Latvia's membership in NATO and transitioning to professional military service.

The most significant reform of the defense sector took place after 2000, when Latvia received guidelines or the so-called "road map" for joining NATO, which required the renewal and restructuring of the military sector and the amendment of laws in accordance with NATO standards. Although Latvian defense system has experienced a number of positive trends, it still faces many challenges, including public engagement in strengthening national security (Nikers, 2019).

After the restoration of independence, formation of Latvia's defense and security can be divided into three stages.

Latvia gradually established its army and defense system, adapting to the existing international environment and relying on the norms of international law after the end of the Cold War. Shortly after the restoration of independence, political and economic integration in the Western political and economic space became the main driving force of Latvia's domestic and foreign policy. At the same time, military development was somewhat neglected, with only a few units maintained, mainly to participate in international peacekeeping operations. In this phase, the "Russian threat" was assessed as relatively low, given the significant domestic political problems in Russia. The defense forces of all the Baltic States reflected this situation, as a result of which only symbolic military forces remained in Latvia (Nikers, 2019).

The second stage in the process of Latvia's defense and security development in the early 2000s and resulted from Latvia's membership in NATO in 2004. The NATO Membership Action Plan called for changes in the command and control of the Latvian defense system. In addition, military personnel were completely reformed and reorganised according to the NATO standards. During this period, compulsory military service (CMS) was abolished in Latvia and Lithuania.

Occupation and annexation of Crimea by Russia in 2014 led to changes in Latvia's defense concept (Par valsts aizsardzības koncepcijas apstiprināšanu, 2016). Simultaneously, much more attention was paid to the weak spots in NATO's collective ability to protect the Baltic States under Article 5 of the NATO Treaty. These include: (1) the presence of Russian military forces in the region (Kaliningrad), and the vulnerability of the Suwałki Corridor, (2) the presence of massive Russian military forces against the smaller Baltic armies acting as the armies of the most militarily powerful NATO nations; and (3) the location of NATO capabilities far from the potential defense positions of the Baltic states (Nikers, 2019).

Since Latvia adopted policies towards integration in EU and NATO, legislator often acted as a "mailbox", receiving guidelines and instructions provided by the officials of ministry of Foreign Affairs and Ministry of Defense and approved a number of legal acts according to these "pre-set" conditions in a way for Latvia to fulfill political and legal

obligations in joining these international organisations. This tradition of "competence" and "older brother" in cooperation with the legislature has continued even after successful accession to NATO. The legislator usually follows recommendations of MoD officials and NAF professionals, which are also reflected in the law (Nikers & Tabuns, 2019).

Policy Transformation and Legal Aspects

After the Russian aggression in Ukraine, at the level of public administration and among elected officials, the notion that the state must increase its self-defense capabilities gradually began to crystallise, and the notion of wider public engagement in national defense was returned to governmental agenda, which was later reflected in legislation as well.

In general, the response to international development from the side of Latvian Ministry of Defense and the legislator regarding public engagement in national defense was relatively slow.

The Concept of National Defense, which is approved by the Saeima, the Parliament of Latvia, in accordance with Article 29 of the National Security Law at least once during each parliamentary term, was updated only within two years after the Russian aggression in Ukraine provides understanding of changes within international security environment, but is not giving sound and clear guidance on comprehensive public engagement in national defense (Par valsts aizsardzības koncepcijas apstiprināšanu, 2016). Consequently, as the National Defense Concept is updated every four years, in this situation there was no public conviction among defense policy makers that Russia's aggression in Ukraine would serve as a basis for updating the concept earlier than the provisional deadline.

Only in the second half of 2018, more than four years after the Russian aggression in Ukraine, the MoD began work on strengthening and incorporating the Comprehensive National Defense System in laws and regulations – a conceptual approach to engage all public administration institutions in national defense and setting ambition for a wider public involvement in national defense in the future. The informative report on the "Implementation of the Comprehensive National Defense System" (Informatīvais ziņojums par visaptverošās sistēmas ieviešanu Latvijā) was approved by the Latvian Cabinet of Ministers on January 8, 2019. This approach was chosen as an alternative to the resumption of compulsory military service and was based on engagement of all public administration branches in ensuring the national defense. Amendments to the National Security Law (Nacionālās drošības likums) regarding comprehensive state defense entered into force on October 30, 2018.

Wider public discussions on resumption of compulsory military service began in the spring of 2016. Then, according to the results of the SKDS survey, the number of supporters of compulsory military service had increased significantly. The survey showed that almost half of the Latvian population supports CMS (Meisters, 2016). At that time, the Minister of Defense Raimonds Bergmanis rejected resumption of the compulsory

military service, citing excessive expenses in the state budget for the implementation of such a policy. The head of the Saeima Defense Commission Ainars Latkovskis rejected the possibility of CMS for the same reason. In her turn, the Speaker of the Saeima Ināra Mūrniece called to resume the discussion on the necessity of the CMS, pointing to the renewal of conscription in Lithuania which took place in spring of the same year, but a year later I. Mūrniece announced that the CMS should be renewed after the reform of the defense sector (Rīta panorāma, 06.04.2016).

During 2017, the MoD put emphasis on the development of the National Guard, which in fact did not introduce changes in the field of public law and legislation regarding public engagement in the national defense, and the National Guard still remained the only organisation for real public (only for citizens) engagement and alternative to CMS from the point of view of public law. Early 2017, the MoD announced that the country was returning to the concept of total or "comprehensive" defense, which was forgotten after joining the North Atlantic Treaty Organization (NATO). During this time, preparations for the establishment of high-readiness units in the National Guard Battalions continued (Nikers, 2017). At the beginning of 2018, the Ministry of Defense reported plans to expand the National Guard forces to 12,000 by 2027. At that time, there were approximately 8,000 volunteers in the National Guard.

The first legal act approved by the Cabinet of Ministers in 2019, which sets a broader and more detailed policy within the public administration regarding public engagement in national defense, is the Informative Report on the Implementation of the Comprehensive National Defense System in Latvia (Informatīvais ziņojums par visaptverošās sistēmas ieviešanu Latvijā, 2019). The report states that "the practical task of a comprehensive national defense system is to define specific tasks and roles for each governmental institution in national defense". The subsequent regulation of the Cabinet of Ministers instructs the MoD to establish and lead a working group for the development of a comprehensive protection system and determination of the further actions necessary.

The Informative Report consists of references regarding participation and responsibilities of individuals, explaining that "national defense applies to every resident of Latvia. (...) guaranteeing national defense is not only the duty of state authorities and administrations, but also the responsibility of each individual", but this document does not define specific obligations and responsibilities of individuals.

Information report is a declarative document that provides guidance to the MoD and public administration institutions. It describes the goals and objectives of the Comprehensive National Defense, such as "ensuring that state institutions, public organisations and citizens are ready to provide support to the National Armed Forces and perform vital functions for the further existence of society and the economy (...)". Simultaneously, it is stated that comprehensive national defense must "promote a culture of preparedness so that citizens prepare purposefully for the worst-case scenarios and are ready to support each other in their personal and social lives, thus providing a greater sense of security and consequent psychological resilience". In specifying these settings,

reference is made to strengthening of the National Guard and the Youth Guard, which does not introduce any changes in the context of public law regarding engagement of citizens or the general public in national defense.

The comprehensive defense approach is strengthened in the National Defense Concept 2020 developed by the MoD and approved by the Saeima, in which even greater emphasis is placed on the responsibility and engagement of individuals and society in national defense (Par valsts aizsardzības koncepcijas apstiprināšanu, 2020).

This, too, is a conceptual document that, in the context of public law, does not introduce any substantial changes in the relationship among the state and citizens regarding the wider engagement of society and individuals in national defense. This document does not envisage a return to the CMS, but instead, suggests a more active and wider public engagement in national defense. Need to introduce compulsory national defense training in secondary schools in the 2024/2025 school year is mentioned. Mandatory implementation of national defense training is determined by the National Defense Training and Youth Guard Law, which entered into force on 5 January 2021 (Valsts aizsardzības mācības un Jaunsardzes likums).

Article 23.5 of the National Security Law defines the concept of comprehensive national defense where (...) in the event of war, military invasion or occupation (...) the national armed forces, public administrations and local authorities, as well as natural and legal persons, shall take measures for the military and civil defense of the State and implement armed resistance, civil disobedience and non-cooperation with illegal civil administration bodies (Nacionālās drošības likums, 2001).

Regarding the Comprehensive National Defense System, despite the fact that obligations and rights regarding national defense are ruled in the National Security Law, obligations are defined only for citizens of the Republic of Latvia, the circle of subjects who have obligations and rights in the event of a state of emergency is expanded as of October 30, 2018, according to the Article 25^1 of the same law. This provision in National Security Law (NSL) stipulates that in case of military invasion, when implementing comprehensive state defense policy, obligations and rights are determined not only for citizens of the Republic of Latvia, but for residents of the Republic of Latvia as a whole.

According to the NSL, the Latvian population is obliged to fulfill the tasks given by the National Armed Forces and the Allied Forces, as well as other state administration and local government institutions responsible for overcoming the state threat; not to cooperate with illegal administrative institutions and armed units of the aggressor, except in cases when the refusal to cooperate endangers the life or freedom of a person or his or her family members. At the same time, citizens have the right to exercise civil disobedience against illegal government institutions and the aggressor's armed units; to show armed resistance and provide support to members of civil disobedience and armed resistance, the NAF and allied forces.

There is currently no legislation in force to determine how these NSL regulations should be implemented, as well as to specify and regulate the fulfillment of obligations

and rights imposed on citizens and the applicable liability in case of non-compliance with these obligations.

Public law also does not address the issue of engagement of all residents of the country in national defense, still extending these duties and rights only to citizens of the Republic of Latvia.

According to the comment of the State Secretary of the Ministry of Defense Jānis Garisons to "Latvijas Avīze" on December 15, 2020, the right to make armed resistance can be exercised only in the ranks of the National Guard or professional military service, thus only Latvian citizens who have joined the National Guard, professional military service, or who are mobilised as reserve soldiers and reservists, which consequently do not apply to the entire population of Latvia (Drēziņš, 2020).

According to the Law on the National Guard, only Latvian citizens aged 18 to 55 can still join its ranks (Zemessardzes likums, 2010).

Regarding societal support for the army, the MoD State secretary in the interview indicates that this means ability of the population to "comprehend certain things outside of everyday life, out of the ordinary and report them to the relevant services, first and foremost – about the armed people of unknown origin". In the context of non-cooperation with the occupiers, each citizen "must understand for himself how far he can go – he should not endanger his own life or the lives of others".

These clarifications from MoD in the public give a greater understanding of the rights and obligations for the Latvian population within the context of NSL and the National Defense Concept 2020. From the perspective of the public law, the concept of "every citizen" and "every resident" engagement in the national defense is still not binding until mechanisms and procedures for compliance that include obligations and rights for citizens and residents, as well as obligations and rights of the public sector are set by law and subsequent governmental regulations. Latvian MoD took initiative to transform the policies towards societal engagement into national defense, at the same time leaving a legislator somehow behind in terms of adequate reflection of these policies into the legal acts and regulations. The Parliament has found itself playing a weak role reacting to the MoD's political course and never took a lead in expressing general political guide for the issue of societal engagement in national defense.

Conclusions

In the area of public law, there has been no significant change in public engagement in national defense, despite the willingness of the public, public administration and the legislative body to change the situation and the actual change in defense policy in response to international security challenges. This has been reflected in the National Defense Concepts in 2016 and 2020, as well as in the National Security Law. However, changes in this legislation have so far failed to provide a specific framework for public commitment to the engagement of individuals and society in national defense that would provide a comprehensive response to today's security challenges.

Policy changes towards societal engagement in national defense itself came along "outside" pressure of "degrading" regional security environment, and reaction to the Russia's aggressive behavior, as the issue of public engagement in national defense has been on the agenda since Russia's aggression in Ukraine in 2014, and the dynamics of policy change in this regard are mainly related to the Ministry of Defense's policy initiatives, which are reflected in the respective policy documents.

While there has been a wide political debate on the form and nature of societal engagement into national defense, Latvian MoD is taking a lead in these policy matters, and the behavior of the legislator is mainly proactive or reactive. Though MoD is the governmental institution which is responsible for development and implementation of the national defense policy, the issue of societal engagement is domain which cannot be resolved within the narrow circles of public administration officials. This is a complex problem of "societal contract" with the state, where, for instance, important factors of public law should be carefully considered.

A legislator has to demonstrate its political will and communicate its vision with society, including wide spectrum of governmental and non-governmental institutions, think-tank community and academia, while setting agenda for such an important policy affecting lives of all Latvian citizens and residents. If MoD is taking a lead in these national policy matters and in certain regulations provides that, this is obligatory for every Latvian citizen and resident to engage into national defense, but the legislator fails to reflect and properly resolve these norms in the national legislation, it proves that balance of executive and legislative powers has been significantly distorted. It is necessary that public law in Latvia and subsequent policy documents and regulations clearly provide how responsibilities and obligations are divided among the state and society.

Bibliography

Law

1. Militārā dienesta likums: Latvijas Republikas likums. Latvijas Vēstnesis, Nr. 14, 25.07.2002.
2. Nacionālās drošības likums: Latvijas Republikas likums. Latvijas Vēstnesis, Nr. 3, 08.02.2001.
3. Nacionālo bruņoto spēku likums: Latvijas Republikas likums. Latvijas Vēstnesis, Nr. 388/389, 24.11.1999.
4. Par valsts aizsardzības koncepcijas apstiprināšanu: Latvijas Republikas likums. Latvijas Vēstnesis, Nr. 117, 17.06.2016.
5. Par valsts aizsardzības koncepcijas apstiprināšanu: Latvijas Republikas likums. Latvijas Vēstnesis, Nr. 186, 25.09.2020.
6. Valsts aizsardzības mācības un Jaunsardzes likums: Latvijas Republikas likums. Latvijas Vēstnesis, Nr. 247A, 22.12.2020.
7. Valsts pārvaldes iekārtas likums: Latvijas Republikas likums. Latvijas Vēstnesis, Nr. 94, 21.06.2002.
8. Zemessardzes likums: Latvijas Republikas likums. Latvijas Vēstnesis, Nr. 82, 26.05.2010.

Literature

9. Aberbach, J. D., & Rockman B. A. (2000*).* In the web of Politics: Three Decades of the U.S. Federal Executive. Washington, DC: Brookings Institution Press, 56.
10. Cooper, A. D., Gvosdev, N. K., & Blankshain J. D. (2018). Deconstructing the "Deep State": Subordinate Bureaucratic Politics in U.S. *National Security*. Foreign Policy Research Institute, 73.
11. Diena.lv. (2017). Mūrniece uzskata, ka Latvijā jāatjauno obligātais militārais dienests. *Diena.lv.* https://www.diena.lv/raksts/latvija/viedokli/murniece-uzskata-ka-latvija-jaatjauno-obligatais-militarais-dienests-14167688 [rev. 20.02.2021].
12. Drēziņš, A. (2020). Cik reāla ir okupācija? Kā rīkoties krīzes gadījumā? Saruna ar AM valsts sekretāru Jāni Garisonu. *La.lv*, December 25. https://www.la.lv/pretosanas-atbalsts-nesadarbosanas.
13. Easton, D. (1953). The Political System: An Inquiry into the State of Political Science. New York: Knopf.
14. Hammond, T. (2003). Veto Points, Policy Preferences, and Bureaucratic Autonomy in Democratic Systems. In *Politics, Policy, and Organizations: Frontiers in the Scientific Study of Bureaucracy*, ed. G. A. Krause, & K. J. Meier. University of Michigan Press, p.185.
15. Informatīvais ziņojums par visaptverošās sistēmas ieviešanu Latvijā: Ministru kabineta informatīvais ziņojums. Ministru kabineta 08.01.2019. sēdes Nr. 1 protokllēmuma 29. §., *Latvijas Vēstnesis*, Nr. 9, 14.01.2019.
16. Ingber, R. (2018). Bureaucratic Resistance and the National Security State. *Iowa Law Review*, 104, 139.
17. Krasner, S. D. (1984). Approaches to the State: Alternative Conceptions and Historical Dynamics. *Comparative Politics*, 16(2), 223–246.
18. Meisters, G. (2016). Jauna tendence: gada laikā ievērojami pieaudzis obligātā militārā dienesta atbalstītāju skaits. *Skaties.lv*, March 13. https://skaties.lv/zinas/latvija/sabiedriba/jauna-tendence-gada-laika-ieverojami-pieaudzis-obligata-militara-dienesta-atbalstitaju-skaits/.
19. Nikers, O. (2017). Latvia Pursues 'Total Defense' Concept, Rejects Conscription. *Eurasia Daily Monitor.* The Jamestown Foundation. https://jamestown.org/program/latvia-pursues-total-defense-concept-rejects-conscription.
20. Nikers, O. (2019). The Role of NATO and Military Security Viewed from the Baltics Point of View. *Institute of Eastern Europe Policy papers*, 1/2019, 13–36.
21. Nikers, O., Tabuns, O. (2019). Institutional effects on defense and security cooperation – the case of the Baltic States. *Security Forum University of Dąbrowa Górnicza,* 3 (2), 173–189.
22. Peters, B. G., & Pierre, J. (2011). The Handbook of Public Administration, Sage, p.185
23. Pierson, P. and Skocpol T. (2002) Historical Institutionalism in Contemporary Political Science. In *Political Science: State of the Discipline*, ed. I. Katznelson and H. V. Milner. New York: Norton.
24. Rīta panorāma. (2016). Mūrniece: Latvijā jāatjauno diskusija par obligāto militāro dienestu, *LSM.lv.* https://www.lsm.lv/raksts/zinas/latvija/murniece-latvija-jaatjauno-diskusija-par-obligato-militaro-dienestu.a176807/.
25. Thoenig, J.-C. (2011). Institutional Theories and Public Institutions: New Agendas and Appropriateness. In *Handbook of Public Administration*, ed. G. Peters and J. Pierre. London, Sage, pp.101–185.
26. Thoenig, J.-C. (2005). Territorial Administration and Political Control. Decentralization in France. *Public Administ*ration, No. 83, pp.685–708.

https://doi.org/10.25143/socr.21.2021.3.127-138

Approbation of Results Obtained During Interview: Research of Possibilities for Exercising the Rights of Political Oppositions in Lithuanian Self-Government

Ph.D. candidate ***Karolis Kaklys***
ORCID: 0000-0002-7020-5314
Kazimieras Simonavicius University, Lithuania
karolis.kaklys@ksu.lt

Abstract

Analysing the problematic aspects of the legal regulation of local self-government of the Republic of Lithuania related to the realisation of the rights provided for the minority (opposition) of the municipal council in the Law on Local Self-Government and other legal acts, the following empirical research was performed. During the research, the method of interviews was used in order to identify, as precisely as possible, the problems of the realisation of the rights of political minorities (opposition) in the whole Lithuanian municipality. It is the interview method that was chosen to ensure the interaction between the researcher and the respondent, which enables to obtain the widest and deepest possible information in identifying practical problems and also allows to collect the detailed data needed to solve the identified problems. The interview focused on the target group of respondents from many different Lithuanian municipalities who are fully acquainted with the practical aspects of the realisation of the minority rights of the council. All respondents are current or former opposition members of municipal councils. With the aim of maximising practical benefits, as many as thirty respondents were interviewed in this research.

Keywords: local self-government, political minority's rights, opposition.

Introduction

After direct mayoral elections held on March 1, 2015 in as many as sixteen Lithuanian municipalities – Birštonas municipality, Druskininkai municipality: Ignalina district, Jonava district, Kaunas district, Lazdijai district, Marijampolė municipality,

Neringa municipality, Pagėgiai municipality, Palanga municipality, Pasvalys district, Rietavas municipality, Šakiai municipality, Šalčininkai municipality, Vilkaviškis district, Vilnius district (Central Electoral Commission of the Republic of Lithuania, 2015), one political party or movement won an absolute majority in the elections. After the March 3, 2019 municipal elections, the number of "one-party" municipalities increased to seventeen (Central Electoral Commission of the Republic of Lithuania, 2019), which further highlighted the importance of ensuring the minority (opposition) rights of the council in the municipalities. Thus, it could be further noted that during the 2019 direct mayoral elections, as many as 39 mayors (out of 60) were re-elected for the next term.

Separation of authorities is one of the most important constitutional principles of a democratic state, which influences organisation of state authority, its functioning, and guarantees human rights and freedoms. The principle of separation of powers can be divided into two interrelated parts: 1) *interaction of authorities* – usually associated with relations between individual authorities, which are understood as cooperation between authorities, coordination of actions, functioning of the system of "checks and balances" ensuring control and balance between governments; 2) *separation of authorities* – it is not only the division of authorities into branches of state authority, but also determination of their own internal formation procedure, legal status, powers and competencies, and assurance of their independence (Jarašiūnas, 2001).

J. Madison, one of the main founders of the doctrine of the division of authorities, also held the position that constitutional framework defining the powers of each individual government was insufficient. He argued (Madison, 1999) that a mechanism was needed to guarantee self-regulatory control of the branches of government. "J. Madison's aim was to protect freedom and interests of the minority by creating a system in which the central authorities remain independent but at the same time control and counterbalance each other. Based on the experience in the states, J. Madison saw the greatest threat (to democracy) in the legislature." (Griškevič, 2008).

Although in science the system of levers and counterweights, usually associated with management of the state rather than municipalities and the institutional structure (Novikovas, 2005), of their government differs substantially, essential principles between municipal councils and the Seimas of the Republic of Lithuania, as collegial authorities in which political decisions (legal acts) are made, are very similar in terms of making decisions themselves. Therefore, a certain analogy between the municipal council and the Seimas of the Republic of Lithuania can be seen, in particular on separation of authorities, with regard to the procedure for their internal formation, determination of authorities and competences between the majority and the minority. Thus, when emphasising the importance of the political opposition of municipalities, the analogy of the Seimas of the Republic of Lithuania can be partially relied upon.

The Constitutional Court of the Republic of Lithuania has noted that the Constitution of the Republic of Lithuania presupposes protection of the parliamentary minority, the minimum requirements (Constitutional Court of the Republic

of Lithuania, 1993) for the protection of the Seimas opposition, and that the recognition of the parliamentary opposition is a necessary element of a pluralistic democracy (Constitutional Court of the Republic of Lithuania 2001). The Statute of the Seimas may establish guarantees for activities of the opposition – a certain number of seats and positions in committees, status of the leader of the opposition, initiation of agendas and commissions, and so on. A systematic assessment of the provisions of the Law on Local Self-Government of the Republic of Lithuania shows that the obligation to form a Control Committee, Anti-Corruption and Ethics Commissions in each municipality to which the opposition is delegated by the opposition is one of the ways envisaged by the legislator to ensure pluralist democracy.

Presence of the opposition in every municipal council is not only a normative phenomenon but also a necessary expression of democracy. In essence, the opposition has two main functions. First, it prevents establishment of one party and curbs arbitrariness of authority, helping to maintain the constitutional model of authority. Second, because political decisions are not perfect, the opposition points to the mistakes and shortcomings of the government. The opposition is a means of limiting power and fostering social peace.

Although there is no precise, universally accepted definition of democracy (Kekic, 2007), a democratic form of government means that all citizens have the right to participate in the governance of a country and is fundamentally different from a form of government in which such a right belongs to one class, exclusive group or autocrat. Even before the introduction of direct mayoral elections in Lithuania, Lithuanian scientists (Urmonas & Novikovas, 2011), noted that "[o]ne of the most important foundations of a democratic society is a multi-party system" and suggested that "the election of direct mayors may lead to the development of oligarchic tendencies".

The aim of this empirical research is to identify the main problems of the realisation of the rights of political minorities (opposition) in Lithuanian self-government with the help of respondents from different Lithuanian cities.

The article is divided into three parts. The first part presents the methodological substantiation of the research, the formulation of the interview questions, the strategy and the course. The second part summarises the results, and the third part presents conclusions.

Strategy and Methodology of Survey of Opposition Representatives of Different Lithuanian Municipal Councils

The specifics of the research object determined the choice of qualitative research methods, because the solution of the problem formulated in the article requires analysis of many variables, and some of them are difficult to identify by theoretical means alone. Qualitative methodology does not constrain the researcher with standardised procedures and allows to gather detailed information about the object of research necessary for

solving the problem. Abundance of data does not necessarily mean quality of information. In terms of interactions, quantitatively based individual studies can provide useful insights based on analysis of pre-existing relationships. However, the interaction itself is an ever-changing process. The qualitative approach is based on more flexible methods and provides better opportunities to predict the causal links between different processes and the perspectives of an individual's behavior. The results of quantitative research only show the existence of problems. Quantitative research can help with hypothesis testing and statistical generalisation (Tummers, 2011). It can be stated that qualitative analysis would allow to fully understand the problems raised in the research paper – for which data collected using quantitative methods signal – the causal links between the underlying processes and factors. In order to ensure that research does not become only a tool for data collection, but actually serves to improve municipal management processes, it is appropriate to combine elements of quantitative methodology and qualitative approach. The researcher using the qualitative research approach does not seek to gather as many facts as possible, the qualitative methodology allows to focus on a deeper analysis of the collected information.

In order to achieve practical benefits and novelty of the work, the possibilities of the qualitative approach to generate conclusions and recommendations that would be relevant and useful in decision-making should be emphasised. Therefore, supplementing the ongoing research with elements of a qualitative approach is particularly relevant.

Thus, in the qualitative research it was decided to additionally use the interview method. This method is used to gather comprehensive understanding of the research object. To obtain important data based on the knowledge of competent persons who are fully acquainted with the practical aspects of the realisation of the minority rights of the council in their activities. The interview method was chosen to ensure the interaction of the researcher and the informant, which enables to obtain wider and deeper information by detailing and asking additional questions, to gather information useful for the research not only from theoretical knowledge provided by experts and scientists.

Most of the data required for the research is obtained by linguistically assessing the information provided directly in the statements (surveys) of the representatives of the municipal opposition. However, in order to maximise the reliability of the data obtained from the research, it is important to take into account observations made by researchers that public administration research is too little focused on issues related to the culture of public sector organisations and the internal climate, and even applied research that provides recommendations for solving real problems rarely analyses how the internal culture and work atmosphere of a municipality have a significant impact on the implementation of public policy and the activities of organisations themselves (McNabb, 2002). Therefore, when formulating the questionnaire and conducting the interview, it is necessary to pay attention to the fact that when interviewing respondents in a structured way, without direct contact and researcher intervention (e.g. questionnaire

method), an important part of the aspects relevant to the research would go unnoticed. For example, adjustment of informants' thought process, attentive listening, voice intonation, and nonverbal behavior during interviews. Therefore, the interview survey method provides an opportunity to assess beginnings of understanding of the phenomena that shape the management culture.

Thus, the researcher cannot know some details in other ways than by asking the respondents questions, which helps with the better assessment of the mentioned phenomena and management culture. The data obtained from the interviews can be divided into two groups (Gomm, 2004): 1) things that can be considered as facts, and 2) things that are inherently unconfirmable because they involve matters of self-knowledge. For example, the informant may provide specific examples and identify situations not described elsewhere due to statutory rules, and these will be indisputable facts that reflect reality. However, statements about the lack of legal regulation and identification of its shortcomings and directions for improvement are already partly decisive in terms of internal beliefs and possible practical experience. This may lead to objections to the credibility of the interviewee's statements, as the informant is chosen as an authoritative source of information; however, their opinion cannot be accepted as *a priori* correct. Deciding which information obtained during the interviews can be considered relevant data and evidence for the research is a crucial task. It is difficult for the researcher to prove that he or she does not invent the data and does not misrepresent the informant's opinion, so any research results must be critically evaluated, the validity of which becomes a closed circle.

Thus, the choice of technique to transform an interview into data should focus on epistemological issues and, in particular, on what should be considered as data from the researcher's perspective (Mason, 2002), that is, it is important for what purpose and for what information the interview method is used, as well as how it is expected to logically integrate the obtained data into the overall set of data analysed in the research and consistent interpretations of the studied phenomena. Thus, the main problem of scientific methodology can be identified as the organisation of an efficient and effective process of scientific cognition (Gudelis, 2007).

In this research, informants are interviewed in order to gather not only the knowledge about the object of the research obtained with the help of theoretical methods and document analysis, but also data that cannot be effectively collected in other ways. The object of the research can be conceptualised from various positions; therefore, it is crucial to approach the research questions more broadly from the aspects relevant to practical activities. Taking into account that there are 60 separate territorial administrative units (municipalities) in Lithuania; therefore, the application of the survey (interview) method will help to reveal the object of research more and will ensure the reliability of the data in interaction with the observation method applied by the author. In this context, it should be noted that the author of this research himself has been a member of the opposition of the municipal council for more than ten years.

In applying the above methods and in formulating the research strategy, the different research methods should be combined in the light of (Mason, 2002, *34*):

1) *technical integration*: data collected by different methods or from different sources must be identical or complementary in technical or procedural terms so that they can be easily combined and grouped, or in some way comparable;
2) *ontological integration*: data must be ontologically compatible. In other words, they must be based on uniform, consistent or comparable assumptions about social existence and phenomena;
3) *integration at the cognitive and evidence substantiation levels*: includes questions of whether different methods and data derive from the same epistemological provisions or are at least epistemologically compatible, that is, must be based on the same or harmonised assumptions about the generation of knowledge and the validity of the evidence;
4) *integration at the level ofexplanation*: also includes epistemological issues, but focuses on constructing explanations and generalisations. The data obtained using different methods should be useful for comprehensible and convincing reasoning to help solve difficult research questions.

A characteristic feature of the exploratory interview is that all the information is obtained orally. In that, it is fundamentally different from a questionnaire survey. There are more differences. For example, interviews provide wider opportunities to get to know the subject in more depth, whereas in a questionnaire survey such opportunities are very limited. On the other hand, interviews are less likely to cover more respondents than a questionnaire.

The purpose of the exploratory interview method, according to L. Cohen and L. Manion, can be used in three ways (Cohen & Manion, 1989):

1) it can be used as a direct and basic means of obtaining the necessary information; for example, to find out what the respondent thinks (attitudes), what the person knows (knowledge information), what he likes and dislikes (values);
2) as a tool to test a hypothesis; for example, to identify or refine the relationships between variables and a study event;
3) can be used in conjunction with other research methods both to gather information and to evaluate other methods such as a questionnaire.

Four types of interviews are possible in research practice (Kardelis, 2017):

1) structured (questions and the whole procedure are planned in advance and little is changed during the interview; in this case the situation is defined);
2) unstructured (without a detailed plan, questioning in free form; the situation is open and able to change);
3) non-imposed (the interviewer does not try to maintain the intended line of conversation, but gives in to the course of the interview imposed by the respondent);

4) purposeful (the interviewer pays special attention to the respondent's subjective answers about the situation known to him, which he became acquainted with before the interview; from the answers received, the researcher can decide whether his hypothesis has been confirmed or not). This type of interview was chosen for the survey of the representatives of the opposition of the municipal councils.

When researching the possibilities of the realisation of the opposition rights of municipal councils (practical implementation) – interviewing selected local politicians is potentially useful due to the fact that the features that shape the practical content of the research phenomenon may differ radically from theoretically (both in legal regulation and research) defined assumptions and conclusions. Additionally, proper implementation of the rights of municipal opposition is one of the most important standards of good governance; therefore, in order to objectively understand the established traditions of local government governance – the findings of the research need to be based not only on subjective beliefs, but also to integrate municipal opposition. However, this does not mean that the views of the interviewees must be considered unequivocally correct. Informants are interviewed in order to deepen the analysis, covering more questions, the interpretation of which would enable objective assumptions to be confirmed or refuted objectively.

Therefore, the interview method aims to obtain data that:

1) reflect the practical possibilities for the realisation of the rights provided by law to the municipal opposition at the national level;
2) would allow to identify, evaluate and understand specific problems of practical realisation of the rights of the local opposition in separate Lithuanian municipalities;
3) would play a role in critically evaluating data collected by other methods;
4) would allow to decide on the prevailing views among the respondents on the importance of the analysed issue and the scale of relevance;
5) views would be reasoned, based on examples and reasonably explained;
6) would be useful (logically integrated) for a common objective understanding of the phenomena under research.

The survey of municipal opposition representatives can be named as a control method for scientifically objective knowledge of the researched phenomena. It can be stated that the *interview* method is used to refine and verify the data obtained by observation, document analysis and other *methods*.

It is advisable for the interviewer to try to take such a position as if he or she knew nothing about the situation under investigation, as if the most important and obvious aspects of the phenomenon under investigation are better understood (Babbie, 2007). However, such a proposal is more appropriate to accept when analysing data already collected and, of course, to avoid overwhelming the opinion of informants, without affecting the content of their statements.

K. Kardelis, the author of the textbook of scientific methodology, claims that the interview is one of the effective methods of qualitative research, which guarantees greater reliability than the questionnaire method or other survey methods, as the interview provides wider opportunities to get to know the subject in more depth, whereas in a questionnaire survey such opportunities are very limited (Kardelis, 2002). During the interview, the researcher should be active enough to direct the conversation towards the information of interest. Therefore, in this case, the expert survey is conducted using the semi-structured interview method. The questions aim to reveal the views, assessments and reasoning of the opposition representatives of different municipalities not only about the object of research, but also about other phenomena, factors and assumptions raised in the theoretical part. Semi-structured interviews allow interviewees to express their views better than structured interviews and simultaneously provides better comparability of responses than free-form interviews (May, 2001). One of the main advantages of semi-structured interviews is the possibility to change the sequence of questions and refine the questions depending on the course of the interviews (Bailey, 2007).

The interview questions (see Table 1) are guidelines that ensure the volume of data in the expert's statements that is adequate for the research.

Table 1. Preliminary interview questions

1. *The questions are intended to assess the attitude of the informants to the main goals of the political opposition of the self-government, practical problems, as well as to determine the need to improve and develop the legal framework*	2. *Questions showing the informants' attitudes towards possible solutions to the problems identified during the interviews by improving the legal framework*
1.1. What are the main goals and functions of theopposition activities of the municipal council?	2.1. How do you assess the quality of the current legal environment in the context of local government?
1.2. What are the most significant legal acts that you could identify in the activities of the municipal council (and the opposition)? (question in order to assess the respondent's legal perception)	2.2. What are the key factors to be considered in order to improve the legal framework in the context of ensuring the minority rights of the council?
1.3. How do you assess the possibilities of the municipal council opposition to influence the decision-making process?	2.3. What specifically could you offer in order to achieve better legal regulation in the context of the realisation of the opposition rights of the municipal council?
1.4. In your opinion, what are the main obstacles to the realisation of the opposition rights of the council?Are there no obstacles?	2.4. Control-additional questions. Discussion.
1.5. In which areas are there the most problems in implementing the activities of the municipal council opposition?	
1.6. Control-additional questions.	

The information obtained from the interviews with the experts is used both as independent data and as a means to ensure the reliability, relevance and validity of the conclusions obtained from the analysis of the documents. Expert evaluations influence the researcher's perception; therefore, they help to interpret the data better, to see the object of the research more widely, and the integration of information gathered in different ways and from different sources ensures that the principles of objectivity are respected in the process of scientific knowledge.

Summary of Data and Results Obtained Through Interviews (Results)

This interview research was conducted in collaboration with the Association of Local Authorities in Lithuania (ALAL) who, with the help of their database, helped to distribute the invitations to the target group of respondents, which greatly helped to increase the scope of the survey and to obtain more reliable data.

Thirty respondents from different Lithuanian municipalities participated in the research, and in particular: Vilnius city municipalities, Kaunas city municipalities, Klaipėda city municipalities, Šiauliai city municipalities, Panevėžys city municipalities, Neringa municipalities, Druskininkai municipalities, Trakai district municipalities, Širvintos district municipalities, Varėna district municipalities, Lazdijai district municipalities, Šakiai district municipalities, Molėtai district municipalities, Utena district municipalities, Kėdainiai district municipalities, Rokiškis district municipalities, Elektrėnai municipalities, Kazlų Rūda municipalities, Kaunas district municipalities, Skuodas district municipalities, Kelmė district municipalities, Kaišiadorys district municipalities, Raseiniai district municipalities, Anykščiai district municipalities.

