

LEGAL NORMS WITH IMMEDIATE EFFECT: UNDERSTANDING AND ADMISSIBILITY IN THE STATE OF LAW

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Abstract

The article analyses the understanding on the rights of a legislator to pass legal norms with immediate effect. Although, up to now legal doctrine has viewed inadmissibility of retroactive legal norms more largely, in practice there are a lot more legal norms with immediate effect passed. Therefore the article firstly assesses features according to which legal norms related to past are passed with an immediate effect. Similarly, in light of the general view of case-law and legal doctrine that *prima facie* consider legal norms with immediate effect admissible and lawful, the article reveals the historical origin and development of this opinion. In addition, as the above assumption on admissibility of the legal norms with immediate effect is not absolute and is exposed to assessment of legitimate expectations of addressees of legal norms, a significant attention has been drawn to methodology of the admissibility assessment. Within the framework of analysis of methodology, the article views both different methods applicable for assessment of public interest and addressees of legal norms in cases of immediate effect as well as various circumstances that might be the basis to acknowledge legal norms with immediate effect as illegitimate.

Keywords: Legal norms with immediate effect, admissibility of legal norms with immediate effect, principle of legitimate expectations, principle of proportionality, transitional period for passing legal norms with immediate effect

Introduction

Traditionally, only issues, that occur or are realized after the legal norms become effective, are subjected to binding nature of legal norms.²

² Heukels T. Intertemporales Gemeinschaftsrecht. Rückwirkung, Sofortwirkung und Rechtsschutz in der Rechtsprechung des Gerichtshofes der Europäischen Gemeinschaften. Baden-Baden: Nomos Verlagsgesellschaft, 1990, p. 42–43.

Such effect of legal norms can be recognized, for example, if increased or new taxes are applied to transactions, which are realized after the legal norms become effective. Similarly in the future binding nature would exist if, for example, the new regulation would impact contractual relations planned to establish in the future or stricter construction requirements would apply to buildings that will be built in future. However, in practice there are situations when for purposes of the society interest it is necessary to direct the binding nature of legal norms to the past, thereby with retroactive or immediate effect impacting the issues that have occurred or might occur.

In contrast to the comparatively large analysis of inadmissibility of retroactive effect³, researchers have assessed the legal situations that are related to legal norms with immediate effect less.⁴ Namely, admissibility of legal norms passed with immediate effect has been viewed mainly in the court rulings and in monographs, assessing it within the analysis of legal norms with retroactive effects.⁵ Consequently, such situation at first causes practical difficulties to legislator and furthermore to other appliers of legal norms to assess, whether and in which cases legal norms with immediate effect are admissible from the point of view of time. Moreover, unlike the conception of general inadmissibility of retroactivity in the state of law, there is a presumption that legal norms with immediate effect are generally considered legitimate.⁶ Therefore separation of these legal norms establishes

³ Onževs M. Retroactivity of legal norms and its restriction in a state of law. Sciences of Law for Future, 2. Journal of the University of Latvia, No. 4, 2013.

⁴ Legal doctrine also expresses the opinion that assessment of legitimacy of the legal norms passed with immediate effect is one of the basic problems of correlation between law and effect in time. Heukels T. Die Rückwirkungsjudikatur des EuGH: Grundlagen und Tendenzen. Vortrag vor dem Europainstitut der Universität des Saarlandes Saarbrücken, den 15. Januar, 1992. Europa-Institut Universität des Saarlandes, 1992, p. 42.

⁵ See, for example, Berger T. Zulässigkeitsgrenzen der Rückwirkung von Gesetzen. Eine kritische Analyse der Rechtsprechung des Bundesverfassungsgerichts und des Gerichtshofs der Europäischen Gemeinschaften. Frankfurt am Main: Europäischer Verlag der Wissenschaften, 2002.

⁶ „Eine unechte Rückwirkung ist verfassungsrechtlich grundsätzlich zulässig. Sie liegt vor, wenn eine Norm auf gegenwärtige, noch nicht abgeschlossene Sachverhalte und Rechtbeziehungen für die Zukunft einwirkt und damit zugleich die betroffene Rechtspositionen nachträglich entwertet.“ (Translation: “Quasi retroactive effect (immediate effect – M.O.) fundamentally is considered legitimate. It is recognizable when legal norm affects the current not yet completed legal relations and legal relations with regards to future and therefore adversely change the legal position affected.”) Ruling No. 1 BvR 3076/08 of 18 February 2009 by the First Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 122.Band. Tübingen: Mohr Siebeck, 2009, p. 374–397 (p. 394). Götz V. Bundesverfassungsgericht und Vertrauensschutz. Bundesverfassungsgericht und Grundgesetz. Festgabe aus Anlaß des 25jährigen Bestehens

a fundamental basis for assessment of admissibility of legal norms related to the past from the point of view of time.

