

THE TRANSFORMATION OF THE UNDERSTANDING OF JUDGE INDEPENDENCE IN LATVIA

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Abstract

Latvian people's craving for freedom culminated in the beginning of 1990-s. The activity of the Constitution of the Republic of Latvia was renewed, and the state power was returned to the people. From this moment, the work on dismantling the Soviet legal system in Latvia had started. A legal system had been redirected to the principles of the Western legal branch. The hard core of these principles was already in the Article 1 of the 1920 Constitution of the Republic of Latvia which states that Latvia is an independent and democratic republic. A key element of a democratic state is of a legal state. The division of powers, which is an essential element of a judge's independence, is in force in a legal state. Up to 2009 the judge's independence was based on the understanding of the institutional independence, when the other branches of state power must not sit as a court, and on the understanding of the personal independence, when the pressure to the judge is not acceptable during the administration of justice. Only after the complication of the financial situation, there were also highlighted other elements of the judge's independence principle, including financial security. Separate present cases in society, these together produce a variety of problems understanding the judge's independence principle.

It is positively characterized, that by expanding cooperation with foreign judges, the independence of Latvian judges' self-consciousness is increasing. But these are not just demands for greater freedom. Currently, the Latvian legal system has identified several problems: 1) the admissibility of the judges participating in discussions with other government representatives, 2) the stability of judges' salaries, 3) the judges' progress in their careers, 4) the best model for evaluating judges' professional qualifications, 4) the need of judges' administrative immunity; 5) the need of the Honour Judge Institute. The decisions of the Constitutional Court had a great impact on the understanding the content of the judge's independence principle. The Constitutional Court at least in six cases have extended the judge's independence principle, have given its clarification and the methodology of application.

However, in practice, the main obstacles achieving the optimal model of freedom are not the rules of law. During economic problems the public do not attach importance to nuances of a freedom's narrow aspect in the constitutional model. The public psychological portrait has not significantly changed during 20 years. Soviet people's fears and worry, lack of understanding the activity of state's democratic elements make it difficult to improve the democratic state's legal system. In addition it should be noted that the judiciary and the executive and the legislative powers are unable to negotiate with each other. Therefore, during the next few years the provisions of international rules and the arguments of the constitutional court's decisions will, however, remain as implementation tools for the judge's independence principle.

Keywords: Constitutionalism, separation of powers, judge, judicial independence, financial independence.

Introduction

The matters of the content of judge's independence principle in recent years have been constantly in the list of Latvian law system news. The materials of annual judge's conferences and cases viewed separately at the press allow us to judge about the actual development aspects of the current understanding of judge's independence principle. In recent years, the Latvian legal system has significantly complemented with decisions of the Constitutional Court, which analyze the independence of judges at the constitutional level. Towards the mechanism of power balance appropriate to Western legal system, the Latvian legal system has experienced much. However, despite the laws' amendments, the most important is the society to understand the legal nuances of the expression of freedom. In this respect, both politicians and the public in Latvia have gone hard. But recently, a trend has emerged that in matters of the judiciary independence the judges are becoming more active. Although individually the achieved changes within all the legal system can not yet be regarded as fundamental, but in general it characterizes a positive trend that points to the clear

way to achievement of Western legal values.

The article deals with the transformation of the content of judge's independence principle over the past 20 years in Latvia, highlighting some of the problems and finding the solution. Developments research gives an opportunity to evaluate progress and to understand the current issues that are yet to be resolved.

Up to the year 2009 the judge's independence was based on the understanding of the institutional independence, when one branch of state power must not sit as a court, and on the understanding of the personal independence, when the pressure to the judge is not acceptable during the administration of justice. Only with the complexity of financial situation, there have also been highlighted the other elements of judge's independence principle, including financial security. Without this the Latvian legal system still has a few cases requiring the solution from the perspective of judge's independence principle.

The aim of this article is to give the reflection of development of the judge's independence principle's separate

elements through a historical perspective. Looking at the situations which are identified by an element of the judge's independence principle, it is possible to estimate the Latvian legal system on the whole and trends of understanding.

The research also points to the most urgent changes in the judges' professional field of employment law and offers its solutions.

The article uses historical, comparative and deductive research methods.