It should be noted that all respondents are current or former members of municipal councils, chairmen of municipal control committees, ethics or anti-corruption commissions; therefore, they are well acquainted with the topicalities of the researched issues in their practical activities. Among the interviewed respondents, a number of current or former members of the Seimas of the Republic of Lithuania, as well as prominent scientists can also be found.

According to the data received from the respondents during the research, the (results) problems of the realisation of the rights of political minorities (oppositions) in the municipal councils of the Republic of Lithuania could be divided into three separate groups according to their nature (see Table 2).

Table 2. Problems of realisation of the rights of political minorities of municipal councils of the Republic of Lithuania

1. According to technical possibilities	*2. According to the management culture – established traditions*	*3. According to the legal and political environment*
1.1. Failure to provide information to members of opposition of the council.	2.1. In some municipalities, there is humiliation and belittling of members of the opposition in the eyes of the public. The media is often used for this purpose.	3.1. Quality of administrative supervision is extremely poor, leading to frequent breaches of the hierarchy of legislation.
1.2. Artificial barriers are created for members of the council's opposition to make proposals.	2.2. There are cases where a local political majority of its members form a fake opposition with the aim of circumventing the Local Self-Government Act and appropriating posts guaranteed to the opposition.	3.2. Perforated and insufficient legal regulation in appointing members of the opposition to positions guaranteed by law.
1.3. Municipal administration exclusively represents the interests of the majority of the municipality and the mayor. Acts exclusively biasedly and ignores members of the opposition.	2.3. Division into own people and enemies. With the ruling majority not changing over time, there are a number of cases where members of the opposition are persecuted for their political views. For example, obstacles to employment in municipal institutions or companies are created. This is especially true for smaller municipalities, where the municipalities themselves are the largest employers.	3.3. By the provisions of the regulation of the activities of the municipal council, opposition rights are often unduly restricted.
1.4. Municipal administration does not adequately serve the chairmen of the Control Committee and the Ethics-Anti-Corruption Commissions in opposition positions.		3.4. The problem of media independence – it is very common for local media to be publicly funded and to represent exclusively the group political interests of local government.
1.5. Municipal public resources are often used to satisfy the majority of group political interests.		
1.6. Opposition members of the municipal council are technically prevented from participating in discussions during council meetings and are sometimes not allowed to speak at all.		

Conslusions

1. Since there are sixty separate territorial administrative units (municipalities) in the Republic of Lithuania, in which there are different demographic and political situations, different regulations of municipal councils, composition of municipal councils, different management traditions are formed in them. In the absence of a sufficient definition of political minority rights of municipal councils, which ensure the possibilities of opposition activities, the medium develops into autocratic management tendencies. The poor control of decisions taken by municipal councils and administrative actions as well

as a flawed legislative framework make it possible to form situations in which the democratic values and the protection of individual rights and freedoms are threatened.

2. As the Government of Lithuania itself is a political entity in which political parties play a major role, there is a clear risk that decisions relating to *administrative control* in individual municipalities can be (and in some municipalities are) taken selectively, not through legitimate arguments, but through political agreements, it is, therefore ,necessary to depoliticise the procedure for appointing Lithuanian Government representatives to address the current problem.
3. Clearer legal regulation of the exercise of political minority rights and the establishment of a counterweight mechanism between municipal political majority and minority in national law is becoming increasingly relevant and necessary to maintain a democratic model of governance.

Existing issues need to be addressed by eliminating the need for majority approval of delegated representatives of council member groups or factions to the control committee, leaving it to them to decide which member is best suited to fill statutory positions on the *control committee* (as well as with *ethics and anti-corruption commissions*).

Bibliography

Court practice

1. Constitutional Court of the Republic of Lithuania 1993 November 26 and 2001 January 25 resolutions. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta477/content.
2. Constitutional Court of the Republic of Lithuania 2001 January 25 ruling. https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta315/content.

Articles in academic journals

3. Griškevič, L. (2008). *Valdžių padalijimo teorija pagal J. Madisoną* (Eng. Theory of separation of powers according to J. Madison). *Teisė*, 66(2). https://epublications.vu.lt/object/elaba:59633164/.
4. Novikovas, A. (2005). *Vietos savivaldos esmė ir socialinė paskirtis visuomenėje* (Eng. The essence of local self-government and its social purpose in society). *Jurisprudencija,* 77(69). https://ojs.mruni.eu/ojs/jurisprudence/article/view/2951.
5. Tummers, L. (2011). *Explaining the willingness of public professionals to implement new policies: a policy alienation framework. International Review of Administrative Sciences,* 77(3), 557. https://doi.org/10.1177/0020852311407364.
6. Urmonas, A., Novikovas, A. (2011). *Europos vietos savivaldos chartijoje įtvirtintų principų įgyvendinimo vietos savivaldoje ir inkorporavimo nacionalinėje teisės sistemoje ypatumai* (Eng. The peculiarities of the implementation and incorporation of the principles of European Charter of Local Self-Government in Lithuanian local government and national legal systems). *Jurisprudencija*, 18(3). https://ojs.mruni.eu/ojs/jurisprudence/article/view/589.

Literature

7. Babbie, E. R. (2007). *The Practice of Social Reseach* (11th ed.). Belmont, CA: Thomson Wadsworth, p.309.

8. Bailey, C. A. (2007). *A Guide to qualitative field research* (2nd ed.). Thousand Oaks (Calif.): Sage Publications, p 100.
9. Cohen, L., Manion L. (1989). *Research methods in education*. (3rd edition), London: Routledge.
10. Gomm, R. (2004). *Social research methodology: a critical introduction*. Basingstoke, New York: Palgrave Macmillan, p.185.
11. Gudelis, D. (2007). *Savivaldybių veiklos matavimo modeliai ir jų įgyvendinimo galimybės Lietuvoje: daktaro disertacija.* (Eng. Municipal activity measurement models and their implementation possibilities in Lithuania: doctoral dissertation). Vilnius: Mykolo Romerio universitetas, p.106. https://www.lituanistika.lt/content/10767.
12. Jarašiūnas, E. (2001). *Valdžių padalijimas – demokratinės valstybės valdžios organizacijos ir veiklos principas. Lietuvos konstitucinė teisė* (Eng. Separation of powers is a principle of the organization and operation of a democratic state. Lithuanian constitutional law). Vilnius: Lietuvos teisės universiteto leidybos centras, p.674. https://repository.mruni.eu/bitstream/handle/007/15418/konstitucine_teise.pdf?sequence=1&isAllowed=y
13. Kardelis, K. (2017). *Mokslinių tyrimų metodologija ir metodai* (Eng. Research methodology and methods). Mokslo ir enciklopedijų leidybos centras, p.260.
14. Kardelis, K. (2002). *Modulio konspektas parengtas pagal vadovėlį: Mokslinių tyrimų metodologija ir metodai. 2-asis pataisytas ir papildytas leidimas* (Eng. The module summary is prepared according to the textbook: Research methodology and methods. 2nd revised and supplemented edition), p.98.
15. Kekic, L. (2007). *The Economist Intelligence Units index of democracy*. http://www.economist.com/media/pdf/DEMOCRACY_INDEX_2007_v3.pdf.
16. Madison, J. (1999). The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments. In Kesler, R. C., Rossiter, C. *The Federalist Papers*. New York: Hamilton, Madison, Jay.
17. Mason, J. (2002). Qualitative Interviewing: Asking, Listening and Intepreting. *Qualitative Research in Action*. London: Sage Publications Ltd, p. 34, p. 76. https://dx.doi.org/10.4135/9781849209656.n10.
18. May, T. (2001). *Social Research: Issues, methods and process* (4th edition). Berkshire: Open University Press, p.124.
19. McNabb, D. E. (2002). *Research Methods in Public Administration and Nonprofit Management: Quantitative and Qualitative Approaches*. Armonk; New York: M. E. Sharpe, p.19–20.

Internet resources

20. See the data available on the official website of the Central Electoral Commission of the Republic of Lithuania: http://www.vrk.lt/statiniai/puslapiai/2015_savivaldybiu_tarybu_rinkimai/output_lt/rezultatai_daugiamand_apygardose/rezultatai_daugiamand_apygardose1turas.html.
21. See the data available on the official website of the Central Electoral Commission of the Republic of Lithuania: https://www.vrk.lt/2019-savivaldybiu tarybu/rezultatai?srcUrl=/rinkimai/864/1/1506/rezultatai/lt/rezultataiTarNariaiMeraiSavivaldybese.html

https://doi.org/10.25143/socr.21.2021.3.139-148

Challenge of Advocate's Profession in the Age of Money Laundering, Terrorism Financing and Proliferation Evasion "Not to slip with a fragile burden!"

Sandra Joksta
Joint Stock Company "Latvijas Gāze", Latvia
sandra.joksta@lg.lv

Abstract

Ability to perform advocate's duty is irrevocably linked to advocate's immunity concept. The article provides an insight about the scope of advocate's immunity concept in the age of money laundering. The purpose of it is to analyse the modern tendency to overstep the red lines guarding this concept, when applying legal enactments for money laundering evasion purposes. In the article, the judgment of 19 November 2020 in case "Klaus Mueller vs Germany" made by European Court of Human Rights, is analysed, where the issue of advocate's immunity was considered in joint connection with the Clause 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The sometimes-exaggerated need for transparency at all costs conflicts with privacy protection aspects of individuals. Legislative enactments of money laundering and terrorism financing and proliferation evasion systemically contradicts Law of Advocacy and causes collision with other norms of higher legal rank such as fundamental rights enshrined in the European Convention on Human Rights to fair trial and justice and rights to choose an occupation and engage in work.

Keywords: advocate's immunity concept, advocate's rights to professional secret and confidentiality, legal certainty, money laundering and terrorism financing and proliferation evasion, principle of sound legislation, uncertain privilege.

Introduction

When moulding the title of this article, the author was inspired by writings of the Russian Empire's advocate Mr. Fyodor Plevako, namely, his assertions and reflections

about advocate's profession as the one with the highest standards in the legal profession and simultaneously as a tool by means of which fundamental human rights and freedoms are implemented in democratic society:

> "Behind the prosecutor, there is a deaf, cold, and unshakable law, behind the defendant, there is a human being with his own destiny, wishes and needs; and this human being crawls onto the shoulders of its defender seeking protection; it is dangerous not to slip with such a burden on your shoulders!" (Plevako, 2017, 30)

This article is devoted to analysis of advocate's immunity concept (aspects of professional secret and confidentiality) in the age of money laundering. Throughout the article, the author will try to identify where the red lines that sketch advocate's immunity concept in the money laundering field are and whether they are not being overstepped, putting the fundamental rights and democratic values of society at risk. This has been researched from the point of view of implementation of society's fundamental rights i.e. rights of defence and rights to fair trial.

The recent judgement made by the European Court of Human Rights (hereinafter – ECHT) on 19 November 2020 in the case "Klaus Mueller vs Germany" (application No. 24173/18) considered the issue of advocate's immunity in joint connection with the Convention for the Protection of Human Rights and Fundamental Freedoms (The Convention for the Protection of Human Rights and Fundamental Freedoms, 1997, Article 8). The importance of this judgement lies in the fact that currently the issue of combating money laundering and the financing of terrorism and proliferation and the related enforcement and problems in Latvia has been recognised as the top priority of the country, and it prevails over the issue of advocate's immunity. Moreover, it is important to note that transparency often opposes the human rights in respect of privacy protection aspects, which, in their turn, are one of the fundamental rights, protected by the European Convention on Human Rights.

The value of the judgement also lies in the fact that it reflects diverging views of the courts upon this question. There is no unified approach and evaluation yet established within the Court level. The situation is similar in Latvia. The Courts have not adopted unified interpretation of the situation where the norms protecting human rights and fundamental freedoms are opposed to the need for maximum transparency exposure in Anti-Money Laundering (hereinafter – AML) sector, i.e., to make transparency at all costs.

The purpose of the article is to inform the reader about the substance of the matter, the ECHT arguments and conclusions, and express the author's own assumptions about its importance for Latvia in the context of Anti Money Laundering and Finance of Terrorism (hereinafter – AMLFTP) regulations (The law on combating money laundering and the financing of terrorism and proliferation, 2008) and development of legal thinking.

The Basis

The applicant submitting a complaint was a sworn advocate who during the period from 1996 to 2014 had provided legal services to four entrepreneurs in connection with various transactions. In 2017 criminal proceedings were initiated against these entrepreneurs in relation to the activities of persons in charge of these companies, including possible fraud.

Within the respective criminal proceedings before the Court of Appeal, the advocate was summoned as a witness to testify about the transactions of enterprises. Insolvency administrators of the companies agreed that the applicant would be released from professional secrecy. However, during the court session, based on the rights stipulated in the criminal code, the applicant refused to testify, because the information had been obtained during performance of his professional duties as an advocate providing legal advice to his client. The applicant considered that it is also necessary to obtain permission of former persons in charge of the enterprises, who were the managing directors during the time when the applicant provided his legal services. However, the court disagreed with the applicant's opinion and acknowledged that it is sufficient to have consent of the current representatives of companies by adjudging administrative penalty to the applicant for unjustified refusal to witness.

By using all appealing options available and considering that the rights mentioned in Article 8 of the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union – freedom to privacy and immunity of family life, the applicant brought a claim to the ECHT. In the claim, he noted that the offence, which was placement of administrative penalty, which might be followed also by imprisonment for refusal to witness, violates the applicant's right to privacy and correspondence in accordance with Article 8 of the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. Moreover, such a decision about issuance of administrative penalty is contrary to the rights enlisted about a possible refusal to testify if the information had been obtained during performance of professional duties. It has also been stated that in the given case it is not material that the applicant (his office) had signed the agreement on provision of legal services solely with enterprises as corporate persons because the relationship based on trust can similarly be established only with private persons. In the given case, the applicant was forced to testify in criminal proceedings about the facts that had become known to him during provision of legal services. The applicant also indicated that in the German court practice there are different opinions and a case-law regarding the issue whether in case of companies' managing directors it is necessary also to hold a permission from former managing directors to provide testimonies by relieving the advocate from the duty of confidentiality.

The ECHT in the given case did not note a violation of the rights according to Clause 8 of the European Convention for the Protection Human Rights and Fundamental

Freedoms. The court concluded that the applicant had a reasonable basis to consider that national courts admit it as sufficient to obtain a permission from the existing management of companies for the advocate to provide evidence about the provided legal advice. In fact, the ECHT agreed that the information obtained during performance of professional duties should be protected, but, if, according to the national rights, it is sufficient to have consent of existing companies' management for disclosure of this information, the advocate is not anymore entitled to provide evidence about contents of legal assistance. (Latvian Sworn Advocates Council, 2020).

Analysis of Substantial Assumptions of the Judgment

Under the effective legislation in the Republic of Latvia with respect to advocate's professional activities – "sworn advocate may not divulge the secrets of his or her authorising person not only while conducting the case, but also after being relieved from the conducting of the case or after the completion of the case" (The Advocacy Law of the Republic of Latvia, 1993, Article 67). The existing regulation does not provide a possibility to deviate from the assumption; if a clear consent is not received from the client to be released from the duty to keep business secret and not to disclose data, which the advocate has obtained from the client while providing legal advice to the latter, the duty of confidentiality remains in force. The tendency of the assumptions adjudged by the ECHT judgment indicate that advocate's immunity issue is not a constant and fixed legal notion; instead, it can be widely interpreted and discussed, and applied. The ECHT also holds no full equal opinion about the issue in the context of the mentioned judgment. One of the judges, judge Ms. Judkovska, objected against such ECHT opinion and expressed it in a written argumented opinion. In her opinion, she, *inter alia*, indicated to the unclear [advocate's] privilege aspect and analysed interruption, which has been supported by necessary measures for a democratic society as a measure for reasonableness of such interruption. In this respect she referred to the judgement made by the US Supreme Court in the case of Upjohn Company by analysing the notion of unclear privilege (US Supreme Court, 1981):

> "If a service is rendered and received under a mutual agreement between the attorney at law and the client, then the attorney at law and the client should be able to predict with a certain degree of legitimate expectation whether the given conversations will be protected. Uncertain privilege, or the one that only seems to be certain, but is interpreted and applied by the courts differently, is no better than a non-existent privilege."

Judkovska emphasised that in this situation the interests of a private person and the interests of a person as a company's director cannot be separated because the company cannot itself hire an advocate and provide information to them. There is always a duly authorised person who secures the exchange of information in the meantime expressing his opinion and will. Consequently, such type of communication, performed

between the advocate who is providing professional legal services to the company, and the managing director or authorised representative of the company who is always a private person, is undoubtfully subject to assumptions about advocate's immunity and privilege. By applying a penalty on the advocate for refusing to witness upon absence of consent, which is clearly stated in law, from other three company's managers, the authorities have violated the principle of proportionality during the review of the case and violated Article 8 of the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union.

Legislative regulations of Republic of Latvia (The Advocacy Law of the Republic of Latvia, 1993, Article 6, Paragraph 6) also prohibit to subject an advocate to any sanctions or threats in connection with provision of legal assistance according to the law. However, by the said ECHT judgment, advocate is forced to refuse from their inherent rights to professional secret and confidentiality and rights to engage in work and limit advocate's immunity.

The lawyer and legal philosopher R. Alexy reflects on the dual nature of law, describing and investigating the problem of need for balance between ideal and real dimensions in the field of law, to arrive at the state of ideal democracy, explaining the components of this process:

> "Law has a dual nature. [..] The thesis about the dual nature brings an assumption that the law comprises both the real or actual dimension, as well as the ideal or critical dimension. In the definition of law, the actual dimension is represented by the consideration of the society and the authority's ability to make assessments and ensure competence, whereas the ideal dimension is manifested in the element of moral correctness." (Alexy, 2010, 167)
>
> "The dual nature of law requires that these both sides would be in correct proportion against each other. To the level, in which this proportion is reached, the harmony of legal system is ensured." (Alexy, 2010, p.174).

Anti-money laundering legislative framework is very radical and strict, and non-compromisory as it tries to identify and eliminate threats to the fundamental freedoms caused by terrorism, proliferation and money laundering activities. In many cases it is being implemented by means of restricting and limiting other rights or interests, including the fundamental rights of advocates to professional secrecy, or limiting the fundamental principles of legal certainty and principle of justice thus threatening or weakening the democratic values as set by the Constitution in general.

Article 8 of the European Convention on Human Rights confers additional protection to advocate-client relationships. Additional protection is justified by advocate's fundamental role in the society. In case advocates are not able to guarantee the confidentiality of their clients, they are not able to perform their duty. The relationship of trust between advocate and client is a precondition to be able to provide and receive legal services and that, in turn, secures fundamental rights of a person to a fair trial, including the right of accused persons not to incriminate themselves.

In 1998, the new wording of the Charter of Fundamental Rights of the European Union entered into force and the European Court of Human Rights admitted that legal professional privilege is a fundamental right which can be violated or limited only in exceptional cases.

There exist discussions amongst the professionals of the field that with the legislative AML requirement to report suspicious activity or transaction of the client, the principle of professional secrecy of the lawyer is weakened and threatened. This consideration is grounded by additional protection stated by this norm. Moreover, the position is accurate if looked upon from ideal or moral dimension of law. Nonetheless, the real dimension, i.e., the reason why the AML legislation and idea and concept were developed must be faced. Namely that the problematic of AML is a threat to the interests of society and security, and this can be equalled to the threatening of fundamental rights. There can be no objections towards such position as well. The threats are realistic. Both positions are of highest possible legal rank; they directly impact the fundamental rights, and both are equal in their strength from the validity point of view. Therefore, balancing among these is strongly required as it is not possible to respect each entirely, part of it must be donated in favour to the other right in order to reach and maintain the required balance.

The main and most important task for the legislator during the implementation and enforcement of legal regulations with a new legislative enactment, idea or principle and legal norms in practice is to strive for finding the balance of law. Legislator should understand these theoretical presumptions of dimensions of law and try to find ways how to reconcile and approximate these two dual natures to achieve the ideal balance of law.

Advocate's Privilege or Fundamental Rights to Professional Secret and Confidentiality

According to Article 3 of the Advocacy Law of the Republic of Latvia, advocate is an independent and professional lawyer who provides legal assistance by defending and representing the lawful interests of persons in the court and in pre-court investigation.

The Advocacy Law of the Republic of Latvia regulates advocates' professional activities. Advocacy is an integral part of a judicial system in a law-governed state. In their profession, the advocate is independent and subject only to the Law of advocacy. State and municipal authorities and courts, prosecutors and pre-court investigation establishments should guarantee their independence.

In 2008, with the introduction of AMLFTP law, the scope of legal entities of said law was widened and new norms and duties were envisaged also for advocates, such as to carry out and document money laundering and terrorism financing and proliferation evasion risk assessment in order to clarify, evaluate, understand and monitor the risks attributable to operations of his client and the area of client's operations, based on the self-made assessment – establish internal control system by drawing up and documenting respective policies and procedures.

It is important to regard the aspects of advocate's professional secret and confidentiality within the context of fundamental rights of society (implementing rights to defence and justice).

A democratic society is based on two fundamental aspects – rule of law and rule of justice. The rule of law cannot exist without defence and without an advocate there is no defence. Defence is not imaginable without the client's rights to freely express his opinion and trust advocate at the same time having legitimate expectations that all the information disclosed will remain confidential.

It is significant to note that advocate's professional secret and confidentiality obligation (the Advocacy Law of the Republic of Latvia, 1993, Article 67) cannot be regarded as advocate's privilege. On the contrary, they are advocate's duty and obligation towards their client and have been introduced into the legal system exactly to serve the interests of an individual. In such way the rights of defence and serving society on the whole are guaranteed. At the same time, it should be noted clearly that this privilege must not be used for hiding illegal actions. If the advocate suggests or helps a client to make an illegitimate activity by being aware that it is illegal, the advocate is subject to disciplinary penalty and this privilege is not applicable to the situation. In this case this action cannot be treated as the advocates professional activity. The level of advocates knowledge, skills and ethics is determined by education and examination system and high ethical and moral standards of the profession.

Scope of Immunity of Advocate and Collision with Existing Regulation

The issue of advocate's immunity scope is interrelated with the understanding of the function or role of advocate as a tool in ensuring fundamental rights of defence in society and realisation of justice in the court on one part and the principle of proportionality by comprising its integral elements – need, necessity, and compliance – on the other part.

There is no dispute about the fact that intervention by means of legal regulation in respect to advocate's immunity scope cannot be discussed in respect of a situation when the advocate, by using its operational privileges or advocate's immunity, acts dishonestly in his own interests. The Law of Advocacy of the Republic of Latvia clearly states that in these cases the issue of advocate's immunity is not under discussion because it refers solely to the activities of an advocate. Whereas an intentionally dishonest action which leads or might lead to committing a criminal offence, may not be treated as the advocate's activity

In the present article, an ordinary established situation has been analysed – where the advocate honestly performs his professional duties. In 2008, upon introduction of amendments to AMLFTP Law, the scope of subjects of the Law was increased and the advocate was automatically included to be the subject of the Law due to their inherent

nature of being a "gatekeeper" in the context of AMLFTP. Irrespective the fact that the mentioned law was developed initially for the financial sector, it got automatically expanded without evaluating the possibilities of this new range of subjects to really be able to carry out the assessment required by the law according to the requirements of Law as well as the significance of their role as "gatekeepers" according to the sector's statistics. Instead, additional burden of duties was determined when providing services, which sometimes are impossible to perform due to lack of access to information, for example, when interpreting information in the scope provided in the Law in respect of true beneficiaries (hereinafter – beneficiaries), politically significant persons, the vast formulation about risky territories from AMLFTP viewpoint, also in respect to resources – both regarding the requirement of due diligence research of the client and an obligation to report each and any suspicious transaction.

For the purposes of substantiating the above assumption, it is valid to refer to the *term of suspicious transaction* defined in AMLFTP law – it is a transaction or activity, which causes suspicion that the financing involved in it has been directly or indirectly acquired through a criminal activity or relate to terrorism and proliferation financing or attempt of such activity. In this case, a criterion to assess the reasonableness is based on subjective opinion – suspicion that might or might not arise, thus making the reporting duty subjective and such that can be interpreted widely according to each advocate's personal assuredness or understanding.

In the author's opinion, if a precise framework of criteria cannot be given, this widely and formally set duty to report about each suspicious action, oversteps the red lines guarding the advocate's immunity and the principle of proportionality. It is necessary to find a balance between these two dimensions of the nature of law, and it can be done by carrying out regular and consistent constitutional evaluation of authorities and persons involved in the application of law.

R. Alexy considers that

> "[..] in ideal democracy, a democratic process will always show due respect to constitutional rights. In principle the conflict between democracy and constitutional rights will not exist. However, in real democracy the conflict exists. The reality of political life in joint connection with the idea about human rights and constitutional rights, however, require constant constitutional evaluation and revision." (Alexy, 2010, p.178).

It is necessary to revise the existing AMLFTP regulation by adjusting requirements in respect to advocate's activities as the subject of Law, possibly refuse from several of them because of their unenforceability due to limited resources, as well as the idea of assessments, based on subjective interpretation and to evaluate and listen to the assessments of specialists of advocacy and analysis about the advocate's sector risk assessment (Sectoral risk assessment of the Latvian Sworn Advocates Collegiate, 2019) thus following the principle of sound legislation.

Conclusion

Entitlement to professional secret and confidentiality form the basis of correct and just preparation for adjudgment of a case and simultaneously together with the advocate's independence – integral part of rights to fair trial by preserving the power of law and ensuring a just construction of democratic country. These rights are not only a privilege, but also an obligation and a precondition for establishment and functioning of correct legal system by allowing each party involved in the system to realise their rights.

With automatic invention of AML legislation into the national legislation in the advocate's sector, the advocate's immunity concept and the privilege adherent to it becomes more and more unclear.

The legislative enactment effective in the Republic of Latvian in the area of AML is systemically contradictory with the Law of Advocacy and causes collision with other norms of higher legal rank – fundamental freedoms of individuals. There is a collision between the advocate's fundamental rights to professional secret and confidentiality and an obligation to report on a suspicious transaction, as well as with the client's legitimate trust as concerns confidentiality and loyalty to its representative, thus enforcing its fundamental right to fair trial and defence.

A reasonable compatibility or balance is required between the advocate's specific basic rights to professional secret and the legal regulations of AMLFTP. This balance can be achieved by using a risk-based approach in the analysis on the legislator's level in close and willing cooperation with specialists of respective sector.

Bibliography

1. Alexy, R. (2005). Balancing, Constitutional Review and Representation. *International Journal of Constitutional Law*. 3(4), 572–581. https://doi.org/10.1093/icon.moi040.
2. Alexy, R. (2010). The Dual Nature of Law. *Ratio Juris*, 23(2), 167–182. https://doi.org/10.1111/j.1467-9337.2010.00449.x.
3. Apvienoto Nāciju Pamatprincipi par advokātu lomu. http://www.advokatura.lv/lv/dokumenti-par-advokaturas-jautajumiem/radit/25.
4. Brief substantial description of the European Court of Human Rights judgement dated 19 November 2020 in the case "Klaus Mueller vs Germany" (application No. 24173/18) from the informative report of the Latvian Sworn Advocates Council on 26.10.2020.
5. Charter of core principles of the European Legal Profession and Code of Conduct for European Lawyers. http://www.ccbe.eu/fileadmin/userupload/NTCdocument/EN_CCBE_CoCpdf1_1382973057 pdf.
6. Charter of the collegium of the Latvian sworn advocates. (1993). Adopted at General meeting of sworn advocates in May 21, 1993. https://advokatura.lv/lv/dokumenti-par_advokaturas-jautajumiem/radit/232.
7. Code of ethics of the Latvian sworn advocates. (1993). Adopted at General meeting of sworn advocates in May 21, 1993. https://advokatura.lv/lv/dokumenti-par_advokaturas-jautajumiem/radit/23

8. European Court of Human Rights Judgment in the case "Klaus Mueller v Germany" (2020) (application No. 24173/18). http://hudoc.echr.coe.int/eng?i=001-206165.
9. International Treaty: The Convention for the Protection of Human Rights and Fundamental Freedoms. (1997). *Latvijas Vēstnesis*, No. 14/44. https://likumi.lv/ta/lv/starptautiskie-ligumi/id/649.
10. Law of the Republic of Latvia: The law on combating money laundering and the financing of terrorism and proliferation. (2008). https://likumi.lv/ta/id/178987.
11. Law of the Republic of Latvia: Advocacy Law of the Republic of Latvia. (1993). https://likumi.lv/ta/id/59283.
12. Plevako, F. N. (2017). *Izbrannye rechi*. Moskva: Jurait.
13. Sectoral risk assessment of the Latvian Sworn Advocates Collegiate (2019) prepared according to the World Bank methodology suggested by the Financial Intelligence Service. https://www.advokatura.lv/lv/nilltpfnl-sl-jautajumi/zverinatu-advokatu-nilltpf-risku-novertejums/.
14. US Supreme Court case "Upjohn Company v. United States", 449 U.S. 383, 393, 101 S. Ct. 677 (1981).
15. Zemribo, G. (2011). Kāds ir zvērināta advokāta statuss: Tiesu sistēmai piederīga amatpersona vai brīvā profesija [What is the status of a sworn advocate]. *Jurista Vārds*, 19 (666). https://juristavards.lv/doc/229706-kads-ir-zverinata-advokata-statuss/.
16. Zemribo, G. (2011). Tiesu sistēmai piederīga amatpersona vai brīvā profesija [Official of the judiciary or liberal profession]. *Delfi*. https://www.delfi.lv/news/comment/comment/gvido-zemribo-tiesu-sistēmai-piederiga-amatpersonaivai-briva-profesija.

https://doi.org/10.25143/socr.21.2021.3.149-158

Court's Ability to Assess Evidence Obtained During Operational Activities

Gerda Klāviņa
Talsi District of Kurzeme Regional Administration of State Police, Latvia
gerda.maslobojeva@gmail.com

Ansis Zanders
Ventspils District of Kurzeme Regional Administration of State Police, Latvia
ansis_zanders@yahoo.com

Abstract

The article discusses the court's ability to assess information of evidence obtained during operational activities. It addresses only the cases where a person is found guilty of a criminal offence and criminal punishment has been imposed by a court judgment, without considering cases where the punishment has been determined by the public prosecutor when drawing up a penal order.

The aim of the study is to examine the possibilities of the court to assess information of evidence about facts obtained in operational activities, to identify legal and practical issues for the court's ability to assess such information, as well as to propose solutions.

Material and methods used in the preparation of the article include analysis and description of regulatory enactments, court judgments, comparative and logical method. These materials and methods help to achieve the goal of the research. Analysing normative acts and court judgments, describing normative acts and court judgments in the article, analysis and description of normative acts and court judgments have been used for the compositon of the research. The comparative method has been used to compare provisions of regulatory enactments, while the logical method has been used to draw conclusions. Methods of interpretation of legal norms – grammatical, systemic and teleological method – have also been used in the composition of the study.

Keywords: court, criminal proceedings, evidence.

Introduction

Generally, law in Latvia stipulates that courts in there are adjudicated by district courts, regional courts and the Supreme Court, but in case of war or emergency – also by military courts (Constitution of the Republic of Latvia, 1922, Article 82). This indicates that the function of court adjudication in Latvia is solely for the court.

One of the basic principles enshrined in the Criminal Procedural Law also stipulates that everyone has the right to trial in a fair, impartial and independent court (Criminal Procedural Law, 2005, Article 15).

According to the Criminal Law, only a person who is guilty of committing a criminal offense, that is, who has intentionally or negligently committed an offense provided for in the Criminal Law, who has all the characteristics of a criminal offense, can be held criminally liable and punished. In addition, a person may be found guilty of a criminal offense and criminal penalty may be imposed by a court judgment and in accordance with the law, but in cases prescribed by law, a person shall be found guilty of a criminal offense and punished by a prosecutor (Criminal Law, 1998, Article 1).

In criminal cases, the court imposes the penalty. The court examines and decides the merits of the accusation. The court acquits innocent people or recognises persons as guilty of committing a criminal offense and determines a mandatory enforcement of criminal law relations for state institutions and persons, which, if necessary, shall be enforced (Criminal Procedural Law, 2005, Article 23).

It is for the court to decide whether the accusation against a person is well-founded. In order for the court to decide on the merits of the accusation, one of the duties is to assess the evidence on which the accusation against the person is based.

For a court to find a person guilty of a criminal offense and to impose a criminal penalty in a judgment, one of the integral components is the assessment of evidence. It is the range of evidence gathered in a particular case and the process of evaluating it that gives the court a decision to find a person guilty and to impose a criminal penalty.

There are a number of criteria for assessing evidence in Criminal Procedural Law. The criteria for evaluating evidence are admissibility, relevance, reliability, and sufficiency of evidence. The mentioned criteria are also indicated by the Supreme Court of the Republic of Latvia. In the decision of the Department of Criminal Cases of 4 October 2018 in case No. 11520035214 (Decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia, 2018).

The obligation of the court itself to assess evidence can also be seen from the decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia of 22 August 2018 in case No. 11250014115 (Decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia, 2018).

The aim of the study is to examine the possibilities of the court to assess information of evidence about facts obtained in operational activities, to identify legal and practical issues for the court's ability to assess such information, as well as to propose solutions.

Material and methods used in the preparation of the publication – analysis and description of regulatory enactments, court judgments, comparative and logical method. These materials and methods help to achieve the goal of the research. Analysing normative acts and court judgments, describing normative acts and court judgments in the article, analysis and description of normative acts and court judgments have been used for the composition of the article. The comparative method has been used to compare provisions of regulatory enactments, while the logical method has been used to draw conclusions. Methods of interpretation of legal norms – grammatical, systemic and teleological method – have also been used in the compoositin of the study.

Judicial Evaluation of Factual Information Obtained during Operational Measures as Evidence in Court

The Law on Operational Activities determines legal bases, principles, tasks, objectives and content of operational activities, regulates its process, forms and types, status, rights, duties and responsibilities of officials of the subjects of operational activities, as well as financing, supervision and control of these activities. In addition, the Law on Operational Activities stipulates that operational activities are open and secret legal activities of officials of state institutions specifically authorised by law in accordance with the procedures specified in the Operational Activities Law and aimed at protecting persons' life and health, rights and freedoms, honor, dignity and property to ensure the Satversme (State constituion of Latvia), state equipment, state independence and territorial integrity, state defense, economic, scientific and technical potential and state secrets against external and internal threats (Law on Operational Activities, 1993, Article 1).

Moreover, the Law on Operational Activities defines tasks of operational activities, namely, protection of persons against criminal threats; prevention and detection of criminal offenses, identification of persons who have committed criminal offenses and sources of evidence; search for persons who are suspected, accused or convicted of committing a criminal offense in accordance with the procedures prescribed by law; search of criminally obtained property, as well as other such property (including financial resources) which may be subject to seizure in connection with the commission of a criminal offense. In addition, searches for persons who have suddenly and without obvious reason left their place of residence or temporary stay do not respect their normal way of life and are not possible to contact them, as well as for minors and persons whose age, physical, mental condition or illness are in need of care but have left their homes, medical institutions or other places of residence (missing persons); identification and prevention of state independence, constitutional structure, territorial integrity, economic sovereignty, military potential, as well as other threats to state or public security; protection of state secrets; obtaining information about specific persons, if the issue of access to state secrets, classified information of the North Atlantic Treaty Organization,

the European Union or foreign institutions or the right of persons to such occupation or position in respect of which the law provides for state security or public order and providing the opinion of security authorities; in the cases specified by law – ensuring the special protection of persons (Law on Operational Activities, 1993, Article 2).

Consequently, operational activity and its tasks are different from tasks and objectives of criminal proceedings, from which it must be understood that the operational activity cannot be performed in itself in order to obtain evidence in the criminal proceedings. In order to obtain evidence in criminal proceedings, it is necessary to perform criminal procedural actions in accordance with the procedures specified in the Criminal Procedural Law. Facts obtained during operational activities may be used as evidence in criminal proceedings, but this is not the purpose and task of these activities.

The study on the problems of the legal regulation of operative activity concluded that, after entry of the Law on Operative Activity into force, the population learned what operative activity is, how it is performed, its legal bases, principles, tasks, goals and content, process, forms and types, status, rights, duties and responsibilities of the officials of the subjects of operational activities, as well as financing, supervision and control of these activities (Matvejevs, 2017, *86*). Such a statement indicates openness of the nature of an operational activity to the public.