In light of the above, the article provides an in-depth understanding of identifying legal norms with immediate effect along with assessment of admissibility of such legal norms in the state of law. The first part of the article views the identification and preconditions of legal norms with immediate effect as well as historical concept of separation of retroactive and immediate effect as the basis for restriction of legal norms with immediate effect. The second part of the article analyses methodological aspects to assess admissibility of legal norms with immediate effect. The final part of the article reveals conditions that might serve as the basis to recognize legal norms with immediate effect as illegitimate.

The main legal sources on the basis of which the analysis was carried out are the conclusions of the Continental Europe case-law and the concepts of the legal doctrine. Besides, as the main source of law in assessing the legitimacy of temporal restrictions of the legal norms is the case-law⁷, an in-depth analysis of understanding and concepts developed within the German and Latvian case-law has been provided. It is of importance to emphasize that the German case-law is analysed as the main source of law of the Continental Europe to comprehend the restrictions of legal norms due to their temporal impact on legal relations occurred or commenced in the past. Analysis of the conclusions and rulings of the Latvian law is related to the author's goal to apply the conclusions developed as a result of the article to improve the Latvian legal system.

1. Conceptual understanding of legal norms passed with immediate effect

1.1. Identification of legal norms passed with immediate effect

In line with the legal doctrine⁸ and conception developed within the case-law⁹, legal norms are considered to be passed with immediate effect¹⁰ if they are applied to issues commenced in the past but continuing after the new regulation has come into effect. It has to be identified that legal regulation applies to issues which realization was commenced in the past, however, the legal regulation impacts those issues only in respect to the future. The above aspect – attributing the binding nature of a legal norm to

des Bundesverfassungsgerichts. Zweiter Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1976, p. 421–453.

⁷ Schmidt W. „Vertrauensschutz“ im öffentlichen Recht. Randpositionen des Eigentums im spätbürgerlichen Rechtsstaat. Juristische Schulung, September 1973, Heft 9, p. 529–537.

the future not past is the main feature that differ those from the legal norms with retroactive effect.¹¹

In light of the above, immediate effect can be often established both in regulating the public legal relations and passing amendments in the private sphere of law. For example, amendments to legal norms with an immediate effect may impact actions, performed within the taxation period, or change already assigned social benefits within the period of time after the legal norms have come into effect. Similarly, the immediate effect may implement changes in the private sphere of law. Therefore, modifying provisions of concluded loan agreements after the legal norm coming into effect, or adversely impacting the legal situation of lenders towards the established but not yet collected mortgages, will be passed with immediate effect. Illustrating legal norms passed with immediate effect, it should be noted that, for example, in 2009 in the German legal system there were amendments implemented in the insurance sphere applying the amendments also to insurance contracts concluded before.¹² As it was indicated in the annotation to the legal regulation, assigning additional rights to the already insured persons and providing unfavourable regulations to the insurance merchants would impact the legal relations with the immediate effect.¹³

⁸ Götz V. Bundesverfassungsgericht und Vertrauensschutz. Bundesverfassungsgericht und Grundgesetz. Festgabe aus Anlaß des 25jährigen Bestehens des Bundesverfassungsgerichts. Zweiter Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1976, p. 421–453.

⁹ Ruling No. 2 BvR 4/59 of 31 May 1960 by the Second Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 11.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1961, p. 139–149.

¹⁰ The term “immediate effect” is replaced also with other terms. For example, initially in the German law “immediate effect” was called “quasi retroactive effect” (in German – *unechte Rückwirkung*). Onževs M. Par neīsta atpakaļejoša spēka izpratni Latvijas tiesu nolēmumos. Jurista Vārds, 26 March 2013, No. 12 (763). Later on, a term that can be used concurrently was implemented within the case-law: “past attachment of legal norms” (in German - *tatbestandliche Rückanknüpfung*). Ruling No. 23, 2 BvR 475/78 of 22 March 1983 by the Second Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 63.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1983, p. 343–380.

¹¹ Onževs M. Retroactivity of legal norms and its restriction in a state of law. Sciences of Law for Future, 2. Journal of the University of Latvia, No. 4, 2013.