The role of the Latvian Constitution in ensuring the judge's independence principle

The renewal of the Latvian Republic's judiciary and the changeover of Soviet law, including the judiciary, began with the adoption of the *Declaration of the Latvian sovereignty* by Latvian SSR Supreme Council on the 28th of July, 1989. Latvian SSR Supreme Council in paragraph 2 of the declaration stated that the judiciary system in Latvia is carried out by the Latvian people.¹ In less than a year later, by paragraph 3 of the *Declaration of the Latvian independence restoration*, adopted by the Latvian SSR Supreme Council on the 4th of May, 1990, the activity of the Constitution of the Republic of Latvia, adopted on the 15th of February 15, 1922, was renewed throughout the entire Latvian territory. With the acceptance of the declaration the Constitution's of the Republic of Latvia Article 1 came into force, which states that Latvia is an independent, democratic republic. Paragraph 6 of the declaration stated that the only applicable rule of law is the one, which is not contrary to the Constitution's of the Republic of Latvia Article 1.²

The restoration of the Constitution's of the Republic of Latvia Article 1 is not only symbolic but also practical. An essential characteristic of a democratic state is a legal state. In turn the main element of a legal state is a division of powers and the resulting consistency - the judiciary's independence claim.

The democratic idea that the domination power comes from the people, is not a modern invention. This topic was already known in antiquity.³ In the course of time, the idea of representative democracy developed, because in the way of direct democracy is difficult to take effective actions (making decisions). Only a structural democracy of a legal state is also the freedom of democracy.⁴ The legal state in turn is a country where public bodies observe the law and rights and where fundamental rights are being implemented.⁵ Therefore, the Constitutional Court states that: "the concept of a democratic republic included in the Article 1 of the Constitution of the Republic of Latvia result that all state institutions have an obligation in their activities [...] to respect the legitimacy, the division of powers and to carry out mutual supervision, considering the public power subordination to law, i.e. the supreme command of the law and other principles of the

legal state, as well as the principle of proportionality and the principle of legitimate expectation".⁶ The principle of legality and the principle of division of powers is the basis of the existence of any legal state [...].⁷ The German Federal Constitutional Court has also recognized: "traditional judge's subordination to the law is a part of the principle of powers' division, which again is part of the principle of a legal state".⁸

In French Count's Charles Louis Montesquieu (Charles Louis de Montesquieu) book, released in 1749, in section "*De l'esprit des lois*" about England's constitution is stated: "There is not any freedom either, when the judge's powers are not separated from the legislative and executive powers. In this case, power over people's lives and freedom would be limitless, if the judicial power would be connected with the legislative power, as then the judge would be the legislator".⁹ Former state theory still maintains the familiar doctrine of Montesquieu about three national powers; almost the only amendment made by the later theory in the doctrine of Montesquieu is that – taking into consideration public power entity - do not talk anymore about the three state powers, but the three public powers' functions. These functions are: the legislative function, the jurisdictional function and the administrative executive function.¹⁰

Ensuring civil liberties what is decisive is, which organs are realizing the function.¹¹ The Latvian Constitutional Court emphasizes that "the principle of division of powers manifests itself in the division of powers into legislative, executive and judicial power, which are realized by independent and autonomous institutions. This principle guarantees the balance and mutual control and promotes moderation of power".¹²

In western democracies the division of powers is in a force as a principle, but it is not implemented in strict ideal-typical model. In general a judge's independence is strictly protected only from executive interference. The breaking of power-division schemes is not only happening in a way that one power is influencing another, as it is in parliamentary control, but also so that one power is fulfilling the other power's functions. The judiciary power with an interpretation of the law and gap filling in the law is taking part in correction or improvement of rights grounded in legal acts. Interpretation of the law and "open" development of the law may establish themselves as a permanent jurisdiction [the judges rights] so far so that it reaches the chance of actually carrying out the legal interpretation or other rule of law, from the principles about equality before the law and legal security immediately follows the link of legitimacy for once implanted practice of the interpretation or gap filling. So the judiciary power, despite disclaimers, is also inevitably operating in the field of

⁶ Latvian Constitutional Court Judgement No.04-07 (99) from 24 March 2000. *Latvijas Vēstnesis*, 29 March 2000, No.113/114

⁷ Latvian Constitutional Court Judgement No.04-03(98) from 10 June 1998. *Latvijas Vēstnesis*, 11 June 1998, No.172/173