According to the Criminal Procedural Law, evidence in criminal proceedings is any information obtained in accordance with the law and confirmed in a certain procedural form on facts used by persons involved in criminal proceedings within their competence to substantiate existence or absence of evidence (Criminal Procedural Law, 2005, Article 127).

The Criminal Procedural Law also stipulates that persons involved in criminal proceedings may use only reliable, relevant and admissible facts as evidence (Criminal Procedural Law, 2005, Article 127).

Regarding factual information obtained in operational activities, the Criminal Procedural Law stipulates that this factual information may be used as evidence only if it is possible to verify it in accordance with the procedural procedures specified in the Criminal Procedural Law. If the factual information obtained during operational measures is used as evidence in a criminal case, then an indication of which authority, when and for what period of time has accepted the taking of the operational measures must be attached. The person conducting the inquiry process must be issued by the head of the authority which approved the operational measure or by an official authorised by them (Criminal Procedural Law, 2005, Article 127).

Thus, the information on the facts obtained in operational activities can be used as evidence in criminal proceedings, observing certain criminal procedures. The above also indicates that the persons involved in criminal proceedings may, within the scope of their competence, use the information on facts obtained in operational activities to substantiate existence or absence of circumstances included in the subject of evidence, observing the procedures specified in the Criminal Procedural Law. In essence, there

are two preconditions – an attached reference and the possibility of an inspection in accordance with the procedures specified in the Criminal Procedure Law.

The Criminal Procedural Law clearly defines the content of the information to be attached, the institution, when and for what period of time, has accepted the performance of operational activities.

When clarifying the content of the second precondition, thus, a possible inspection in accordance with the procedure specified in the Criminal Procedural Law, it should be noted that the content of this precondition is more uncertain, much broader than the first precondition.

Inspection in accordance with the procedures specified in the Criminal Procedural Law imposes an obligation to ascertain relevance, admissibility and reliability of the information. If this requirement cannot be met, the information may not be used to prove the criminal proceedings (Strada-Rozenberga, 2019, 430–435).

The content of reliability, relevantity and credibility is clearly disclosed in the Criminal Procedural Law. The reliability of evidence is the degree to which a piece of information is established. The reliability of factual information used in evidence shall be assessed by looking at all facts obtained during the criminal proceedings or the information on the facts as a whole and in relation to each other. None of the evidence has a higher degree of certainty than the other evidence (Criminal Procedural Law, 2005, Article 128).

Evidence is relevant to a particular criminal proceeding if facts of the case directly or indirectly confirm existence or absence of circumstances to be proved in the criminal proceedings, as well as the reliability or unreliability of other evidence, its possibility or impossibility (Criminal Procedural Law, 2005, Article 129).

Information on facts obtained during criminal proceedings may be used as evidence if they have been obtained and procedurally confirmed in accordance with the procedures specified in the Criminal Procedural Law. Information on facts obtained through violence, threats, blackmail, deception or coercion obtained in the course of proceedings performed by a person who was not entitled to do so under the Criminal Procedural Law, including information obtained by allowing in particular the specified violations that prohibit use of the specific evidence, as well as in violation of the basic principles of criminal proceedings. Information on facts obtained through other procedural irregularities shall be deemed to be of limited admissibility and may be used in evidence only if the procedural irregularities are insignificant or can be remedied, could not affect veracity of the information obtained or are corroborated by other news. Accordingly, evidence obtained in a situation of conflict of interest is admissible only if the prosecutor is able to prove that the conflict of interest has not affected the objective conduct of the criminal proceedings (Criminal Procedural Law, 2005, Article 130).

Although the content of the above-mentioned verification criteria is clear from the disclosure of the mentioned verification criteria, it must be concluded that verification by criteria requires detailed examination which is not limited to establishing existence of a specific information claim, as in the accompanying note.

Such criteria apply both to the possibility of an examination and to the assessment of the evidence by the court. In essence, the criteria reveal feasibility of the test and the test process itself.

Decision of the Department of Criminal Cases of the Senate of the Republic of Latvia of 30 November 2018, case No. 15830009812, states that a court decision based on evidence that has not been assessed in accordance with the evidence assessment criteria specified in the Criminal Procedural Law, namely, cannot be recognised as legal and justified (Decision of the Department of Criminal Cases of the Senate of the Republic of Latvia, 2018).

In addition, already the decision of the Department of Criminal Cases of the Senate of the Supreme Court of the Republic of Latvia of October 12, 2006 in case No. 11511003104 stated when to adjudicate a case, evaluated evidence in accordance with the above requirements of the Criminal Procedural Law and in the judgment indicated what evidence relates to existence or absence of a criminal offense, analysed and evaluated all evidence examined in the case (Decision of the Department of Criminal Cases of the Senate of the Supreme Court of the Republic of Latvia, 2006).

The Criminal Procedure Law clearly stipulates that, if in a criminal case the information obtained by the possibility of operative activity is used as evidence, only a court may, at the motivation request of a prosecutor, victim, accused or his or her deputy, get acquainted with it, stating in the case file and in the decision that these materials have been evaluated (Criminal Procedural Law, 2005, Article 500).

Consequently, the court does not always assess the information obtained in an operational measure as evidence, it does so only upon a motivated request of a particular person. Such a situation is inadmissible. It indicates an unequal assessment of the evidence in the event that the court has not received a motivated contract from the persons concerned.

Limits of the Court's Ability in Assessing Information as Evidence on Facts Obtained in Operational Measures

When in a criminal case, the court has to assess information of evidence about the facts obtained during operational measures, the court must ascertain existence of the already mentioned reference. In essence, no problem situation can be seen in establishing existence of a reference and existence of the necessary content, because, as indicated above, the necessity and the necessary content of a reference are specifically defined in the Criminal Procedural Law.

According to the decision of the Department of Criminal Cases of the Senate of the Republic of Latvia of October 7, 2020 in case No. 11815007317, it can be seen that the court in its decision reflected existence and content of the reference (Decision of the Department of Criminal Cases of the Senate of the Republic of Latvia, 2020).

Moreover, in the judgment of the European Court of Human Rights, Oderovs vs. Latvia No. 21979/08, reflects existence and content of the reference (European Court of Human Rights, 2017).

In the decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia of 27 November 2014 in case No. 11095016806, the court regarding the reference has stated that in case reference is not attached when the case is being considered in court, the court as the person conducting the proceedings must request such reference (Decision of the Department of Criminal Cases of the Senate of the Supreme Court of the Republic of Latvia, 2014).

It is clear from the mentioned judgments that when adjudicating criminal cases, courts establish existence or absence of a reference. The courts also establish deadlines for the relevant activities indicated in references, the content of other references. In essence, the courts must do so in order to determine whether, in general, the act performed as a result of which the information used in the evidence is obtained has been carried out lawfully, that is to say, in accordance with the procedure laid down by law.

Discussion is triggered by the factual information obtained in the operational measures itself as an opportunity to assess the evidence against the criteria. That is, an examination of relevance, reliability and admissibility of the factual information.

According to the Law on Operational Activities, the method of operational activities is a set of operational activities, means and tactics, sequence and procedure for their performance, for the performance of specific operational tasks and objectives referred to in the Operational Activities Law. The methods of operative activity are developed based on the legal basis specified in the Law on Operational Activities. Organisation, methodology and tactics of operational activities are a state secret (Law on Operational Activities, 1993, Article 8).

It should also be noted that the Law on Operational Activities clearly defines operational activities. Those include operational investigation, operational observation (tracking), operational inspection, operational sampling and operational research, operational operative examination of a person, operational intervention, operational experiment, controlled delivery, operational detective action, operational supervision of transactions in a credit institution's or financial institution's customer account, correspondence control, operative acquisition of the content of information expressed or stored by a person from technical means, operative wiretapping, operative video surveillance of a place inaccessible to the public (Law on Operational Activities, 1993, Article 8).

In addition, the Law on Operational Activities stipulates that the content of operational activities are measures of operational activities and methods of their implementation (Law on Operational Activities, 1993, Article 6).

This indicates that operational activity is in itself inseparable from operational activities and methods of their implementation. Thus, in order to speak of an operational activity, it must be concluded that this activity is both a measure and a method. Although,

according to the Law on Operational Activities, operational measures are clearly defined, the methods are still in a state of secret.

In order for the court to be able to assess factual information obtained in operative activity measures as evidence, it must assess the measure itself and its method, because according to the Law on Operational Activities, the two elements are indivisible.

The Law "On State Secrets" stipulates that in order to obtain the right to get acquainted with the object of a state secret, a special permit is required, which has a special procedure for obtaining it (Law On State Secrets, 1996, Article 9).

It can be concluded that the court, when assessing information about the facts obtained in the activities of operational activities as evidence, needs a special permit to get acquainted with the object of a state secret in order to be able to perform a full assessment. So, to be able to evaluate the measure itself and its methods. The court cannot assess information about the facts obtained during the operational measures as evidence, if the information obtained about the facts is not assessed in connection with the methods of obtaining it, it is required by the above-mentioned criteria – reliability, relevance, admissibility.

In assessing factual information obtained during measures of inquiry as evidence, the court must, although assessed according to the same criteria as any other evidence in criminal proceedings obtained in the ordinary course of criminal proceedings, be regarded as a whole set of measures requiring intensified examination. already according to the provisions of the Criminal Procedural Law, because it contains both information about the facts and evaluation of the extraction methods, which is undeniably of significant importance.

In the decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia of 28 December 2015 in case No. 11903022711, the court has stated that it is not permissible to use information as evidence about the facts obtained by police officers actually carrying out an operational measure without complying with the requirements of the Operational Law (Decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia, 2015). This indicates that the court must evaluate the information on the facts obtained during the operative activity measures, but it cannot be used; therefore, it can also be assessed without considering requirements specified in the Law on Operational Activities.

Examining judgments of the Supreme Court, which reflect evaluation of factual information obtained during operative measures as evidence, it can be concluded that in practice the courts evaluate this factual information; moreover, evaluate according to the mentioned criteria.

The lawyer Jānis Baumanis has stated that sciences of Criminal Law today are in a continuous process of modernisation, which is determined by economic, political, organisational and scientific development of society, the change in values in people's legal consciousness, as well as other factors (Baumanis, 2017, 260). Agreeing with Baumanis, it should be noted that the issue addressed in the study is also relevant in modern criminal proceedings, it is subject to continuous process of modernisation, since with simple

criminal procedural methods, it is increasingly difficult to obtain evidence to prosecute a person. Facts in criminal proceedings play a key role in proving that the use and assessment of that information must be such that the legal framework for its preconditions is perfectly clear and that it can be used unambiguously in practice without creating a significant degree of complexity in the assessment.

When the court has to assess factual information obtained during operative measures as evidence, it must be assessed on an equal footing with other evidence in the particular criminal proceedings, as required by the criterion of reliability. However, when assessing factual information obtained during operational measures as evidence, the court itself must have a precondition, special permission to fully assess this factual information as evidence.

Conclusions

1. In the norms of Criminal Procedural Law, there are specific criteria for assessment of evidence which are applicable in conjunction, without the possibility to exclude any criterion from the assessment process.
2. In practice, the court also has to assess information obtained during operational measures as evidence, which is fully possible by evaluating methods of operational measures, which are the object of state secrecy. This circumstance gives grounds to consider that the court must have a special requirement – the right of access the object of a state secret in order to be able to fully assess such information as evidence. This circumstance gives a special status to the information obtained during operational measures as evidence in criminal proceedings, makes an additional claim.
3. In cases where the court has to assess factual information obtained during operational measures as evidence, there can be no additional requirement for the court itself, as this makes the evidence itself unequal as the object of assessment in the specific criminal proceedings. The existence of a permit for a court cannot be a precondition for assessment of factual information obtained during an operational activity.

The authors suggest that whenever information obtained during operational measures is used as evidence in a criminal case, the court should examine operational materials that are not attached to the criminal case and that relate to the subject matter of the evidence, indicating in the case file and ruling that these materials have been evaluated.

Bibliography

Law

1. Law of the Republic of Latvia: The Constitution of the Republic of Latvia, Latvijas Vēstnesis No. 43, 01.07.1993
2. Law of the Republic of Latvia: Criminal Law, Latvijas Vēstnesis No. 199/200, 08.07.1998.

3. Law of the Republic of Latvia: Criminal Procedural Law, Latvijas Vēstnesis No. 74, 11.05.2005.
4. Law of the Republic of Latvia: Law on Operational Activities, Latvijas Vēstnesis No. 131, 30.12.1993.
5. Law of the Republic of Latvia: Law on State Secrets, Latvijas Vēstnesis No. 181, 29.10.1996.

Case Law

6. Judgment of the European Court of Human Rights of 23 May 2017 in the case Oderovs v. Latvia, No. 21979/08.
7. Decision of the Department of Criminal Cases of the Senate of the Supreme Court of the Republic of Latvia of 12 October 2006 in case No. 11511003104, SKK-579/2006.
8. Decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia of 27 November 2014 in case No. 11095016806, SKK-691/2014.
9. Decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia of 28 December 2015 in case No. 11903022711, SKK-549/2015.
10. Decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia of 22 August 2018 in case No. 11250014115, SKK-297/2018.
11. Decision of the Department of Criminal Cases of the Supreme Court of the Republic of Latvia of 4 October 2018 in case No. 11520035214, SKK-540/2018.
12. Decision of the Department of Criminal Cases of the Senate of the Republic of Latvia of 30 November 2018 in case No. 15830009812, SKK-439/2018.
13. Decision of the Department of Criminal Cases of the Senate of the Republic of Latvia of October 7, 2020 in case No. 11815007317, SKK-80/2020.

Literature

14. Baumanis, J. (2017). No krimināltiesību normu interpretācijas līdz kvantu kriminoloģijai. [From the interpretation of criminal law norms to quantum criminology]. Rīga: Latvijas Vēstnesis, 260.
15. Matvejevs, A. (2017). Operatīvās darbības tiesiskā regulējuma problēmas.[Operational Activities Legal Regulatory Issues]. *Electronic Scientific Journal of Law "Socrates"*, 3(9), 85–90. https://doi.org/10.25143/socr.09.2017.3.85-90
16. Strada-Rozenberga, K. (2019). 127. pants. Pierādījumi. No: Kriminālprocesa likuma komentāri. A daļa. K. Stradas-Rozenbergas zin. red. [Comments from the Criminal Procedure Law. Part A. In the scientific edition of K. Strada-Rozenberga]. Rīga: Latvijas Vēstnesis, 430–435.

https://doi.org/10.25143/socr.21.2021.3.159-168

Problems of Police Activity in Ensuring Public Order and Public Safety

Dr. iur. ***Aleksandrs Matvejevs***
Faculty of Social Sciences, Department of Law,
Daugavpils University, Latvia
aleksandrsmatvejevs5@inbox.lv

Abstract

The article addresses the issues concerning public order and public security. These two are the objects of the state administration that form separate legal institutes. The duties of the police include securing the rule of law, maintaining public order and security, preventing, detecting and investigating crimes. The police ensure safety of people and environment and prevent all violations of the law and disturbances by eliminating and investigating all such incidents. The tasks of the police are defined in the Police Act. The police cooperate with other authorities and local residents and communities in maintaining security.

Keywords: public order, public security, public place, police activity.

Introduction

The idea of public security and the need to ensure such security date back to the earliest days of civilization itself. Predominant understanding of public security today has acquired new additional elements beyond the traditional and fundamental concept of public security. Over the course of time many researchers have sought to find a clear and precise definition for public order and public security. From the very beginning of the existence of society, there has also existed crime, in one or another way of its manifestation [16].

Public order can be viewed in two senses: in *a broader sense*, it is a social political category that comprises varied social phenomena, including legal order, public order, public security etc.; in *a narrower sense* public order is a system of relations that are formed in public places, regulated by legal and other social norms and aimed at development and protection of public and private peace, human dignity and respect, and public morals.

Definition and Analysis of Threats

The state as a historically formed entity prevented most circumstances that endangered people's life and health, their property, environment, but it was unable to solve all problems pertaining to public security. Even today people having reached a certain level of comfort and well-being are not protected from social and other threats. Moreover, in the post-industrial world the level of social, ecological and technological threats increases. Security threat is not an action, but a phenomenon, fact, event, or a person that has a potential of committing a malicious act against an object protected by the state and requires application of preventive security measures. Threat may transform into an emergency, i.e., a natural disaster, mass riots etc.

Emergency situation may be declared in case of such threat to national security, which is related to a disaster, danger thereof or threat to the critical infrastructure, if safety of the State, society, environment, economic activity or health and life of human beings is significantly endangered.

Security threat is a set of conditions and factors that endanger vital interests of individuals, society and state. Security threat is created by internal and external sources of danger and is a real or potential threat to security objects and requires action for maintenance of internal and external security. Security threat is a manifestation of danger that may cause damage to security objects. Public and other types of national security (ecological, economic, informational etc.) may be endangered by action (omission), facts, events that may lead to loss of human life, harm to health, loss of property, material damage to society and state. A threat that is transformed into a violation is an attempt to endanger security of individuals and society as well as the state protected interests. The transformation of threats results in interaction: the endangering party causes harm; the other party suffers loss or even destruction. However, a human being as an object of a harmful action is able to evaluate the events and develop tactics and system for protection against threats of varied nature, i.e., a legal protection system.

If the police protection system functions properly, an object of threat is in a state of protection that may undergo unfavourable changes. The state of protection is an absence of threats or an ability to counter threats to an object of state protection (public order, rights and freedoms of individuals, property) and prevention of emergency situations of social, technological or biological nature. The scope of security threats may differ, a threat may be global or local. The system of security threats is constantly changing, criminal threats being a major part of it.

Nowadays the state and individual security is determined by economic, political (both domestic and international) and social environment. National security of Latvia [8] is the ability of the state and the society to protect national interests and fundamental values that include independent statehood, territorial integrity and democratic order laid down in the Constitution of the Republic of Latvia [12] as well as maintenance of internal security of the state, observance of human rights, security, and protection of inhabitants.

Threats to the state security are actions that endanger fundamental values and interests of Latvia, and situations caused by ecological, technological, and other factors that have a negative influence on national interests. Threats may manifest themselves separately in political, military, economic, informational, social, ecological, criminal etc. spheres, or be closely connected by interrelation and aggregation. Risks and threats to national interests of Latvia may result from both the international environment and the processes of national development of the state and society.

Characterisation, Features, Structure and Classification of Objects of Police Protection

The object of police protection is a notion that comprises material, spiritual and legal values to be protected by the state and its police institutions. It might be defined as follows: *a social good (value) protected by the state and of vital importance to individuals, society and state, the protection of which is ensured by the system of legal measures available to the state* [7].

The main subject that ensures security is the state with the assistance of legislature, executive and judiciary. However, law enforcement is complete only when the police become its participant as it performs surveillance, applies administrative and criminal procedural coercive measures, investigative activities etc. The object of police protection includes the following chain: threats – protection object – police protection. Security of an object is provided by the system of measures performed by the police. There is a number of police protection objects: human life, health, rights and freedoms, property, interests of the state and the society etc.

It has to be noted that there are fundamental categories – objects that include balanced, historically stable and evident relationships between individuals, society and the state. They are human life, rights and freedoms, property, public order and security. These objects are the supreme values of the Latvian state as their protection ensures protection of both every single element of the entirety and the entirety itself.

Each police protection object shall have the following features:

1) it exists irrespectively of human will and consciousness, is useful, benefits individuals, society and the state;
2) it needs protection against illegal actions and other forms of threat;
3) it is the aim of state sovereignty and its protection is an internal matter of the state;
4) it interacts with the subject of policing (police protection) that determines the status of object protection;
5) it is provided for in legal norms;
6) the object protection is of applied nature.

The scope of police protection objects is wide which requires their scientific classification which would facilitate research and understanding of such objects and

determine their place, value and significance in the common system. An accurate classification and systemisation of police protection objects require detailed analysis of the structure of the object under study.

Structure is an aspect of a system for vertical examination of the police protection object from bottom to top and setting the hierarchy of the basic elements of this vertical line. The structure of the police protection object is an aspect of system invariants. A universal police protection object is a complex object as it combines various individual objects: people, property, certain territory. In its turn the universal object comprises the system of kin objects. Public order, for instance, includes order in public places with traffic such as streets, squares, public order in yards of residential areas and in protected territories.

Public security as a universal police protection object includes the following kin objects: safety of people in public places, traffic safety, fire safety, sanitary safety etc. The universal object is characterised by a large scope, universality and diversity of protection objects. The universal object includes other kin and individual ones: houses, territories, people, animals etc. Universal police protection objects are subject to the Criminal Law [8], the Law on administrative penalties for offences in the field of administration, public order, and use of the official language and other laws and regulations [4].

Kin police protection objects are also a complex object that unites numerous varied individual objects that possess kindred features and are protected by the state. For instance, traffic safety as a kin police protection object includes 'safety for everybody', safety of property (vehicles, roads, houses, trees) that may be damaged in a traffic accident. Kin objects are more realistic compared to the universal ones and form the second level in the hierarchy of police protection objects. A number of kin objects are regulated by special laws, e.g., traffic safety is regulated by the Road Traffic Law [11], fire safety – by the Fire Safety and Fire Fighting Law [3], safety of persons in public places – by the Law 'On Police' [5] etc.

Kin objects depend on individual police protection objects that have actual and strong protection. The individual police protection object is a social and legal value that is visible and is protected as an individual or applied 'set'. Individual police protection objects are concrete persons, buildings, protected territories, documents, government information etc. The individual object is a direct object as it is a value protected by police officers both in the vicinity and inside it.

Structure being an aspect of the system allows classification of phenomena both vertically and horizontally. E.g., singling out types of state security – public, national, economic etc. – is a horizontal classification of protection objects. Therefore, analysis of the structure on the basis of scale criteria determines two groups of police protection objects vertically. The first groups are *complex objects* which are usually wider and more general, e.g., public order includes protection of property, human rights and freedoms; universal and kin objects are complex objects. The second group is *individual objects* which are usually indivisible, belonging to a particular owner or representing a concrete person.

Another criterion for division of police protection objects determining their position in a particular group is the type of object protection. According to the type of protection, the police protection objects are divided into general and special.

General police protection objects are public security and order. These objects are protected by well-known and widely used policing methods: mainly overt administrative supervision, direct administrative coercion, administrative jurisdiction, police help etc. These methods are applied by police patrol units, the Public Order Police inspectors that are in charge of a particular territory. General police protection objects are closely tied with the competence of several units of the police department. General police protection objects are stated in the Law 'On police' [5], the Road Traffic Law and other laws [11] and regulations.

Special police protection objects are objects that are protected applying more complicated methods and forms of policing that are prescribed by the Operational Activities Law [10]: investigative monitoring of correspondence, information gathering by means of special equipment, wiretapping etc. Special objects include state protection objects, protected territories, state border, special buildings, e.g., nuclear power stations etc.

Police protection objects may also be classified by the special nature of each object and under this classification all objects can be divided into natural persons and property. The first group is comprised of private persons, deputies of the parliament, deputy nominees and government officials. The second group consists of property in the wide sense of the term: buildings, land etc.

Police protection is the last link of the chain "threats – security object – police protection". The notion *police protection* may be defined as police activity for protection of some object (public order, government building, state border etc.) If the notion under study has such definition, a question arises whether it is equivalent to the notion of policing.

These notions are similar, but not equal. Police protection is the basis of policing and includes the most essential elements: administrative supervision and administrative coercion. These elements were the reason for the foundation of the police as an element of state administration. Moreover, the state applies them in exercising its direct functions – performing protection of the most significant objects for society and the state, including protection of the state itself. The scope of policing is wider; it includes operation of a police institution, staffing, crime intelligence, rendering help to people in emergency situations and many other tasks, although they are not always directly aimed at protection of an object or a person.

Provisions of criminal and administrative law play an important role in legal protection of objects. The protective function of the norms of criminal and administrative law is performed in many ways and by various methods. They are prohibition to perform actions with the protected objects, imposing sanctions (punishments) for offences against the protected objects; establishing legal facts that allow the law enforcement institutions (the police) to apply administrative coercive measures. Therefore, prevention of criminal and administrative offences, i.e., protection of many security objects is delegated not to

the judicial institutions or the prosecutor's offices, but to police institutions as they are in close proximity of the objects, monitor them and, in case of an attempted crime, can prevent it or stop it on the spot.

Police protection unlike the law enforcement activity of other institutions has an applied nature. The applied nature manifests itself in police actions:

1) prevention of offences and crime in the course of patrolling or other activities;
2) identification of persons who have committed administrative or criminal offences, detention of perpetrators and taking them to the police station;
3) rendering help to persons whose life and health are endangered by perpetrators;
4) maintaining road traffic safety by controlling vehicles and pedestrians;
5) maintaining public order in public places by means of administrative supervision and applying coercive measures against persons who break the law;
6) maintaining contacts with people and gathering police information thereby instilling a sense of safety in the inhabitants of a particular territory;
7) cooperation with other police agencies (the Municipal Police) in guarding certain objects.

Police protection has its characteristic features:

1) the basis of policing for protection of security objects are monitoring (administrative supervision) and coercion. When applying administrative coercion or preventing an offence against the protection object, police institutions perform the so-called direct protection measures;
2) due to its applied nature, 24/7 operation, application of administrative coercion the police protection means play a special role in the law enforcement system of the state and its absence leads to weakness of protection or even complete lack of it despite the fact that the rest of the law enforcement elements are functioning and retain their repressive power (protective legal provisions, law enforcement institutions);
3) protection of security objects (e.g. patrolling public places) often requires application of minimum means against the potential law-breaker (oral caution, document check-up etc.) as disproportionate measures discredit themselves and have an opposite effect. Police protection effected by overt surveillance is aimed at turning the illegal disposition of the potential law-breaker into a law-abiding behavior.

Analysis of Notions of Public Order and Public Security

In respect of the activity of police institutions, legal order includes ensuring two spheres of public order and public security. The first sphere of activity is comprised of the set of activities that are performed by a police institution and its units with an aim of creating such in the particular territory that would ensure inviolability of individuals, their dignity, respect and property and enjoyment of political, economic and social rights

and freedoms provided for in the Constitution [12]. The second sphere of activity is the maintenance of public security, i.e., protection of human life and health, material and other values of the society from the impact of natural forces, sources of high hazard, violation of technical regulations and other negative social phenomena.

The word *order* is usually interpreted as a willful order. This notion is rather unpopular among the liberals and increasingly popular among those supporting authoritarian power. According to this interpretation, the order in the society is based on giving orders and obeying them or on a total hierarchic structure of the society where the leaders or even a sole monarch decides what each individual shall do.

Crises in liberalism are not merely triggered by exogenous factors, such as international terrorism, wars, global economic downturns and natural disasters. They can also emerge endogenously when basic principles underpinning liberalism come adrift and, like soap bubbles, fluctuate and then burst when they come into contact with a new idea or harsh reality. One such harsh reality is insecurity of residence and the principles of liberalism that it challenges are freedom from state coercion, human emancipation from unnecessary restrictions and the equal treatment of all individuals irrespective of their place of birth and nationality.

Public order is attached to a definite territory that has limits of space and is called *public place.* Clause 1 of Paragraph 1 of Section 10 of the Law "On Police" provides an incomplete list of public places: "to ensure order on roads and streets, in public squares, parks, public transport, airports, ports, stations and other public places in order to guarantee safety of persons and society" [5]. The Public Entertainment and Festive Events Law explains the notion of a public event: "a festive, commemorative, sports, entertainment or recreational event planned and organised by a natural or legal person open to the public in a public place irrespectively of the ownership of the venue" [6]. The Law on Administrative Penalties for Offences in the Field of Administration, Public Order, and use of the official language: "a public place is any place which, regardless of the actual form of its use or ownership, serves for the provision of joint needs and interests of the society and which is available, for a fee or free of charge, to any natural person who is not the owner, possessor, holder, paid employee of the relevant place, or to another person whose presence in the relevant place is related to the performance of work duties" [4].

The term *security* is older than its constant peer *public order.* The notion of security was already used by the police law scholars of 18th century and the early 19th century; they believed that security as safeguarding the subjects (citizens) is 'the life and soul of a state'.

The nation-state is the format in which most of our central political concepts were shaped or indeed invented. On closer scrutiny, it is revealed that concepts such as community, democracy, security and identity are not only recurrently applied to the nation-state; they are also in their very meaning marked by it.

The concept of security has predominantly been used in reference to the nation-state and this without even reflecting on the distinction between state and nation: national security is the established name for the security of the state.

While the traditional concept of security, closely identified with the military affairs of the state, is widely felt to be insufficient, attempts to articulate a 'wider' concept of security have also met with considerable reserve. The wideners have been criticised for being unable to specify a clear criterion to prevent everything becoming defined as security.

It is unclear what individual and international / global security mean. It is too easily assumed that *security* is a simple word the meaning of which is widely known, and thus they can immediately proceed to discussing the questions of whom, what and how. The concept of security as known from *security policy* has no basic meaning independent of its referent object, the state. It is naive to assume that the concept of *national security* (that is, state security) should be understood by detaching *state* and comprehending it without its security dimension (which is always inherent in the word *state*) and then connect this to an equally context free concept of *security*. The two concepts are already present in each other. If this were to be denied, both state and security would have to be reified and naturalised for them to be seen as a necessary, historical, constant entity.

Ensuring public security in normal conditions of society and the state, as well as in emergency situations is achieved through a unified state policy in the field of internal security, and therefore public security, the implementation measures of economic, political, organisational, and other measures that are aimed primarily at preventing threats to the vital interests of the state and society. Significant role in providing safety is appropriate and professional for selection of the staff [15].

The Parliamentary Assembly considers that the full exercise of human rights and fundamental freedoms, guaranteed by the European Convention on Human Rights and other national and international instruments, has as a necessary basis for the existence of a peaceful society which enjoys the advantages of public order and public security [1].

Conclusions

Some legal experts believe that public security is a public order. Others, however, explain the public security concept as more intensive and inclusive to public order, arguing that the goal of public order is provision of human security: either from other people's illegal attempts or from high-risk sources of misuse alleged negative manifestations.

In the scientific literature, the concept of *public order* is examined by its broader or a narrower sense. In a broader sense it is the general nature of the socio-political category, encompassing a multitude of social events, including the legal system; in a narrow sense – public security, etc. The latter sense deals with the law and other social norms regulating the system of relationships that are formed in all public areas and directed to persons of public and personal peace, human dignity and respect, public morality installation, development and safeguarding.

The analysis of the notion *public security* reveals its two parts:

1) conditions where there is no threat to an individual, society or state;
2) measures by the state that ensure these conditions and instill a sense of security in people.

These elements to a certain extent determine the features and characterise public security as an object of police protection and as a definition of the notion.

Public security is based on two elements:

1) public peace when there is peace, cooperation and confidence in safety in the public realm;
2) conditions on the ability to protect where the state (the police) continuously provides public security and is ready to render help and neutralise any threats.

Thereby, in the legal reality public security is legal relations of the police where the subjects are, on the one hand, persons, society, state institutions that have a constant need of protection against crimes and other offences and, on the other hand, the state whose task is to ensure the protection stated in the legislation via competent institutions.

Thus, relations in the public security sphere are regulated by legal norms, but in the sphere of public order – by legal and social norms.

The European Code of police ethics states that the main purposes of the police in a democratic society governed by the rule of law are: (1) to maintain public tranquility and law and order in society; (2) to protect and respect the individual's fundamental rights and freedoms as enshrined, in particular, in the European Convention on Human Rights; (3) to prevent and combat crime; (4) to detect crime; (5) to provide assistance and service functions to the public [14].

The framework of the Code was provided by the European Convention on Human Rights [2] and its case law, together with a number of important Council of Europe Recommendations. It was drafted to take account of both the similarities and differences between member states in the way policing is being implemented and reformed. The Code seeks to be both a source of information and inspiration for the governments, policing practitioners and the general public of member states.

Bibliography

1. Declaration on the Police. Parliamentary Assembly of the European debate on 1 February 1979 (24th Sitting of the 30th Session) (see Doc. 4212, report of the Legal Affairs Committee). Text adopted by the Assembly on 8 May 1979 (2nd Sitting of the 31st Session). Available: http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16101&lang=e
2. European Convention on Human Rights. Available: https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c
3. Fire Safety and Fire-fighting Law of Latvia. Available: https://likumi.lv/ta/en/en/id/68293-fire-safety-and-fire-fighting-law
4. Law on administrative penalties for offences in the field of administration, public order, and use of the official language and other laws and regulations. Available: https://likumi.lv/ta/en/en/id/314808-law-on-administrative-penalties-for-offences-in-the-field-of-administration-public-order-and-use-of-the-official-language
5. Law on Police of Latvia. Available: https://likumi.lv/ta/en/en/id/67957-on-police

6. Law on Safety of Public Entertainment and Festivity Events of Latvia. Available: https://likumi.lv/ta/en/en/id/111963-law-on-safety-of-public-entertainment-and-festivity-events
7. Matvejevs, A. (2009). Tendencies of the evolution of the theory of policing. Riga. P. 327. ISBN 9984-689-08-5.
8. National Security Concept of Latvia. Available: https://likumi.lv/ta/en/en/id/309647-on-approval-of-the-national-security-concept
9. National Security Law of Latvia. Available: https://likumi.lv/ta/en/en/id/14011-national-security-law
10. Operational Activities Law of Latvia. Available: https://likumi.lv/ta/en/en/id/57573-operational-activities-law
11. Road Traffic Law of Latvia. Available: https://likumi.lv/ta/en/en/id/45467-road-traffic-law
12. The Constitution of Republic of Latvia. Available: https://likumi.lv/ta/en/en/id/57980-the-constitution-of-the-republic-of-latvia
13. The Criminal Law of Latvia. Available: https://likumi.lv/ta/en/en/id/88966-the-criminal-law
14. The European Code of police ethics. Recommendation (2001) 10 adopted by the Committee of Ministers of the Council of Europe on 19 September 2001. Available: http://www.krim.dk/undersider/straffesager/straffeproces/109-european_code_of_police_ethics-2001.pdf
15. Zahars, V., Stivrenieks, M. (2015). Ieslodzījuma vietu drošības aspekti. *Administratīvā un krimināla justīcija*, 1(70)/2015. Rīga: Baltijas Starptautiskā akadēmija. ISSN 1407-2971.
16. Zahars, V., Stivrenieks, M. (2016). Security and safety enforcement: execution peculiarities. *Journal of Security and Sustainability Issues*, 6(1):71–83. DOI: http://jssidoi.org/jssi/papers/papers/bykeyword/177

https://doi.org/10.25143/socr.21.2021.3.169-180

Current Issues of Construction Law

Dr. iur. ***Jānis Bramanis***
Riga Technical University, Latvia
janis@bramanis.lv

Dr. iur., Professor ***Jānis Načisčionis***
ORCID: 0000-0002-6313-8010
"Turība" University, Faculty of Law, Latvia
Janis.Naciscionis@turiba.lv

Abstract

Theoretically, the construction right affects all persons and the humanity in general since a situation is impossible that would prove the lack of this process, and as the area of economics, also different economic, political and legal thought development processes regulate consolidation of this legal discipline in the legal science. Construction right has consolidated over time as a legal discipline with its regulating subject – construction works and designing, including also the development of construction plan – designing, construction of the object, reconstruction or dismantling.

Keywords: construction, construction rights, permission, responsibility, construction control.

Introduction

The author believes that it is difficult to imagine a situation when no construction would be carried out in the country. Thus, the article is of current importance due to several reasons, the main one remaining insufficient attention paid and scientific research undertaken in particular on the subject of the construction right, its content and place in the legal system.

The purpose of the article is to change the approach to construction right and continue specifying its place in the Latvian legal system, simultaneously looking back at the existing solutions to several problems of theoretical and practical nature, which evidently result from the lack of theoretical justification.

The study aims at continuing improvement of the construction right theory, while its task is to characterise the development of construction right in Latvia, analyse the legal framework of the construction process in the country and identify the current issues.

Scientific research methods – both comparative and analytical – will be used in the process of drawing up of this publication.