¹² Neuhaus K.J., Kloth A., Köther L. Neue Frist, alte Verträge – Wann ist ein Altvertrag mit mehrjähriger Laufzeit kündbar. *Zeitschrift für Versicherungswesen*, 15.03.2009., p. 180–183.

¹³ Annotation of 20 December 2006 No. 16/3945 to the law On reforming the insurance contracts (“Entwurf eines Gesetzes zur Reform des Versicherungsvertragsrechts”). Available: <http://dip21.bundestag.de/dip21/btd/16/039/1603945.pdf> [accessed on 10 April 2013]

Not always it is clear to legislator itself, whether legal norms related to legal relations realized or commenced in the past have been passed with immediate or retroactive effect. Therefore sometimes due to the fear to pass legal norms with retroactive effect, legislator may refuse to implement amendments to legal regulation that actually may be assigned as immediate effect. It should be noted that legislator of the Republic of Latvia (hereinafter – the Saeima) is currently facing a significant challenge as it recently has passed amendments to the Civil Law on restriction of contractual penalty that have not come into effect yet.¹⁴ The goal of the amendments is to protect immediately the debtors of the existing legal relations, therefore it would be logical to apply restrictions of the amount of contractual penalty not only as regards the contracts to be concluded in the future but also legal relations the realization of which was commenced in the past – contract already concluded. However, as both the society and part of lawyers have an unreasonable opinion that attributing the amendments to contracts already concluded would mean the legal norms have been passed with a retroactive effect, it is planned to pass transitional provisions until the amendments come into effect. Consequently, new regulation of contractual penalty could be passed with a further effect only as regards the contracts concluded in the future.

It shall be noted that due to similar arguments amendments to the Civil Procedure Law of the Republic of Latvia were refused previously. Namely, in light of the existing problems in the sphere of settlement of payments for public utilities, amendments to legal regulation with immediate effect were proposed implementing a primary collection of debts for public utilities at the real estate secured by a mortgage. However, on basis of arguments regarding protection of interests of mortgage creditors¹⁵ and considering risk of potential litigation at constitutional court due to

¹⁴ Amendments to the Civil Law of 20 June 2013. Latvijas Vēstnesis, 4 July 2013, No. 128 (4934) (come into effect on 01.01.2014).

¹⁵ “The planned amendments apply to procedural legal norms the amendments to which have an immediate effect. Although the amendments do not directly relate to liabilities between the lender and borrower (the main interest of whom is, on the one hand, to receive the loan, but, on the other hand – to receive repayment of the loan within the prescribed terms) as those relate to issues related to directing of collection to real estate, creditor’s interests to receive the claim from the collateral are impacted.” Report on first impact assessment of the draft law “Amendments to the Civil Procedure Law” (annotation).

Available:

<http://titania.saeima.lv/LIVS10/SaeimaLIVS10.nsf/0/7264CFBB80090237C225783E00314570?OpenDocument#b> [accessed on 10 August 2013]

retroactive effect¹⁶, Saeima without a convincing argumentation refused the initial implementation of amendments.

According to the above, it should be taken into account that identification of degree of effect of a certain legal norm – whether it is passed with retroactive or immediate effect – is an important condition to assess it from the point of view of the time. In other words, passing legal norms related to the past, legislator should comprehend and assess to what extent the planned amendments to the legal regulation influence the legal relations established in the past.

1.2. Historical development of admissibility of legal norms with immediate effect

As it was mentioned before, one of the main reasons to identify legal norms with immediate effect is the understanding of their *prima facie* legitimacy. Although legal norms passed with immediate effect are related to the past, they are, however, considered legitimate. Therefore, further on establishment and historical development of this concept has been viewed.

Since the Ancient Rome, legal norms related to past dimension were divided by intensity of their effect.¹⁷ However, until the second half of the 20th century, legal norms related to the past were separated not to recognize whether legislator has violated its authority to create legal norms but to interpret the will of legislator¹⁸. Therefore legal norms were not separated more precisely – those that have been passed with retroactive and those with the immediate effect. On the contrary - on the basis of the principle on “non-retroactivity” of legal norms (German - *Nicht-Rückwirkung*¹⁹) the following separation of legal norms was made: legal norms the binding nature of which on the one hand impacts the legal relations in the past, on the other hand – the legal relations occurred after passing the legal norms.²⁰ Consequently all

¹⁶ During the review of amendments to the Civil Procedure Law the head of the Legal Commission of the Saeima Ilma Čepāne has noted: “There is a saying: The road to hell is paved with good intentions. I would paraphrase it and say: “I am afraid that we are paving road with good intentions to the Constitutional Court.” 17.03.2011. Transcript of the sitting of the 10th Saeima. Available: <http://www.saeima.lv/lv/transcripts/view/49> [accessed on 10 August 2013]

¹⁷ Vonkilch A. Das Intertemporale Privatrecht. Übergangsfragen bei Gesetzes- und Rechtsprechungsänderungen im Privatrecht. Wien: Springer Verlag, 1999, p. 15–17.

