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Issues on interpretation of legal norms in the practice of the Constitutional Court of the Republic of Latvia

by

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Introduction

The Constitutional Court of the Republic of Latvia is one of the most recently established constitutional courts of Europe. In December , 1997, it celebrated its first anniversary, but in May, 1998 we marked the first anniversary of reviewing the first case. The number of reviewed cases is insignificant at the moment.

However, even during this short period of time we have been able to acquire experience and make certain that issues on interpretation of legal norms are of really great importance in practice of the Constitutional Court.

It should be noted, that the above issues are topical not only to the Constitutional Court but to the whole legal system of Latvia .

Since May 4, 1990, the Latvian legal system is experiencing a rapid transition from the Soviet legal system, imposed on us during the years of occupation, to that of Western Europe. For Latvia it means ”returning”, as before the Soviet occupation Latvia and its legal system were considered to belong to that of Continental Europe. However, the process of reunion is to take place in another quality, because during a little bit more than half a century, while Latvia has been separated from the Western European legal system, the system itself has developed qualitatively and in different ways.

Rapid and positive changes are taking place in creative approach to legal processes. At the same time, one seems to forget that creativity is the just the ” visible part of the iceberg” . And very often the part of the iceberg, that cannot be seen, namely, development of philosophy and theory of law, based on priorities of democratic values as well as application of legal norms, meeting the requirements of a law-based state, is unattended.

It seems, that the above problems are topical not only in Latvia, but in most former Soviet states, including Ukraine as well.

Therefore I feel grateful, that I have been given the opportunity to exchange experience of the Constitutional Court of the Republic of Latvia on interpretation of legal norms with you.

New Theoretic Traits on Interpretation of Legal Norms

Before speaking about particular problems of interpretation in the practice of the Constitutional Court, I would like to touch upon those problems that the transitional period has advanced to the theory of law all in all.

Transition from one legal system to another one -even in case we do not want it- does not happen all at once, with one decision and on one and the same day. That is the process, that may last for years.

When proclaiming independence of the state, there was no possibility to abrogate all the norms, that were inherited from the Soviet times. The process of substitution has been gradual.

Even at the present moment, 8 years after the Declaration of Independence has been signed on May 4, 1990, quite a lot of laws, passed by the authorities of the Soviet Latvia, are effective, though shorter or longer Amendments to the laws have been passed.

Theory of law cannot be restructured in one day either. Development of the theory of law that would meet the requirements of the present time is a hard and lasting process.

The basic problem, connected with issues of interpretation of legal norms ,that is to be solved during the transitional period , is abandonment of outright political and ideological exertion of influence, typical to Soviet legal system and introduction of the method of teleological interpretation of legal norms.

As is well known, the Western legal sector is characterised by 4 methods of interpreting legal norms:

1) grammatical (philological) method that makes out the contents of the text of the norm from the point of view of the language;

2) systemic method, that prompts how to interpret the sense of the text of the norm from the viewpoint of interconnection of legal norms;

3) historical method, that instructs how to elucidate the sense of the text of the norm, taking into consideration the historical circumstances of the time of their adoption;

4) teleological method, that is directed to elucidation of the sense of the text of the norm from the point of view of the objective of its adoption.

The very first three of the above methods were acknowledged by the Soviet theory of law, at the same time the fourth -teleological- was denied. And it is understandable, because - under Soviet theory of law- will or order of the legislator had no standing value, as it was subordinated to guidelines of the communist party.

Denial of the leading power of the Communist party was the first big step on the road to interpretation of legal norms appropriate to the requirements of a law-based state. The next , decisive and the most difficult step is putting the fourth - teleological method- into practice .

The above method has historical roots in the Latvian science of law in pre-Soviet period. For instance, the 1937 Latvian Civil Law had established a normative basis in the sector of civil rights. In accordance with Article 4 of the Law" First of all Regulations of the law shall be interpreted according to their real sense; if necessity arises, they are to be interpreted taking into consideration the law system, basis, objective and last, but not the least, analogy." In 1992, when re-establishing the rule of the 1937 Civil Law, the Article in the above wording took effect as well.

However, the Latvian pre-Soviet heritage demands thorough appraisal and specification, that would correspond to conclusions of up-to-date science of law. For instance,

when analysing the above Article, one notices lack of precision. Namely, analogy, that is undeniably connected with interpretation, is not considered by scientists of law to be the method of interpretation. Unfortunately, this viewpoint of the science of law has not received confirmation by the legislator in a form of respective amendments in the Civil Law.