1 Legal Framework of Construction in Latvia and Theoretical Issues of Its Development

The legal framework of construction in Latvia and abroad is important, as the society, while being in a public place or in their own private house, need to feel safe, knowing that the erected houses will not collapse and endanger the lives or health. The reason for such statement may be found in the tragedy (Parlamentārās izmeklēšanas komisijas gala ziņojums, 2013) that happened in Latvia where people died in a public space. This tragedy also highlighted the tragedy of the legal framework existing in construction field over many years and the irrational meanders of the legal framework, within which the building specialists involved in the construction process tried to find the most suitable solutions for the construction of the buildings.

Therefore, it is essential to look back at the existing situation with the legal base of construction in Latvia under the context of buildings of public importance, their safety and sustainability, since these are the buildings where most people stay every day, spending time at work, recreating, or just passing by them.

1.1 Legal Basis of Construction in Latvia (2014–2021)

The year 2014 is important in the construction law and industry due to the fact that the legislator of the Republic of Latvia (Saeima) chose to cardinally change the legal framework of construction by abandoning years of established practice and gradually abandoning the use of the Soviet Union Construction norms and regulations (Spriedums lietā Nr. A420305714, SKA-1104/2017, 2017) or otherwise known as SNiP during construction process.

The new Construction Law (Būvniecības likums, 2013) entered in force, and with it several subordinate regulatory enactments were created – the Cabinet regulations (Vispārīgie būvnoteikumi, 2014), which significantly changed not only the procedure for obtaining a building permit (the process), but generally the understanding of the role, responsibility and duties of the building specialist in construction process, as well as define the role of the state in control of public buildings.

In this regard, a relevant institution was created – the State Construction Control Bureau of Latvia (Būvniecības valsts kontroles biroja nolikums, 2014), the competence of which included control of the construction of public buildings. It must be admitted that as of the moment of drawing up of this publication, the Construction Law has been amended (Būvniecības likums, 2013) ten times.

It is essential to highlight the changes in relation to the administrative liability in construction, since the Law on Administrative Liability (Administratīvās atbildības likums, 2018) entered in force in 2018, stipulating administrative liability for violations in construction and integrating regulations on administrative liability in the Construction Law (Būvniecības likums, 2013, *Articles 25–32*).

It has to be pointed out that in this period the legislator finally found a solution for the Eurocodes (Eirokodeksa standartu nacionālais ieviešanas plāns 2013–2014, 2012) that were referred to as standards, by granting them the effect of a legal regulatory enactment. Therefore, a mandatory enforcement effect was given to the long-existing standard.

By granting the effect of a legal regulatory enactment to Eurocodes, at last the designers of building structures acquired legitimate grounds to apply these standards as a mandatory norm not only in the design of public buildings and implementation of this design but also in construction of private houses in general.

1.2 Development Trends of Legal Construction Norms

It can be argued that any building and structure acquires its legal status only if it has been designed in accordance with the procedure specified in the laws and regulations and in accordance with the territorial plan, built by fully implementing the approved and accepted construction design and in accordance with the relevant construction norms (Čepāne, 2003). Therefore, when implementing a construction design, a link emerges that a building, built upon a ground and closely connected to it, shall be recognised as its part (Civillikums, 1937, *Article 968*), which in general creates a whole body – a property.

Therefore, the state is the entity that organises and regulates relations between the subjects of construction rights in order to ensure fulfilment of all the above-mentioned relations and the observance of the requirements. The state should organise stability of relations and create necessary guarantees, as the buildings may have different importance status – a building may be also a building of public importance (Lešinska, Grišāne & Statkus, 2008), and the requirements for design and construction of the buildings imposed regarding buildings of public importance are rather different and stricter.

Most definitely, the essence of construction rights is manifested in the regulation of relations between construction participants (subjects) or persons whose rights may be violated during construction. Therefore, the legal framework of construction should include also issues related to the construction process in general, including issues related to purchase of land and funding of the project until commissioning of the building or the structure for operation. The legal framework of construction should also include issues regarding conclusion of construction contract, which has not yet been done, the procedure for submission and review of claims or complaints made in construction which affects all parties involved in the construction process.

Therefore, the following shall be taken into account in the development of building regulations as research objects of construction rights:

1) construction institutions (state and municipal);
2) competence, that is, the goals, tasks, functions, rights, obligations, authorities and responsibility of the subject of construction rights – construction institutions;
3) in the aspect of vertical, horizontal relations of the study of the interaction of separate subjects of construction rights, that is, co-operation relations of subordination and mutual disobedience of construction institutions of higher and lower construction institutions;
4) participation of non-governmental organizations as subjects of construction rights in the relations related to the performance of the functions of construction rights;
5) relations of private persons with the administration of the construction industry;
6) public involvement and rights in the construction process (Bramanis, 2013).

In this regard one of the goals of development of the legal construction norms should be a guarantee – guarantee for the public that buildings or structures involved in the daily life of the society will not cause environmental and public harm and are safe to use.

The construction rights shall address the issue of which rights are more important – the rights of the subject of construction rights, who wishes to build or implement the construction intention or the rights of the person, or who wishes to live in a favourable environment. There are no legally established strict boundaries between these two rights and interests. Therefore, as the guarantee for the public that its rights will be respected, it shall be stipulated that the technical requirements specified in the Latvian building norms shall be complied with the implementation of construction, which, among other things, stipulate that a structure must not be used until it is accepted for service. The structure accepted for service shall be used only according to the designed type of use (Būvniecības likums, 2013, *Article 21, Section 2*).

Significance of the theoretical aspects of construction rights in the development of construction norms can be found in the search for construction rights, namely, in the law itself as such and in construction law.

2 Buildings of Public Importance or Public Buildings

Buildings of public importance or public buildings – the question of which term to use may arise both in daily life and in legal terminology. It is worth studying the equal or different meaning of these concepts "buildings of public importance" or "public buildings", because understanding of the further practical applicability of these concepts probably changes depending on the content of these concepts.

Buildings of public importance or public buildings also include military objects, state security buildings, buildings, which have been classified as containing state secret (Par valsts noslēpumu, 1996, *Article 6*), because design and construction of such buildings requires receiving Industrial safety clearance certificate, issued by the Constitution Protection Bureau (Latvijas Republikas Satversmes aizsardzības birojs).

2.1 Understanding the Concept of Buildings of Public Importance in Regulatory Enactments

When reviewing both concepts – "buildings of public importance" or "public buildings", it can be concluded that they consist of two parts. A building of public importance consists of "public importance" and "building", whereas public building consists of "public" and "building".

Regardless of the status of the building, pursuant to the normative regulation in construction, a structure is a physical object which has resulted from human activities and is linked to a foundation (ground or bed) (Būvniecības likums, 2013, *Article 3, Section 3*).

Pursuant to the special regulations in construction, the structures per se are divided into buildings and engineering structures, which are further divided into groups in accordance with the construction process (Vispārīgie būvnoteikumi, 2014, *Annex 1*).

As stipulated in paragraph 2.4 of Article 2 of Latvian building norm LBN 208-15 "Public buildings" (Noteikumi par Latvijas būvnormatīvu LBN 208-15…, 2015), a public building is a building where more than 50 % of the total area of the building is occupied by public spaces or spaces designed for the purpose of ensuring public function, or an engineering structure which is designed for public use (for example, concert stages, stadiums).

Thus, due to its public nature a building of public importance will be attended by different groups of people and the special requirements shall be taken into account in regard to safety and accessibility already when designing such building.

As specified, the number of the floors for a public building depends on the built-up intensity of the land plot and building height restrictions in accordance with the territorial plan and building regulations of the relevant municipality and are specified in the detail plan in more specificity if this is necessary in accordance with the regulatory enactments (Noteikumi par Latvijas būvnormatīvu LBN 208-15 …, 2015, *Point 2.1*).

Regrading similarities and differences in the concept of a building of public importance or a public building, it is worth looking at the historical regulations. As specified in the regulations of the currently void Cabinet Regulations No 112 "General construction regulations", the term "of public importance" was defined and used therein for marking public buildings, indicating that a building of public importance is a building which has more than five above-ground stories, a public building in which it is intended more than one hundred people shall inhabit concurrently, a production or warehouse building with total area of more than 1000 m^2, a tower, as well as

a bridge, an overpass, a tunnel if it is longer than 100 m, or an underground structure of more than one story. Local governments in the local building regulations may additionally specify structures of public importance in their relevant territory (Vispārīgie būvnoteikumi, 1997).

Whereas, when reviewing the information available in the public space regarding the use of the concept, it shall be concluded that "a building of public importance" is used in most of the publications, and not the term "public building". This might be related to the different understanding of these concepts, since, when using the term "public", it is immediately perceived as important for the society in general.

Therefore, the term "public building" and not "of public importance" shall be further used in this article. An important factor in the operation of the public buildings is correct control thereof not only in construction of such building, but also later during its operation.

2.2 Control of Buildings of Public Importance as Public Safety

Control over public buildings shall meet the principle of good administration (Valsts pārvaldes iekārtas likums, 2002, *Article 10*). The institution responsible for control of public buildings is the State Construction Control Bureau of Latvia, which, in accordance with Article 6.[1] of Construction Law, has been entrusted with ensuring state control of construction works.

According to the estimates of the operating report of the Bureau and Annual Public Report of 2019 (Būvniecības valsts kontroles birojs, 2019), approximately 10,000 public buildings are under the jurisdiction of the Bureau. During the reporting period, 327 decisions were prepared in general, of which 151 decision was made regarding elimination of danger and consequences of arbitrary construction (in 28 cases regarding elimination of danger in mechanical durability and stability of the building, while the rest of the decisions concern elimination of the consequences of arbitrary construction – of which in 74 cases arbitrary construction concern also the load bearing structures of the building).

Construction control, which mostly includes control over the implementation of the construction design on site and the construction process, however, qualitative outcome of the construction works lies in the interests of any Client, that is why the laws and regulations of Latvia stipulate the requirements both regarding achievement of such outcome and the responsible persons. The quality control of construction is ensured by the Main contractor, the specialists involved by the Client, the Construction Board and the State Construction Control Bureau of Latvia.

A construction work manager has a duty to ensure performance of construction work up to the quality in conformity with a building design and plan for performing the work, also by complying with other laws and regulations governing the construction and technologies laid down for the use of construction products. The quality of

construction work shall comply with the construction work quality indicators laid down in Latvian Construction Standards and other laws and regulations (see Vispārīgie būvnoteikumi, 2014, *Point 99*).

Each company develops the construction quality control system in accordance with its profile, type and scope of works to be performed. The quality control of construction works includes: preliminary control of construction work performance documentation, delivered construction products and structures, devices, mechanisms and similar equipment; technological control of individual work operations or work processes; final control of the completed work type (to be handed over) or construction work cycle (structural element) (Vispārīgie būvnoteikumi, 2014, *Articles 124, 125*).

This raises the issue that the concept of quality is mentioned everywhere, but nowhere are the quality parameters specified, nor is it specified, for example, whether someone should inspect these quality control systems of the contractors which are often formal, or what the consequences are if these systems are not essentially implemented in daily work. This issue directly concerns safety and quality of buildings but is not regulated in practice.

The construction work control in accordance with the competence specified in this law is conducted by construction boards, institutions which perform functions of the construction boards, and the building inspectors of the bureau – persons employed at relevant authorities who have acquired the right of independent practice in the field of architecture or construction and are registered with the register of building inspectors. Within the scope of cooperation, the building inspector of the building authority has the right to also visit such structure and construction site during construction work supervision of which is within the competence of the Bureau or another authority carrying out the functions of the building authority, and to provide information thereon to the relevant authorities for further action (Būvniecības likums, 2013, *Article 18, Section 1*).

A person is confronted with a kind of "construction supervision" daily – someone is checking a student's homework; another one is checking how well the factory-made products are, etc. The same principle applies in construction. A person named in the state laws must check the work of another person, because, unfortunately, human nature proves that if there is no other, higher-ranking person who pushes and expects a certain level from the employee, these quality standards systematically decline. Construction supervision at its root ensures responsibility of the main contractor for his work.

A construction supervisor is a representative of the Client's interests and a trusted partner in the entire construction process from the procurement development until handing over the construction object in accordance with the requirements of the construction design and regulatory enactments. Construction supervision is regulated by the Regulation 500 of the Cabinet of Ministers "General Construction Regulations", in force of 01.10.2014. A construction supervisor has specific duties (Vispārīgie būvnoteikumi, 2014, *Point 125*).

A construction supervisor shall be responsible for supervision of the entire construction work at large and control of every stage specified in the plan of construction supervision at the construction site within the time periods provided for in the relevant plan, and also for the conformity of the structure or its part during construction of which the building supervisor has carried out his or her obligations with the building design and the requirements of the initiator of the construction, this Law and other laws and regulations (Būvniecības likums, 2013, *Article 19, Section 6*).

The purpose of the author's supervision is not to allow arbitrary deviations from the accepted intention and developed building design, and also infringements of the laws and regulations and standards during the course of the construction work (Vispārīgie būvnoteikumi, 2014, *Point 102*).

Author's supervision is regulated by the Regulation 500 of the Cabinet of Ministers "General Construction Regulations" in force of 01.10.2014.

Author's supervision is performed for:

1) state protected cultural monuments, buildings of second and third group in the territory of the urban construction monument and in the protective zone thereof in conformity with the territorial planning (except for one or two apartment residential buildings and auxiliary buildings);
2) structures of the third group to be newly erected, restored and reconstructed if building permit is required for construction; public structures of the second group if building permit is required for construction: public structures to be newly erected, restored and reconstructed;
3) new residential buildings (except for one or two apartment residential buildings);
4) structures for which environmental impact assessment has been carried out (Vispārīgie būvnoteikumi, 2014, *Point 105*).

The purpose of author's supervision is to ensure that the erected object on site will be the same, as specified by the author of the construction design in the completed construction design. This means that author's supervision shall be performed by the author of the construction design or its authorised certified person (Vispārīgie būvnoteikumi, 2014, *Point 113*).

2.3 Concept of Construction Rights in Latvia

Pursuant to the current regulations, construction is design and construction works of all types of structures (Būvniecības likums, 2013, *Article 1, Section 12*). But in accordance with the definition of construction, proposed by the Latvian encyclopaedia, "*construction is the construction of all types of buildings, a branch of the national economy that performs the design, construction, extension and renovation of all types of buildings*" (Latvijas enciklopēdija, 2002).

First, the definition of construction describes the concept of *construction*. Construction as one of the elements of the composition envisages performing an activity – works. Secondly, the definition of construction shows that it is a sector of economy.

The Construction Law adopted in Latvia after the restoration of independence was the first attempt to understand the concept of construction and the legislator has also acknowledged the fact that it is important to determine the content of the concept of construction. The legislator has acknowledged that the necessary activities, the performance of which is recognised as construction, have not been determined. According to the current legal definition, construction is the design and construction works of all types of structures (Būvniecības likums, 2013, *Article 1, Section 12*).

It may seem that the concepts *construction* and *construction rights* are understandable. Although several amendments have been made to the Construction Law, the legal definition of construction has not changed and has remained in its original version. This definition could be considered self-sufficient if it is clear what is meant by *structure*. It follows from the definition of the current law that anything that is being built, based on the accepted construction design and a building permit, issued in accordance with a particular procedure, shall be subject to construction rights. Therefore, one should be very careful when defining the concept of construction, because anything that will be subject to the construction rights will be interpreted in the future in accordance with this definition.

Construction rights are rights that determine the set of rights and obligations of legal entities in the design and construction works. Thus, it is necessary to analyse the explanation included in other regulatory enactments regarding classification of structures. The regulations "On classification of structures" (Noteikumi par būvju klasifikāciju, 2010) define classification of structures according to their use. The purpose of classification is to ensure unified registration of structures in the Republic of Latvia. The structures and groups of premises are classified in accordance with their form of use or function. Structures, which are being operated or designed for several uses, shall be included in one particular classification position, based on their main use.

Thus, construction activity results in creation of such structures as buildings, residential houses, dwellings, non-residential buildings, civil engineering works, bridges, roads, water dams and other construction objects. Simultaneously, it should be noted that predominantly classification and functions of buildings are necessary for administration of real estate tax. Thus, new norms will be included in the draft law "Construction Law", which envisages dividing structures into four groups (Būvniecības likums 2013, *Article 9*).

As specified in the annotation to the draft law "Construction Law":

> "this classification is based on the degree of complexity of the construction of the buildings and the potential impact on the environment. An essential criterion in the formation of these groups is the risk factor or hazard that these structures can potentially pose. In view of the above, in order to divide buildings into groups, it is necessary to take into account not only the number of floors and other technical characteristics, but also the function (type of use) and the potential number of people who come into direct contact with these buildings at the same time. Thus, it is also not possible to make a division based only on the classification of buildings. According to these three groups, additional requirements will be set for the construction of the existing buildings or they will be reduced". (Būvniecības likums, 2013)

As defined in the national programme of construction (Par Būvniecības nacionālo programmu, 2002), one of the most important end products of construction is housing, which is the main provision of the environment necessary for functioning and existence of human life and at the same time one of the indicators of well-being of people. In this context, the European Court of Human Rights has clarified that *housing* is the right of an individual to live in their own home and to be protected from unwanted interference with the privacy of the home (Augstākās tiesas Senāta Administratīvo lietu departamenta lieta Nr. SKA-120). In particular, construction rights should aim to protect people from imminent dangers that may arise as a result of impact by third parties or nature. In this regard, it should be noted that only a building (dwelling) built in accordance with the law can create a sense of security and protect a person from imminent danger.

The concept of construction also includes the process where legal norms determine procedure for initiating construction, renovation and reconstruction procedures, construction of engineering networks, rights and obligations of the client, rights and obligations of state and municipal institutions, environmental protection conditions and procedures for performance of construction work (Vispārīgie būvnoteikumi, 1997). As the court concluded, "construction is a single, sequential process in which each subsequent decision depends on a previous decision" (Administratīvās rajona tiesas 10.01.2007. spriedums lietā Nr. A42308005). It follows that, in order to discover substantive limits of the concept of construction, it is necessary to identify a set of activities which refer to works, that is to say, those relating to renovation or new construction. Therefore, in order to establish the fact whether construction has taken place or not, a precondition is to establish existence of the activity.

Conclusion

Consequently, a current issue related to the development of construction law is related to the expertise of construction and construction projects and their place in the construction process as such. The question may arise as to how binding the expert reports commissioned by all participants in the construction process are and the conclusions contained therein.

This would also be relevant in the context of amendments to the Public Procurement Law, which are currently being lobbied by large contractors that in essence they will now hand over everything to customers on the basis of the expertise, and if the customer has any objections, they will have to prove their objections by expertise conclusions.

Such a turnaround essentially paves the way for elimination of author supervision and construction supervision as a system, as the contractor and construction expert(s) will be involved as voting participants in the construction process. This can directly pose a risk to security of public buildings, as public buildings are mainly public procurements regulated by the Public Procurement Law. Combined with the generality of

the concepts of quality and control and the lack of detailed concepts of responsibility and consequences in the regulations, this creates a situation in which Latvian construction found itself shortly after 2009, when the State Construction Inspectorate was liquidated.

Bibliography

State Laws

1. Administratīvās atbildības likums: LR likums, 25.10.2018., stājas spēkā 01.07.2020. *Latvijas Vēstnesis*, 225, 14.11.2018. https://likumi.lv/ta/id/303007-administrativas-atbildibas-likums.
2. Būvniecības likums: LR likums, 09.07.2013., stājas spēkā 01.10.2014., Latvijas Vēstnesis, 146, 30.07.2013. https://likumi.lv/ta/id/258572-buvniecibas-likums.
3. Civillikums: LR likums, 28.01.1937., stājas spēkā 01.09.1992. Valdības Vēstnesis, 41, 20.02.1937. https://likumi.lv/ta/id/225418-civillikums.
4. Likumprojekts "Būvniecības likums": sākotnējās ietekmes novērtējuma ziņojums (anotācija).
5. Par valsts noslēpumu: LR likums, 17.10.1996., stājas spēkā 01.01.1997., Latvijas Vēstnesis, Nr. 181, 29.10.1996. https://likumi.lv/ta/id/41058-par-valsts-noslepumu.
6. Valsts pārvaldes iekārtas likums: LR likums, 06.06.2002., stājas spēkā 01.01.2003., Latvijas Vēstnesis, 94, 21.06.2002.

Regulations of the Cabinet of Ministers

7. Būvniecības valsts kontroles biroja nolikums: MK noteikumi Nr. 576, 30.09.2014., stājas spēkā 01.10.2014. Vēstnesis, Nr. 194, 01.10.2014. Izdoti saskaņā ar Valsts pārvaldes likuma 16. panta pirmo daļu. https://likumi.lv/ta/id/269202-buvniecibas-valsts-kontroles-biroja-nolikums.
8. Eirokodeksa standartu nacionālais ieviešanas plāns, 2013.–2014. gads: MK 17.05.2012. Rīkojums Nr. 224. http://tap.mk.gov.lv/doc/2005/EMpl_260312_EC.749.docx.
9. Noteikumi par būvju klasifikāciju: MK noteikumi Nr. 1620, spēkā no 01.01.2010. Latvijas Vēstnesis, Nr. 205, 30.12.2009. Izdoti saskaņā ar Valsts statistikas likuma 71. pantu. http://www.em.gov.lv/images/modules/items/bk_02_06_10.doc.
10. Noteikumi par Latvijas būvnormatīvu LBN 208-15 "Publiskas būves": MK noteikumi Nr. 331, 30.06.2015., stājas spēkā 01.07.2015. Latvijas Vēstnesis, 125, 30.06.2015. Izdoti saskaņā ar Būvniecības likuma 5. panta pirmās daļas 3. punktu. https://likumi.lv/ta/id/274995-noteikumi-par-latvijas-buvnormativu-lbn-208-15-publiskas-buves.
11. Par Būvniecības nacionālo programmu: MK rīkojums Nr. 478, 30.08.2002. Latvijas Vēstnesis, 04.09.2002., Nr. 125 (2700). Pēdējie grozījumi 17.09.2003.
12. Vispārīgie būvnoteikumi: MK noteikumi Nr. 112, 01.04.1997., stājas spēkā 01.07.1997., zaudēja spēku 01.10.2014. Latvijas Vēstnesis, 88, 04.04.1997. Izdoti saskaņā ar Būvniecības likuma 2. panta ceturto daļu. 252. punkts. https://likumi.lv/ta/id/42807-visparigie-buvnoteikumi.
13. Vispārīgie būvnoteikumi: MK noteikumi Nr. 500, 19.08.2014., stājas spēkā 01.10.2014. Latvijas Vēstnesis, Nr. 191, 26.09.2014. Izdoti saskaņā ar Būvniecības likuma 5. panta pirmās daļas 1. punktu. https://likumi.lv/ta/id/269069-visparigie-buvnoteikumi.

State Documentation

14. Administratīvās rajona tiesas 10.01.2007. spriedums lietā Nr. A42308005. http://www.tiesuprakse.lv/files/AL_1001_raj_A1200-06_3_.pdf.

15. Augstākās tiesas Senāta Administratīvo lietu departamenta lieta Nr. SKA-120, 16. punkts. http://www.at.gov.lv/info/archive/department3/2004/.
16. Būvniecības valsts kontroles birojs. Gada publiskais pārskats par 2019. gadu. file:///C:/Users/Janis/Dropbox/My%20PC%20(DESKTOP2VJULQ4)/Downloads/bvkb_publiskais_parskats_20191%20(1).pdf.
17. Latvijas Republikas Augstākās tiesas Administratīvo lietu departamenta 21.12.2017. spriedums lietā Nr. A420305714, SKA-1104/2017.
18. Parlamentārās izmeklēšanas komisijas galaziņojums. https://likumi.lv/ta/id/277713-parlamentaras-izmeklesanas-komisijas-par-latvijas-valsts-ricibu-izvertejot-2013gada-21novembri-zolitude-notikusas-tragedijas-celonus-un%20turpmakajam-darbibam-kas-veiktas-normativo-aktu-un-valsts-parvaldes-un-pasvaldibu-darbibas%20sakartosana-lai-nepielautu-lidzigu-tragediju-atkartosanos-ka-ari-par-darbibam-minetas-tragedijas-seku%20nov%C4%93r%C5%A1an%C4%81%20galazi%C5%86ojums.
19. Traffic Defense Office of the Republic of Latvia. Industrial safety. https://www.sab.gov.lv/?a=s&id=24.

Literature

20. Bramanis, J. (2013). Būvniecības tiesību attīstības problemātika Latvijā: Promocijas darbs Biznesa augstskola "Turība".
21. Čepāne, I. (2003). Patvaļīga būvniecība, Satversme un vispārīgie tiesību principi. *Jurista Vārds*, Nr. 36 (294). http://www.juristavards.lv/index.php?menu=DOC&id=181889.
22. Latvijas enciklopēdija, 1. sēj. (2002). SIA "Valērija Belokoņa izdevniecība", 927. lpp.
23. Lešinska, A., Grišāne, A., Statkus, S. (2008). Izaicinājums būvēt likumīgi. Būvniecības procesa rokasgrāmata visiem, kas būvē, izdod būvatļaujas un dzīvo kaimiņos. Sabiedriskās politikas centrs "Providus", 45.–46. lpp.

https://doi.org/10.25143/socr.21.2021.3.181-190

May the Patient's Will, Expressed by Means of Assistive Communication Technologies, be Admissible as Evidence in Court Proceedings?

Anatoliy A. Lytvynenko[1]
ORCID: 0000-0001-7410-5292
Baltic International Academy,
Department of Legal Sciences, Latvia
anat.lytvynenko@gmail.com

Abstract

The article is dedicated to hallmark the problem of accepting evidence of a patient's will by a court in diverse proceedings, and it being communicated by non-classical means. Modern technologies allow patients to communicate utilizing various electrified appliances, in case the disabled person suffers from an ailment, or a health disorder affecting speech and mental abilities. Such appliances may truly enhance the patient's quality of life; however, it is uncertain whether such patient may be found to be a competent witness, or the information reflecting their will obtained in a non-classical method may be found to be as convincing evidence by the court. Currently, there is very little judicial precedent dealing with obtaining evidence of the patient's will by means of assistive communication technologies, though recent Italian legacy has shown such evidence may be accepted by the court, in case forensic-psychiatric examination approves adequacy of the cognitive abilities of the patient, rendering their will competent. Diverse legal systems render the question of patient's competence differently, and the issue of accepting information as evidence obtained by means of assistive communication technologies will surely become more frequent in disputes relating to testament validity or determining the patient's will to undergo or forego medical treatment. Such cases may be of high relevance in civil proceedings on withdrawal of life-supporting treatment, which will ultimately result in the patient's demise.

Keywords: patient's autonomy, patient's legal capacity, withdrawal of life-supporting treatment, assistive communication technologies, theory of evidence, critically-ill patients.

[1] Scientific supervisors: *Dr. iur.*, Professor Tatjana Jurkeviča (Baltic International Academy, Latvia) and *Dr. iur.*, Professor Sarah Sivers (Christie) (School of Law at Robert Gordon University, Scotland, UK).

Introduction

Concerns relating to the expression of patient's will in relation to conducting deeds or expressing a firm desire concerning their medical treatment have been topical for already a long time in diverse civil law scholarship. Expressing gratitude towards assistive communication technologies (hereinafter – *ACT*), patients being silenced by degenerative ailments are able to communicate and express their will by means of various mechanical devices, such as E-Tran tables and voice synthesisers, attached to computers or special appliances. Simultaneously, it may be really complicated for the court to determine the actual competence of a non-verbal patient. American courts have withdrawn the presumption of non-verbal witnesses as incompetent ones long ago – at common law of the previous ages, such witnesses were deemed incompetent with no exception. The United States case law represents that the competence of a witness suffering from an ailment having a substantial impact on their speech or behavior should be dealt upon an individual approach [1, *610–614*]. Not so long ago, as in the year 1950, the Supreme Court of Canada affirmed a decision to expel 2 mentally-retarded children from school, who repeatedly caused nuisance owing to their behavior and outlook [2, *482–486*]. However, this does not seem to be the fashion nowadays owing to highly developed systems of inclusive education. At the same time, the United States case law has a multitude of recent examples relating to discrimination or special education lawsuits on basis of restrictions in right of education for handicapped persons, or failing to facilitate it, involving the issue of ACT as well [3, *134–139*; 4, *3–9*; 5, *2–5*].

Patient's Will and Assistive Communication Technologies

The will of the patient (the author refers to an ill person, maintained in a hospital, or otherwise frequently undergoing treatment, whose health condition renders substantial complexification in its everyday activities, involving concluding deeds, communicating etc.) usually concerns either the deeds they conclude, or expressing their will concerning their further treatment (frequently, courts have problems to define the will of a person, silenced by accident, having little to no chances of any recovery – such as, for instance, the recent case of Marcelo Diaz in Argentine, where the Supreme Court allowed to dislodge his life-support appliances [6, *22-ff*).

It is virtual that various progressive ailments affect mental abilities of the patient and cast a doubt on their legal capacity. Approaching a potential end of life, the patient may consider drawing up a will, and the patient's competence is an ultimate pre-requisite for rendering their will valid. Simultaneously, not every disabled person may write a will owing to their ailments. In former Latvian law, the jurisprudence frequently featured litigation between civil parties, alleging invalidity of a will, based on the testator's conjectural incapacity, considering the testator drew up a will at hospital, or died in its premises, being

(allegedly) considerably morbid [7, *11–12*; 8, *93–94*]. The Civil Cassational Department of the Latvian Senate also ruled that personal rights, such as the right to file a divorce action on behalf of a mentally ill patient, may not be lodged by their guardian, as some personal rights are too inalienable from their respective holder in order to be exercised by means of legal representation – such was the ruling CKD No. 72 / 36 in the case of *Lacis* (1936) [9, *64–65*]. The issue of the patient's competence had to be resolved by courts by means of witness (including expert witness) testimony, as well as forensic-psychiatric examinations; in case the lower court had clearly defined that the patient was competent, the Senate dismissed the appeal in cassation, as such circumstances belong to the factual side of the case, and thus were not subject to appeal in cassational order [7, *12*]. For instance, in the case of *Doroškevič* (1938), the testator died in a psychiatric clinic, casting a serious doubt on his legal capacity, but since the appellate court established he was capable of drawing the will at the time of concluding this deed, this fact was not revised by the Senate, which rendered it as virtual [7, *11–12*]. In the case of *V. Grzibovsky v. City of Riga* (1937), where a man sued the city of Riga and other parties for a failure to provide him medical assistance after his leg was overrun by a bus (a gangrene had developed shortly after the injury and the leg was subsequently amputated), plaintiff was denied to be accepted to Riga City Hospital II. However, when he found another hospital for treatment, plaintiff refused to undergo amputation in Riga City Hospital I (the operation was conducted at a different hospital). The Senate did not consider this circumstance as a major fact which could change the resolution of the case, claiming that gangrene had developed shortly after the injury, but not owing to plaintiff's lack of consent, but the delay in medical treatment (judgment was handed down for plaintiff against the City of Riga, but was dismissed against other defendants). [10] In this case, not even an outstanding medical malpractice case (which was seldom in the First Period of Independence), but the fact plaintiff's uncontested will not to undergo amputation is particularly interesting from an era when medicine was very paternalistic.

In modern Latvian law, the will of the patient is strictly necessary to conduct a medical intervention, provided by law [11], and repeatedly affirmed in jurisprudence [12, *9*; 13, *8*]. However, the law on patient's rights does not touch the issue of the patient's will rendered in alternate ways – the patient may be mentally competent to conclude a deed or express their will to undergo treatment but may not physically express it. The situation is even more complexified as the Patient's Rights Law does not clearly establish the boundaries of the right to refuse medical treatment [11, *Articles 6.4–6.6*]. Claiming that there are *no* boundaries, euthanasia with all the deplorable consequences may be recklessly legalised [14, *9*]; though in fact, any form of euthanasia is forbidden in the Republic of Latvia. Patients approaching towards the end of their lives, may gradually lose their ability to express themselves, conduct deeds or decide for their medical treatment – in legal terms, they lose legal capacity.

Already in the 1980s and 90s, a number of English-speaking authors suggested that dementia patients, regardless of being in-patient or out-patient, cannot be considered

incompetent by default [15, *69–72*; 16, *151–157*]. In the legal terms, there has to be firm and convincing evidence that such person is competent to conclude a deed, or to express their will in regard with medical treatment (i.e., patient's autonomy). The author of this article does not uphold a presumption that literally every patient of such nature should be deemed as legally competent, unless there is firm evidence that they are incompetent.

A presumption of legal incapacity of a person suffering from progressive neurodegenerative ailment, such as dementia or having been badly injured in an accident rendering the patient in a shock condition or suffering from a chronic disease causing repetitive and severe pain and distress, is logical from the Civil Law point of view, which may sound old-fashioned at first. However, deciding upon a testament, or upon end-of-life issues (where it is legally permissible) bears legal consequences. In those jurisdictions, where a living will (or a "patient's testament") is already legalised, patients suffering from neurodegenerative ailments may draw them up, at least to a certain extent [17, *503–505*]. It should, however, be considered that their actual capability of understanding legal consequences of their decisions is subject to proof. The law should not bend in the way to comfort such patients, rendering them competent if they are apparently not. The legal institute of a guardian may be a solution on some occasions, yet, not always.

Moreover, there are wise restrictions for guardian activities relating to facilitating health of their beneficiary. For instance, a Dutch court ruled that a legal guardian has no right to file a no-cardiopulmonary resuscitation order for their elderly mother, affected with severe senile dementia, as matters of life and death are way too personal to be decided by someone apart from the person itself [18, *Section 3.3–3.7*]. At the same time, an American court in Colorado has ruled to affirm an order authorising a patient's legal guardian to institute a "do-not-resuscitate" order for a severely handicapped man, finding it serves the best interests of the patient [19, *593–597* / *Section III–V*]. This is an example how diverse the guardian powers may be assessed by the courts – in both cases, the patients were incapable of deciding for themselves primarily owing to their mental condition. The common law tradition, however, seems to be more inclined towards the boundaries of guardian powers and the patient's autonomy, which does not seem to be acceptable in civil law jurisdictions.

However, as emphasised before, the law should not be made to comfort a patient, allowing them everything their consciousness would desire, but rather be adequate in representation of their legal rights. A Dutch approach on end-of-life issues seems to be an exception from civil law tradition: mentally ill people may also request to end their life by a physician, though such practice is very rare even in the Netherlands [20, *243–247*]; in fact, the number of such cases in 2015–2017 did not substantially increase since the 1990s [21, *1797–1800*]. In 2020, a Dutch court, deciding upon a case on compulsory crisis measures relating to a mentally-retarded and mentally-ill person, intimated that euthanasia (the patient had suicidal tendencies and requested it) could be a subject of a review, in case ordinary treatment would not succeed [22, *Sec. 2.1–2.2*]. It should be

denoted that the actual number of such requests (including their fulfillment) cannot be assessed from a lawyer's view by at least considering the claims for a court order: there is no necessity to ask for it in the Netherlands to obtain permission to conduct any form of euthanasia.

From the viewpoint of classically-shaped civil law, a mentally-ill person's legal competence would be of the same level, as of a patient in a permanent vegetative state, meaning zero – both would possess a legal representative, responsible for their health. However, the latter may have a "patient's testament", which may serve as evidence of their will. Not many countries from Eastern Europe have ever approached this institute of civil law (the author acknowledges the existence of an institute of civil law), but upon explanations of the Constitutional Court of Hungary in the case (IV. 28), drafting such a will and certifying it would be the same as of an ordinary testament [23, *Section IX, para. 4*]. The author of the article supports lack of creating a blend of civil law and bioethics, and not attempting to comfort a patient presuming their legal competence in any situation, apart from, the brain death. In the 1970-80s, American courts clarified that brain-dead people have to be considered legally dead (i.e. cases of *Lovato* (1979) and *Bowman* (1980) [24, *1078–1080*; 25, *411–412, 417–419, 733, 735–737*]), which is designated by a set of medical measures, involving electroencephalogram (EEG) to determine brain function. Brain-dead people do not express any autonomy – they are legally dead and thus possess no civil rights, despite technically being maintained alive by machines.

Patients may express their will in various ways, and it is correct to assume that cognitive abilities are the key pre-requisite to assess the competence of such person. In terms of testifying, the Supreme Court of Colorado presented a firm position in the case of *Howard v. Hester* (1959): "...if the witness has the capacity to observe, recollect, and communicate he is competent, and his mental deficiency is considered only in so far as it affects the weight to be given his testimony" [26, *108*]. The same court in the trial of *Welborn Alexander* (1986) did not disqualify the victim (testifying as witness), having slight-to-moderate speech and hearing impairments. Upon the court report, the victim of a sexual assault made her testimony through her interpreter using American sign language [27, *1305–1307*]. American states may have different rules for determining competency of such witnesses, which may considerably vary.