⁸ BVerfGE 34, 269

⁹ Ipsen J. *Staatsrecht I (Staatsorganisationsrecht)*. 8. Aufl. Neuwied [u.a.]: Luchterhand, 1996, S.216

¹⁰ Dišlers K. *Latvijas valsts varas orgāni un viņu funkcijas (Latvian state power organs and their functions)*. Rīga: Courthouse Agency, 2004, p.25

¹¹ Ipsen J. *Staatsrecht I (Staatsorganisationsrecht)*. 8. Aufl. Neuwied [u.a.]: Luchterhand, 1996, S.218

¹² Latvian Constitutional Court Judgement No.2001-06-03 from 22 February 2002. *Latvijas Vēstnesis*, 26 February 2002, No.31

¹ *Latvijas PSR Augstākās Padomes un Valdības Ziņotājs (Rapporteur of the Latvian SSR Supreme Council and the Government)*, 1989, No.32, p.863.-864

² Archives of the Saeima, Archive Collection of the Supreme Council, 10th Description, file No.2932, p.42

³ Cipeliuss R. *Vispārējā mācība par valsti (General doctrine about the state)*. Rīga: AGB, 1998, p.97

⁴ *Ibidem*, p.99

⁵ Ipsen J. *Staatsrecht I (Staatsorganisationsrecht)*. 8. Aufl. Neuwied [u.a.]: Luchterhand, 1996, S.215

legislative functions.¹³ However, the court is not suitable for legal politically regulating considerations.¹⁴

In fact, Latvia and other countries are constantly in search of the best possible system of the power balance. The principle of division of powers is based on the popular aspiration for freedom, therefore searches for the balance of power system is the search for freedom.

The institutional independence

When you browse the debates of the past 20 years reflected in the Latvian press, the author finds that they are mostly related to only two of the elements of judicial independence - the judicial institutional independence and the judge's independence in justice. Although the understanding of judicial institutional independence and the judge's independence in justice in Latvia always relied on international standards in this area, however not always in practice they are implemented correctly.

Note that renewing the Constitution's of the Republic of Latvia Article's 1, regulatory activities, cardinal changes in public opinion did not happen. Perhaps that is why the Supreme Court judges at their first decision, after the renewal of the Constitution of the Republic of Latvia, made in general meeting on the 11th of March, 1991 referred to the UN resolution of December 13, 1985 Nr.40/146, where are proposed basic principles of judicial independence. The Supreme Court specially stressed the independence of judge as the subordination to the law during the trial and the obligation of anyone to treat the court with respect. It was also noted that the judge can not be a member of any political organization and can not combine positions, except scientific.

Are courts subordinated to the Ministry of Justice?

On the 23rd of August, 1994 the Cabinet of Ministers approved *the Statutes of the Ministry of Justice*¹⁵, which established that the Supreme Court, regional courts and district city courts are supervised by the Ministry.

The meeting of the Supreme Court judges on 31st of October, 1994 indicated that such a rule in part on the inclusion of the Supreme Court in the Ministry's of Justice supervision is contrary to the principle of courts' independence.¹⁶

The author does not consider the inclusion of such provision as a conscious desire of the executive power to subordinate the courts. In fact, since the renewal of Latvian independence and the establishment of Latvian Cabinet of Ministers, the issue of courts' administration has not been resolved. Thoughts on court administration and judicial institutional independence had all this time been as a "hot potato". Initially this was done by the Ministry of Justice. Later there was developed the concept of the Council of Justice, which was intended to establish a council where the majority of the judges would determine the judicial organization, development and would

organize the judicial self-government.¹⁷ In the Council's structure would also include the administration of the Courts dealing with administrative matters. However, the concept of the Council lastingly was not supported¹⁸; the content of it disappeared in debates, until the Cabinet of Ministers set up only the Court Administration.¹⁹ The district city courts' and regional courts' administrative organization was transferred to it. But the Supreme Court administration remained outside the tasks of the Court Administration. The Supreme Court administration is carried out by the Supreme Court itself.

In the discretion of the author it creates a dual situation, for example, if a judge goes on a business trip or uses the entitlement to leave. The district city judge and regional judge with a request for permission to go on a business trip or to go on holiday has to go to the executive power, but the Supreme Court judge, however, solve these issues interns – in the court itself. On the judge's activity organization viewpoint, it is not clear why one judge must settle his operational issues with the representatives of the executive power, but the other judges - with the judicial authorities.