Teleological method in its modern sense makes the interpreter orient himself/herself to the objective of the norm and deduce its meaning, to attain suitable and just results with the help of the norm. The method is indisputably connected with the system of basic political values, that means it is also connected with the basic principles of a democratic, law-based state. However, the basic values and basic principles cannot be grasped and put into practice in one day. It demands elaborate and permanent efforts of theoreticians and practical workers.

Besides, successful development of the theory of interpretation is closely connected with the development of the whole theoretical legal sector. For example, legal theoretical issues on hierarchy and sources of normative acts are closely connected with interpretation. During the last year an extensive discussion on the importance of general legal principles as legal sources was commenced.

During the process of developing theory of law, the Constitutional Court has been chosen to be the initiator.

Already in its first verdict, the Constitutional Court of the Republic of Latvia made use of the teleological method of interpretation of legal norms and referred to general legal principles. The fact caused an extensive debate and the Constitutional Court was both criticised and praised. Thus, not only the verdict itself, but also the debate made a contribution to the development of the theory of law. In its next verdicts the Constitutional Court referred to the general legal principles repeatedly, but no critical remarks were expressed. The public opinion had accepted the method of action of the Constitutional Court.

Still, it would be untimely to come to the conclusion that everything is all right as concerns application of the teleological method. We are to acknowledge that those who are applying legal norms in Latvia, are repeatedly falling from one extreme into the other.

One extreme is normativism. Unfortunately, there is a tendency in Latvia to analyse the reasons of it in a simple way, reducing them just to the heritage of the Soviet period. This tendency prevents fighting normativism effectively, as it gives an illusion that it is quite enough to change the so-called ” old employees’’ with ” new employees”. The fact, that normativism is not only the remnant of the Soviet tradition, can be proved by an interesting nuance. The Constitutional Court heard the most bitter reproach for reference to general legal principles from the representative of the party that lost the case - sworn advocate Radziòð. When reading his reply , that was written in the style of the best traditions of normativism, one could come to the conclusion that he had spent at least 10 years in the sector of law of stagnancy and had neither seen nor heard how his colleagues behind the borders of Latvia worked. Nothing of the kind! Radziòð has received his lawyer’s diploma during the time of ”perestroika”, has started his career during the time of ”awakening” as the lawyer of the Latvian Popular Front and has been one of the first to acquaint himself with the experience of Western states.

The roots of normativism are much deeper and more complicated. They can be

eradicated only with the help of qualitative developing of the theory of law, all-round educating of the persons who are applying the norms and creation of the system, guaranteeing that the greatest number of those who apply the above norms are personalities with adequate knowledge, understanding and oriented on real values.

The second extreme, those who side-step from the teleological method use to fall into, is identification and adjustment of the objective of the norm to his/her interests or to those of his/her party, not understanding or not wanting to understand the link of the norm with the fundamental principles of the democratic, law-based state. Not so long ago striking examples of inadequate interpretation could be observed in the activities of the Department of Citizenship and Immigration of the Ministry of Internal affairs.

II OFFICIAL INTERPRETATION OF LEGAL NORMS- A SPECIAL FUNCTION OF THE CONSTITUTIONAL COURT

In analogy with the greatest number of European Constitutional Courts, the Constitutional Court of the Republic of Latvia is not authorised to present official interpretation of legal norms . However, Article 13, part 4 of the Ukrainian Constitutional Court Law envisages it.

There have been attempts in Latvia to include the above norm of presenting official interpretation of legal norms in the competence of the Constitutional Court. In spring of 1997 a group of deputies submitted a draft project on Amendments to the Constitutional Court Law.

The Amendment envisaged to determine, that ”the Constitutional Court shall present official interpretation of the Constitutional norms and norms of other laws”.

The following were suggested to have the right to submit an application on official interpretation of the norms of Constitution : the President of the State, the Cabinet of Ministers, not less than ten members of the Saeima, the Plenum of the Supreme Court and Prosecutor General.

As to official interpretation of the norms of laws, an application (as was suggested) shall be submitted by the President of the State, the Cabinet of Ministers, the Plenum of the Supreme Court, Prosecutor General and the Council of a municipality.

Besides, the project envisaged that the interpretation was to be announced not later than 3 months after submission of the application. The application -according to the draft- shall be reviewed at a closed court session. All the judges of the Constitutional Court who are not excused from participating in the session because of health or other justified reasons shall attend the session. In this case there may not be less than five judges of the Constitutional Court. The session is chaired by the Chairperson of the Constitutional Court or his/her deputy.

The draft determined, that interpretation of Constitutional or any other law shall be binding on all state and municipal institutions, offices and officials, including the courts, also natural and juridical persons. However, the Saeima rejected the motion, even without submitting it to the commissions , because the greatest number of the deputies were of the

opinion that the above function was not typical to Western European courts.

