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В КОНТЕКСТІ ЄВРОІНТЕГРАЦІЙНИХ ПРОЦЕСІВ**

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МІЖНАРОДНЕ ПУБЛІЧНЕ ПРАВО ТА МІЖНАРОДНЕ ПРИВАТНЕ ПРАВО

LEGISLATOR'S MISTAKE, WHICH HAS RESULTED IN THE CJEU JUDGMENT. LATVIA'S EXAMPLE

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At present, Latvia has been a member of the Union for 18 years, which means that on 1 May 2004, Latvia's national legal system was adjusted to meet the requirements of a democratic state governed by the rule of law. This is because only a national legal system that meets the requirements of a democratic state governed by the rule of law is compatible with the rules of the Union law.² Upon accession to the Union, a state undertakes to respect and promote the values referred to in Article 2 of the Treaty on European Union (hereinafter referred to as the TEU).³ It is the values enshrined in Article 2 of the TEU – human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the rights of persons belonging to minorities – that underpin the Union. On the other hand, when a Member State of the Union decides to derogate from all or some of the values of Article 2 of the TEU, the proceedings provided for in Article 7 of the TEU are initiated against that Member State, as has been the case in the Republic of Poland.⁴

Therefore, a situation in which the general principles of law and the basic idea of a democratic state governed by the rule of law are or may be disregarded is unacceptable and the Member State has to ensure that its actions do not conflict with the concept of a democratic state governed by the rule of law. This is because 'in a democratic state governed by the rule of law, a person is a subject served by the state, as opposed to a socialist legal system where the individual is seen as an object in relation to the state apparatus'.⁵ This means, among other things, that 'an individual shall be given an opportunity to express their observations and they shall be evaluated

¹ All conclusions made in this article are based on the personal opinion and confidence of the author and shall not be binding to any authority, where she works.

² Constitutional Court's judgment in case No. 2002-18-01 of 5.03.2003, clause 6 of the Operative Part.

³ Article 49 of the TEU.

⁴ V. Soņeca. Tiesiskuma apdraudējums. Polijas Piemērs. Satversmē nostiprināto vērtību aizsardzība: dažādu tiesību nozaru perspektīva (*Threat to the rule of law. Polish example. Protection of the values enshrined in the Satversme: perspective of various branches of law*). Proceedings of the 77th International Scientific Conference of the University of Latvia. Riga: LU Press, 2019, pp. 397–404.

⁵ Comments on the Constitution of the Republic of Latvia. Introduction. Chapter I. General Provisions. The team of authors under the scientific guidance of prof. R. Balodis. – Riga: Latvijas Vēstnesis, 2014, p. 203.

before a decision is made’⁶ all the more so because according to Article 64 of the Satversme the legislator in Latvia is not only the Saeima, but also the People⁷ who may exercise their legislative rights only in the cases exhaustively indicated in the Satversme.⁸

Such rights granted to the People in the Satversme indirectly indicate the importance of respecting the sovereign will and involving the society in the legislative process, taking into account that the legislative process, regardless of the context of the matter, ‘should be seen as an act of exercising sovereign will purposefully aimed at achieving justice.’⁹ This is because ‘the principle of justice requires that the fairest possible balance be struck between the conflicting interests of the various members of society. One of the ways to implement this principle is to ensure the observance of a person’s right to participate in various decision-making processes and the formation of political will. [...] The meaning of the participation is not that the opinion of any group of persons should be binding on the legislator, but that an objective decision should be taken and a balance of different interests should be struck.’¹⁰

This, in turn, is inextricably linked to good legislation, which is to be understood as a set of requirements that ‘should be taken into account with regard to the legislative process in order to achieve the pursued goal of a democratic state governed by the rule of law.’¹¹ These requirements are linked to quality as ‘the fruit of good legislation is a quality law – the result of the rational action of government in carrying out the will of the people, which at the same time meets [...] quality requirements.’¹² This is because a properly enacted law is not just a norm adopted and promulgated in accordance with procedural procedures. This criterion includes the quality requirements of the norm. In the case of Latvia, these quality requirements of a legal norm are clarified through the interpretation of Article 90 of the Satversme (*everyone has the right to know their rights*);¹³ however, the said requirements are outside the scope of the specific article.