The Council of Justice

The Council of Justice is a new governmental body. It was created in Latvia only in 2010 and started its work in the autumn 2010. Because of political compromises the Council of Justice is established as an advisory board, but its aims are certainly more wide-ranging - to participate in the court system policy and the development of strategy, as well as in the development of judicial work organization system. The Council of Justice is also granted the right to influence the judges' institutional issues, such as to determine a judge's place of service, to transfer a judge from one court level to another, etc.

In the discretion of the author the establishment of the Council of Justice process was accelerated by the Constitutional Court's decision in judges' pay case. The Constitutional Court stated that the principle of division of powers and the principle of judge's independence led to an obligation to listen to the judiciary bodies' represented views.²⁰ The court declared unlawful the managed wage reform, because the obligation of hearing was not observed. However, when the Council of Justice was established, the process of opinion hearing was formal, because Saeima did not observe the opinion of the Council of Justice²¹ in judge's wage reform case.

In the discretion of the author the Council of Justice during the first half of the year failed to show their character that would be expected from the justice system policy and strategy consultant's viewpoint. The previous activity is "dissolved" into small administrative and bureaucratic work, such as dealing with the internal procedural rules,

¹³ Cipeliuss R. *Vispārējā mācība par valsti* (General doctrine about the state). Riga: AGB, 1998, p.224

¹⁴ *Ibidem*, p.241

¹⁵ 23 August 1994 Cabinet Decision Nr.118 "On the Statutes of the Ministry of Justice". *Latvijas Vēstnesis*, 22 September 1994, No.111

¹⁶ Decision of the Plenum of the Supreme Court from 31 October 1994 No.5 "On the Latvian Ministry of Justice Statute Law improper recognition as part of the Latvian Republic of the Supreme Court's supervision". Not published

¹⁷ The draft law "On judicial system". On line paper: http://www.politika.lv/temas/politikas_process/4581/

¹⁸ Āboltiņa S. Tiesu iekārtas likumprojekta laiks nodot Saeimai (Judiciary draft law time to pass to the Parliament). *Latvijas Vēstnesis Jurista vārds*, 13 June 2006, No.23

¹⁹ Cabinet Order of 28 August 2003, No.574 "On the Concept of Court Administration". *Latvijas Vēstnesis*, 29 August 2003, No.118

²⁰ Article 24.4. of the Latvian Constitutional Court Judgement No.2009-11-01 from 18 January 2010. *Latvijas Vēstnesis*, 20 January 2010, No.10

²¹ Judicial Council Decision of 1 December 2010 No.18. On line paper: <http://www.at.gov.lv/files/docs/doc20101203201741.pdf>

judges' certificates and an approval of judges wearing robes arrangements. Simultaneously the Council has not even analyzed in functional perspective the judicial budget of 2011, its priorities, is has not deeply judged the activity of the Court Administration in 2010. Also, it has not earned the necessary authority in the eyes of the parliament. For example, in Saeima current discussions about the evaluation of judges' professional activity, the head of Saeima's Legal Affairs Committee expressed incomprehension why rules of the bill of judges' professional qualification evaluation should be coordinated with the Council of Justice.²²

One may agree with a specialist of the European Court of Human Rights J. Rudevskis' view that the Council's of Justice main defect is its rank²³ of constitutional state power body, but even the institutional place will not solve lack of personal charisma and internal power. This, however, depends on the inner freedom of society and on the inner freedom members of the Council of Justice (as a part of a society).

In the future, the Council of Justice should unite with the Court Administration, concluding the institutional reform of judicial administration. The Court Administration would lose its national regulatory authority's status, and would become a full judicial self-management executive body, but the Council of Justice would be decision-making body.