III. THE MOST RELEVANT TENDENCIES OF INTERPRETATION OF NORMS AT THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

Performance of any Constitutional Court is continuously connected with interpretation of legal norms. I would like to single out just the two most relevant tendencies.

1. Interpretation of norms, connected with the activities of the Constitutional Court

The Constitutional Court in any of its verdicts or judgements as well as when elaborating normative acts of its own, is interpreting norms, regulating the process and authorisation of the Court.

Our Court has acquired special experience in the above sphere, as the Constitutional Court Law of the Republic of Latvia determines only the fundamental issues of procedure of the Constitutional Court. It envisages that a special Procedural Law of the Constitutional Court shall be elaborated, and it shall establish the procedure of reviewing cases. Up to the date of the above law taking effect, the procedural order is regulated by the Constitutional Court Law and the Rules of Procedure of the Constitutional Court, that has been adopted by an absolute majority vote of the entire total of the Constitutional Court judges.

When working on the Rules of Procedure, the body of the Constitutional Court of the Republic of Latvia faced many essential problems , connected with interpretation, because - as I have already pointed out - the Constitution and the Constitutional Court Law of the Republic of Latvia have expressed the procedural order of reviewing of cases in a very laconic way. Therefore, in many cases typical general principles, characteristic to Western European legal system as well as analogy have been made use of.

Unfortunately, in cases, when the Constitutional Court is interpreting legal norms, that regulate the process and authorisation of the Constitutional Court itself, one mostly notices the result of interpretation, but not its progress. For instance, the text of the Rules of Procedure, judgements and verdicts etc. are not publicly substantiated.

However, in all the cases, when it has been possible, the Constitutional Court of Latvia has tried to present motivation to interpretation of procedural norms. In several cases, the Constitutional Court at the court session has had to present the above interpretation of a decision or judgement, adopted in the conference chamber.

For example, when reviewing the very first case, that - according to the law - had to be reviewed by the entire Constitutional Court, i.e. by not less than 5 judges, three out of the six judges of the Constitutional Court were challenged as not having the right to review the case. Two of the judges were challenged because they had taken part in passing the law that was questioned, and the judge Ilma Èepâne was challenged because she happens to be the wife of the Chairman of the Saeima. At that time, the wording of the Constitutional Court Law did not

envisage the right of challenging judges, at the same time it was not stated that there was no possibility to do it.

The Constitutional Court turned the expressed challenge down, referring not only to the fact that the Constitutional Court Law did not envisage the possibility of expressing challenge, but also to the fact that the legislator has determined the procedure of reviewing certain cases by the entire body of the Constitutional Court i.e. by not less than 5 judges and therefore challenging judges would be at variance with the aim of the law, as - if the challenge were accepted -there would be no possibility to review the above case at all. At the same time, in conformity with the demands of Article 85 of the Constitution of the Republic of Latvia, the judges of the Constitutional Court are confirmed by the same qualified majority of vote as the President of the Republic and thus they have received a heightened confidence.

Several months after the above court session, the legislator amended the Constitutional Court Law, including into it the norm, envisaging that ”there shall be no possibility to express challenge to the judges of the Constitutional Court”.

At one of the Constitutional Court sessions a request was expressed to close proceedings referring to a normative act, adopted by Ministers before the Law on the Structure of the Cabinet of Ministers had taken effect. The Constitutional Court Law envisages that the Constitutional Court shall review cases on ”compliance with the Constitution, other laws and resolutions by the Cabinet of Ministers of normative acts issued by institutions or officials subordinated to the Cabinet of Ministers”, but at the time when the above act had been issued, the Cabinet of Ministers had carried out the functions of the government.

The Constitutional Court, making use of the method of teleology and systematic interpretation, decided that Article 16 of the Constitutional Court Law shall not be interpreted in a limited manner and turned down the request of closing proceedings. In its judgement the Constitutional Court also referred to the principle of unity and succession of the legal system.

2. Interpretation of legal norms with the help of abstract control

The most important function of the Constitutional Court of the Republic of Latvia is the so-called abstract control of legal norms, i.e. cases on conformity of a legal norm (act) of lesser legal force with the legal norm (act) of higher legal force **.**

The objective of the abstract control of legal norms is to find out if the respective legal norm (act) of lesser legal force is in conformity with the legal norm (act) of higher legal force. However, to state it, an extensive and detailed interpretation of the questioned legal norm and the legal norm of higher legal power is to be accomplished. In fact, the essence of the abstract control of legal norms is verification of the rightness of interpretation of legal norms, by making use of all the methods of interpretation.