In terms of civil law jurisdictions, cognitive abilities and a sufficient way to express oneself are seemingly determinant. Several Italian cases demonstrate how the will of the patient relating to their end of life was expressed by means of ACT, and were accepted by courts as convincing evidence, proving the patient's cognitive abilities were sufficient to render them competent. The first one is the case of *Giovanni Nuvoli* (2007). The ward in this case was a famous football referee who was suffering from amiotrophical sclerosis (ALS) in the last few years of his life. The malady rendered him bed-ridden and immobilised, though he had adequate cognitive abilities. Not once, Nuvoli expressed himself for an ultimate wish to die, but no one apparently allowed him to do so (those days, euthanasia was banned in Italy).

Previous year before Nuvoli's case, Piergiorgio Welby had lost his legal battle asking a court authorisation to switch off his ventilator – Welby having suffered from fasciocapulo-humeral muscular dystrophy for most of his life (died aged 60) practically committed a suicide requesting an anaesthesiologist to assist him a couple of days after the court declined his claim [28, *5–10*]. Nuvoli had also attempted to end his life before he could die of natural causes, but any attempts were blocked as illegal. By July 2007, Nuvoli was kept at home with life-supporting machinery, and his de-facto wife Maddalene Soro, with whom he had cohabited for over twenty years, filed a claim to the court of Sassari to be empowered to represent him, including all his personal affairs, as well as external representation of his will. It may be presumed Nuvoli would ask to withdraw his life-support (but who would allow it to him, remains rhetorical). However, a public prosecutor had intervened into the proceedings, claiming that Nuvoli could autonomously express his will by using a voice synthesiser (the model was "MyTobii"), or by means of an eye gaze upon an alphabetic table.

Other relatives of Nuvoli opposed to administering M. Soro as a guardian, but for their private reasons. They did not oppose the fact that Nuvoli could express his will by means of a voice synthesiser. The public prosecutor claimed that Nuvoli was fully capable of expressing his will by the device, and the patient was later examined by medical experts in the presence of the tutelary judge. Nuvoli expressed a firm will to die and stop his treatment, declaring by means of a voice synthesiser that he would not tolerate resuscitation measures in case of termination of treatment. It was declared that Nuvoli's equipment was functioning properly, and Nuvoli's intellectual abilities were adequate. M. Soro was appointed as his guardian for limited purposes: the court found he could declare his will himself by means of his voice synthesiser.

Concerning the expression of the patient's will by extraordinary means, the court said: "There is no doubt that said speech synthesiser should be recognised as a suitable technical tool, in the light of the 2nd paragraph Art. 3 [of the] Constitution [of Italy], to remove the obstacle, that prevents Mr. Nuvoli, due to his illness, to express himself autonomously, effectively impairing his freedom and making equality with other citizens fail." [29]

Nuvoli, however, was not encouraged with such judgment (probably, he could assume the court could satisfy his plea to terminate life-supporting treatment), started a hunger strike shortly after the judgment was pronounced, and died a week thereafter.

Another case, adjudicated by the court of Modena in 2009, also involved the issue of a patient's expression by ACT. The wife was applying to be appointed a guardian for her incapacitated husband, a 52-year-old physician. The husband was suffering from ALS on later development stages, causing complete immobilisation, an instalment of a PEG tube (nutrition and hydration) and an assisted ventilation after tracheostomy. He was placed at home. The man, upon the visit of April 23, 2008, was able to express his will upon

the upcoming therapies in case of a total loss of capacity to communicate. The report discloses that in fact he was not able to speak as people do – by vocal cords, but means of a low-tech E-Tran table indicating the letters by eyelids to an "interlocutor" (probably one of the nursing stuff who holds the table). On May 6, the tutelary judge visited the disabled man. He expressed a "living will" that though his intellect will continue working despite ALS, he would suspend assisted ventilation and artificial nutrition in case of his full incapacity (e.g., severe dementia). The judge wrote his living will that was confirmed by the disabled man.

The theses from the judgment are represented as underwritten:

- The Court held that the guardian is to respect the wills of the incapacitated relative, so must the doctor. The artificial life-support in a permanent vegetative state actually postpones death in case coma is irreversible. So do various surgical manipulations.
- The Court claimed there may be no treatment in case of lack of free and informed consent upon two judgments in bold.
- The Court affirmed that a living will may include suspending all the treatment. This is not in conflict with the constitutional provisions of life preservation or the duty of care lodged upon the legal guardian.
- The Court also discussed that Belgian and Dutch law practices a form of assisted suicide where some administered liquid is enhancing death (moreover, the court says, that there is a possibility to self-administer it). However, assisted suicide is not the same case as the presented one.
- The Court considers the "living will" to be an important instrument of right to self-determination, and upon the 2007 cassational judgment [30], it was held that if there is no written power of attorney, the presumed will may be determined upon the prior habits and customs of the person, being supplied with sufficient evidence. The case, upon the court, represented the ability (though not with the classic sense of communication) of the person to express their wish for further treatment (in a sense of its withdrawal). The court discussed that since the 2004 law was adopted (*Legge No. 6 del 2004*), an administrator may execute decisions of a mentally or physically incapacited person who is appointed by a court or by a tutelary judge to be their legal guardian (see Art. 408 (2); 410 (1) of the Civil Code – anticipating person's incapacity the administrator may be appointed) [31, *3*].
- The "provisional writing" is a power of attorney representing a living will. In such case, it will be legal if the administrator will claim for suspension of the life-supporting systems; and the court ascertains that currently the ward has capacity to ask to withdraw treatment which may include a wide variety of manipulations to keep them alive for many years owing to advancements of modern medicine. The court affirmed that cognitive abilities exercised by the patient are full and adequate [31, *4–6*]

- The patient's will must be respected, and the revocation of the will must be proved (otherwise being legally inconsistent), i.e., if not acting as written in the living will, proof must be provided as for interferences of the decision; otherwise such evidence must be brought before the court.
- When there is no direct law on "living wills" (such law was adopted in 2017), the principle is laid down upon the informed consent formed upon case law, Civil Code and medical ethics.
- The Court ascertained that the legal guardian does not express their own wills, but the wills of the patient, being a modern-way "executor" and the judge may empower the guardian to recall the physicians to do what they are obliged to do upon the "living will" of the patient.
- The Court appointed the administrator and empowered them in the following: (a) if the patient comes to the state of incapacity, to request the doctors to suspend the treatment; (b) request to provide necessary palliative care to mitigate his sufferings, and requires the administrator to inform the court on the condition of the patient (Office of the Tutelary Judge), communicating the medical records of clinical (of his health condition) and psychiatric reports (degree of loss of capacity and the loss of ability to want and understand) [31, *6–8*].

Conclusion

The article has displayed that a patient's communication may be rendered in many ways, both representing their will regarding medical treatment and a will to make deeds, or even testify in a court. Owing to various ailments, some patients may be deprived of their ability to communicate in an ordinary way. Formerly, oral testaments or testimony by non-verbal language were legal in such situations. As medical technologies advanced, various ACT appliances have been introduced to facilitate the will of a patient. However, courts have seldomly dealt with testimony, obtained by such extraordinary means. The recent jurisprudence of Italian courts depicts that such evidence may be admissible, in case the patient's cognitive abilities are proved to be adequate by medical experts. Contemporary and elaborating medical technologies, such as neuro-networks, will allow deciphering brain signals of non-verbal patients in the near future, and thus the courts will deal with the issues of admissibility of such evidence as well. Therefore, topicality of the research relating to expression of a patient's will by alternate means is arising and has prospective for further scientific investigation.

Bibliography

1. Phipps, C. A., Ells, M. L. (1995). Facilitated Communication: Novel Scientific Evidence or Novel Communication? *Nebraska Law Review*, 74, pp.602–657.
2. *Bouchard v. St Mathieu de Dixville*, [1950], SCR 479 (13.03.1950, 1950 Supreme Court Reports, pp.479–486).

3. *M. A., Individually and on behalf of her minor child, W. A., Plaintiff, v. New York Department of Education, et al., Defendants*, 1 F. Supp.3d 125 (S.D.N.Y. 2014), No. 10 Civ. 3646 (DAB) [Federal Supplement, 3 ser., Vol. 1, pp.125–152, 19.02.2016].
4. *W. S. v. Wilmington Area School District States District Court*, W. D. Pennsylvania, Civil Action No. 15-406, 2015 WL 7721840 [30.11.2015, pp.1–9].
5. *Brooklyn T. by and through Vandergriff v. Knox County*, United States District Court, E. D. Tennessee, Northern Division, at Knoxville., June 25, 2020, Case No. 3:20-CV-0005, 2020 WL 3473643.
6. *D., M.A. s/ Declaración de Incapacidad*, Corte Suprema de Justicia de la Nacion, 7 de julio de 2015, CSJ 376/2013 (49-D).
7. Prasītājas Annas Daraškevičs kasācijas sūdzība par Tiesu palātas 24.02.1937. spriedumu Annas Andreja m. Daraškevičs (Doroškevičs) prasībā pret Antonu Antona d. un Jāni Miķeļa d. Daraškevičiem un mir. Konstantina Miķeļa d. Doroškeviča (Daraškeviča) m. m. viņas aizgādnības personā par mir. Konstantina Miķeļa d. Doroškeviča (Daraškeviča) privāttestamenta anulēšanu (L. No 63.). *1938. g. 27. janvāris, Latvijas Senāta Civilā Kasācijas Departamenta Spr. Nr. 7* (pp.11–12).
8. Atbildētāja Adama Bergmaņa pilnv. zv. adv. J. A. Kalniņa kasācijas sūdzība par Tiesu palātas 28.03.1938. spriedumu Aleksandra Stendera prasībā pret Adamu Bergmani par Ls 1010,00 un prasītāja Aleksandra Stendera pilnvarnieka zv. adv. A. Rotberga paskaidrojums (L. Nr. 987.). *1938. g. 24. novembris, Latvijas Senāta Civilā Kasācijas Departamenta Spr. Nr. 90* (pp.93–94).
9. Atbildētāja Žaņa-Jēkaba Lāča pilnvarnieku zv. adv. A. Hāmaņa un zv. adv. N. Kronberga kasācijas sūdzība par Tiesu palātas 29.05.1935. spriedumu Anetes-Otilijas Lācis prasībā pret Žani-Jēkabu Lāci šķirt laulību (L. Nr. 1234.). *10.06.1936. Latvijas Senāta Civilā Kasācijas Departamenta Spr. Nr. 72* (pp.64–65).
10. Prasītāja Vacslava Gržibovska un atbildētājas Rīgas pilsētas pilnvarnieku, zv. adv. J. Ķuzis un J. Volkova, kasācijas sūdzības par Tiesu palātas 22.02.1937. spriedumu Vacslava Gržibovska prasībā pret Rīgas pilsētu v. c. summā Ls 14.097. CKD 25.11.1937. / 16.12.1937., Spr. N. 10. Pašvaldības Balss, Nr. 7 (01.07.1939); Pašvaldību Darbinieks, Nr. 4 (01.04.1939).
11. Pacientu tiesību likums: LR likums. Latvijas Vēstnesis, 205, 30.12.2009.
12. G. D. pret Valsts sabiedrību ar ierobežotu atbildību "Strenču psihoneiroloģiskā slimnīca". Latvijas Republikas Augstākās tiesas, Senāta Civillietu departamenta 2013. gada 18. oktobra Lieta Nr. 216/2013.
13. A. pret. AS "EZRA-SK Rīgas slimnīca "BIKUR HOLIM"". Senāta Administratīvo lietu departamenta 2020. g. 24. marta Lieta Nr. A420172018, SKA–790/2020.
14. Lytvynenko, A. A. (2021). The Application of Patient's Right to Informed Consent, Medical Confidentiality and Access to Medical Records upon the Example of Republic of Latvia. *Proceedings of the conference "Legal Problems of the Contemporary Transformation of Healthcare"* [Zaporizhzhia, 27–28 May 2021], pp. 6–11.
15. Stanley, B. (1983). Informed Consent and Senile Dementia. *Behavioral Sciences & the Law* 1, pp. 57–72.
16. Fang, A. (1997). The Living Will of Dementia Patients. *UCL Jurisprudence Review*, pp. 143–162.
17. Wolff, J. (2012). Dementia, Death and Advance Directives. *Health, Economics, Policy & Law* 7, pp. 499–506.
18. *Rechtbank Zeeland-West-Brabant*, 03.03.2014, 2660330 EJ VERZ 13-5801.

19. *People ex rel. Yeager*, 93 P. 3d 589 (Colo. Ct. App. 2004). Pacific Reporter, 3d Series, Vol. 93, pp. 589–597, 2004. [22.04.2004; No. 03CA0809].
20. Veen, S. M. P. , Weerheim, F. W., Mostert, M., Delden, J. J. M. (2019). Euthanasia of Dutch psychiatric patients in 2015–2017. *Tijdschr. Psychiatr.* 61(4):241–247.
21. Groenewoud, J. H., van der Maas, P. J., van der Wal, G., Hengeveld, M. W., Tholen, A. J., Schudel, W. J., van der Heide, A. (1997). Physician-assisted death in psychiatric practice in the Netherlands. *N. Engl. J. Med.* 336(25):1795–801.
22. *Rechtbank Rotterdam*, 27.03.2020, No. C 10/593713 / FA RK 20-2005.
23. *Magyarország Alkotmánybírósága* 22/2003. (IV. 28) 22/2003. (IV. 28.).
24. *Lovato v. District Court in & for Tenth Jud*., 601 P.2d 1072 (Colo. Sup. Ct. 1979), Pacific Reporter, 2nd ser., Vol. 601, pp. 1072–1081 [15.04.1979, 79SA407].
25. *In Re Bowman*, 94 Wn. 2d 407, 617 P.2d 731 (1980), Washington Supreme Court, 2nd ser., Vol. 94, pp. 407–421; Pacific Reporter, 2nd ser., Vol. 617, pp. 731–739.
26. *Howard v. Hester*, 338 P.2d 106 (Colo. Sup. Ct. 1959). Pacific Reporter, 2nd ser., Vol. 338, pp. 106–109 [13.04.1959, No. 18456].
27. *People v. Alexander*, 724 P.2d 1304 (Colo. Sup. Ct. 1986), Pacific Reporter, 2nd ser., Vol. 724, pp. 1304–1309 [02.09.1986, No. 84SA519].
28. Piergiorgio Welby c. Associazione Onlus ed il. Dott. Giuseppe Casale, Trib. di Roma, Sezione I Civile, Ordinanza 16 dicembre 2006 No. N.R.G. 78506/2006, [pp. 1–10].
29. *Caso Giovanni Nuvoli*, Trib. ordinario Sassari-Alghero, decreto del 14 luglio 2007, RG 99/07 R.N.C.; RG 11/07 R. Amm. Sost.
30. *Caso Englaro*, Corte di Cassazione, Sentenza n. 21748, del. 16 ottobre 2007.
31. *Trib. de Modena*, decreto 14 Maggio 2009.

https://doi.org/10.25143/socr.21.2021.3.191-203

Digital Marketing: Problems of Internet Pharmacies Legal Regulation

Ph.D. ***Vitalii Pashkov***
ORCID: 0000-0001-9489-7768
Department of Civil, Commercial and Environmental Law,
Poltava Law Institute, Ukraine
Laboratory for the Study of National Security Problems
in the Field of Public Health, Ukraine
v.pashkov26.06@ukr.net

Dr. med. ***Oleksii Soloviov***
ORCID: 0000-0002-6615-4868
National Security and Defense Council of Ukraine

Ph.D. ***Andrii Harkusha***
ORCID: 0000-0001-5266-3007
Department of Civil, Commercial and Environmental Law,
Poltava Law Institute, Ukraine
Laboratory for the Study of National Security Problems
in the Field of Public Health, Ukraine
andreigarkusha@gmail.com

Abstract

Digitalisation of pharmaceutical activities is creating a new type of pharmaceutical market, a more flexible and less costly; yet it has become more dangerous for patients and the economic stability. The reason is the imperfection of the legal regulation and online sales of pharmaceutical products, in particular. It is necessary to clarify that digitalisation of pharmaceutical activities is not only about online sales of pharmaceutical products. It is also digital marketing, which includes promoting pharmaceutical products via the Internet, including advertising such products. Research shows that prescription drugs are sold to such patients by both illegal online pharmacies and legal ones. Most counterfeit medicines are sold through illegal online pharmacies.

The purpose of the article is to draw attention to the need for legal support for the activities of Internet pharmacies using more efficient technologies, including limiting their activities.

Carrying out the research, several scientific methods were used. The methods of system-structural analysis, induction and deduction were used at all stages of the research in the study of the legal regulation of the sale of medicines in various countries through Internet pharmacies, the practice of its use, the state of illegal behavior in this area, analytical materials and scientific sources. The formal-logical method was used to study regulatory acts and international documents, the comparative-legal method was used to perform comparative analysis of the legal regulation of Internet pharmacies' activity, as well as the practice of its application in the countries of the European Union, the USA, Turkey, Ukraine, and some Arab states. It should be noted that in the EU member countries, due to single European economic and customs area and general regulation, the problems of Internet pharmacies are of the same nature. The content analysis method was implemented for studying journalistic materials and researching websites that offer distance selling, online ordering, and delivery of pharmaceutical products to a consumer in various ways.

Keywords: online pharmacies, digital marketing, digitalisation of pharmacy.

Introduction

Digital forms of pharmaceutical marketing aimed directly at the consumer have globalised in the era of free and open exchange of information (Mackey and Liang, 2013). As a result, marketing strategies in pharmacy activities are provided by digitalisation of pharmaceutical sales (Insights, 2011). Therefore, many online pharmacies operate worldwide today. Most of them work illegally, especially in countries with insufficient legal regulation of pharmaceutical activities. Illegal Internet pharmacies are well versed in digital marketing strategies, including search engine optimisation and social networks (Mackey & Nayyar, 2016). It should also not be forgotten that in some countries, online trade of pharmaceutical products is performed through business entities that position themselves as a delivery service without specifying the seller of such product.

Meanwhile, a study of the literary sources revealed that in most EU countries, online pharmacies that operate within the legal framework are described as websites that comply with the laws of those countries in which the Internet pharmacy website functions, and the point of destination where pharmaceutical products are delivered to the final consumer (Fittler et al., 2013).

However, on the background of the growth of pharmacy digitalisation, there is an increase in the number of illegal Internet pharmacies that pose a threat to patients' health (Mackey & Nayyar, 2016). Simultaneously, most online pharmacies, including those that operate legally, also violate the legislation on the procedure for dispensing medicines to patients. According to cyber security experts, 96 % of all global online pharmacies operate outside the legal framework, illegally, without complying with regulatory documents (CSIP, 2016).

Illegal online pharmacies that sell substandard drugs or poor-quality products pose a serious threat to patients. Still, even legitimate pharmacies can cause serious adverse health effects for users (Desa et al., 2015).

It is not only about violations of the procedure for dispensing pharmaceutical products but also about the sale of counterfeit drugs (Mackey & Liang, 2013). Violations of the dispensing order of specific categories of pharmaceutical products and, as a result, inappropriate use of drugs are associated with the risk of increased resistance to antibiotics due to their improper use. At the same time, online trade of pharmaceutical products, online pharmacies, considering the processes of globalisation, is carried out not only within the borders of their country. Pharmaceutical website owners often change their electronic base between national jurisdictions (Cohen, 2004; Katsuki et al., 2015), while the jurisdiction of national regulatory authorities usually terminates at the borders of their countries (Tapscott & Schepis, 2013).

According to the WHO, prevalence of counterfeit drugs through illegal Internet pharmacies is approximately 50 % (World Health Organization, 2018). Meanwhile, patients are unaware of the risks of potential threats associated with buying drugs through online pharmacies and cannot distinguish between legal and illegal online pharmacies. Although in the EU countries, some measures have been taken to control the trade of medicines in compliance with the Directive on counterfeit drugs adopted by the European Council and the European Parliament (Directive 2011/62 / EU) (European Council, 2011).

The Directive introduces harmonised European measures to combat drug counterfeiting and to ensure safety of drugs, and strictly control their trade. These measures include mandatory use of a unique identifier and anti-tampering device on the outer packaging of medicines, the use of a common logo in the EU countries to denote legal Internet pharmacies, and others.

However, as the study showed, the measures taken were not enough to implement technological solutions for tracking circulation of medicines through the Internet pharmacy.

Therefore, medicines sold in some online pharmacies pose a severe public health risk, as the origin and quality of these medicines have not been determined, and patients usually use them beyond awareness and supervision of doctors.

Thus, the system of unique identification of outer packaging (barcoding) of medicines, which is used by most developed countries, including the EU countries, as well as the use of blockchain technology, in order to track drugs within one pharmaceutical network, is an insufficient means of ensuring safety of patients who use online pharmacies (Pashkov & Soloviov, 2019).

The purpose of the article is to analyse activities of online pharmacies that actively use digital marketing methods, which leads to the danger of illegal circulation of pharmaceutical products, as well as to develop proposals for legal support of online pharmacies using more effective technologies, including limitation of their activities, considering experience of some countries.

Within this research, the method of content analysis was used, namely, during the study in the summer of 2021, all legal online pharmacies were interviewed, with predetermined selected groups of pharmaceutical products according to international non-proprietary names and trademarks. When referring to the legal websites of pharmacy enterprises, a request was made to sell antibiotics without a prescription; none of the sites demanded a prescription from the authors of the study and agreed to deliver the prescription drug to the specified address. The method of systemic-structural analysis, induction, and deduction was used at all stages of the research while studying the problems of legal regulation of pharmaceutical products sale in various countries through Internet pharmacy, practice of its application, analytical materials, and scientific sources. The formal-logical method was used to study regulatory legal acts and international documents, the comparative-legal method was used to perform a comparative analysis of the legal regulation of Internet pharmacies activity, as well as the practice of its application in the countries of the European Union, the USA, Turkey, and Ukraine. The study found a surge in activity related to online pharmaceutical trade since 2018, following the announcement of the COVID-19 pandemic.

Discussion and Results

As a result of the COVID-19 pandemic, demand for various pharmaceuticals has increased, creating the possibility for illegal online pharmacies that have filled the gap in the pharmaceutical market, sometimes using counterfeit products (Fittler et al., 2021).

For example, in Hungary, during the pandemic 2020–2021, online pharmacies were inspected in terms of the sale of certain types of drugs. Patients accessed Internet pharmacy websites, most of which were illegal, accounting for almost half (53.3 %) of search engine results. Simultaneously, illicit pharmacies prevailed in number over legal ones. The vast majority (77.7 %) of the identified online pharmacies were knowingly illegal; 55.5 % of them sold prescription drugs without a prescription (Miller et al., 2021). Meanwhile, prescription drugs are an essential part of effective healthcare. In addition, most patients began to use self-diagnosis and self-medication. An example is the use of certain groups of drugs for self-medication by patients, namely, increased demand, availability on the Internet, and availability for consumers of Ivermectin, an anthelmintic agent, without justified indications for SARS-CoV-2 (Miller et al., 2021).

It should be noted that sale of pharmaceutical products using digital technologies and through Internet pharmacy itself represents a significant breakthrough for pharmacy markets and is a positive step but requires the necessary legal support.

Online pharmacies first began to emerge back in the late 1990s. Today, the global market for online pharmacies based on the information from cyber security specialists is estimated at about $ 81.6 billion, and according to forecasts, its growth may increase to $ 244 billion by 2027 (Miller et al., 2021). This indicates that health-related technologies are evolving due to digitalisation of the healthcare system and prevalence of

the Internet in everyday life. Digital forms of pharmaceutical marketing aimed directly at the consumer have globalised in the era of free and open exchange of information (Mackey & Liang, 2013). Some researchers agree that the new direction of digitalisation-related pharmaceutical services offered by online pharmacies is very attractive for most patients, especially those with disabilities (Miller et al., 2021). This provides the possibility of online orders within 24 hours, economic availability of most of the names of pharmaceutical products, and privacy issues. An example of the use of confidentiality is the increased demand for contraceptives through Internet pharmacy (Orizio et al., 2011). Simultaneously, the rapid expansion of the online pharmacy market was largely uncontrolled and accompanied by severe public health problems such as sale of drugs. Again, this regards the non-prescription dispensing of pharmaceutical products, which are distributed only by prescription, as well as inadequate provision of information to patients (Miller et al., 2021). However, the Internet differs from all other media in at least one crucial respect: it allows shoppers from all over the world to shop with relative anonymity on a 24/7 marketplace (Orizio et al., 2011). Internet pharmacies are an important phenomenon that continues to spread despite partial regulation due to internal difficulties associated with the intangible and fleeting nature of the Internet and its global dimension (Miller et al., 2021). It is challenging to estimate the number of online pharmacies and people shopping online, the volume of drugs sold, and revenues and profits generated from such a hidden business. Moreover, geographical distribution of the phenomenon seems to be very heterogeneous (Fittler et al., 2021).

Explaining the competitive cost of pharmaceutical products sold through Internet pharmacies, researchers associate it with low operating costs, advertising revenues, pressure to reduce costs due to comparative purchases, and/or high volume of sales (Orizio et al., 2011). In fact, this is a new kind of pharmaceutical market that can replace existing traditional pharmacies. Everything is more straightforward in countries where activities of Internet pharmacies are not regulated.

For instance, in Ukraine, under the Law of Ukraine *On the Legal Regime of the State of Emergency*, amendments were made to the Law of Ukraine *On Protection of the Population from Infectious Diseases*, and electronic trade of medicines was allowed, which was enshrined in the Resolution of the Cabinet of Ministers of Ukraine No. 220 dated 23.03.2020. According to this Resolution, changes were made to the Licensing Conditions for the implementation of economic activities for the production of medicines, wholesale and retail trade in medicines, import of medicines (except for active pharmaceutical ingredients), which were granted permission to carry out remote retail sales of medicines in the event of a quarantine. The right to carry out such activities was granted only to licensees who have a license to perform economic activities in the retail trade of medicines, who were also granted permission to organise and carry out delivery of medicines directly to consumers in compliance with the storage conditions for medicines determined by the manufacturer during their transportation, in particular, with the involvement of postal operators on contractual basis. This permit did not apply to

the following categories of drugs: (1) drugs dispensed by prescription, other than those subject to reimbursement; (2) narcotic drugs, psychotropic substances, and precursors (according to the corresponding list); (3) potent and poisonous medicines; (4) medicinal products requiring special storage conditions.

Based on the law *On Amendments to Article 19 of the Law of Ukraine On Medicines* dated September 17, 2020, electronic retail trade in medicinal products received legislative consolidation for implementation of electronic retail trade in medicinal products.

In general, this Law complies with the European standards for electronic retail trade of medicines using information and communication systems in terms of creating a mechanism to counteract counterfeit medicine circulation, e.i, compliance with the provisions of Directive 2011/62/EU of the European Parliament and of the Council of 08.06.2011 amending Directive 2001/83/EU on the Community code for medicines for human use to prevent the introduction of counterfeit medicines into the legal supply chain (European Council, 2011).

However, licensing conditions for such activities were not accepted due to the opposition of certain representatives of the pharmaceutical business. In general, the reason for the appearance of such a document was the COVID-19 pandemic. Only when legal pharmacies tried to enter the online pharmaceutical market, it became obvious that such activity had long been occupied, divided, and developed according to its own rules, and legal pharmacies with their pricing policy had no control of the market. A negative touch of pricing in Ukrainian pharmacies is the widespread use of marketing contracts, in which a pharmacy purchases pharmaceutical products from a pharmaceutical manufacturer or distributor, subject to payment by the latter for marketing services for the so-called product promotion. It does not matter whether this product is a prescription product. This state of affairs is primarily due to monopolisation of pharmacy activities (Forman et al., 2006).

Considering the experience of the United States regarding activities of Internet pharmacies, it is necessary to recall the initiative of the National Association of Boards of Pharmacy (NABP) in 1999 to introduce a programme for verifying the websites of Internet pharmacies (Ivanitskaya et al., 2010).

Despite such measures, according to a 2015 NABP report, analysis of about 11,000 websites that sold prescription drugs online in the United States found 96 % of online pharmacies not complying with the US law (NABP, 2015).

In this context, HR 6353 (110th) also has to be mentioned: Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (United States Congress, 2008). According to this Law, on its home page Internet pharmacy must visibly and clearly display a statement that it meets the necessary requirements for the delivery, sale, or sale offer of controlled substances. The website has a declaration of conformity under this section.

Every online pharmacy must comply with the pharmacy licensing requirements of the Law in every state it operates in and in every state it delivers, distributes or dispenses in, or offers to deliver via the Internet, distribute or dispense controlled substances in accordance with the applicable licensing requirements established by the respective

state. On every home page that the Internet pharmacy operates at, a page directly linked to it, where the hyperlink is visible or understandable, it must post, in a visible and clear manner, the following information about provision, distribution or dispensing of controlled substances in accordance with orders made on, through or on behalf of this website: (1) the name and address of the pharmacy as indicated on the Drug Enforcement Administration's pharmacy registration certificate; (2) the phone number and email address of the pharmacy; (3) the name, professional degree of the responsible pharmacist, as well as the telephone number by which the responsible pharmacist can be contacted; (4) a list of states in which the pharmacy is licensed to dispense controlled substances; (5) confirmation that the pharmacy is registered in accordance with this clause in order to deliver, distribute or dispense controlled substances via the Internet.

In the course of the study, applications were made for obtaining drugs necessary for treatment of bacterial infections, which are registered in Ukraine (the active ingredient is Tinidazole + Ciprofloxacin).

Applications were made to (1) LLC "Apteka nizkikh tsen", which has several partners united by one ultimate beneficiary of about 1000 pharmacies; (2) LLC "Sirius" – about 900 pharmacies; (3) LLC "Podorozhnik" – about 900 pharmacies; (4) LLC "Apteka dobrogo dnya" – about 800 pharmacies; (5) LLC "Med Service Group" – about 700 pharmacies; (6) LLC "Market Universal LTD" – about 700 pharmacies; (7) PJSC "Aptechnaya set' Farmatsiya" – about 500 pharmacies; (8) LLC "3 i" – about 500 pharmacies. These pharmacy enterprises ultimately shape the pharmaceutical policy in Ukraine and unite about 40% of the pharmacies in Ukraine. On all websites, drugs with the above active ingredient were available, and the product was offered with the delivery or self-pickup. None of the websites of these drugstores required prescription.

Simultaneously, representatives of these pharmacies, while dispensing drugs online, violated the legislation of Ukraine regarding the *Rules for the Dispensing of Prescription Drugs*, posing a threat the health of patients.

Implementation of the EU legislation set out in Directive No. 83 on distance selling of medicines did not lead to an improvement of OTC dispensing, the reason being that globalization of the new type of business is characterised by disregard for national jurisdiction. This makes it difficult for national government oversight bodies to track violations of online pharmacies. For the same reason, not only in the EU countries but also in the USA, as well as in Ukraine, there are similar problems. Although, from the point of view of Turkish officials, they have implemented the most complete control over the activities of Internet pharmacies, this approach is characterised by ignoring the principles of a market economy.

That is, in fact, a worldwide problem where the principles of the market economy are not violated, and the Internet is not blocked; activities of both legal and illegal Internet pharmacies are carried out with various violations in most cases, starting from the lack of legalisation of such pharmacies and ending with over-the-counter dispensing of pharmaceutical products.

Globalisation of these processes, as well as ignorance of national jurisdictions by Internet pharmacies, indicates that this is a worldwide problem, regardless of the state of pharmaceutical market regulation. That is, websites of Internet pharmacies can be located anywhere in the world, and methods of delivery and accumulation of the required number of pharmaceutical products to further supply them to patients are of technical nature.

Further, websites providing information on the availability of medicinal products that contain the active ingredients Tinidazole + Ciprofloxacin were examined. During the study, several websites were found to have advertising information about medicinal products with these substances. For example, the Drugs Control website listed the drug's trade name and international non-proprietary name (Ciprofloxacin and Tinidazole). In this case, the information provided is sufficient for self-diagnosis.

Of interest are studies related to promoting and selling the prescription drug ALLUTOP through illegal Internet pharmacies (Gutorova, 2021). This is a solution for injection produced by the Romanian company "Biotechnos". The official distributor of this company is Biotechnos LLC (Register ID 41599490), which has a license to import and wholesale drugs, being the only authorised representative of the Romanian company Biotechnos in Ukraine that is a manufacturer of ALFLUTOP. At the time of the study, the drug was imported to Ukraine by this company in secondary packaging, where the inscription of the drug and other information in Ukrainian is placed on a yellow background.

A study of information from the Internet revealed a significant number of websites on which the drug "ALFLUTOP" was offered for sale to consumers, from which ten sites were selected where the drug was provided in secondary packaging with the appearance that differs from the one in which it is officially imported into Ukraine. That is an obvious sign of illegal pharmaceutical activity. At the same time, none of these websites had information about the existence of a license to sell (wholesale or retail) medicines.

According to the results of analysis, Internet pharmacies were divided into two groups; the first one includes Internet pharmacies on the website of which the consumer was frankly informed that the proposed medicines were imported into Ukraine with official permission directly from the EU or other countries. A characteristic feature of the illegal online pharmacies of this group was lack of any information about its location or landline phone number. Communication with the buyer was offered by mobile phone and/or using the feedback function provided directly on the website.

The second group of Internet pharmacies contained information for patients on their websites, which allegedly testified that the Internet sale of medicines is carried out in accordance with the legislation of Ukraine since such Internet sellers only help the consumer to find the necessary medication in the pharmacy, pay for them and deliver them to their destination. In contrast to the websites of Internet pharmacies of the first group, the consumer was provided with information about the landline phone number, and in some cases, the address of the location of the Internet pharmacy from which it was possible to pick up medicines. Some sites of this group contained messages that

the delivery of medicines offered to a patient was an activity under a public offer agreement since no one can prohibit a person from buying medicines not personally but entrust this to his friend or relative.

The fact that the websites of both groups offered the drug "ALFLUTOP" illegally imported into Ukraine for sale is the evidence that Internet pharmacies of these groups perform illegal activities. Yet again, methods of selling drugs, payment, and delivery to the consumer are identical for them.

It should be noted that the pandemic has triggered changes in drug demand and access and has contributed to the development of self-diagnosis and self-medication practices among patients. Requirements to provide a prescription and the desire to use pharmaceutical products for self-medication create conditions for purchase of prescription drugs by patients in illegal online pharmacies (Mackey & Liang, 2011; Mackey & Nayyar, 2016). Basis for eliminating such risks for patients is placing restrictions on such websites. Most worrisome, however, is that due to unfair advertising as well as concerns about the declining availability of pharmaceutical products, patients suffering from continuing shortages may turn to the websites of illegal Internet pharmacies. That is, sale of pharmaceutical products through illegal Internet pharmacies is a means of promoting questionable therapeutic products for a wide range of treatments and diseases (Vida et al., 2020). A system arises when restrictions on access to specific groups of drugs contribute to the development of illegal Internet pharmacies (Mackey & Liang, 2011).

Pharmaceutical advertising in digital marketing has a highly negative impact on patient self-diagnosis. Pharmaceutical companies spend vast amounts of money on advertising their brands on the Internet. Traditional media are often used to create or maintain brand awareness, reach a broader target audience, and digital ones – for more accurate targeting and outreach.

In the course of researching the information presented in the specialised journal Weekly Digest "Apteka" (Dmytryk, 2021), tendencies of the advertising market for pharmaceutical brands on the Internet were considered. In 2020, UAH 6.980 million were spent on advertising pharmaceutical products in Ukraine on the Internet. Nevertheless, according to the results of the first half of 2021, 454.3 million impressions of advertising of pharmaceutical products on the Internet were recorded in Ukraine. Among drug brands, the leaders in terms of the number of appearances on the Internet according to the results of the study period are Colikid, Nurofen, and Engystol.