The independence adjudicating cases

Subordination to the legal act and the law

Article 83 of the Constitution of the Republic of Latvia provides that "*judges shall be independent and subject only to the legal acts*". That provision strengthens the judge's independence principle as an integral component of division of powers. Article 83 of the Constitution of the Republic of Latvia equally reinforces, and also limits the judge's subordination only to the legal acts. Firstly, Article 83 of the Constitution of the Republic of Latvia protects a judge from another form of influence, therefore, according to the principle of division of powers separates the judiciary power from the legislative and executive power. Secondly, the principle of subordination to law is a legal prerequisite for the restriction of independence's arbitrary use.²⁴ The constitutional principle included in the Article 83 of the Constitution of the Republic of Latvia means that a judge who is hearing the case shall not be subjected to any impact. Therefore, the obligation not to interfere in making a decision concerns not only the legislature and executive, but also the court itself and relevant officials of the judicial power.²⁵

The judge and the government is subject to the law. However, the legal act is not the only source of law and the legal act is not the same as the law. Therefore, the discretion of the Constitutional Court, subordination to the law means that judges in the process of applying the law should seek to

reach a fair and useful result, which would correspond to the legal system on the whole.²⁶ The adopter of the law can do it if he observes not only a legal act, but also the law. Similar to the subordination to the legal act, subordination to the law of Latvian legal system outcomes from the principle of a legal state, in particular - the principle of division of powers. These constitutional principles are not directly indicated in the Constitution of the Republic of Latvia, but these principles outcome from Article 1 of the Constitution of the Republic of Latvia, which states that Latvia is an independent democratic republic. It is also declared in the Constitutional Court's judicature.²⁷ So Latvian judge is subject to both the legal act and the law.

Subordination to the legal act means that judges adjudicating cases are required to apply the binding legal act, and he is not entitled to repeal these provisions (the principle of the law mastership). At the same time, subordination to the legal act means that a judge is not subordinated to anything other than the legal act. But the subordination only to the legal act would be an overstatement of the legal act's construction. In particular, it appears if the judge faces an obviously unjust legal act. Therefore, the judge must be subordinated to the law.

The concept of „subordination to the law“ is expressing the idea of justice, which cannot be provided by a „subordination to the legal acts“.²⁸ Therefore, only the simultaneous subordination to the legal act and the law binds the adopter of the law to observe the requirements of fairness, the over-positive law. Subordination to the law (alongside to the legal act) means the recognition of the custom law and the principles which is the legal system based on. Thus, the principle of justice (rule of law) or the principle of the law mastership is carried out, which is the central principle of a legal state and generally provides that all public power is linked with the law, and it can handle within the limits set by the law.

However, as the term „legal act“, the term „law“ has many meanings. For example, the Roman-Germanic legal system the priority rights to create the law belong to the legislature, however, as previously seen, the legislature is often in the role of „driving into“ body, because the society creates new forms of relationships that need to be regularized. Similarly, the language of the legal acts is necessary to understand and use for a particular occasion. Here appears the great significance of the judicature. Argumentative and authoritative binding judicial decisions inevitably have an impact on the application of the rule of law in the future. Thus, these court decisions become „unofficial attendants“ of the law. Practicing lawyers in similar cases love to refer to such decisions in order to reinforce an accuracy of his view. Such court decisions become a part of the law.²⁹ However, the legal doctrine recognizes that the subordination to the law does not mean

²² 10.Saeimas Legal Commission of Judicial Policy Subcommittee, 5 April 2011, minutes of the meeting No.18. Not published

²³ Rudevskis J. Dažas piezīmes un ierosinājumi par Tieslietu padomi (Some comments and suggestions on the Judicial Council). *Latvijas Vēstnesis Jurista vārds*, 26 January 2010, No.4

²⁴ Stern K. *Das Staatsrecht der Bundesrepublik Deutschland. Bd. II "Staatsorgane, Staatsfunktionen, Finanz- und Haushaltsverfassung, Notstandsverfassung"*. München: Beck, 1980, S.911

²⁵ Article 2.4. of the Latvian Constitutional Court Judgement No.2002-06-01 from 4 February 2003. *Latvijas Vēstnesis*. 5 February 2003, No.19

²⁶ Ibidem

²⁷ Latvian Constitutional Court Judgement No.04-03(99) from 9 July 1999. *Latvijas Vēstnesis*, 14 July 1999, No. 229; Latvian Constitutional Court Judgement No.03-05(99) from 1 October 1999. *Latvijas Vēstnesis*, 5 October 1999, No. 325/327; Latvian Constitutional Court Judgement No.2004-04-01 from 5 November 2004. *Latvijas Vēstnesis*, 9 November 2004, No. 177

²⁸ Evaluating the experience of the National Socialist and the Soviet historical period

²⁹ Levits E. Par tiesiskās vienlīdzības principu (On the principle of legal equality). *Latvijas Vēstnesis*, 8 May 2003. No.68

the subordination to the rights of judges.³⁰ The Court under certain circumstances may enter its practices change, so the concept of „legal act and law“ does not imply the rights of judges. Here should be evaluated the fact, whether the rights of judges are not developed into custom law, thus becoming a full part of the law as well as in regulatory sense.