In this connection I would like to touch upon several problems, the Constitutional Court of the Republic of Latvia has faced.

<u>Firstly, on force of the verdict.</u>

Article 85 of the Constitution of the Republic of Latvia establishes, that ” there exists the Constitutional Court in Latvia, which within the jurisdiction set fourth in law shall review cases concerning the compliance of laws with the Constitution as well as other cases placed under its jurisdiction. The Constitutional Court has the right to declare laws and other acts or their parts null and void.”

The second part of Article 32 envisages, that ” a verdict of the Constitutional Court shall be binding on all state and municipal institutions, offices and officials, including the courts, also natural and juridical persons”.

In its turn, before the wording of Article 85 of the Constitution and the Constitutional Court Law took effect, Article 25 of the ”Regulations Nr.154 on the Procedure of Administrative Acts”, passed by the Cabinet of Ministers on June 13, 1995 establishes that ”If the Constitutional Court in a published verdict has interpreted a respective norm, then the institution shall interpret it in the same way.”

Neither theoretically, nor practically there is doubt as to the force of the resolution part of the verdict by the Constitutional Court . But attitude to the interpretation expressed in the motivating part has not been unequivocal. Up to the very moment no legal act has been motivated by reference to the motivating part of the Constitutional Court verdict.

For instance, nobody doubts, that after review of the first case of the Constitutional Court, Regulations Nr.54 of March 14, 1995 by the Cabinet of Ministers” On Purchase prices of Electrical Energy Generated in the Republic of Latvia” , that the Constitutional Court has declared as not being in conformity with the law” On Regulating Business Activity in the Energy Sector” as well as with Article14 of the law on the Structure of the Cabinet of Ministers are invalid and null and void.

However, neither the Cabinet of Ministers, nor officials of the Ministry of Justice , who are responsible for codification of normative acts, have mentioned the above interpretation by the Constitutional Court in an analogous situation on Regulations Nr.239 by the Cabinet of Ministers of August 1, 1995 ” On Purchase Prices of Electric Energy Generated by Wind Power Stations”.

Evidently, much is still to be done in Latvia in the sector of theory and practice of law.

Secondly, when discussing the abstract control, one should speak about interpretation limits.

Several scientists of law reproach the Constitutional Court , because the Constitutional Court does not present versatile interpretation of the respective norms, stressing only the interpretation of those, that are essential to reach the verdict.

To my mind, this reproach is ungrounded, as the Constitutional Court in not a research institute, but a court , that reviews certain cases.

Thirdly, when speaking about the abstract control, one should also speak about arguments, used in the verdict.

There is no doubt, that the verdict shall refer to normative acts. Still, lawyers are

discussing if the Constitutional Court has the right of referring to normative acts, that are not mentioned by any of the parties.

My viewpoint is, that any normative act has public access and it is not mandatory to verify it at a court session.

Procedure of the Constitutional Court could be considered to have two dispositions. From the one hand ,it involves the principle typical for civil proceedings - that of competition and equality of parties, on the other - the principle of ascertaining truth , typical for administrative proceedings.

Doubtless, the Constitutional Court , in the motivating part of the verdict expresses its interpretation of the respective legal norms. And the debate is on the problem, if it is acceptable and necessary to quote interpretations, one comes across in literature of law in cases, when the Constitutional Court agrees to them, or, vice versa, rejects them. When getting acquainted with practice of European Constitutional Courts, one notices, that different courts of different countries use different approach. The Constitutional Court of the Republic of Latvia has established the practice, that quotation is permissible.

In the only case, that the Constitutional Court of the Republic of Latvia reviewed on conformity of a law with the European Convention of Human Rights and Fundamental Freedoms, the debate was started if the Constitutional Court, when motivating its verdict, had the right of making use of judgements by the European Court of Human Rights.

The Constitutional Court stated, that Latvia, when joining the European Convention of Human Rights and Fundamental Freedoms, has acknowledged jurisdiction of the European Court of Human rights. The Constitutional Court, in the motivating part of the verdict of the above case, more than once referred to the practice of the European Court of Human Rights and up to the moment has not been criticised about it.

Conclusion

Those - in short - are the basic problems, connected with interpretation of legal norms, the Constitutional Court of the Republic of Latvia in its practice has come across.

In this respect, we have more problems, than approved solutions. The problems mostly are connected with the specific character of the transitional period, and are so very much alike to problems of post-Soviet state courts. I do hope that with joint efforts we shall find solution of the problems more quickly and successfully.

Thank you for your attention!