Consequently, the way to counter digital marketing should be a decisive action by public authorities and professional associations to ensure control over circulation of pharmaceutical products. Tracking and traceability systems are increasingly being deployed as a technology solution to secure pharmaceutical supply chains. Turkey was the first country to implement a complete pharmaceutical traceability and control system throughout its regulated domestic supply chain (Parmaksiz et al., 2020). From a Turkish perspective, pharmaceutical policymakers should conduct systematic analysis of market, political, economic, technical, and legal factors before implementing any pharmaceutical

traceability and control system. To achieve the intended results, the system must be consistent with the implementation goals (for example, combating fraud, reducing the number of counterfeit drugs, minimising shortages). Undoubtedly, total control of tracking circulation of pharmaceutical products requires additional resources and implementation of unpopular countermeasures.

Conclusions

The expanding market for illegitimate online pharmacies poses a global public health threat with potentially negative consequences for patient safety in all aspects of the healthcare system, as well as national economy. It is very difficult to estimate the number of online pharmacies and people who buy online, the volume of drugs sold, and the revenues and profits generated from such a hidden business. In addition to harm to patients, such online pharmacies, in cases of sale of counterfeit pharmaceutical products, harm economic relations and undermine confidence in the health care system in general.

Simultaneously, the recent surge in online drug sales represents a breakthrough in pharmaceutical markets, and COVID-19 further supports this trend. While online pharmacies were originally the domain of high-income countries, over the past decade, they have grown rapidly in low- and middle-income countries. On the one hand, online pharmacies pose a threat of over-the-counter dispensing of pharmaceutical products, including risks of dispensing counterfeit products. On the other hand, online pharmacies create conditions for expanding access of those patients to pharmaceutical products. This is especially true for patients who require regular medication for chronic diseases or have problems accessing traditional pharmacy services.

The regulation of this sector has not been able to keep up with these fast-growing, dynamic markets that easily operate across national borders and pose some regulatory challenges. Therefore, regulators need to pay more attention to ensure that they have the technical expertise to oversee it and adapt the regulatory process to take advantage of the opportunities e-pharmacy provides to improve traceability and transparency of drug sales.

Given the dynamism of e-pharmacy markets, countries need to quickly address lack of a regulatory framework. The first step for regulators would be to start a dialogue with larger, more compliant enterprises and work together to develop best practice guidelines and regulatory frameworks. Legal options may include tightening legal regulation, including restrictions on certain types of activities or expanded licensing, deletion of websites, which will simplify tracking of pharmaceutical products, and control over the activities of individual online pharmacies.

Among the methods of legal regulation, one can envisage accreditation procedures, domain restrictions, introduction of a national register of domain names for digital marketing subjects and websites.

Achieving these changes requires increase in professionalism of specialists from state control bodies, as well as involvement of specialists in the field of information technology and e-commerce. In turn, transnational coordination of regulatory bodies of different countries remains relevant. Therefore, the most appropriate way to counter illegal digital marketing and its component, illegal activities of Internet pharmacies, is adoption of the international *Convention On digital marketing and illegal activities of Internet pharmacies*. The purpose of such document should be development of uniform rules for implementation of such activities, ways of decriminalising them and expanding national jurisdictions of the state control bodies of participating countries with the help of international mechanisms.

Bibliography

1. Ad Age Insights White Paper: Kantar Media. (2011). Pharmaceutical marketing. *ur.gov.lv*. http://gaia.adage.com/images/bin/pdf/WPpharmmarketing_revise.pdf [rev. 27.08.2021].
2. Cohen, J. C. (2004). Public policy implications of cross-border Internet pharmacies. 13(3 Suppl):14–16.
3. CSIP, LegitScript. (2016).The Internet Pharmacy Market in 2016: Trends, Challenges, and Opportunities [Internet]. *safemedsonline.org*. http://www.safemedsonline.org/wp-content/uploads/2016/01/The-Internet-Pharmacy-Market-in-2016.pdf [rev. 28.08.2021].
4. Desa, K., Chewning, B., Mott, D. (2015). Health care use amongst online buyers of medications and vitamins. *ur.gov.lv*. https://www.sciencedirect.com/science/article/abs/pii/S1551741115000030?via%3Dihub [rev. 25.08.2021].
5. Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products. https://eurlex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0062
6. Directive 2011/62/EU of the European Parliament and of the Council of 8 June 2011 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use, as regards the prevention of the entry into the legal supply chain of falsified medicinal products (Text with EEA relevance). *Official Journal of the European Union*. 01.07.2011. https://ec.europa.eu/health/sites/default/files/files/eudralex/vol-1/dir_2011_62/dir_2011_62_en.pdf
7. Dmytryk, K. (2021). Telebachennia, radio, internet: reklama farmbrendiv u media. Pidsumky I pivrichchia 2021 r. Apteka Online UA. *ur.gov.lv*. https://www.apteka.ua/article/605910 [rev. 25.08.2021].
8. Epharmacy Market to Surpass $ 244.0 Billion, Globally, by 2027 at a CAGR 17.0%. Right ePharmacy, PlanetRx.com.Inc., Lloyds Pharmacy Ltd. (10-20-2021). *Health & Medicine*. https://www.openpr.com/news/2435040/epharmacy-market-to-surpass-244-0-billion-globally-by-2027
9. Fittler, A., Bősze, G., Botz, L. (2013). Evaluating aspects of online medication safety in long-term follow-up of 136 Internet pharmacies: illegal rogue online pharmacies flourish and are long-lived. *ur.gov.lv*. https://pubmed.ncbi.nlm.nih.gov/24021777/ [rev.28.08.2021]
10. Fittler, A. et al. (2021). Effect of Infodemic Regarding the Illegal Sale of Medications on the Internet: Evaluation of Demand and Online Availability of Ivermectin during the COVID-19 Pandemic. *ur.gov.lv*. https://www.mdpi.com/1660-4601/18/14/7475 [rev. 28.08.2021].

11. Forman, R. F. et al. (2006). The Availability of Web Sites Offering to Sell Opioid Medications Without Prescriptions. *ur.gov.lv*. https://globalizationandhealth.biomedcentral.com/articles/10.1186/1744-8603-9-45 [rev. 29.08.2021].
12. Gutorova, N. (2021). Legal remedies against black online market of medicines during COVID-19 Pandemic. *Forum Prava*. 2021, 68(3), 15–24. https://forumprava.pp.ua/files/015-024-2021-3-FP-Gutorova_4.pdf [rev. 30.08.2021].
13. Gutorova, N., Pashkov, V., Soloviov, O. (2020) Legal means of ensuring competition in pharmacy. *Wiadomości Lekarskie*, LXXIII, 12, part 2, 2701–2708.
14. H.R. 6353 (110th): Ryan Haight Online Pharmacy Consumer Protection Act of 2008. (2008). https://www.govtrack.us/congress/bills/110/hr6353/text
15. Internet Drug Outlet Identification Program Progress Report for State and Federal Regulators. (April 2015). *National Association of Boards of Pharmacy*. https://nabp.pharmacy/wpcontent/uploads/2016/08/NABPIDOIReport_April2015.pdf
16. Ivanitskaya, L. et al. (2010). Dirt cheap and without prescription: how susceptible are young US consumers to purchasing drugs from rogue internet pharmacies? *ur.gov.lv*. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2885783/ [rev. 25.08.2021].
17. Katsuki, T., Mackey, T. K., Cuomo, R. (2015). Establishing a Link Between Prescription Drug Abuse and Illicit Online Pharmacies: Analysis of Twitter Data. *ur.gov.lv*. https://www.jmir.org/2015/12/e280/ [rev. 28.08.2021].
18. Liang, B. A., Mackey, T. K., Lovett, K. M. (2012). Suspect online sellers and contraceptive access. *ur.gov.lv*. https://www.contraceptionjournal.org/article/S0010-7824(12)00184-9/fulltext [rev. 28.08.2021].
19. Mackey, T. K., Liang, B. A. (2011). The global counterfeit drug trade: Patient safety and public health risks. *Journal of Pharmaceutical Sciences*. 100 (11, November), 4571–4579.
20. Mackey, T. K, Liang, B. A. (2013). Improving global health governance to combat counterfeit medicines: a proposal for a UNODC-WHO-Interpol trilateral mechanism. *ur.gov.lv*. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4225602/ [rev. 28.08.2021].
21. Mackey, T. K., Liang, B. A. (2013). Pharmaceutical digital marketing and governance: illicit actors and challenges to global patient safety and public health. *ur.gov.lv*. https://globalizationandhealth.biomedcentral.com/articles/10.1186/1744-8603-9-45 [rev. 28.08.2021].
22. Mackey, T. K., Nayyar, G. (2016). Digital danger: a review of the global public health, patient safety and cybersecurity threats posed by illicit online pharmacies. *ur.gov.lv*. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5127424/ [rev. 28.08.2021].
23. Miller, R. et al. (2021). When technology precedes regulation: the challenges and opportunities of e-pharmacy in low-income and middle-income countries. *ur.gov.lv*. https://gh.bmj.com/content/6/5/e005405.abstract [rev. 28.08.2021].
24. National Association of Boards of Pharmacy. Digital Pharmacy. https://nabp.pharmacy/programs/accreditations-inspections/digital-pharmacy [rev. 28.08.2021].
25. Orizio, G. et al. (2011). Quality of Online Pharmacies and Websites Selling Prescription Drugs: A Systematic Review. *ur.gov.lv*. https://www.jmir.org/2011/3/e74/ [rev. 28.08.2021].
26. Parmaksiz, K., Pisani, E., Kok, M. O. (2020). What Makes a National Pharmaceutical Track and Trace System Succeed? *Lessons from Turkey. Global Health: Science and Practice*. 8(3), 431–441. *ur.gov.lv*. https://www.ghspjournal.org/content/8/3/431 [rev. 25.08.2021].

27. Pashkov, V., Soloviov, O. (2019). Legal implementation of blockchain technology in pharmacy. *Int. Conf. Society. Health. Welfare. 2018. ur.gov.lv.* https://www.shs-conferences.org/articles/shsconf/abs/2019/09/shsconf_shw2019_01027/shsconf_shw2019_01027.html [rev. 27.08.2021].
28. Tapscott, B. E., Schepis, T. S. (2013). Nonmedical Use of Prescription Medications in Young Adults. Analysis of Twitter Data. *ur.gov.lv.* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4882925/ [rev. 29.08.2021].
29. Vida, R. G. et al. (2020). Developing a framework regarding a complex risk based methodology in the evaluation of hazards associated with medicinal products sourced via the internet. *ur.gov.lv.* https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7783221/ [rev. 30.08.2021].
30. World Health Organization. (2018). Substandard and falsified medical products. Medicines: counterfeit medicines. *ur.gov.lv.* https://www.who.int/news-room/fact-sheets/detail/substandard-and-falsified-medical-products [rev. 27.08.2021].

https://doi.org/10.25143/socr.21.2021.3.204-214

Forensic Expert Activity: Issues of Improving Effectiveness

Inessa Ovsiannykova
ORCID: 0000-0002-3351-7781
National Scientific Center "Hon. Prof. M. S. Bokarius Forensic Science Institute", Ukraine
inessa_ovs@ukr.net

Abstract

Improving efficiency of forensic science nowadays is poorly understood and extremely relevant for administration of effective justice in Ukraine. To understand the goals that need to be achieved to obtain the desired result, first the existing problems that need to be addressed must be understood. Based on the previous analysis of the administrative legislation of Ukraine, scientific literature, as well as the practical experience of experts, the article considers the key problems in the field of forensic examination of theoretical, methodological, practical and administrative nature, which must be addressed to improve judicial efficiency in the country.

Keywords: effectiveness, expert, forensic expert activity.

Introduction

In modern conditions of formation of Ukraine as a state governed by the rule of law, the role and importance of legal regulation of public relations becomes especially relevant. Thus, the main feature of the model of the state, which is characterised as legal, is precisely the feature of high legal regulation of social relations. Modern society, first, puts forward a person and citizen with their needs focussing on effective justice. The judiciary is endowed with certain powers, without which functioning of the rule of law is impossible, development of social relations in the vector of balance is unattainable, and the level of justice for everyone is utopian. That is why every civilized country, aiming to provide proper justice quickly and efficiently, is obliged to organise a system of justice in which all efforts and resources invested in the judiciary will be effective, rational and sufficient (Shcherbliuk, 2021). In Ukraine, guaranteeing rights to a fair trial and ensuring

the rule of law is impossible without development of effective system of forensic science support of justice providing not only to implement steps on modernisation of the current legislation but the need for systemic transformations in the field of forensic expert activity, in particular. The aim of the research is to consider some of the main problems of theoretical, methodological, practical and administrative nature that prevent forensic activities to be an effective part of the system of expert support of justice in Ukraine and need to be addressed urgently.

Discussion and Results

Forensic science plays an important role in administration of justice and assistance to stakeholders, so development and improvement of judicial reform that is taking place in Ukraine today is impossible without some effective changes in the field of forensic science. Nevertheless, such changes, especially administrative and legal changes in the legislation governing forensic expert activity, are not always clear and effective, which causes a number of problems, which, in turn, are the cause of debate among scholars and lawmakers.

Starting to consider the issue of increasing efficiency of forensic expert activity, it is necessary to determine what such forensic activity is. The very concept of "activity" is the subject of research in a large number of scientific areas. It is usually associated with two categories of purpose (purposefulness) and result (performance).

In addition, Article 7 of the Law of Ukraine On Judicial Examination provides that forensic activities in Ukraine are carried out by state specialised institutions and their territorial branches, expert institutions of communal ownership, as well as forensic experts who are not employees of these institutions and other specialists (experts) from the relevant fields of knowledge. State specialised institutions include:

1) research institutions of forensic examinations of the Ministry of Justice of Ukraine;
2) research institutions of forensic examinations, forensic medical and forensic psychiatric institutions of the Ministry of Health of Ukraine;
3) expert services of the Ministry of Internal Affairs of Ukraine, the Ministry of Defense of Ukraine, the Security Service of Ukraine and the State Border Guard Service of Ukraine (Zakon Ukrainy, 25.02.1994).

The legislator clearly stipulates that forensic activities related to forensic and forensic psychiatric examinations are carried out exclusively by state specialised institutions.

From a scientific point of view, different scholars give different definitions of "activity", "expert activity", "forensic activity", and therefore there is a problem of their different interpretations and lack of solid theoretical basis for this, which, in turn, causes problems in the activities of law enforcement agencies that carry out legal proceedings, on the types, forms of expert activity, tasks to be solved and other relevant issues.

Dzhavadov (2000) reveals understanding of forensic activity as a separate type of legal activity, which has features inherent in it as a specific type of human activity. Among the features of this activity, he refers to its legal nature and a separate entity, which may be a forensic expert. Zherebko (2019) adheres to the opinion that forensic activity should be understood as the performance by a specific person of the functions assigned to him by law to ensure justice. According to Strilets (2009), forensic activity is a statutory activity of forensic institutions, aimed at conducting independent forensic examinations as a result of objective, complete and comprehensive research in compliance with modern advances in science and technology, organisation of forensic institutions as a whole and their structural subdivisions, their scientific-methodical and information support, selection and training of forensic experts. Averyanova et al. argue that forensic activity is a system of actions and related legal relations carried out in the process of judicial proceedings by authorised bodies and persons on the appointment, organisation and conduct of forensic examinations (Averyanova et al., 2008). Segai (2003) defines forensic activity as the activity of the state, legal entities and individuals to ensure justice by an independent, objective and qualified examination carried out by professional (certified) forensic experts.

Analysis of scientific opinions shows that at present in modern science and practice there is no clear and comprehensive definition of "forensic activity", so today forensic activity in connection with changes in public life, requires a theoretical understanding of its concept, essence, tasks, definition of directions of development and improvement (Chornous & Lopata, 2016).

Based on the above, it can be stated that the scientific community has formed an opinion about forensic activity as a complex phenomenon, which includes, along with expert research, other elements, primarily of organisational, methodological and didactic nature. Meanwhile, the activity itself is mainly analysed from the point of view of the characteristics of the expert's personality, its professional, social and psychological aspects. It is logical that within the framework of this approach, a forensic expert is primarily called a forensic expert as a bearer of special knowledge and as a procedural person as a subject of forensic activity. The question of other subjects finds much less coverage in the scientific literature. This mainly applies to a forensic institution or organisation (Smirnova, 2012).

Some scholars rightly point out in their works that forensic activity is extremely important in every democratic state and should be carried out effectively, and its administrative and legal regulation should take place without violating human rights and freedoms (Oliinyk, 2013; Rusetskyi, 2017; Skoryk & Biriukov, 2020).

In order to determine the effectiveness of an activity, you must first define the concept of "effect". According to the dictionary definition, "effect" (Latin *effectus* – performance, action, from efficio – action, perform) – the result, the consequence of any causes, measures, actions; "effectiveness" – the result, a consequence of any causes, forces, actions (Melnychuk, 1987).

Scientists in various fields of science have repeatedly tried to define the concept of "effect". For example, in the article of Sinicyna (2004), the effect is considered as a result, a consequence of any causes, actions, economic measures (introduction of new equipment and investment projects, commercial agreements, implementation of any economic decisions, etc.). According to Petrova, the effect is a useful result, expressed in terms of valuation (Yachmenova et al., 2010). Surmin formulates the definition of "effect" as a result, a consequence of any action (Rats, 2008). Zagorodniy et al. (2002) reveals the concept of "effect" as an achieved result in a certain form – material, monetary, social and economic. Based on the above, there is a common scientific opinion that the "effect" is the result that arises as a result of certain actions. Thus, understanding of the term "effectiveness" is related to actions that lead to the desired consequences; thus, the concept of "effectiveness" is synonymous with the concept of "active". It follows that "effectiveness" is efficiency, result, consequence of certain causes, forces, actions. Nevertheless, effectiveness is not just the ability of someone or something to act in such a way as to achieve the intended consequences. This is a rather complex phenomenon, determined by the ratio of human, organisational, time, scientific and technical, material resources and the results obtained (Tsvietkov, 1998).

Issues of increasing effectiveness of forensic expert activity have always been the most important, since work results of forensic experts using specific expertise, the most effective methods and high-tech scientific and technical means in many ways determine efficiency of law enforcement agencies to fight against crime allowing to realize scientific and technical potential of society while implementing justice and providing a new impulse for the development of the state and strength in law enforcement (Svintsytskyi, 2020). Proclamation of independence, change of economic conditions of management of economy, ideology of the development of market relations in Ukraine, formation of a civil society – all this sets new challenges for the authorities regarding public administration in the field of forensic expert activity. Thus, nowadays, there is an urgent need for new mechanisms of forensic expert activity, which would ensure its scientific nature and at the same time create conditions for improving its economic and social effectiveness.

Issues of efficient justice and forensic expert activity become objects of scientific research and subject of various thematic discussions that confirms relevance of the problem. Forensic expert activity is one of the areas where reforms are much desired (Filipenko, 2020).

For example, on February 6–7, 2020, on the basis of the National Scientific Centre "Hon. Prof. M. S. Bokarius Forensic Science Institute" together with the Department of Criminalistics of Yaroslav Mudryi National Law University, a round table meeting on *Problems of Reforming the Basic Legislation of Ukraine on Forensic Science Support of Justice* was held in Kharkiv, which was the first organised event scientists of higher education institutions, academic institutions, scientists and those with significant practical experience working in forensic scientific institutions of Ukraine, representatives of public

organisations of forensic expertise attended. The purpose of this meeting was to discuss about the issues related to forensic science support of justice in Ukraine in general and forensic expert activity, in particular.

Analysis of round table content, studying dissertation and other research papers on this topic indicates common scientific opinions on importance of reforming forensic expert activity and the need to make legislative changes to its regulation and efficient judicial reform in Ukraine. In other words, it means development of the concept of forensic science in Ukraine that should be understood as systematic statement of goals and priority directions of its development which should be based on democratic judicial principles and on challenges that are in connection with the European vector development. Lack of balanced opinions leads to chaotic lawmaking, and uncertainty of some positions reduces effectiveness of using the specific expertise in the field (Yaroslav, 2020).

Consequently, it can be argued that efficacy of administrative and legal regulation of forensic expert activity in a wider sense should be considered as a result of purposeful and systematic activity of public administration bodies aimed at performing tasks and functions of the state in the field of forensic science (Ovsiannykova, 2019). However, it should be noted that Law of Ukraine On Judicial Examination that is in force now does not contain norms that would directly identify common goals and tasks of forensic expert activity and its subjects.

One of the main goals that should be applied to Ukraine on its way approaching the European Community standards should be improvement of administrative and legal regulation of Forensic Science Institution in Ukraine and eliminating certain gaps in the current law which the expert activity is regulated by.

Importance of changes that need to be made in the areas of legal policy to ensure human and civil rights and freedoms is discussed in the Decree of the President of Ukraine on urgent measures to reform and strengthen the state (Ukaz Prezydenta Ukrainy, 08.11.2019). The decree states the importance of drafting laws and amending some legislative acts of Ukraine related to forensic expert activity. This means that statesman recognises that at present the administrative and legal regulation of forensic expert activity is ineffective and requires improvement.

Nonetheless, optimisation of legal support of forensic expert activity and determination of increase directions of its effectiveness, first of all, provides the definition and features of forensic institution activity that is in need of accurate definition and general purpose characteristics, tasks and functions of their activities reflecting their importance and place in the system of relations with other subjects of legal relations in the field of forensic expert activity and form the basis of their legal status (Ostropilets, 2019).

It should also be noted that the judicial reform carried out in Ukraine, development of a market economy, global and regional integration processes have led to the presentation of higher requirements by the participants in legal proceedings to the quality of forensic examinations and their scientific, methodological, organisational and technical support.

Aminev and Abdullin, forensic experts, address the problem of the quality of forensic examinations in conditions of improving judicial proceedings. The professors note the need to increase the level of methodological support of forensic expert researches through international cooperation of forensic institutions for creation of an objective evidence-based justice system. In their opinion, central role in international cooperation in the field of forensic science should be taken by the integration of methodological expert research foundations that consist of merging the domestic theoretical base of forensic expertology with foreign applied expert school. Thus, cooperation of forensic expert schools in different countries can lead to mutual enrichment due to the possible integration of two radically different conceptual approaches to the forensic expert activity methodology (Aminev & Abdullin, 2020). Importance of this problem is evidenced by the results of a survey conducted by Nguen Van Kau among law enforcement officers of the Socialist Republic of Vietnam; majority of the respondents (83.27 %) stated that one of the main ways to improve effectiveness of new species of forensic examinations is international cooperation with other countries (Nguen Van Kau, 2020).

Recently, the role of international cooperation in the field of forensic science has been steadily growing. The main purpose of state forensic institutions is to protect interests of the state, rights and freedoms of citizens and rights of legal entities by conducting objective, scientifically sound forensic examination and expert research. International cooperation of forensic institutions is important for implementation of the rule of law improving forensic activities and forensic science quality as one of the main forms of using specific expertise in modern justice, as well as formation of preventive recommendations for law enforcement agencies. Intensified activity in the field of international integration of the country into the world legal space sets the state forensic institutions a wide range of tasks to establish such international cooperation and expand cooperation with foreign specialised forensic science institutions (Filipenko et al., 2021).

In modern administrative-legal science and practice of forensic expert activity, a number of approaches are distinguished regarding possible forms of implementation of international cooperation. In accordance with the strategy approved by the Decree of the President of Ukraine, to increase the efficiency of the judiciary and institutions of justice, as well as to strengthen public confidence in them, the basic principles and directions for further sustainable functioning and development of the justice system in the country should be implemented considering the best international standards and practices (Ukaz Prezydenta Ukrainy, 11.06.2021).

According to the Strategic Business Plan, tasks of developing international standards include:

1) enhancement of reliability of forensic evidence;
2) establishment of consistent work practices that facilitate forensic laboratories / agencies from different jurisdictions to work collaboratively in response to cross border investigations;
3) enabling of agencies from different jurisdictions to support one another in case of a catastrophic event that exhausts a jurisdiction's capabilities;

4) allowing for the exchange of forensic results, information and intelligence including sharing of databases;
5) ensuring forensic supplies are fit for purpose and do not impact upon the features under examination;
6) allowing mobility of forensic professionals (ISO/TC 272 Forensic sciences / Strategic business plan, 2016).

Considering expansion of scientific and methodological base as one of the leading areas of international cooperation in the field of forensic examination includes:

1) development of a detailed modern practical guide to forensic disciplines;
2) exchange of information from databases for expert analysis (in particular, regarding weapons and ammunition, explosives, drugs, etc.);
3) development and implementation of testing for aptitude and ability to cooperate in the field of expert activities;
4) increasing the level of information content about forensic examination and appropriate training for representatives of law enforcement agencies and the judiciary;
5) stimulating the exchange of data for expert analysis and improving the quality of exchange;
6) increasing the competence of forensic experts, etc. (Simakova-Yefremian, 2017).

Thus, international cooperation in the field of forensic expertise, harmonisation of expert national legislation and development of relevant national standards, as well as various forms of exchange of information and best practices in the field of theory and practice of forensic expertise, expansion of scientific and methodological base in the area are important factors affecting effectiveness of forensic expertise.

Legislation and law enforcement in modern conditions present more and more complex criteria for objectification of forensic examination, where the cost of error these days has increased significantly. Participants in legal proceedings are aware of typical mistakes that are often encountered in production of forensic examinations by both state and non-state forensic experts, namely: the expert goes beyond their competence (mainly by solving legal issues), procedural violations, professional incompetence, etc. Therefore, another important component of the problem of forensic effectiveness is related to experts themselves. According to the Law of Ukraine On Judicial Examination that is in force now, forensic expert activity is carried out on the principles of research legality, independence, objectivity and completeness (Zakon Ukrainy, 25.02.1994). Therefore, it is indisputable that expert conclusion should reflect all those principles. Regardless of the fact that forensic expert conclusion correctness is guaranteed by the said law, there are scientific thoughts on mistakes that influence effectiveness of forensic expert activity, that are:

1) objective errors – those that do not depend on forensic expert activities;
2) subjective errors – those that depend on forensic expert activities and their way of thinking.

Prus (2014) defines error as the result of deceptive action (inaction) detected during the activities performed by law enforcement subjects with adoption of incorrect or erroneous decisions. According to Platonov (1972), a psychologist, error is the result of a wrong action that has not achieved its goal. In general, the problem of errors is an important independent research area that is justifiably paid attention to by many scientists in various knowledge fields.

Forensic expert error in general as defined by Belkin (1997) is the judgment of the expert, which does not correspond to objective reality or their actions that do not lead to the purpose of forensic research, in case when both the distorted judgment and incorrect actions are the result of good faith deception. Klimenko (1988) also speaks of forensic expert error as a result of good faith deception while allowing possibility of conscious error on the expert part.

Predetermined willful erroneous forensic expert conclusion can be expressed in conscious disregard or silencing while making the research of essential facts and characteristics of forensic examination objects; distorted description of the facts and signs predetermines their wrong assessment or predetermined wrong actions and operations on their research, it can also be expressed in predetermined wrong choice of forensic expert methods or their application. Predetermined willful forensic expert conclusion falsity can be determined only by the court while studying the entire set of evidence collected in case of availability of all crime signs (Kiyan, 2012).

Wrong forensic expert conclusion as a result of false or fake primary source information previously presented to them for research can be attributed to subjective factors. In this regard, Bululukov (2015) rightly notes that criminal investigator error that they have caused in making a tactical decision on forensic examination assignment is transformed into an expert error only for reasons of subjective nature.

Zavdovieva et al. (2018) also remarks on availability of unreliable and probable information in materials submitted for research, which require increased forensic expert attention (in particular at the stage of preliminary research) that is connected with assessment of information reliability, establishment of obviously unreliable information and verification of probable information. The authors of the current study suggest that in such circumstances there can be no question of forensic expert error, because the cause of forensic expert error is corresponding erroneous or intentional actions of the legal agency that appointed the examination.

Conclusions

During the stage of transformation process, a number of methodological, practical and administrative problematic issues take place in forensic expert activity and require their effective solution. The authors of the present study are of opinion that all these issues should be considered through the prism of effectiveness of achieving the goals and objectives defined for forensic experts, forensic institutions and the state as a whole.

Bibliography

Legal acts

1. ISO/TC 272 Forensic sciences. Strategic business plan. (16.01.2016). https://isotc.iso.org/livelink/livelink/fetch/2000/2122/687806/ISO_TC_272__Forensic_Sciences_.pdf?nodeid=18832591&vernum=2. (in English)
2. Ukaz Prezydenta Ukrainy, 11.06.2021, No. 231/2021: Stratehiia rozvytku systemy pravosuddia ta konstytutsiinoho sudochynstva na 2021–2023 roky. https://zakon.rada.gov.ua/laws/show/231/2021#Text. (in Ukrainian)
3. Ukaz Prezydenta Ukrainy, 08.11.2019, No. 837/2019: Pro nevidkladni zakhody z provedennia reform ta zmitsnennia derzhavy. https://zakon.rada.gov.ua/laws/show/837/2019#Text. (in Ukrainian)
4. Zakon Ukrainy 25.02.1994: Pro sudovu ekspertyzu, No. 4038 – XII. https://zakon.rada.gov.ua/laws/show/4038-12#Text. (in Ukrainian)

Literature

5. Aminev, F. G. & Abdullin, R. R. (2020). O tselesoobraznosti integratsii metodologicheskih osnov ekspertnyih issledovaniy v hode mejdunarodnogo sotrudnichestva sudebno-ekspertnyih organizatsiy. *Sudebnaya ekspertiza* = Forensic examination, 4(64), 8–18. http://www.va-mvd.ru/sudek/archive/64.pdf. (in Russian)
6. Averyanova, T. V. et al. (2008). *Kriminalistika*: ucheb. dlya vuzov. 3-e izd., pererab. i dop. Moskva: Norma, 992 p. (in Russian)
7. Belkin, R. S. (1997). *Kurs kriminalistiki: Chastnyie kriminalisticheskie teorii, 3 vols.* Moskva: Yuristy. (in Russian)
8. Bululukov, O. Yu. (2015). Innovative approach in research of errors at setting judicial examinations. *Law and Innovations.* No. 3, 139–144. http://www.irbis-nbuv.gov.ua/cgi-bin/irbis_nbuv/cgiirbis_64.exe?I21DBN=LINK&P21DBN=UJRN&Z21ID=&S21REF=10&S21CNR=20&S21STN=1&S21FMT=ASP_meta&C21COM=S&2_S21P03=FILA=&2_S21STR=apir_2015_3_21 (in Ukrainian)
9. Chornous, Y. M. & Lopata, O. A. (2016). Poniattia ta zavdannia sudovo-ekspertnoi diialnosti u suchasnykh realiiakh. *Kryminalistyka i sudova ekspertyza.* Vol. 61, 3–12 (in Ukrainian).
10. Dzhavadov, F. M. (2000). *Kontseptualni osnovy rozvytku sudovoi ekspertyzy v suchasnykh umovakh.* (Extended abstract of Doctoral thesis). Kyiv. (in Ukrainian)
11. Filipenko, N. Ye. (2020). Perspektyvy rozvytku ekspertnykh ustanov Ukrainy z ohliadu na zakonodavchi zminy shchodo pytan ekspertnoho zabezpechennia pravosuddia. *Problemy reformuvannia bazovoho zakonodavstva Ukrainy z pytan ekspertnoho zabezpechennia pravosuddia.* Kharkiv: KhNDISE, pp.94–96. (in Ukrainian)
12. Filipenko, N. et al. (2021). Implementation of Preventive Activity: Foreign Experience in Criminological Work of Forensic Science Institutions. *Electronic Scientific Journal of Law "Socrates"*, 1(19), 32–39. https://doi.org/10.25143/socr.19.2020.1.032-038.
13. Kiyan, T. M. (2012). Aktualnyie prichinyi vozniknoveniya ekspertnyih oshibok. *Liudyna, suspilstvo, derzhava: publichno-pravovyi aspect.* VIII Prybuzki yurydychni chytannia. Mykolaiv: Ilion, pp.159–160. http://dspace.onua.edu.ua/handle/11300/3803. (in Russian)
14. Klimenko, N. I. (1988). Ekspertnyie oshibki i ih prichinyi. *Kriminalistika i sud ekspertiza*. 1988. Vol. 37, 35–38. (in Russian)

15. Melnychuk, O. S. (1987). Slovnyk inshomovnykh sliv. Kyiv: Holovna redaktsiia Ukrainskoi radianskoi entsyklopedii Akademii nauk Ukrainskoi RSR. (in Ukrainian)
16. Nguen Van Kau. (2020). *Pravovoe i informatsionnoe obespechenie sudebnoekspertnoy deyatelnosti v Sotsialisticheskoy Respublike Vetnam*. (Diser. kand. yur. nauk). Moskva. (in Russian)
17. Oliinyk, O. O. (2013). Zarubizhnyi dosvid administratyvno-pravovoho rehuliuvannia sudovo-ekspertnoi diialnosti. *Mytna sprava*, 4(88), 270–274. (in Ukrainian)
18. Ostropilets, A. V. (2019). Zavdannia ta funktsii sudovo-ekspertnykh ustanov Ukrainy. *Yevropeiski Perspektyvy = European Perspectives*. № 2, 52–57. http://ep.unesco-socio.in.ua/archive/2019-2/. (in Ukrainian)
19. Ovsiannykova, I. M. (2019). Main approaches to determining the effectiveness of forensic expert activity: administrative and legal aspects. *Theory and Practice of Forensic Science and Criminalistics.* 20(2), 215–229. https://khrife-journal.org/index.php/journal/article/view/325. (in Ukrainian)
20. Platonov, K. K. (1972). *O sisteme psihologii.* Moskva: Myisl, 216. (in Russian)
21. Prus, E. U. (2014). Pomylka pry zastosuvanni prava. Poniattia ta kharakterystyka. *Aktualni problemy polityky*. Vol. 51, 79–86. http://dspace.onua.edu.ua/handle/11300/306. (in Ukrainian)
22. Rats, O. M. (2008). Vyznachennia sutnosti poniattia "efektyvnist funktsionuvannia pidpryiemstva". *Ekonomichnyi prostir.* Vol. 15, 275–285.
23. Rusetskyi, A. A. (2017). Pro orhanizatsiiu sudovo-ekspertnoi diialnosti: mizhnarodnyi aspekt. *Teoriia ta praktyka sudovoi ekspertyzy i kryminalistyky*. Vol. 17, 158–164. (in Ukrainian)
24. Segai, M. Y. (2003). Sudebnaya ehkspertologiya: ob»ekt, predmet, priroda i sistema nauki. *Teoriia ta praktyka sudovoi ekspertyzy i kryminalistyky.* Vol. 3, 25–32. (in Russian)
25. Shcherbliuk, O. V. (2021). *Orhanizatsiini osnovy sudoustroiu v Ukraini*. (Extended abstract of candidates thesis). Kyiv. (in Ukrainian)
26. Simakova-Yefremian, E. B. (2017). *Teoretyko-pravovi ta metodolohichni zasady kompleksnykh sudovo-ekspertnykh doslidzhen.* (Diser. kand. yur. nauk). Kharkiv (in Ukrainian)
27. Sinicyna, T. A. (2004). *Ocenka ehffektivnosti sistemy upravleniya promyshlennym predpriyatiem – celevoj pokhod* (Diser. kand. ehkon. nauk). Odessa. (in Ukrainian)
28. Skoryk, A. L. & Biriukov, M. A. (2020). Poniattia ta sutnist kryminalistychnoi ekspertyzy. *Teoriia ta praktyka sudovoi ekspertyzy i kryminalistyky*. III Vseukr. nauk.-prak. konf. Kyiv-Mariupol: KUP NAN Ukrainy DonDUU, pp.269–271. (in Ukrainian)
29. Smirnova, S. A. (2012). *Sudebnaya ekspertiza: perezagruzka (mul'timodal'noe izdanie) v trekh chastyah, 1 chast'*. Moskva: RFCSE. (in Russian)
30. Strilets, H. O. (2009). *Henezys systemy sudovo-ekspertnykh ustanov v Ukraini ta napriamky yikh diialnosti.* [Extended abstract of Ph.D. candidates thesis]. Kyiv. (in Ukrainian)
31. Svintsytskyi, A. V. (2020). Systema ekspertnoho zabezpechennia pravosuddia v Ukraini na suchasnomu etapi: orhanizatsiino-pravovi aspekty. *Problemy reformuvannia bazovoho zakonodavstva Ukrainy z pytan ekspertnoho zabezpechennia pravosuddia*. Kharkiv: KhNDISE, pp.16–20. (in Ukrainian)
32. Tsvietkov, V. V. (1998). Pidvyshchennia efektyvnosti derzhavnoho upravlinnia – vazhlyva meta yoho reformuvannia. *Reformuvannia derzhavnoho upravlinnia v Ukraini: problemy i perspektyvy*, pp. 128–153.
33. Zavdovieva, I. H. et al. (2018). An error and its value in the forensic expert activity. *Kryminalistychnyi visnik*. 30(2), 31–39. https://visnyk.dndekc.mvs.gov.ua/index.php/visnuk/article/view/30. (in Ukrainian)

34. Zherebko, O. I. (2019). Sutnist y zmist sudovo-ekspertnoi diialnosti: vitchyznianyi dosvid. *Teoriia ta praktyka sudovoekspertnoi diialnosti*. VIII Mizhvidom. konf. Kyiv: MVS Ukrainy, NAVS Navch.-Nauk. instytut № 2, pp.150–154. (in Ukrainian)
35. Yachmenova, V. M., Vysochyna, M. V., & Sulyma, O. Y. (2010). *Efektyvnist upravlinnia diialnistiu promyslovoho pidpryiemstva ta diahnostyka zahroz*: monohrafiia. Simferopol: VD ARIAL, p.472. (in Ukrainian)
36. Yaroslav, Yu. Yu. (2020). Do pytannia kontseptsii sudovoi ekspertyzy v Ukraini. *Problemy reformuvannia bazovoho zakonodavstva Ukrainy z pytan ekspertnoho zabezpechennia pravosuddia*. Kharkiv: KhNDISE, pp.109–117. (in Ukrainian)

https://doi.org/10.25143/socr.21.2021.3.215-226

Role of Forensic Historical and Archaeological Examination in Preserving Archaeological Heritage

Kateryna Sylenok
ORCID: 0000-0001-9355-5010
National Scientific Center "Hon. Prof. M. S. Bokarius Forensic Science Institute", Ukraine
sylenokkateryna@gmail.com

Abstract

The article covers the topic of the possibility of conducting forensic historical and archaeological examination. The problems that arise when protecting archaeological monuments are relevant not only for Ukraine but also for many countries of the world. Preserving history is an important task for every civilized country. To ensure effective protection of historical heritage of Ukraine, it is necessary to have effective mechanisms to prevent and protect archaeological monuments against destruction and theft. Formation and development of forensic historical and archaeological examination is essential to improve Ukrainian legislation, including the field of forensic science. To effectively apply state policy on the issues of archaeological monuments preservation while pre-trial investigation of criminal offenses, it is necessary to make an active use of special knowledge in the field of historical and archaeological research. One of the peculiarities of forensic research is that it should be performed in compliance with appropriately approved expert methods, characterised by combining in itself the necessary requirements for research and being the basis for quality and speed for solving forensic examination tasks. In this regard, their study and development are significant in research and practice. The aim of the article is to study the role of forensic historical and archaeological examination in preservation of archaeological heritage. It analyses the respective literature and legislation of Ukraine dedicated to forensic examination, forensic historical and archaeological examination and international experience in the field of archaeology.