The binding nature of the decisions of the general meeting of Supreme Court judges

Up to 2003 the leading role in the field of uniform practices, including statutory interpretation, was awarded to the decisions of Plenum of Supreme Court of the Republic of Latvia. It was detected by the binding effect of decisions of Plenum, because the Law *On Judicial Power* in Article 49 in second paragraph provided that the the Plenum of Supreme Court is competent to adopt binding interpretations of laws.

The roots of the competence of Plenum of the Supreme Court to interpret legal provisions shall be found in the socialist legal system, because theses Plenum decisions as the law interpreting acts was put in during the time of the USSR. All issues - both strategic and tactical - within its jurisdiction, USSR dealt within the level of Party committee or the issues were dealt by that committee leaders alone. The next filter was the Ministry, committee and the Prosecutor's Office, furthermore the Prosecutor's Office was directly required to supervise the judicial activities. In cases when the regional courts notwithstanding tried to withstand that pressure, the necessary adjustments were made the USSR Supreme Court.³¹

Due to the fact that Latvian Soviet Socialistic Republics was part of a united Soviet legal system, in accordance with the Law of June 12, 1981 *On the Latvian SSR judiciary*, the Plenum of Latvian SSR Supreme Court leading explanations were binding to the courts, in adjudicating similar cases, as well as to other institutions and officials, which were applying the law, and on which the explanation was referring.

While the continental European law does not recognize the similar institute of plenum decisions, by adopting the Law on Judicial Powers, the Latvian Republic preserved the rights of Plenum of the Supreme Court to issue bindings on the courts interpretations of law, strengthening the competence of the Plenum of the Law Article 49 of second paragraph. At the moment of adopting the Law on Judicial Powers a strong soviet comprehension on the law existed.

Long-standing Soviet understanding of the matter was adjourned by the Constitutional Court, which provided that such rights to give the binding explanations are inadequate of the The Constitution of the Republic of Latvia Article 83. The court found that the judge's independence principle provides that the judge shall be subject to the legal acts and to the law. This means that a judge shall not be subject to anything other, then to the legal acts and to the law.

The Constitutional Court held that a judge who is hearing the case shall not be subjected to any influence. Therefore, the obligation not to interfere into decision-making applies not only to the legislature and executive, but also to their own

courts and the officials realizing the judicial power.³²

However, in the author's opinion, another legal provision that affect the judge's independence has occurred in the law. The possibility was incorporated into the law that the Senate as a cassation instance and the Panel as the appellate instance may jointly decide on the legal interpretation issues. First, the most striking is the cassation and appellate instance joint decision possibility in any legal issues. But secondly, even though the law does not impose such a joint interpretative decision with binding nature, however, according to the hierarchical ranking of instances, it appears that decisions are in fact binding, because they are already following the general meeting sense. In any case, following the decisions of general meeting making so overwhelming pressure on the appellate court judge, who would have to justify not only the resignation of the highest court instance judicature, but also have to justify the resignation of his colleagues made joint agreement.

Financial security

It is no secret that Latvia has experienced a severe financial crisis. It couldn't affect also the judges' wages. Since March 9, 2006, the judge wage principle was in force that the monthly salary is calculated on the basis of national average wage for the previous year, which is indexed by a factor of 4.5. By the law in 2008 and in 2009 the legislature had been frozen the judges salary increases, and finally - also reduced the wage. Similarly, the law also stipulated that the judge's salary may not exceed the salary of the Prime Minister.

By the rulings of the Constitutional Court in three cases it was confirmed that the judge's salary is the element of the independence of the judge's principle, in particular, the judge's financial security.