¹⁸ See: Heukels T. Intertemporales Gemeinschaftsrecht. Rückwirkung, Sofortwirkung und Rechtsschutz in der Rechtsprechung des Gerichtshofes der Europäischen Gemeinschaften. Baden-Baden: Nomos Verlagsgesellschaft, 1990, S. 50, Hess B. Intertemporales Privatrecht. Tübingen: Mohr Siebeck, 1998, p. 13.

¹⁹ Heukels T. Intertemporales Gemeinschaftsrecht. Rückwirkung, Sofortwirkung und Rechtsschutz in der Rechtsprechung des Gerichtshofes der Europäischen Gemeinschaften. Baden-Baden: Nomos Verlagsgesellschaft, 1990, p. 50.

²⁰ Ibid.

legal norms with any relation to regulation of issues realized in past – both as regards the legal relations already realized and only related to past - were altogether named with a general term “retroactive effect”.²¹

This relatively superficial concept of differentiation between legal norms by their temporal effect changed only after World War II, when a different understanding of necessity to identify retroactive effect developed in the Continental Europe as basis to restrict the legislator's actions. Namely, analysis of borders of temporal effects was not anymore related to the work of applicators of legal norms but with the assessment of legitimacy of legal norms passed by legislator. The legal doctrine emphasizes that control of legislator's work for purposes of restricting retroactive effect was particularly implemented in Germany, therefore establishing control mechanisms to preventively avert the unfair laws implemented during the National Socialist regime.²²

Due to necessity to recognize whether legislator has not interfered in the past, at first legal norms with retroactive effect were separated as the most intensive degree of effect to the legal relations realized in the past. Understanding of legitimacy of such legal norms passed with immediate effect has formed assessing not admissibility of legal norms passed with immediate effect but as a counterargument to legal norms passed with retroactive effect. Moreover – legal norms passed with immediate effect initially were considered a “by-product” (in German – *Abfallprodukt*) to identify retroactivity.²³ Namely, the key goal assessing legitimacy of legal norms related to past dimension, were to protect addressees of law from legal norms passed with retroactive effect. Whereas in other circumstances level of protection of addressees of legal norms was not considered important to implement special protection against legislator's interference with the past dimension²⁴ and thereby ensure protection of legitimate expectations.

²¹ Maurer H. Kontinuitätsgewähr und Vertrauensschutz. Ins: Isensee J., Kirchhof P. Handbuch des Staatsrechts, Band IV. Heidelberg: C.F.Müller Verlag, 2006, p. 404. Krons M. Study of Intertemporal law, Article 3 of the Civil Law. Tieslietu Ministrijas Vēstnesis, 1938, No.1. p. 83-115. It is interesting to note that, for example, in the Anglo-Saxon law there is uncertainty related to terminology, namely, in which cases one can use the terms used in the Continental European law referring to retroactive and immediate binding nature: “retroactivity” and “retrospectivity”. Juratowitch B. Retroactivity and the Common Law. Portland: Hart Publishing, 2008, p.7–10.

²² Götz V. Bundesverfassungsgericht und Vertrauensschutz. Bundesverfassungsgericht und Grundgesetz. Festgabe aus Anlaß des 25jährigen Bestehens des Bundesverfassungsgerichts. Zweiter Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1976, p. 421–453.

²³ Pieroth B. Rückwirkung und Übergangsrecht Verfassungsrechtliche Massstäbe für intertemporale Gesetzgebung. Berlin: Duncker&Humblot, 1981, p. 60.

²⁴ Berger T. Zulässigkeitsgrenzen der Rückwirkung von Gesetzen. Eine kritische Analyse der Rechtsprechung des Bundesverfassungsgerichts und des Gerichtshofs der Europäischen Gemeinschaften. Frankfurt am Main: Europäischer Verlag der Wissenschaften, 2002, p. 51.