Keywords: archaeological heritage, archaeological monuments, forensic historical and archaeological examination, protection of archaeological heritage in Ukraine.

Introduction

Archaeological heritage is an inexhaustible resource for studying history and culture of the past which requires protection from criminal offenses. Information on archaeological discoveries is usually not widespread, therefore the public is not always aware of the importance of each. Simultaneously, illegal archaeological excavations have become more common recently, resulting in priceless artifacts of the past becoming part of private collections, and being destroyed due to negligence and violation of excavation requirements.

Currently, archaeological discoveries are of a great historical, cultural, social and educational significance. Despite the enormous value of each artefact for the state and people who are heirs of ancient tribes as well as for people having created civilization at Ukrainian land, the archaeological heritage of Ukraine is constantly lost. It is looted by black archaeologists who irreparably damage it, eliminating the historical context of the discovery.

The main goal in the field of preserving archaeological heritage is to create conditions for organisational-legal, financial-economic and scientific support for protection and research of archaeological monuments (sites) in the interests of dynamic socio-economic, cultural and spiritual development of society. Archaeological discoveries, if skilfully presented, can enormously contribute to the development of tourism in Ukraine.

In the course of research, analysis of scientific publications, prior scientific developments, Ukrainian legislation and international experience in terms of the addressed issue was carried out. To fulfil the set goal, the article uses general scientific methods, in particular methods of formal logic (analysis, synthesis, deduction, induction, analogy, abstraction); comparative-law, system-structural method, etc.

Certain aspects of state policy regarding protection of cultural heritage are covered in scientific papers by V. I. Akulenko, R. V. Aseikin, M. M. Herasymov, O. S. Batishcheva, Yu. P. Bohutskyi, V. V. Karlova, T. V. Kurylo, O. V. Malysheva, M. O. Mishchenko, V. O. Navrotskyi, B. M. Odainyk, I. H. Poplavskyi, I. V. Pyvovar, S. S. Ptukha, O. S. Sotula, O. V. Usenko, M. I. Khavroniuk and others. Topicality of the research has been supported by Huliakov (Huliakov, 2020).

The aim of the article is to study the role of forensic historical and archaeological examination in preserving archaeological heritage.

Research Results and Discussion

Archaeological monuments are destroyed at a rapid rate due to negligent economic activity which constantly expands its boundaries (laying of pipelines and communications, highways, urban renewal, private building, etc.). This determines the scope and terms of researches, sets new tasks regarding quality and informativity and requires new approach to research methodology. Formerly, the field season began in late April,

currently research is carried out throughout the year, occasionally under snow, because land acquisition and construction are performed throughout the year. Scheduled research with the purpose of preserving monuments and performing scientific study are conducted only as fieldwork of students and execution of programmes and projects financed by funds due to lack of adequate public funding. For this reason, an important role is now given to scientific and rescue research (excavations, supervision of earthworks), the method of its conduct, which allows to obtain more wholistic and high-quality information about archaeological monuments (Minaieva, 2010).

Strict compliance with legislation on protection of archaeological heritage in practical activity of state bodies, institutions, officials, enterprises is significant for preservation of national cultural heritage, where archaeological monuments serve as important components. In Ukraine, the right to conduct research on cultural heritage is enshrined in the current legislation: archaeological expedition may be established by the Institute of Archaeology and corresponding research institutions of NAS of Ukraine (which have archaeological departments), higher education institutions of the III or IV level of accreditation of state ownership within training programmes for students, by administrations of historical and cultural reserves, museums of state and communal ownership, staffed by archaeologists with appropriate qualifications, duly documented (part three of Article 14 of the Law *On Protection of Archaeological Heritage*). The Institute of Archaeology of NAS of Ukraine provides for the right to organise and perform scientific and scientific-rescue research on archaeological monuments (Paragraph 2 of Article 12 of the Law of Ukraine *On Protection of Archaeological Heritage*) (Minaieva, 2020).

According to the Law of Ukraine *On Protection of Archaeological Heritage* in force on March 18, 2004, archaeological heritage of Ukraine is a set of archaeological heritage monuments under state protection and the associated territories, as well as movable valuable cultural artefacts (archaeological objects) which derive from archaeological monuments (Rada, 2004).

A separate section of the Law of Ukraine *On Protection of Cultural Heritage* regulates rules for monument protection. Thus, according to Article 22 of the Law, monuments, their parts, related movable and immovable property are prohibited to be demolished, changed, replaced, moved (relocated) to other places. Moving (relocating) the monument to another place is allowed as an exception in cases when it is impossible to keep the monument in place, provided a set of researches on the study and fixation of the monument (measurements, photofixation, etc.) is carried out (Rada, 2000). Violators of the Law are liable considering the established guilt and the caused damage.

Thus, the Code of Ukraine on Administrative Offenses in 2001 was supplemented by Article 921 *Violation of the Legislation on the National Archival Fund and Archival Institutions*. Under the sanction of Part 1 of this Article, negligent storage, damage, illegal destruction, concealment, illegal transfer of archival documents to another person, violation of the procedure for access to these documents, as well as failure to notify the state archival institution of existing archival documents in case of emergence

of threats of destruction or significant deterioration of their condition: entail warning or imposition of a fine on citizens from three to seven tax-free minimum incomes and warning or imposition of fines on officials: from five to ten tax-free minimum incomes (Rada, 1984).

According to Part 2 of the same Article, the same actions committed by a person who during the year was subjected to administrative penalty for one of the violations stipulated in Part 1 of this Article: entail the imposition of a fine on citizens from seven to twenty tax-free minimum incomes of citizens, and on officials: from ten to forty tax-free minimum incomes (Rada, 1984). In addition, Article 92 of the Code of Administrative Offenses provides for liability for violation of the legislation requirements on cultural heritage protection. Violations entail the imposition of a fine on citizens from fifty to one hundred tax-free minimum incomes and on officials: from one hundred to one hundred and fifty tax-free minimum incomes (Myshchak, 2013).

To protect archaeological heritage, Ukrainian legislation provides for the holding of a set of measures by relevant public authorities, their officials, enterprises, institutions, organisations and citizens. Measures should be aimed at accounting, protection, preservation, proper maintenance, proper use, conservation, restoration, rehabilitation and museumification of archaeological monuments, as well as dissemination of knowledge about archaeological heritage.

One of the mechanisms for protection of archaeological heritage is the criminal liability provided for in Article 298 of the Criminal Code of Ukraine for illegal excavations at archaeological heritage site, destruction or damage to cultural monuments (Rada, 2001a). In the course of a criminal proceeding, the investigator must gather corresponding, admissible, reliable evidence, which collectively will be sufficient for the court to impose sentence. The source of evidence is the conclusion of a forensic archeologist who is empowered to objectively evaluate the amount of the caused damage, presence or absence of historical or archeological monuments, determine cultural value of the object, etc. It is impossible for the investigator to independently, without a help of a specialist, establish whether the archaeological monument was damaged; whether seized movable objects originate from archeological monuments; what the amount of damage is. In such case, involvement of a forensic expert is of great importance.

Damage is caused as a result of activities of natural and legal persons. In his report, Hlib Yuriiovych Ivakin, a corresponding member of the National Academy of Sciences of Ukraine, notes that targeted efforts have been made on behalf of construction entities to destroy Ukrainian current legislation on protection of archaeological heritage particularly since 2009 (Ivakin, 2013). As a result of the adoption of the Law of Ukraine *On Regulation of City Planning Activity*, the Land Code of Ukraine as well as the Laws of Ukraine *On Protection of Cultural Heritage* and *On Protection of Archaeological Heritage* have been amended and the control mechanism for construction and excavation has been practically destroyed. At present, cultural heritage authorities are effectively suspended from approving construction projects located outside protected areas of monuments or

historical sites. That is, although on paper, a very small percentage of cultural heritage is under protection (Ivakin, 2013).

H. Yu. Ivakin also brings attention to the fact that the only complex of national archaeological heritage is artificially divided into "monuments", that is archaeological heitage monuments registered by the Ministry of Culture and Information Policy of Ukraine. Not yet identified and unregistered archeological monuments are practically not protected by the state. Cultural heritage is uncontrollably susceptible to construction work, transferred to private ownership, and in fact is destroyed. Approval of projects without a forensic archaeologist is transformed into bureaucratic formality (Ivakin, 2013).

Such a challenging situation with desctruction of archeological monuments is observed not only in Ukraine. For example, Andris Kairiss in his article *Awareness Raising and Protection of Archaeological Heritage* drew attention to similar problems in Latvia. In this article, the scientist provides statistics on damages caused to the national archaeological heritage. Besides, A. Kairiss offers an example of how three offenders were convicted in Latvia for damaging and robbing ancient burial site. This fact could be considered a positive indicator; however, then it was the first case when criminals were prosecuted and sentenced for such offense. It is also stated in the article that there are no statistics on the actual state of destruction and theft of monuments (Kairiss, 2017).

The above circumstances demonstrate the need for a more decisive approach to solving the problem of monuments destruction. It should be stressed that creation of a concept for development of forensic historical and archeological examination, given the international trends, would be an effective impetus for the development of this area. In this regard, O. Agapova in her research paper draws attention to the position of researchers that all green papers (doctrines, concepts, strategies, etc.) without exception determine the promising areas for public policy development in any area of state activity. Due to absence of clear and systematic vision for the development concept of the field of justice expert support in Ukraine, the research topic dedicated to the analysis of the state of development of public policy guiding documents, scientific understanding and formulation of proposals to improve the functioning of the field of justice with the prospect of their enshrinement in green papers are updated (Agapova, 2020).

Each state must ensure preservation of historical monuments for future generations, and currently Ukraine is actively promoting this area. The staff of National Scientific Centre "Hon. Prof. M. S. Bokarius Forensic Science Institute" (HNIISE) developed suggestions for creation of a new direction of forensic examination and a corresponding expert specialisation, developed training programmes for forensic experts in the field of forensic historical and archaeological examination. As a result of a long and dilligent work of scientists, the proposal to create a new expert area is supported at the legislative level.

According to the Order of the Ministry of Justice No 243/5 *On Approval of Amendments to Certain Legal Regulations on Forensic Examination* dated on January 20, 2021, changes were made to the List of types of forensic examinations and expert specialisations for which the qualification of a forensic expert was awarded to specialists from forensic science institutes of the Ministry of Justice of Ukraine, namely, the list was supplemented by a new specialization: *historical and archaeological examination of land* (Rada, 2021). Since 2021, forensic examinations have been carried out in the area: *historical and archaeological examination of land* at National Scientific Centre "Hon. Prof. M. S. Bokarius Forensic Science Institute" (HNIISE). Forensic historical and archaeological examination is an essential element in the mechanism on protection and preservation of archaeological sites.

The factual basis for the appointment of forensic examination is the need for scientific, technical or other special knowledge required to address certain issues in criminal proceedings and other types of court proceedings. Special knowledge includes knowledge in a particular field of science, technology, art or craft and in other specific areas of human activity.

Obtaining expert conclusion is one of the ways to gather evidence in criminal proceedings. Therefore, the investigator or prosecutor, as a rule, involves a forensic expert depending on the availability of grounds at his discretion, based on specific circumstances of a proceeding and questions to be answered by a specialist in a particular field of knowledge (Bondarenko, 2017).

Monuments of forensic archaeological and historical examination are land plots with physical evidence of people existence in the past epochs regardless of the state of their preservation (kurgans, burial sites, necropolises, hillforts, settlements, separate graves, houses, household outbuildings and their remains; anthropogenic layers and movable archaeological objects detected in them) as well as accounting records and research documentation on historical (located underground) and/or archaeological monuments of cultural heritage.

The main tasks of historical and archaeological examination of land are:

- determination of the presence / absence of archaeological and historical heritage within the land;
- determination of the presence/absence of the object of archaeological heritage monument protection within the land plot;
- assignment of archeological heritage monuments to a certain chronological group, establishment of its cultural value of historical significance, level of rarity and preservation, attribution of archeological objects and calculation of costs for works on monument archeological research (addressed while identification of archaeological heritage monuments within the land plot and/or complex appraisal-construction, historical-archaeological and art examination when calculating the value of the monument and/or establishing the amount of damage caused to the state due to destruction, devastation or damage to archaeological heritage monuments);

- determination of the presence / absence in the accounting documentation on historical (located beneath the earth's surface) and / or archaeological cultural heritage monuments of materials on carried out researches, factual data on the authenticity and subject of protection and other tasks. (HNIISE, 2021).

The absence in the Order of the Ministry of Justice of Ukraine No 53/5 *On Approval of the Instruction on Appointment and Conduct of Forensic Examinations and Expert Researches* dated on 08.10.1998 and Scientific and methodological recommendations on preparation and appointment of forensic examinations and expert researches of an indicative list of issues solved by forensic and archeological examination of land remains a pressing issue.

Staff of National Scientific Centre "Hon. Prof. M. S. Bokarius Forensic Science Institute" (HNIISE) proposes the following list:

- Is there archaeological or historical heritage monument within the land plot?
- Is there an object of legal protection for archaeological heritage monument within the land plot?
- Does archaeological heritage site that is not found in terrestrial amounts and located within the land plot require research on the entire area and throughout the entire depth of the cultural layer?
- Has an archaeological monument that had not been identified in terrestrial amounts in the entire area and throughout the entire depth of the cultural layer been researched on, while cultural heritage monuments that are the subject to conservation or museumification on-site and for further use had not been identified?
- Has the archaeological heritage monument lost its legal protection?
- What are the boundaries of the identified and/or damaged archaeological or historical heritage monument, which chronological group does it belong to, what are its coefficients of cultural value, historical significance, level of rarity and preservation?
- What is the total cost for archaeological researches?
- What is the attribution of archaeological objects found during excavations or after/during damage or destruction of archaeological heritage monuments?
- Do accounting records on historical (subterranean) and / or archaeological cultural heritage monuments contain materials on performed research, factual data on the authenticity and availability of the subject of protection?
- Are / not there data in research materials that the archaeological heritage monument within the land plot has been studied throughout the entire area and the whole depth of the cultural layer and at the same time no cultural heritage monuments are identified, which are subject to conservation or museumification on-site and to further use?

Historical and archaeological examination of land plots can solve other issues, if special knowledge in the field of archaeology and history is required to solve set tasks (HNIISE, 2021).

The next stage in the development of forensic historical and archaeological examination should be the development of a corresponding methodological support. The methodology of expert research is an essential feature of each type of examination. It is determined by the nature of studied objects and necessitates the use of a certain system (set) of methods. Methods and technical means of examination are borrowed from natural, engineering and other sciences. In expert research, they are applied in a transformed form, given the specifics of examination objects. Simultaneously, their neither mechanical involvement in expert technique nor basic borrowing take place, but synthesis, transformation in accordance with a peculiar focus of their use. A general theoretical set of techniques and methods is not yet a methodology, although it constitutes the needed content. This is only a possibility of methodology as a "tool" for practical activity of a forensic expert. Methodology is a system of methods that is organised in terms of a specific goal, objectives, research opportunities (Bilenchuk, Kovalova, Shulha, & Strilets, 2013).

The main function of any expert methodology is aimed at achieving a direct research purpose: to establish facts that have probative value. The Law of Ukraine *On Judicial Examination* stipulates that methodologies of conducting forensic examinations (except forensic-medicine and forensic-psychiatric) are subject to certification and state registration in the procedure determined by the Cabinet of Ministers of Ukraine.

According to the Resolution of the Cabinet of Ministers of Ukraine No 595 *On Approval of the Procedure for Certification and State Registration of Methodologies for Conducting Forensic Examinations* dated on 02.07.2008, the term "method of conducting forensic examination should be understood as the result of scientific work containing a system of research methods used while subsequent actions of a forensic expert to fulfil a specific expert task" (Rada, 2008). After attestation of methodologies, their state registration takes place by entering in the Register of methods of forensic examinations used while expert researches.

Given that the process of developing methodologies is statutory regulated, they (methodologies) after corresponding procedures are entered into the State Register of methods of forensic examinations (Zvit pro naukovo-doslidnu robotu ..., 2020).

Creation of new methodologies is a creative process based on understanding the laws of the process of features formation on studied objects, identification of these features using certain tools and methods.

The specific purpose of creating new methods is to expand the amount of factual data provided to the investigation and court based on the ability to solve new tasks, research on new objects, reduce the timing of forensic examinations, material and labour costs, reduce unresolved issues, increase scientific quality and thoroughness in solving expert tasks (Pyrih, 2011).

For expert methodologies in the process of their application to ensure timely, thorough and comprehensive identification and understanding of facts and

circumstances; solution of both typical and non-standard tasks of expert research; effective application of techniques and methods, as well as a successful overcoming of various obstacles in the course of expert research with the least efforts and resources, the methodology developer must go through certain stages in the course of its creation (Slobodian, 2013).

One of the significant elements for a favourable development of forensic historical and archaeological examination is the achievement of a certain level of harmonisation of the legislation of our country with international legal norms. The importance of international agreements as sources of legislation is due to the fact that such agreements, in particular the Convention of UNESCO (UNESCO, 1972) and the Council of Europe, establish general principles and frameworks of global and European policy with which national policy and inheritance law should be agreed upon.

According to Article 9 of the Constitution of Ukraine, current international agreements, the binding nature of which has been approved by the Higher Rada of Ukraine, are part of the national legislation of Ukraine. It should also be emphasised that Article 19 of the Law of Ukraine *On International Agreements of Ukraine* prioritises provisions of international agreements that have entered into force for Ukraine over provisions of other acts of its legislation (Analiz problem ..., 2018).

Cooperation in the field of historical and archaeological researches is provided by national legislation (for example, in the Law of Ukraine *On Protection of Archaeological Heritage* (Article 21)) (Rada, 2004), current international agreements of Ukraine with foreign countries in the field of scientific cooperation.

International cooperation in the field of archaeology is ensured by a number of international regulatory legal documents: European Convention on the Protection of the Archaeological Heritage (Rada, 1992); The Convention on the Protection of the Underwater Cultural Heritage (Rada, 2001); The Convention for the Protection of the Architectural Heritage of Europe (Rada, 1985) and others.

However, the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage plays a crucial role in preservation of cultural and natural heritage in all regions of the world. It was adopted at the 17th session of the UNESCO General Conference in Paris in 1972 (UNESCO, 1972). According to the Convention Concerning the Protection of the World Cultural and Natural Heritage adopted in 1972, its member countries admit that protection of the world heritage is the responsibility of the entire international community. The attitude towards preserving cultural and natural heritage reflects the cultural level of society. The protection of monuments is not limited only to restoration: it is a phenomenon that intertwines the political, economic, legal, moral and ethical processes that the world, every country, civil society live by. Monuments are inseparable from society, they are formed within it, evaluated, preserved or destroyed by it (Prokaieva, 2011).

Conclusions

Existing regulatory and legal framework establishes a mechanism for monument protection at legislative level, but its implementation is not efficient. Provisions of the Laws of Ukraine *On Protection of Archaeological Heritage*, *On Protection of Cultural Heritage*, *On Regulation of City Planning Activity*, the Code of Ukraine on Administrative Offenses, the Criminal Code of Ukraine are dedicated to archaeological heritage. At international level, these issues are governed by the UNESCO Convention Concerning the Protection of World Cultural and Natural Heritage, European Convention on the Protection of the Archaeological Heritage, the Convention on the Protection of Underwater Cultural Heritage, Convention for the Protection of the Architectural Heritage of Europe, etc.

This reflects the interest of the international community in archaeological heritage preservation.

The development of forensic historical and archaeological researches in Ukraine and their active application in practice is an essential element in the mechanism of protection and preservation of archaeological monuments. Considering international experience and reaching a certain level of harmonisation of the legislation of Ukraine with international legal norms will contribute positively to the development of forensic historical and archaeological examination.

Forensic historical and archaeological examination is an important element in the mechanism of protection and preservation of archaeological monuments. For its efficiency, methodologies, the availability of which is a significant feature of each type of forensic examination, should be implemented. Such methodologies must be entered in the State Register of Methods of Forensic Examinations.

Obtaining an expert conclusion is one of the ways to gather evidence in criminal proceedings. Therefore, the investigator or prosecutor, as a rule, involves a forensic expert depending on the availability of grounds at his discretion, based on specific circumstances of a proceeding and questions to be answered by a specialist in a particular field of knowledge. In the decision on the appointment of a forensic expert the list of questions addressed to the forensic expert must be indicated. It is expedient to supplement the Order of the Ministry of Justice of Ukraine No 53/5 *On Approval of the Instruction on Appointment and Conduct of Forensic Examinations and Expert Researches* dated on 08.10.1998 and Scientific and methodological recommendations on preparation and appointment of forensic examinations and expert researches by information on archaeological and historical examination.

Bibliography

1. Agapova, O. V. (2020). Shchodo neobhodimosti rozrobky kontseptsii rozvytku sfery ekspertnoho zabezpechennia pravosuddia v Ukraini. *Visnyk Kharkivskoho natsionalnoho universytetu imeni V. N. Karazina*. Seriia "PRAVO". 29, 162–168.
2. Analiz problem u zakonodavchomu rehuliuvanni zabezpechennia ta upravlinnia kulturnoiu ta pryrodnoiu spadshchynoiu v Ukraini. (2018). Pidhotovleno ekspertamy Vseukrainskoi Merezhi OHS dlia pidtrymky hromad zi spadshchynoiu pid zahalnoiu redaktsiieiu Kyryla Rubanovskoho. Ivano-Frankivsk. P. 158.
3. Bilenchuk, P. D., Kovalova, V. V., Shulha, O. O., Strilets, H. A. (2013). Suchasna klasyfikatsiia metodiv sudovoi ekspertyzy. *Kriminalistika i sudebnaia ekspertiza*. 58(2), 118–123. http://nbuv.gov.ua/UJRN/krise_2013_58%282%29__24.
4. Bondarenko, O. O. (2017). Okremi pytannia vykorystannia spetsialnykh znan u kryminalnomu provadzhenni. *Visnyk KhNUVS – Bulletin of KhNUIA*. 3 (78), 51–59.
5. Huliakov, K. (2020). Evoliutsiia zakonodavstva pro okhoronu obiektiv istorychnoi ta kulturnoi spadshchyny protiahom KhKh stolittia. Yurydychnyi Visnyk, *4*, 240–246. http://yurvisnyk.in.ua/v4_2020/31.pdf; DOI https://doi.org/10.32837/yuv.v0i4.1994.
6. Ivakin, H. Yu. (2013). Problemy okhorony ta zberezhennia arkheolohichnykh pamiatok v Ukraini. *Visnyk NAN Ukrainy*, *5*, 86–88. http://dspace.nbuv.gov.ua/handle/123456789/67310.
7. Kairiss, A. (2017). Awareness Raising and Protection of Archaeological Heritage. https://www.researchgate.net/publication/344043856_Awareness_Raising_and_Protection_of_Archaeological_Heritage.
8. KNDISE. (2021). Istoryko-arkheolohichna ekspertyza. https://www.hniise.gov.ua/14683-storiko-arxeologchna-ekspertiza.html.
9. KNDISE. (2020). Zvit pro naukovo-doslidnu robotu "Aktualizatsiia metodychnykh rekomendatsii "Rozrobka ekspertnykh metodyk: zmist, struktura, oformlennia"". 224 s.
10. Minaieva, N. (2020). Suchasna zakonodavcha baza shchodo zberezhennia i doslidzhennia obiektiv arkheolohichnoi spadshchyny Ukrainy. *Arkheolohichni doslidzhennia v Ukraini 2019*. Kyiv. P. 10–12.
11. Minaieva, N. I. (2010). Naukovo-riativni doslidzhennia viddilu davnoruskoi i serednovichnoi arkheolohii Instytutu arkheolohii NAN Ukrainy. *Arkheolohiia i davnia istoriia Ukrainy: Zb. nauk.* pr. Kyiv. IA NAN Ukrainy. Vyp. 1. P. 502–506.
12. Myshchak, I. M. (2013). Zakonodavche zabezpechennia okhorony kulturnoi spadshchyny ta shliakhy yoho vdoskonalennia v Ukraini. *Naukovi zapysky Instytutu zakonodavstva Verkhovnoi Rady Ukrainy*. № 3. P. 31–36. http://nbuv.gov.ua/UJRN/Nzizvru_2013_3_8.
13. Prokaieva, V. V. (2011). Rol YuNESKO u zberezhenni kulturnykh nadban liudstva. *Aktualni problemy mizhnarodnykh vidnosyn*. 103 (I), 209–217.
14. Pyrih, I. V. (2011). Teoretychni osnovy ekspertnoi diialnosti orhaniv vnutrishnikh sprav: monohrafiia. Dnipropetrovsk: Dniprop. derzh. un-t vnutr. sprav; Lira LTD. 312 s.
15. Rada. (2021). Pro zatverdzhennia Zmin do deiakykh normatyvno-pravovykh aktiv z pytan sudovo-ekspertnoi diialnosti: nakaz Miniustu Ukrainy № 243/5. 20.01.2021. https://zakon.rada.gov.ua/laws/show/z0089-21#n155.
16. Rada. (2004). Zakon Ukrainy: Pro okhoronu arkheolohichnoi spadshchyny № 1626-IV. 18.03.2004 (redaktsiia vid 12.12.2012). https://zakon.rada.gov.ua/laws/show/1626-15#Text.

17. Rada. (2001). Konventsiia pro okhoronu pidvodnoi kulturnoi spadshchyny: pryiniata YuNESKO 02.11.2001, ratyfikovana Zakonom Ukrainy vid 20.09.2006 № 164-V. https://zakon.rada.gov.ua/laws/show/995_c52#Text.
18. Rada. (2001a). Kryminalnyi kodeks Ukrainy: Zakon Ukrainy № 2341-III. 05.04.2001, (zi zminamy ta dopovnenniamy). https://zakon.rada.gov.ua/laws/show/2341-14#Text.
19. Rada. (2000). Zakon Ukrainy: Pro okhoronu kulturnoi spadshchyny № 1805-III. 08.06.2000. https://zakon.rada.gov.ua/laws/show/1805-14#Text.
20. Rada. (1992). Yevropeiska konventsiia pro okhoronu arkheolohichnoi spadshchyny: pidpysana 16.11.1992, ratyfikovana Zakonom Ukrainy vid 10.12.2003 r. № 1369VIV. https://zakon.rada.gov.ua/laws/show/994_150#Text.
21. Rada. (1988). Konventsiia pro okhoronu vsesvitnoi kulturnoi i pryrodnoi spadshchyny: pidpysana 16 lystopada1972; ratyfikovana Ukazom prezydii Verkhovnoi rady Ukrainskoi RSR vid 4 zhovtnia 1988 N 6673-XI. https://zakon.rada.gov.ua/laws/show/995_089#Text.
22. Rada. (1985). Konventsiia pro okhoronu arkhitekturnoi spadshchyny Yevropy: pryiniata 03.10.1985 r., ratyfikovana Zakonom Ukrainy vid 20.09.2006 r. № 165-V. https://zakon.rada.gov.ua/laws/show/994_226#Text.
23. Rada. (1984). Kodeks Ukrainy pro administratyvni pravoporushennia № 80731-X, 07.12.1984. (u redaktsii vid 08.08.2021). https://zakon.rada.gov.ua/laws/show/80731-10#Text.
24. Slobodian, Ya. I. (2013). Metodyky provedennia sudovykh ekspertyz: problemno-oriientuvalnyi analiz. *Borotba z orhanizovanoiu zlochynnistiu i koruptsiieiu (teoriia i praktyka)*. 1 (29,) 265–272.

https://doi.org/10.25143/socr.21.2021.3.227-233

Term 'Household' in the Latvian Legal Framework

Lidija Rozentāle
ORCID: 0000-0001-5139-4642
Rīga Stradiņš University, Latvia
Lidija.Rozentale@rsu.lv

Abstract

Originality / value – the content of this article – is based on the author's own original research. The study presents empirically tested arguments, interpretation of the term 'household' in the Latvian regulatory enactments. At a time when a state of emergency has been declared in the country, in such circumstances there is neither precise normative terminology, nor criteria for defining household. Those applying legislation have no uniform understanding as to whether a relationship established in a partnership can be viewed as household. This issue requires further research and discussion. The aim of the publication is to reveal some legal issues that directly affect couples living in a household.

Keywords: partnership, relationship, common household.

Introduction

The COVID-19 pandemic caused by coronavirus has shattered traditional lifestyle in Latvia. COVID-19 is a disease caused by newly discovered coronavirus SARS-CoV-2, which has been spreading around the world. The new coronavirus was detected in Wuhan, the capital of Hubei province in China, in January 2020, and more than one million COVID-19 cases were recorded as early as the beginning of April 2020 (Valsts Kanceleja, 2020). People all over the world faced restrictions on their rights, including the right to move freely, gather, do shopping, entertain, travel, etc.

Based on the data of Kantar's COVID-19 Barometer, the coronavirus-induced exceptional situation affected the daily lives of almost half (46%) of Latvia's population (June – 38%, August – 31%); the biggest impact can be observed in young people aged 18–24 (Kantar, 2020). People encountered massive inconveniences, such as working from home, children's at-home learning, or inability to see relatives to spend holidays together.

The term 'household' has become prominent due to restrictions imposed over the COVID-19 spread and their regulation, which is why it is important to develop a uniform understanding and criteria for defining 'household' to be able to apply specific restrictions with no questions asked and solve matters relating to an individual's (administrative) liability. Before the pandemic, the term 'household' had been used primarily in the context of social assistance and social services, as well as concerning partnerships.

The aim of the article is to analyse the term 'household' used in laws dealing with measures introduced to curb the spread of COVID-19, also in the context of partnerships, and identify deficiencies in the laws and suggest potential solutions.

The following methods have been employed during the research: analytical method for exploring substance of laws dealing with the term 'household' and partnerships and for studying and analysing related literature and case-law; deductive method for making conclusions about findings and opinions of other authors. Legal interpretation has been also used for the purposes of the article. Grammatical interpretation is employed to understand the meaning of laws. Systematic method is used to compare laws as to understand the reasons for their adoption and their differences. The essence and spirit of and necessity for legal norms are analysed according to teleological method.

Legal framework relating to COVID-19-induced restrictive measures, publications of various authors and national legislation serve as the basis of the research.

Discussion

Many conditions concerning households, including the meaning of the term 'household', were discussed in the context of the pandemic and COVID-19-induced restrictions during LTV's show "4. studija" on 14 January 2021. The authors of the show consulted the Central Statistical Bureau (CSB) about the meaning of 'household' in statistics. According to a CSB's representative, there exist two approaches to define 'household'. First, it is "keeping house together". For example, when "several persons share the same apartment, buy food and often share their income, this is a family from a traditional point of view". Another explanation used for statistical purposes is "living together", which means that all people residing at the same address form a household (4. studija: LTV's show, 2021). Meanwhile, *Dr. oec.* M. Dunska, Associate Professor of the Faculty of Economics and Management of the University of Latvia, explains that "the use of 'household' is justified, it is a term used in statistics and demography, and economics. Regarding economics, it is used most frequently in macroeconomic analysis. In statistics, 'household' means a group of persons who live in the same dwelling and share expenditures, or a person living alone". According to the professor, the Dictionary of Economics and Finance contains a shorter definition of the term 'household', namely: a family consisting of one or several persons" (Dārziņa, 2011). Based on the opinions of professionals representing different areas, the term 'household' can be explained as a group of persons living together in the same dwelling. However, considering that a 'household' may involve

married couples, or couples living in a partnership, or persons who are related otherwise, it is essential to identify explanations provided by legislation.

Regulations of the Republic of Latvia Cabinet of Ministers No 360 on Epidemiological Safety Measures for the Containment of the Spread of COVID-19 Infection entered into force on 10 June 2020. In addition, a state of emergency was declared in Latvia on 9 November 2020 to curb the spread of COVID-19. A state of emergency is a special legal regime, during which the Cabinet of Ministers may restrict the rights and freedoms of authorities and natural and legal persons and impose additional duties on them in accordance with the procedure and to the extent defined by the law to prevent any threats to the country. Distancing is one of restrictive measures, and it means that a two-metre physical distance must be kept where possible, while people gatherings indoors and outdoors are allowed as follows:

1) not more than two persons;
2) persons living in one household;
3) a parent and his/her minor children if they do not live in one household.

This is one of restrictive measures provided by the Cabinet regulation with respect to persons living in a household, without explaining the term 'household' though. In view of the above, the author will check whether the term in question has already been defined in the existing legislation.

Article 1(40) of the Law on Social Services and Social Assistance defines the term 'household' as "several persons living in one dwelling and sharing expenditures, or one person living alone" (Saeima, 2002). M. Pavasare, Senior Assistant of the Division for the Organisation of Social Work and Social Assistance of the Department of Social Assistance and Social Services of the Ministry of Welfare, notes that "in this case, the determining criteria as per Latvian legislation are being a group of persons (regardless of whether they have family links with each other) and keeping a common household, i.e., persons live in the same dwelling and share living expenses" (Kupče, 2011). Social assistance is already provided in Latvia based on assessment of relationships among persons who in practice reside in a household, regardless of whether their relationships are registered formally, to ensure the most appropriate social assistance. Meanwhile, other laws and regulations indeed give priority to the legal status of relationships. For example, if a partner is taken to hospital, medical staff is not allowed to inform the other partner about the partner's health condition according to the Patients' Rights Law, or, if a partner dies, property matters cannot be solved.