The Constitutional Court has generally held that the Constitution Article 83 prohibits the reduction of judges wages during their term. The Constitutional Court in the judgement of 18 January 2010 declared and in the judgement of June 22, 2010 reiterated that the remuneration arrangements set in Latvian in 2006 does not allow a reduction of the judges' wages in the fair value. It provides the judge the financial security of the magnitude required to protect the independence of judges. The system complies with the balance of the branches of power and ensures that the judiciary do not have to discuss with the executive or legislative power of the judges' wages. The system is also flexible - it provides a judge's salary scale adjustment to the average wage in the country.³³ The Constitutional Court stated that the legislature has the authority to establish a new judicial payment system, if it pursues a legitimate objectives, serious causes and reasonable grounds to the new system. By changing the judges' payment system, the legislature must not violate constitutional principles.³⁴ It is also shall be observed that such a reform is carried out jointly to all existing public service officials. The Court held that the judge's salary is not only salary but also social security.

Unfortunately, the legislature failed to comply with the

³⁰ Stern K. *Das Staatsrecht der Bundesrepublik Deutschland*. Band I. Grundbegriffe und Grundlagen des Staatsrechts, Strukturprinzipien der Verfassung. 2. Aufl., München: Beck, 1984, p.800

³¹ Lepse A. *On the separation of power and independence of the judiciary*. *Latvijas Vēstnesis*, 5 January 1996, No.1

³² Latvian Constitutional Court Judgement No.2002-06-01 from 4 February 2003. *Latvijas Vēstnesis*. 5 February 2003, No.19

³³ Article 19.3. of the Latvian Constitutional Court Judgement No.2010-39-01. *Latvijas Vēstnesis*, 28 June 2010, No.100

³⁴ Article 11.5. of the Latvian Constitutional Court Judgement No.2009-11-01 from 18 January 2010. *Latvijas Vēstnesis*, 20 January 2010, No.10

Constitutional Court judgement, and instead of getting into force a previously determined formula for calculating the salaries of judges, within one month made an urgent reform of the remuneration of judges. With these laws in 2011 Latvia has been introduced to a new system of remuneration of judges. It provides that judges shall be included in one category of civil officials and the monthly wages are calculated in respect with the salaries of officials. Currently, the mentioned wage reform again is challenged in the Constitutional Court. It is expected that the court will have to re-address the question on whether the legislature has complied with the independence of judges principles and whether the wage reform is based enough. At the same time the Constitutional Court will have to answer to an awkward question: “whether the new pay reform in the country has complied with the previous constitutional court rulings?”. During the wage reform exactly that caused the most complaints of the judges, because judges could not accept that the court judgement may not be enforced, in particular, by the state itself.

In the mentioned case, as the sub topics but equally important are the aspects of the additional payments and and bonus.

Bonuses to the judges

In Latvia there is a long-term practice and provision which permits a judge to reward for the “the investment into work” and for “quality work”. However, in the author’s opinion, such procedures and practices are incompatible with the principle of independence of the judge. International instruments repeatedly stated that the judge’s remuneration must not depend on the judge’s performance. The judge duty is to dispense a particular case. Judging, the judge must be free of any influence, or as it is specified by the law – “motivation”, therefore judge’s duties performance can not be rewarded. The adequate planning of the judges load is a duty of the presiding judge, therefore, there should not appear the situation that one judge has been severely under load.

Interestingly, the law now delegate the right to determine the bonus cases to the Council of Justice. The Council of Justice is now faced with the dual objective: on the one hand judges bonus arrangements are challenged by the Constitutional Court, and expressed its opposition in the Council of Justice, however, on the other hand the Council of Justice is continuing to examine the bonus arrangements, referring that the law empowers the Council of Justice to decide on these matters.

In addition more significant, that the Constitutional Court in the Judgement of 18 January 2010, in the paragraph 11 stated that in a democracy state there should not be permitted that the judges and execute power determine the judges wages. Since the Council of Justice shall consist of majority of the judges, in the author’s opinion, the Council of Justice should not make the decisions in this regard.

Additional payments

A similar situation is also an additional payments issue. The law defined that the judge shall receive an additional payment not more than in an amount of 20 per cent of the monthly salary determined for him or her, if she or he performs other duties in addition to the duties specified in the position description. The amount of an additional payment, the

substantiation for its determination, as well as a period of time for which the additional payment is to be determined, shall be regulated by a competent official (authority) of the State or local government authority. That means that the additional payments are imposed directly by the court manager. The law also provides that the additional paymaster for the presiding judge of the court defines the Minister of Justice. The Law also provides that a judge receives an addition payment also for the authorization of the operational activities.