⁶ Ibid.

⁷ Comments on the Constitution of the Republic of Latvia. Chapter V. Legislation. The team of authors under the scientific guidance of prof. R. Balodis. – Riga: Latvijas Vēstnesis, 2019, pp. 9, 12.

⁸ Articles 72, 77, 78 and the fourth part of Article 68 of the Satversme.

⁹ Dissenting opinion of Judge Daiga Rezevska of the Constitutional Court in case No. 2016-14-01, clause 5.

¹⁰ Constitutional Court’s judgment in case No. 2004-18-0106 of 13.05.2005, clause 7 of the Operative Part.

¹¹ Comments on the Constitution of the Republic of Latvia. Chapter V. Legislation. The team of authors under the scientific guidance of prof. R. Balodis. – Riga: Latvijas Vēstnesis, 2019, p. 342.

¹² Ibid.; Pleps J. The Principle of Good Legislation. A collection of research papers in conjunction with the international scientific conference “The Quality of Legal Acts and its Importance in Contemporary Legal Space”, 4-5 October, 2012 at the University of Latvia Faculty of Law, Riga, pp. 16 – 26. Available: https://www.apgads.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/Jur-konf_2012_Qualit-Legal-Acts.pdf.

¹³ J. Pleps. Person’s rights to know their rights in the Latvian Constitutional Law. In: Dostep do informacji publicznej. Wybrane zagadnienia. Płock: Szkoła Wyższa im. Pawła Włodkowica w Płocku, 2011.; J. Pleps. Satversmes 90. pants (*Article 90 of the Satversme*). Jurista Vārds, 22 January 2008, No. 3 (508); Comments on the Constitution of the Republic of Latvia. Chapter V. Legislation. The team of authors under the scientific guidance of prof. R. Balodis. – Riga: Latvijas Vēstnesis, 2019, p. 340.

It should be noted that upon becoming a member of the Union, Latvia undertook a number of obligations which it is obliged to fulfil, ensuring, among other things, the arrangement of the national legal system, as well as the correct application of the Union law in practice.¹⁴ This means that Latvia's national regulatory enactments must be drafted, applied and interpreted in such a way that it does not conflict with Latvia's commitments to the Union.¹⁵ In addition, if a specific issue is related to the application of the Union law or falls within the scope of the Union law, given that the Union law is an integral part of the Latvian legal system¹⁶, Latvia, like any other Member State, must also take into account the interpretation of the relevant regulatory enactment of the Union as well as the general principles of law provided in the case law of the Court of Justice of the European Union (hereinafter referred to as - the CJEU), when clarifying the content of national regulatory enactments and applying them.¹⁷

Accordingly, this means that when adopting new national regulatory enactments or amending existing regulatory enactments, it is important to respect not only the primary and secondary Union law, using all methods of interpretation of legal norms, but also the CJEU case law, in order to ensure development of a new national regulatory enactment or amendments to an existing regulatory enactment that comply with the Union law accordingly. One example illustrating the disregard for the Union law is the CJEU judgment in the KOB case¹⁸ concerning Section 28.¹, Paragraph one, Clause 2 (f) of the Law on Land Privatisation in Rural Areas.

The CJEU has concluded in the judgment of 11 June 2020 in the case C-206/19 *KOB* that Section 28.1, Paragraph one, Clause 2(f) of the Law On Land Privatisation in Rural Areas (hereinafter also referred to as - the national legal norm) fails to comply with Articles 9, 10 and 14 of the Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (hereinafter referred to as - the Directive 2006/123/EC). The CJEU assessed this issue as far as the District Administrative Court of the Republic of Latvia Riga Court House wanted to establish, whether the requirements determined by law for the acquisition of agricultural land that the citizens of other Members States of the European Union (hereinafter referred to as - the Union) wishes to perform, does/does not conflict with Articles 18, 49 and 63 of the Treaty on European Union (hereinafter referred to as - the TEU). In this perspective it is to be emphasized that the CJEU did not assess the compliance of the national legal norm with the TEU, but rather requirements of the Directive 2006/123/EC, although the requirements of the above-mentioned directive were implemented by completely different national regulatory enactments.