Regardless of comparatively dogmatic attitude towards admissibility of legal relations realized or commenced, in a short period of time after separating retroactive and immediate effect gradually the understanding of protection of addressees of legal norms, if immediate effect has been recognized, was improved. For example, although, the case-law believes that without recognizing retroactive effect, legal norms from the point of view of time are considered legitimate²⁵, the understanding was justified by assessment of violation of interests of addressees of legal norms.²⁶ At the same time it should be noted that assessment of legitimacy of legal norms passed with immediate effect was performed not in line with the contemporary understanding but related only to subjective assessment of addressees of legal norms as regards reliance upon the changed legal regulation. Namely, assessing whether amendments to legal norms with immediate effect have been legitimate, it was important to clarify whether addressees of legal norms could take into consideration changes in regulation or during commencement of the operations anticipate the possible changes in the legal regulation.²⁷ It was not, however, clarified how significant and urgent the amendments to protect the public interest are, opposing the respective amendments to confidence of addressees of legal norms that the legal norms shall be retained.

Along with the initial understanding, based on which legal norms were only assessed from the point of view of addressees of legal norms, those legal norms passed with immediate effect were assessed from the point of view of time taking into account proportionality between interests of

²⁵ Ruling No. 2 BvR 17/69 of 23 March 1971 by the Second Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 30.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1971, p. 392–406 (p. 402). Muckel S. Kriterien des verfassungsrechtlichen Vertrauensschutzes bei Gesetzesänderungen. Berlin: Duncer & Humblot, 1989, p. 68.

²⁶ „Der Bürger kann angesichts der Erfordernisse der öffentlichen Finanzwirtschaft nicht darauf vertrauen können, daß der zu Beginn eines Veranlagungszeitraums geltende Steuertarif bis zu dessen Ende unverändert bleibt. Wohl aber muß er darauf vertrauen können, daß sich eine Erhöhung des Steuertarifs während des Veranlagungszeitraums in maßvollen Grenzen hält.“ (Translation: “Due to provision of the public financial situation, inhabitants are not allowed to believe that rates established in the beginning of the taxation period will remain the same until the end of the taxation period. At the same time, they may trust that, when increasing tax rates, proportionality shall be observed.”) Ruling No. 2 BvR 1/60 of 19 December 1961 by the Second Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 13.Band. Tübingen: Mohr Siebeck, 1963 p. 274–278 (p. 278).

²⁷ Ruling No. 1 BvI 22/57 of 11 October 1962 by the First Senate of the Constitutional Court of Germany. Entscheidungen des Bundesverfassungsgerichts, 14.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1963, p. 288–306 (297–298).

addressees of legal norms and public interest. To conclude, whether legislator, interfering with the past dimension with immediate effect, has acted illegally, violation of legitimate expectations of addressees of legal norms shall be considered, opposing it to the general benefit (in German - *das Wohl der Allgemeinheit*)²⁸ of the legal regulation or the legitimate goal.²⁹ Therefore, the extent of violation of interest of addressees of legal norms and the interest of legislator to interfere with the past dimension became the obligatory are preconditions, on basis of which the impact of immediate effect on the legal relations realized past is assessed. It shall be noted that this understanding became the dominating one not only when assessing immediate effect but also any violation of legitimate expectations.

2. Methodology used to assess admissibility of legal norms passed with immediate effect

As a result of the above analysis, to verify whether legal norms passed with immediate effect are legitimate, it is significant to assess whether legitimate expectations of addressees of legal norms have not been violated illegally. Therefore the article further on views two different methodologies, on basis of which it is clarified whether legal norms related to the past, however, no retroactive effect can be identified, are legitimate.

2.1. Assessment of admissibility of legal norms passed with immediate effect on basis of evaluation of the public interest and interest of addressees of legal norms

The first legal method implying restriction of legal norms passed with immediate effect results from the traditional assessment of legitimate expectations that was initially developed in the German law and later on transferred also to the practice of the Constitutional Court of the Republic of Latvia (hereinafter – Constitutional Court of Latvia).³⁰ It is based on the

²⁸ Ruling No. 1 BvR 7/62 of 16 October 1968 by the First Senate of the Constitutional Court of Germany. Published: *Entscheidungen des Bundesverfassungsgerichts*, 24.Band. Tübingen: Mohr Siebeck, 1969, p. 220–235 (p. 231–232).