Consequently, the term 'household' is explained in legislation, but there is yet no clear and comprehensive list of criteria for unequivocally defining persons who should be viewed as 'household'. Based on opinions provided by professionals in different areas, the term 'household' may still refer to persons whose relationships are not registered. This means that the term 'household' may cover not only family ties and relationships based on an officially registered marriage, but also non-official partnerships and other situations when persons share the same dwelling (for example, hostels).

Term 'Partnership'

The terms 'household' and 'partnership', discussed above, are used in the context of restrictions imposed to curb the spread of COVID-19 and their regulation. For example, in situations when more than two persons share the same car to go to work, police officers are forced to detect whether the persons concerned form a family or are in a partnership or live in the same household. Meanwhile, the objective of the restrictive measures and their regulation is to halt the spread of the virus.

Substance of the partnership concept is unclear, and so is the interpretation of related terms: living together, trial marriage, consensual union, cohabitation, etc. The approach adopted for definition and practical recognition of partnerships in legislation and everyday language varies from country to country, considering historical development, recognition and occurrence of this phenomenon on a national scale and existence and objectives of legal framework. With a view to achieving a full understanding of the partnership concept, the author would like to identify social factors that facilitate cohabitation, such as solution of the housing problem, economic reasons, emotions. It is mentioned in the study "Comparative Analysis of Factors Affecting Registered and Non-registered Cohabitation" (Latvijas Universitāte, Publiskās antropoloģijas centrs, 2015) that

> "[…] the formation of a family has transformed from an arrangement to the dynamics of an individual relationship – intensification of the relationship, start of cohabitation, birth of a child – where the quality of the relationship has primary importance. A marriage does not necessarily form a part of the dynamics of this relationship, and it is not regarded as a factor impacting on the quality of the relationship. It is hard to pinpoint a set of factors that lead to the official registration of a relationship, but there are some common details in the experience of study participants suggesting that there are still impacts that can promote the evolution of a relationship into a marriage".

In the author's opinion, it is hardly possible to introduce a uniform definition of the term 'partnership' which could be accepted by all countries at an international level, and establish the legal status of this concept in laws. This is due to peculiarities of every country's historical development, culture and customs.

The following definition can be found in the European legislation: "Subjects of a non-registered partnership are two opposite-sex or same-sex partners who live in the same household and whose relationship is analogous to that between husband and wife" (Diduck, 2006). Accordingly, subjects of a non-registered partnership are: (1) heterosexual partners, (2) homosexual partners. This definition legitimises a set of indications of a family since emphasis is laid on cohabitation and relationship between partners as that of a married couple.

Article 6(2) of the Treaty on European Union sets forth that the Member States in applying European Union (EU) legislation must respect fundamental rights, including prohibition on discrimination on grounds of sexual orientation. Therefore, although the EU legislation does not provide for a Member State the duty to allow or recognise

same-sex partnerships or marriages, the Member States applying EU legislation are still required to ensure equal treatment of same-sex couples and opposite-sex couples (including legislation on free movement, migration and asylum). To this end, the author suggests her definition of the term 'partnership' could be described as a long and stable relationship of two persons of the opposite sex or, in certain situations, of the same sex living together, whose goal is to establish a socially significant link between the partners and their relatives without registering a marriage.

Frequently, balancing different areas of life leads to a situation when persons are in a partnership but do not reside permanently in the same household; namely, each person has their own household, visiting the other person regularly. It should be concluded that there is no uniform mechanism in the case of partnerships for defining what should be set directly as the key criterion: existence of a relationship or sharing of the same dwelling. The state should ensure equal rights for all citizens, both taxpayers and members of society, in a democratic system, and that is why a political position that marriage between a woman and a man is the most appropriate type of relationships is not understandable. The question remains if two persons (either of the same sex or the opposite sex) form a relationship, why the registration of their relationship should be thrust upon them and whether this registration entails a duty to live together in the same household.

As can be inferred from the above, there are no clear criteria for determining a household either in the existing legislation or in application of the legislation in practice. Moreover, the following factual circumstances may make determining a household even more difficult:

1) a marriage has been registered but spouses live separately, i.e., they do not live together in the same 'household';
2) two persons (either of the same sex or the opposite sex) live together in the same 'household' but their marriage is not registered;
3) a regular partnership has been established and is maintained between two persons (either of the same sex or the opposite sex) who do not live together in the same 'household' and have not registered their marriage.

Considering the above, the application of provisions concerning administrative liability may be challenging, including demands of the restrictive measures introduced over COVID-19.

Conclusions

In view of the analysed legislation, the author concludes that the term 'household' is explained in the legislation, but there is yet no clear and comprehensive list of criteria for unequivocally defining persons who should be viewed as a 'household'. Therefore, it may also be hard to apply provisions concerning administrative liability regarding restrictive measures introduced over COVID-19.

In the context of the COVID-19-induced restrictions, it can be concluded that siblings and their families, cousins or other relatives, usually regarded as a family, should not be treated as a household, which also refers to grown-up children visiting their parents, unless they live together constantly.

Based on the analysis of Latvian laws and opinions of professionals from different areas, the term 'household' may cover not only family ties and relationships that are officially registered as marriage, but also non-registered partnerships. In order to form an unambiguous understanding of the scope of the term 'household', the author offers her definition of 'partnership', which could be described as a long and stable relationship of two persons of the opposite sex or, in certain situations, of the same sex living together, whose goal is to establish a socially significant link between the partners and their relatives without registering a marriage. Moreover, there are two types of households according to Commission Implementing Regulation (EU) 2019/2181:

1) a person usually resides alone in a housing unit without the intention to be joined by another person to share income or expenses in order to provide the essentials of living for him/herself and his/her relative;
2) a group of two or more persons usually reside together in a housing unit and share income or expenses to provide the essentials of living for themselves and their relatives (several persons).

The term 'household' is characterised by the following: usual residing in a housing unit and economic considerations, which means that this term has no impact on the status of persons' relationships. As a result, the author offers the following criteria for defining 'household':

1) one person or small groups of persons;
2) usual residing in the same dwelling;
3) persons are free to choose where to reside;
4) independent decision-making about the division of their financial and other resources;
5) sharing of income, including movable and immovable properties;
6) joint consumption of certain goods and services, mainly those relating to food and the house.

Bibliography

Legislation

1. Commission Implementing Regulation (EU) 2019/2181. *Official Journal of the European Union*, 20.12.2019. https://eur-lex.europa.eu/legal-content/LV/TXT/HTML/?uri=CELEX:32019R2181&from=EN#d1e138-16-1.
2. Republic of Latvia Cabinet Regulation No 360 of 9 June 2020 on Epidemiological Safety Measures for the Containment of the Spread of COVID-19 Infection. *Latvijas Vēstnesis*, 110B, 09.06.2020. https://likumi.lv/ta/id/315304.
3. Saeima. (2002). Law on Social Services and Social Assistance. *Latvijas Vēstnesis*, 168, 19.11.2002. https://likumi.lv/ta/id/68488.

Literature

4. Dārziņa, L. (24.02.2011). Kas ir mājsaimniecība? Un kāpēc tā nav ģimene? *LV portāls*. https://lvportals.lv/skaidrojumi/226277-kas-ir-majsaimnieciba-un-kapec-ta-nav-gimene-2011.
5. Diduck, A. (2006). Family law, gender and the state: text, cases and materials. Oxford: Hart Publishing, 2006. p.66.
6. European Union Agency for Fundamental Rights. (2009). Same-Sex Couples, Free Movement of EU Citizens, Migration and Asylum, https://fra.europa.eu/sites/default/files/fra_uploads/1225-Factsheet-homophobia-couples-migration_EN.pdf
7. Kantar. (25.11.2020). Arvien vairāk Latvijas iedzīvotāju (46%) izjūt koronavīrusa radītās situācijas ietekmi uz ikdienas dzīvi. https://www.kantar.lv/arvien-vairak-latvijas-iedzivotaju-46-izjut-koronavirusa-raditas-situacijas-ietekmi-uz-ikdienas-dzivi/.
8. Kupče, M. (04.04.2011). Ģimene un mājsaimniecība sociālā dienesta skatījumā. *LV portāls*, 04.04.2011. https://lvportals.lv/skaidrojumi/228124-gimene-un-majsaimnieciba-sociala-dienesta-skatijuma-2011.
9. Latvijas Universitāte, Publiskās antropoloģijas centrs. (2015). Reģistrētas un nereģistrētas kopdzīves faktoru salīdzinoša analīze: Pētījuma ziņojums, p.8. http://www.antropologija.lu.lv/fileadmin/user_upload/lu_portal/projekti/antropologija/zinas/Petijums_kopdzive-2015.pdf.
10. Valsts kanceleja. (21.05.2020). Covid-19 izplatība pasaulē. https://covid19.gov.lv/covid-19-izplatiba-pasaule.
11. 4. studija: LTV raidījums. (14.01.2021). Ko nozīmē "viena mājsaimniecība"? https://www.lsm.lv/raksts/zinas/latvija/ko-nozime-viena-majsaimnieciba.a388828/.

https://doi.org/10.25143/socr.21.2021.3.234-243

Contract for Work (*locatio conductio operis*) of Transportation and Rustic Praedial Servitude of Way (*servitus viae*) as Roman Law Institutions for Needs of Rural Logistics

Dr. iur. ***Allars Apsītis***
ORCID: 0000-0002-8363-6981
Rīga Stradiņš University, Latvia
jf@rsu.lv

Dr. iur. cand. ***Dace Tarasova***
ORCID: 0000-0003-0524-4285
Rīga Stradiņš University, Latvia
jf@rsu.lv

Dr. iur. cand. ***Jolanta Dinsberga***
ORCID: 0000-0003-3503-9151
Rīga Stradiņš University, Latvia
jf@rsu.lv

Dr. iur. cand. ***Jānis Joksts***
Rīga Stradiņš University, Latvia
jf@rsu.lv

Abstract

The article deals with the results of the authors' research performed on original sources of Roman Law with reference to legal constructions concerning various types of logistics challenges related to agricultural production and residence in rural areas. Provision of transportation services was regulated by means of a contract for work (*locatio conductio operis*) – an agreement according to which a contractor / employee as a lessee (*conductor, redemptor operis*) had obligations to fulfil services or certain work on or from the material supplied by the commissioning party / employer / lessor (*locator*). An agreement on transportation of goods or passengers was also considered to be a contract for work. A smart answer to infrastructure challenges was the so-called rustic praedial servitudes (*servitutes praediorum rusticorum*), including a servitude of way / road (*via*), which granted the owner of a parcel of land non-adjacent to a public road (*via publica*)

the right to use the road over a parcel of land belonging to another owner, thus gaining access to the public road. The legal framework of a Roman contract for work of transportation and the rustic praedial servitude of way / road must be recognised as a rather effective solution for challenges of rural logistics at the time.

Keywords: contract for work of transportation, servitude of way, Roman Law, rural logistics.

Introduction

Both agricultural production and residence itself in rural areas have always been associated with various types of logistics challenges, i.e., the need to supply various production-related cargo, to deliver workforce, to guarantee the acquisition of products and services intended for satisfaction of household needs under the conditions of rural areas, etc. The aforementioned, inter alia, causes demand for the appropriately regulated conditions of usage of transportation services and respective infrastructure.

The highly developed Roman civilisation tried rather successfully to find answers to these challenges; thus, legal solutions included in the institutes of Roman law are undoubtedly worth the attention of modern researchers[1].

Within the framework of the research, studies and analysis of the primary sources of Roman Law – The Code of Justinian (*Codex Iustinianus* (*C 3.34. tit.*; Krueger, 1906), The Digest (*Digesta* (*D 8.1–6. tit., D 19.2. tit.*; Krueger & Mommsen, 1928), The Institutes of Justinian (*Iustiniani Institutiones* (*I 2.3. tit.*; Krueger & Mommsen, 1928) were performed, mostly by applying inductive, deductive and comparative methods.

Results

Provision of transportation services was regulated by means of a **contract for work** (*locatio conductio operis* – Latin). A contract for work (*Locatio conductio operis* (*faciendi*)) was an agreement according to which a contractor / employee as a lessee (*conductor*,

[1] As known, within the ancient Roman civilisation, a rather complex and very successful legal basis was set up, so the large and for that time highly developed empire could successfully function. Also, it is necessary to indicate that legal principles created by Romans, in particular in areas of private or civil law, have proven to be so successful that they are still the basis of private law in the West and the entire globalised world (Apsītis, 2015, *91–98*; Apsītis & Joksts, 2018). Modern-day Latvia belongs to the so-called Continental / Romano-Germanic legal system, and its "Civillikums" (Latvian) – *The Civil Law* of 1937 demonstrates rather direct influence of Roman private law; it can be stated that someone who does not have awareness and an idea of the fundamental principles of the Roman private law may find *The Civil Law* of Latvia difficult to understand and complicated to comprehend (Apsītis & Joksts, 2013). The origin of many modern criminal law institutions is also related to the rather manifested reception or acceptance by the modern law of the legal heritage left by the Romans (see: Apsītis & Joksts, 2013; Apsītis *et.al.*, 2016).

redemptor operis) had obligations to fulfil services or certain work on, or from the material supplied by the commissioning party / employer / lessor (*locator*). An agreement on the transportation (carriage) of goods or passengers was also considered to be a contract for work (*locatio conductio operis*) (e.g., see D 19.2.11.3, D 19.2.25.7, D 19.2.60.8; Krueger & Mommsen, 1928, p. 285, 287, 291).

In accordance with the provisions of Roman law, a contractor / lessee-transporter was liable for any damages caused to the transported cargo regardless whether they were caused by themselves or the involved personnel (D 19.2.25.7; Krueger & Mommsen, 1928, *28*). Simultaneously, if a contractor / lessee was able to prove that they had taken all the necessary precautions as a cautious and attentive man would do, they had to be discharged of liability (D 19.2.25.7; Krueger & Mommsen, 1928, p. 287).

A contractor / lessee-transporter was liable for preservation of the transported cargo, also regarding protection against any illegal claims of third parties (D 19.2.11.3; Krueger & Mommsen, 1928, p. 285). They were obliged to pay any possible road taxes / duties (D 19.2.60.8; Krueger & Mommsen, 1928, p. 291). By exercising the right to demand arising from a hire / lease contract (*ex locato actionem*), it was possible to require a contractor / lessee-transporter to indemnify for any damages to cargo in the event of a traffic accident (D 19.2.13 pr.; Krueger & Mommsen, 1928. p. 285; Apsītis & Tarasova, 2017, p. 100).

An agreement as well as any other contract or pact could be considered invalid if its conditions conflicted with good customs / good morals[2] (*contra bonos mores*) (C 8.38.4, C 2.3.6, D 45.1.61, D 50.17.116.pr., etc.; Krueger, 1906, p. 93, 351; Krueger & Mommsen, 1928, p. 774, 923).

A smart answer to infrastructure challenges was the so-called **rustic praedial servitudes (***servitutes praediorum rusticorum***)** (see I 2.3.pr., D 8.1.1, D 8.3.1.pr., etc.; Krueger & Mommsen, 1928, pp. 13; Krueger & Mommsen, 1928, p. 143, 146, 147), including a servitude of way / road (*via*) (Berger, 1953/1991, p. 763), which granted the owner of a parcel of land non-adjacent to a public road (*via publica*) the right to use the road over a parcel of land belonging to another owner ("rights in a thing of another" – "*iuria in re aliena*"), thus gaining access to the public road, the right of usage of which could not be denied to anyone ("*...uti autem via publica nemo recte prohibetur*") (C 3.34.11; Krueger, 1906, p. 142). In other words, the neighbour did not have the right to cross (go or drive along) somebody other's / alien land without establishment of proper servitude (C 3.34.11; Krueger, 1906, p. 142). The servitude of way / road (*via*) included also the rights

[2] It should be noted that the Roman concept of "good customs" / "good morals" (*boni mores*) in conjunction with relevant ideological meanings has been loaned, among others, by modern Latvian legal rules relating to the Labour Law, see, e.g. Labour Law clause 3 part one article 101 (Darba likums, 2001, 101. panta pirmās daļas 3. punkts). See also: Tarasova, 2016.

granted by two other types of servitudes, i.e., the servitude of path (*iter*) and the servitude of (cattle) driving (*actus*).

It should be noted that, for addressing the needs of land-based logistics in case of rural properties (estates) (*rusticorum praediorum*), a number of real servitudes or rights could be established: servitude of path *(iter*), servitude of (cattle) driving (*actus*), servitude of way / road (*via*) (see I 2.3.pr., D 8.3.1. pr.[3]; Krueger & Mommsen, 1928, p. 13).

Servitude of path *(iter*) gave the right to cross *(ius eundi*) the encumbered property (estate), the right for humans to walk on foot, but did not give the right to propel or drive through (*agendi*) any yoke animals / cattle *(iumentum*) or vehicle (*vehiculum*) ("*Iter est ius eundi ambulandi homini, non etiam iumentum agendi.*") (D 8.3.1.pr.; Krueger & Mommsen, 1928, pp. 146, 147) / ("*Iter est ius eundi, ambulandi homini, non etiam iumentum agendi vel vehiculum...*") (I 2.3.pr.; Krueger & Mommsen, 1928, pp. 13). However, servitude of path gave the right to move not only on foot but also on horseback ("*...qua quis pedes vel eques commeare potest"*) (D 8.3.12; Krueger & Mommsen, 1928, pp. 147). Likewise, the transport of someone in a chair or stretcher carried by others was considered to be walking ("*Qui sella aut lectica vehitur, ire...*") (D 8.3.7.pr.; Krueger & Mommsen, 1928, pp. 147).

Servitude of (cattle) driving (*actus*) meant rights to propel or drive (*ius agendi*) over encumbered property (estate) the cattle or yoke animals used for transportation (*iumentum*), or vehicles, trailed implements and equipment (*vehiculum*) ("*Actus est ius agendi vel iumentum vel vehiculum*") (D 8.3.1.pr.; Krueger & Mommsen, 1928, pp. 146–147)) / ("*actus est ius agendi vel iumentum vel vehiculum*") (I 2.3.pr.; Krueger & Mommsen, 1928, p. 13)). Hence, those who owned servitude of (cattle) driving were able to drive a wagon as well as to propel yoke animals ("*Qui actum habet, et plostrum ducere et iumenta agere potest*" (D 8.3.7.pr.)) (Krueger & Mommsen, 1928, p. 147). Both crossing with herd and vehicle driving was allowed ("*...et armenta traicere et vehiculum ducere liceat*" (D 8.3.12)) (Krueger & Mommsen, 1928, p. 147).

Servitude of (cattle) driving (*actum*) included also the rights granted by servitude of path (*iter*), which could even be used without the presence of a yoke animal (*sine iumento*). In turn, servitude of path (*iter*) did not include the rights granted by servitude of (cattle) driving (*actum*) (I 2.3.pr.; Krueger & Mommsen, 1928, p. 13). Thus,

[3] In accordance with this Roman legal tradition, the *The Civil Law* of Latvia speaks about "Ceļa servitūts" (Latvian) – "Servitude of Right of Way" by means of which rights may be granted: 1) to a footpath; 2) to a livestock path; and 3) to a roadway, see: *The Civil Law* article 1156 (Civillikums, 1937, 1156. pants). See also: Dinsberga & Bite, 2018. Many proprietors face challenges in terms of inability to access their immovable properties due to those not being adjacent to public roads. One of the ways how a person can acquire the right to use their property is to request a court to determine servitude of right of way to access that property (Dinsberga & Savickis, 2019, pp. 1). Studying the law and historical development of Latvia, it must be noted that they developed in complicated circumstances and under different regimes. However, there was constant work performed in Latvia to develop and improve the foundation of Latvian national private law ("civiltiesības" – Latvian) (Dinsberga, 2020, pp. 3).

for those who had servitude of path, there was no servitude of (cattle) driving, in turn for those who had servitude of (cattle) driving were granted servitude of path, even without the presence of a yoke animal (D 8.3.1. pr.; Krueger & Mommsen, 1928, pp. 146–147). Thereby truly yoke animals could not be driven by one who had only servitude of path (D 8.3.7.pr.; Krueger & Mommsen, 1928, p. 147).

In addition, it was particularly emphasised that in both cases, i.e., servitude of path and servitude of (cattle) driving, the users of the servitudes had no right to drag heavy loads (stones, logs) through the encumbered property (estate) (D 8.3.7.pr.; Krueger & Mommsen, 1928, p. 147), thus risking serious damage.

Servitude of way / road (*via*) meant the rights to cross (*ius eundi*) the encumbered property (estate) by driving vehicles or on horseback, the rights to propel or drive (*ius agendi*) cattle or yoke animals, the rights to drag (*ius trahendi*) heavy objects and the rights for humans to walk on foot. Thus, servitude of way / road (*via*) included also the rights granted by servitude of path (*iter*) and the rights granted by servitude of (cattle) driving (*actus*) "*Via est ius eundi et agendi et ambulandi*: *nam et iter et actum in se via continent*" (D 8.3.1. pr.; Krueger & Mommsen, 1928, pp. 146–147) / "*...via est ius eundi et agendi et ambulandi*: *nam et iter et actum in se via continet*" (I 2.3.pr.; Krueger & Mommsen, 1928, p. 13) / "*Qui viam habent, eundi agendique ius habent*: *plerique et trahendi quoque... referendi*" (D 8.3.7.pr.; Krueger & Mommsen, 1928, p. 147).

Once established, a servitude was also binding to future owners, e.g., in the event of alienation of land (D 8.1.19, D 8.1.20; Krueger & Mommsen, 1928, pp. 143–144; C 3.34.3.; Krueger, 1906, p. 141) it was linked to the relevant property as the right in rem (C3.34.13.; Krueger, 1906, p. 142). Respectively, when property servient to a property was sold, servitudes also followed ("*Cum fundus fundo servit, vendito quoque fundo servitutes sequuntur*") (D 8.4.12; Krueger & Mommsen, 1928, p. 150). This is because, by carrying the same burden, the servitude was able to transfer to buyers just like the estate itself (C 3.34.3; Krueger, 1906, p. 141). Upon selling the land, it was automatically alienated together with all the imposed servitudes. For the estate that someone sold, the servitude was binding even if there was no actual need for the servitude (D 8.1.19; Krueger & Mommsen, 1928, pp. 143–144).

It was also kept in the event the land was pledged (D 8.1.16; Krueger & Mommsen, 1928, p. 143) or confiscated in favour of the state (D 8.3.23.2; Krueger & Mommsen, 1928, p. 148), in the event the landowner died or was enslaved (D 8.6.3; Krueger & Mommsen, 1928, p. 153), as well as in case of malicious possession of land (D 8.6.24; Krueger & Mommsen, 1928, p. 155).

If the property (estate) was pledged, the pledgee was entitled to legal protection of the servitude. It was not unfair to grant a lawful petition to protect the rights of the servitude to the person who received the pledge (D 8.1.16; Krueger & Mommsen, 1928, p. 143). Just as he was entitled to petition for the recovery of property (estate) itself (D 8.1.16; Krueger & Mommsen, 1928, p. 143).

If the serving (servitude-encumbered) property or the dominant property (the property to which the servitude agreed) was made public – confiscated for the benefit of the state, in both cases the servitude continued, as each property that was made public remained in its previous condition (D 8.3.23.2; Krueger & Mommsen, 1928, p. 148).

According to traditional general principles of law, rights in respect to rural property did not disappear due to death of the owner and loss of legal capacity (enslavement – loss of personal freedom) (D 8.6.3; Krueger & Mommsen, 1928, p. 153). In other words, death of the owner or loss of the owner's freedom did not stop the existence of servitudes.

The servitude was preserved even if the possessor of the property (estate) was in bad faith (D 8.6.24; Krueger & Mommsen, 1928, p. 155).

A servitude could be established based on either an agreement, i.e., a pact / contract (stipulation), or a testament (I 2.3.4; Krueger & Mommsen, 1928, p. 13, 143; D 8.1.5.pr.; C 3.34.3; Krueger, 1906, p. 141).

If somebody wanted to establish rights in favour of their neighbour, it had to be done by the means of pacts and stipulations. It was also possible for anyone to impose an obligation on their heir in the will to allow crossing of bequeathed land on foot or by driving cattle. (I 2.3.4; Krueger & Mommsen, 1928, p. 13).

It was highlighted that servitude of way / road, servitude of path and servitude of (cattle) driving could be established with almost the same legal techniques by which servitude of use and fruit harvesting (usufruct) might be established (D 8.1.5 pr.; Krueger & Mommsen, 1928, p. 143). It was also stressed that if all the necessary formalities had been observed – all the necessary steps were taken to establish a servitude – then it was necessary to preserve and protect what had been agreed between the contractors (C 3.34.3; Krueger, 1906, p. 141). For example, the rights for the servitude of way / road, just like other rights related to real estate, could be bought from the landowner. The procedure for transferring the rights to a servitude purchased was to be carried out in the same way as the transfer of possession (D 8.1.20; Krueger & Mommsen, 1928, p. 144).

However, as it was considered the right in intangible property, a praedial servitude could not be established on the basis of acquisitive prescription – on the grounds of long-term usage (D 8.1.14.pr.; Krueger & Mommsen, 1928, p. 143). As an additional argument in this regard, reference was made to the specific nature of the servitudes – because servitudes are such that they do not allow for certain continuous possession. No one can really walk so persistently and so constantly that at no time interruption of the possession is visible (D 8.1.14.pr.; Krueger & Mommsen, 1928, p. 143).

One could not establish a servitude that would interfere with the use of another already existing servitude. For example, there are references to the impossibility of assigning a servitude of water course through the same site where someone has already been given a servitude of way / road (D 8.3.14; Krueger & Mommsen, 1928, pp. 147–148); likewise, if someone was assigned a servitude of water course, it was not possible to sell

or otherwise assign a servitude of path to another in the same location (D 8.3.14; Krueger & Mommsen, 1928, pp. 147–148).

Width of a servitude road (D 8.3.8, D 8.3.23.pr., D 8.1.13; Krueger & Mommsen, 1928, pp. 143, 147–148), possibilities of determining the conditions of usage thereof (D 8.1.4.1, D 8.1.4.2, D 8.1.5.1 etc.; Krueger & Mommsen, 1928, p. 143), liability for violating the conditions of usage (D 8.6.11 pr.; Krueger & Mommsen, 1928, p. 154), road maintenance / repair procedures (D 8.5.4.5; Krueger & Mommsen, 1928, p. 151) etc. were also regulated.

It was pointed out that the width of a servitude road according to the Law of the Twelve Tables in a straight piece is eight feet, in a bend, i.e., where the road is curved – sixteen (D 8.3.8; Krueger & Mommsen, 1928, p. 147). Depending on the actual needs, a servitude road could be set either wider or narrower than eight feet, but its width should still be where a vehicle can go, otherwise it would be a servitude of path, not a servitude of way / road (D 8.3.23 pr.; Krueger & Mommsen, 1928, p. 148). When upon establishing a servitude of way / road its width was not named, it was regulated by law (D 8.3.13.2; Krueger & Mommsen, 1928, p. 147). For servitude of (cattle) driving and servitude of path, there was a different principle – their width was as indicated, if there was no indication of width, it was to be determined by the arbitrator's decision (D 8.3.13.2; Krueger & Mommsen, 1928, p. 147).

If the referred location of the road was so narrow that neither vehicle nor a yoke animal could enter, it was considered that servitude of path was obtained rather than servitude of way / road or servitude of (cattle) driving, but if a yoke animal could pass through, but not a vehicle, it was considered that servitude of (cattle) driving was obtained (D 8.1.13; Krueger & Mommsen, 1928, p. 143).

If servitude of way / road, servitude of path, servitude of (cattle) driving were granted by legacy (*legatum*) – simply, without specifying the route, the heir was able to choose which part of the property he would allow to make the servitude be established, provided that there was no harm emerging for the legatee (D 8.3.26; Krueger & Mommsen, 1928, p. 148).

Restrictions could be added to servitudes, for example, to determine what type of vehicle to drive or not (e.g., use for a horse only) or to foresee weight restrictions – so that only a certain weight of the carriage would be carried, or that some herd would be moved or coal / charcoal would be carried (D 8.1.4.1; Krueger & Mommsen, 1928, p. 143).

Time restrictions *(modum*) could be set for servitude use – day and hour intervals ("*Intervalla dierum et horarum...*") (D 8.1.4.2; Krueger & Mommsen, 1928, p. 143). Use of servitudes could be divided by clock-times – specified hours or days. For example, for usage from the third to the tenth hour, or every other day (D 8.1.5.1; Krueger & Mommsen, 1928, p. 143). Similarly, it was indicated that for servitude of path, nothing prevents establishing that someone only at daytime can go because for urban properties it was almost a necessity (D 8.4.14; Krueger & Mommsen, 1928, p. 150).

In case of violation of servitude rules – for example, if someone who was assigned a servitude of way / road or a servitude of (cattle) driving ("*via vel actus*") to use a particular type of vehicle ("*ut vehiculi certo genere uteretur*") had used another type of vehicle ("*alio genere fuerat usus*"), or more cargo / weight than allowed would have been carried ("*amplius oneris quam licuit vexerit*"), or a wider piece of servitude of path would have been used ("*latiore itinere usus esset*") or if more yoke animals were driven than allowed ("*aut si plura iumenta egerit quam licuit*"), due to such violations servitude was not lost ("*servitus quidem non amittitur*"); however, parties were not entitled to violate the terms agreed upon while establishing the servitude ("*quam pactum est in servitute habere*") (D 8.6.11pr.; Krueger & Mommsen, 1928, p. 154).

Regarding maintenance and repair of a servitude road, a general principle was applied according to which the essence of any servitude is that it may force one to tolerate or not to do something (refrain from action) but it cannot oblige anyone to do something or to make any improvements (D 8.1.15.1; Krueger & Mommsen, 1928, p. 143). Thus, maintenance costs of the servitude road had to be borne by the user – owner of the dominant land for whose benefit the servitude was established – and not by the owner of the servient land who was forced only to tolerate the existence of the servitude.

If the maintenance and use of the servitude road was somehow disturbed – for example, someone did not allow the construction or repair of stone pavement ("*...reficere sternere non patiatur*"), the user / beneficiary of servitude was entitled to bring an action for the acknowledgement of his rights ("*confessoria actione ... utendum*") regarding the servitude. In the same manner, it was possible to deal with a tree belonging to a neighbour that had obstructed a servitude road or path, thus made it impassable or unusable. As to repairs needed for a servitude road, an interdict could also be used except situations when someone would like to cover the servitude road with the stone pavement unless it was specifically agreed (D 8.5.4.5; Krueger & Mommsen, 1928, p. 151).

Conclusions

Under Roman law, provision of transportation services was regulated by means of a contract for work (*locatio conductio operis*). A contract for work was an agreement according to which a contractor / employee as a lessee had obligations to fulfil services or certain work on or from the material supplied by the commissioning party / employer / lessor. An agreement on transportation (carriage) of goods or passengers was also considered to be a contract for work.

A smart answer to infrastructure challenges was the so-called rustic praedial servitudes (*servitutes praediorum rusticorum*), including servitude of way / road (*via*), which granted the owner of a parcel of land non-adjacent to a public road (*via publica*) the right to use the road over a parcel of land belonging to another owner, thus gaining

access to the public road. The servitude of way / road included also the rights granted by two other servitudes, i.e., the servitude of path (*iter*) and the servitude of (cattle) driving (*actus*).

Once established, a servitude was also binding upon future owners (e.g., in the event of alienation of land) – it was linked to the relevant property as a right *in rem*. It was also kept in the event the land was pledged or confiscated in favour of the state, in the event the landowner died or was enslaved as well as in case of malicious possession of land. A servitude could be established based on either an agreement, i.e., a pact / contract (stipulation), or a testament. However, as it was considered the right in intangible property, a praedial servitude could not be established on the basis of acquisitive prescription – on the grounds of long-term usage Width of the servitude road, possibilities of determining the conditions of usage thereof, liability for violating the conditions of usage, road maintenance / repair procedures etc. were regulated.

Legal framework of a Roman contract for work of transportation and rustic praedial servitude of way / road must be recognised as a rather effective solution for challenges of rural logistics at the time.

Bibliography

1. Apsītis, A. (2015). Romiešu sabiedrības (societas) līgums un romiešu tiesiskie principi mūsdienu Latvijas tiesībās [Roman Partnership Agreement (Societas) and Roman Legal Principles in the Law of Modern Latvia]. *Electronic Scientific Journal of Law "Socrates"*, 3(3), 91–98. https://doi.org/10.25143/socr.03.2015.3.91-98.
2. Apsītis, A., Joksts, O. (2013). Noziedzīgs nodarījums zādzība (furtum) romiešu tiesību kontekstā [Offence of Theft (furtum) In The Context of Roman Law]. *Administratīvā un Krimināla Justīcija*. 1 (62), 7–14. ISSN 1407–2971.
3. Apsītis, A., Joksts, J. (2018). State officials and illicit asset-grabbing: The Roman approach. *SHS Web Conf.*, 40, 01012, DOI: https://doi.org/10.1051/shsconf/20184001012.
4. Apsītis, A., Joksts, J., Antanavičienė, J. (2016). Threats to sustainable development: asset grabbing phenomenon and the legal concept of Force and Fear in Roman Law. *JSSI*, 6(2): 291–297. DOI: http://dx.doi.org/10.9770/jssi.2016.6.2(8), https://journals.lka.lt/journal/jssi/article/1466/info.
5. Apsītis, A., Tarasova, D. (2017). Nomas jeb īres līguma piemērošana darba tiesisko attiecību reglamentēšanai jeb romiešu darbu īres līgums un romiešu darbuzņēmuma līgums. [Adaptation of Lease / Hire Contract in Regulation of Employment Relationship, or Roman Contract of Employment and Roman Contract for Work.] *Electronic Scientific Journal of Law "Socrates"*, 3(9), 91–106. https://doi.org/10.25143/socr.09.2017.3.91-106.
6. Berger, A. (1953/1991). Encyclopedic Dictionary of Roman Law. Philadelphia: The American Philosophical Society.
7. Dinsberga, J. (2020). Compulsory divided property – problems and solutions within modernisation of Latvian legal system. *SHS Web of Conf.,* 85, 01006. DOI: https://doi.org/10.1051/shsconf/20208501006.

8. Dinsberga, J., Bite, K. (2018). Legal consequences and problems of the servitudes of right of way established by administrative acts in Latvia. *SHS Web Conf.*, 40, 01011. DOI: https://doi.org/10.1051/shsconf/20184001011.
9. Dinsberga, J., Savickis, V. (2019). Legal and practical aspects of establishing servitude of right of way by court judgment within the framework of urban and rural development and changing global conditions. *SHS Web Conf.*, 68, 01024. DOI: https://doi.org/10.1051/shsconf/20196801024.
10. Krueger, P., ed., (1906). *Corpus Iuris Civilis. Codex Iustinianus.* [*Body of Civil Law. The Code of Justinian.*]. Berlin: Weidmannos.
11. Krueger, P., Mommsen, T., eds. (1928). *Corpus Iuris Civilis. Digesta* [*Body of Civil Law. Digest.*]. Berlin: Weidmannos.
12. Krueger, P., Mommsen, T., eds., (1928). *Corpus Iuris Civilis. Institutiones* [*Body of Civil Law. Institutes.*]. Berlin: Weidmannos.
13. Latvijas Republikas likums: Civillikums [The Civil Law], *Valdības Vēstnesis,* Nr. 41, 20.02.1937. Consolidated text with amending laws (in Latvian): https://likumi.lv/doc.php?id=225418.
14. Latvijas Republikas likums: Darba likums [Labour Law], *Latvijas Vēstnesis*, Nr. 105 (2492), 06.07.2001. Consolidated text with amending laws (in Latvian): https://likumi.lv/ta/id/26019-darba-likums.
15. Tarasova, D. (2016). Darba tiesisko attiecību izbeigšanas problemātika Darba likuma 101 panta pirmās daļas 3. un 4. punkta gadījumos. [Problems of Termination of Legal Work Relationship on The Basis of Labor Law Section 101, Paragraph 1, Clauses 3, 4.] *Electronic Scientific Journal of Law "Socrates"*, 3(6), 99–107. https://doi.org/10.25143/socr.06.2016.3.99-107.

Autoru alfabētiskais rādītājs / Alphabetic List of Authors