¹⁴ Constitutional Court's judgment in case No. 2010-71-01 of 19.10.2011, clause 13.3.

¹⁵ Constitutional Court's judgment in case No. 2007-11-03 of 17.01.2008, clause 25.4.

¹⁶ Constitutional Court's judgment in case No. 2018-11-01 of 06.03.2019, clauses 16.2 and 18.4.1.

¹⁷ Constitutional Court's judgment in case No. 2017-28-0306 of 29.06.2018, clause 10.

¹⁸ CJEU's judgment in case C-206/19 *KOB* of 11.06.2020, ECLI:EU:C:2020:463.

At the same time, it should be emphasized that the road of the particular national legal norm had not been easy one. Before the national legal norm was formulated in the current wording, the infringement proceeding was commenced against the state in relation to restrictions covered by the Law On Land Privatisation in Rural Areas for acquisition of agricultural land.¹⁹ The European Commission (hereinafter referred to as - the Commission) informed extendedly in its press releases already in 2015 and 2016,²⁰ as well as the deputies have broadly discussed it.²¹ Besides, the President of the State expressed his objections against the national legal norm already in March 2017.²² However, the national legal norm was adopted after the second review (known also as the suspensive veto) in the wording it currently can be read and which has been recognized as not corresponding with the Directive 2006/123/EC. Therefore, the question arises why such national legal norm was adopted and why it has been recognized as not corresponding right with Articles 9, 10 and 14 of the Directive 2006/123/EC? Answers to these questions are covered in the continued article, discussing the course of adoption of the legal norm and establishments of the CJEU, as well as emphasizing the consequences for such ill-considered step of the legislator during the process of adoption of the legal norm.

However, before examining the CJEU judgment and its implications, the historical context will be explained in the beginning of the article in order to elucidate how Latvia has developed the notion of a democratic state governed by the rule of law to what it is today, taking into account that on 17 June 1940 the Latvian legal system was suspended as a result of Soviet occupation, after which it was restored on 4 May 1990, and on 1 May 2004 Latvia became a member of the Union. The article will also examine the practice of applying general principles of law, as well as changes in the national legislation upon accession to the Union, i.e., what the Latvian (and each EU Member State's) legislator must take into account and what in the specific case, in the context of the CJEU judgment, is not taken into account when adopting the respective legal norm. At the same time, the future scenario for possible action will be outlined – both by the legislator and by the Commission, ensuring compliance with the CJEU judgment.

¹⁹ Infringement decisions. Infringement No 2015/2029. Available: https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=true&active_only=0&noncom=0&r_dossier=20152029+&decision_date_from=&decision_date_to=&title=&submit=Search.

²⁰ Financial Services: European Commission opens an infringement procedure against LATVIA on investor restrictions for agricultural land, 29.04.2015. Available: https://ec.europa.eu/commission/presscorner/detail/EN/IP_15_4877 ; Financial services: Commission requests Bulgaria, Hungary, Latvia, Lithuania and Slovakia to comply with EU rules on the acquisition of agricultural land, 26.08.2016. Available: https://ec.europa.eu/commission/presscorner/detail/EN/IP_16_1827.

²¹ Transcript of the meeting of 23.03.2017. Available: <https://titania.saeima.lv/LIVS12/saeimalivs12.nsf/0/E6C5BF990ACE0999C22580F20046C208?OpenDocument>.

²² Lauksaimniecībā izmantojamās zemes tirdzniecības ierobežojumi Eiropā un tirgus situācija Latvijā. The Saeima of the Republic of Latvia, 2017, page 55. Available: https://www.saeima.lv/petijumi/LIZ_tirdzniecibas_ierobezojumi_24102017.pdf.