In the authors opinion such provisions are incompatible with the principle of independence of the judge, because the court’s or the executive’s delegation to determine the additional payment openly violates the principle of judge’s financial security, the principle of the separation of powers. This is admitted also by jurisdiction of German Federal Constitutional Court - Judge wage growth should not depend on executive discretion.³⁵

Similarly, it should be noted that the judge and the prosecutor can not get an additional payment for replacement or for adjudication of court cases (also – approval of operational activities). These tasks include his basic official duties - adjudge, therefore, for example, replacing the duties of absent judge, or attesting criminal proceedings, he shall carry out the same duties.

Privileges of the position

Ongoing discussions in Latvia is awaiting the issue on judges’ administrative immunity. Currently, the law protects a judge from administrative violation proceedings, because it is defined, that judge may not be subject to administrative liability. In the case of administrative violation the judge may be subject to disciplinary liability. Administrative immunity is based on the Soviet legacy, when it was considered that the administrative punishment of the judge would affect its independence.

In the authors opinion such understanding of the principle of independence of the judge has been exaggerated. In everyday life the judge is not a special member of the public, he must, like any other person, comply with the rules of public life, for example, to comply with traffic rules. Position operating provisions are also the part of the judge’s public life, for example, the judge may not behave in inappropriate way at public. However, administrative responsibility and official professional responsibility are not mutually exclusive. Therefore, there is no reason to perceive any administrative violations as official violations. Officials professional liability should be incurred only in the most important, directly to the judge’s professional misconduct.

However, the judges’ opinion in this respect, there are dual. During the survey among the administrative judges, the author found out that the judges divided into proportionately equal parts: one part considers that the administrative immunity shall be preserved, but the other part states that the time has come to withdraw such provision. The reasons for preserving the immunity are prosaically, for example, that privilege protects members of the parliament and substantial equality is accessed, or such immunity protects against prominent pecuniary punishment.

Therefore also in this aspect of the judge’s independence principle each judge’s free point of view is expressed, as far

³⁵ BVerfGE 12,81

as the judge is willing to give up a judge over-balance power in favour of more proportionate.

Conclusions

1. The principle of the separation of powers is based on the society's aspiration for freedom, therefore searches for the balance of power system is the search for the ideal model of use of freedom.

2. The Constitution of the Republic of Latvia article 83 is distinct among the constitutions of other countries, because in the law text it does not provide that the judge shall be subject to the law. This is explained by the fact that the provision is not amended after the 2nd World War, and that the judges shall be subject to the law may be fetched in the The Constitution of the Republic of Latvia article 1 in the concept of "democracy".

3. By the renewal of the normatively ruling of the Constitution of the Republic of Latvia article 1, radical changes in public opinion did not happen. The opinion of the public and opinion of the the judges as part of the public are still substantially affected by the passage of time of the idea of heritage and of practical experience.

4. Previous discussion in Latvia on principle of judge independence basically were related to only two of the elements of judicial independence - the independence of the judiciary and the judge independence in court hearing. Only in recent years the aspect on the judges financial security was highlighted. Judges have begun to recognize the other elements of judge independence principle.

5. The Council of Justice that had been created on 2010, during the first half year failed to show their character, what would be expected from the justice system from the policy and strategy consultant's point of view. The current operation is "dissolved" into small administrative and bureaucratic work. The Court Administration shall incorporate to the Judicial Council, to transfer the court administration function to the courts.

6. From the Law *On Judicial Power* shall be excluded the provision, that the Senate as a cassation instance and the Panel as the appellate instance may jointly decide on the legal interpretation issues. A even though the law does not impose such a joint interpretative decision with binding nature, however, according to the hierarchical ranking of instances, it appears that decisions are in fact binding.

7. From the law that regulates the judge wages shall be excluded the provision on the implementing the bonus system. Also there shall be excluded the provisions on the rights to the extra payment for the same duty that already is in judges range of responsibilities. The payment of administrative work and the additional payment shall be determined by the law.

8. The judges' administrative immunity shall to be terminated because it is an exaggeration o the judge's independence principle. But the judges itself are reluctant to refuse of such freedom.

9. The conclusion of the above thesis, the key elements can be identified, that an ideal division power model depends on the power function executing person's internal awareness of freedom and the ability to self-limit their power reasonably.

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