²⁹ „Das Vertrauen der Beschwerdeführer auf die Zusage in der Berufsvereinbarung muß gegenüber dem Interesse an der baldmöglichen Realisierung der legitimen Absichten des Gesetzgebers zurücktreten.” (Translation: “Legitimate expectations of complainant regarding the agreement of the sphere are of less significance than the interest to implement the legitimate goal.”) Ruling No. 1 BvR 79, 278, 282/70 of 8 February 1977 by the First Senate of the Constitutional Court of Germany. Published: *Entscheidungen des Bundesverfassungsgerichts*, 43.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1977, p. 242–291 (p. 287).

³⁰ Paragraph 25 of the judgement in the case No. 2009-08-01 of 26 November 2009 by the Constitutional Court of the Republic of Latvia „Par 2009.gada 12.marta likuma "Grozījumi likumā "Par valsts pensijām"" 2.panta vārdu "valsts pensijas 2009. gadā pārskatītas netiek"

principle that legislator, as long as it attributes the legal consequences occurring in the future to the previously established legal relations, has to observe a reasonable balance assessing the necessity of amendments to legal regulation or significance of the public interest compared to reliance of addressees of legal norms on the previous legal regulation.³¹

At the same time it is admitted that this legal method does not specify how the interests of addressees of legal norms and public interest shall be assessed and it is exposed to circumstances of each legal situation. Federal Constitutional Court of Germany (hereinafter - Constitutional Court of Germany) has noted that, comparing interests of addressees of legal norms and public interest, the court is entitled to assess whether legislator, assessing the significance of interference and urgency of legal regulation, has not exceeded the reasonable limit.³² Consequently this legal method does not provide a certain correlation between the significance of its goal to protect the public interest, on the one hand, and circumstances ensuring reliance to addressees of legal norms that legal regulation shall not be changed, on the other hand.³³ It is possible to assume that the above deficiencies of the methodology and comparatively superficial analysis is the basis that only in rare cases the assessment of admissibility of legal norms passed with immediate effect recognizes that violation of legitimate expectations of addressees of legal norms prevails the public interest.

In line with the above methodology, i.e., assessing and opposing the interests of addressees of legal norms and goal of the legal regulation or public interest, Constitutional Court of Latvia has assessed legitimacy of legal norms passed with immediate effect. As it has been indicated by the

atbilstību Latvijas Republikas Satversmes 1. un 109.pantam“. Latvijas Vēstnesis, 27 Novembris 2009, No.187 (4173).

³¹ Ruling No. 2 BvR 17/69 of 23 March 1971 by the Second Senate of the Constitutional Court of Germany. *Entscheidungen des Bundesverfassungsgerichts*, 30.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1971, p. 392–406 (p. 404).

³² Ruling No. 1 BvR 79, 278, 282/70 of 8 February 1977 by the First Senate of the Constitutional Court of Germany. Published: *Entscheidungen des Bundesverfassungsgerichts*, 43.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1977, p. 242–291 (p. 289).

„Nur wenn das Vertrauen auf die Fortgeltung der bestehenden Rechtslage den Vorrang verdient, ist die Regelung unzulässig“ (Translation: “Only in case legitimate expectations as regards retaining further legal benefits are of greater importance, legal regulation is inadmissible.”) Ruling No. 2 BvR 9 /85 and 3/86 of 8 June 1988 by the Second Senate of the Constitutional Court of Germany. Published: *Entscheidungen des Bundesverfassungsgerichts*, 78.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1989, p. 249–289 (p. 284).

³³ See, for example, ruling No. 1 BvR 3076/08 of 18 February 2009 by the First Senate of the Constitutional Court of Germany. *Entscheidungen des Bundesverfassungsgerichts*, 122.Band. Tübingen: Mohr Siebeck, 2009, p. 374–397 (p. 395).

Constitutional Court of Latvia, "to assess, whether legislative acts providing deviation of the rights entitled to a person complies with the principle of legitimate expectations, it shall be clarified 1) if a person has legitimate expectations as regards retaining or implementing certain rights and 2) if there is a reasonable balance between protection of legitimate expectations of a person and ensuring public interest".³⁴ Therefore conclusion, whether legislator, changing the legal regulation, has observed a reasonable balance between reliance of a person and interests due to which the regulation has been changed, may be drawn after answering two questions. Namely, only after it has been clarified that addressees of legal norms not only have legal expectations as regards the respective rights but those are considered reasonable enough³⁵, the interests of the addressees of legal norms shall be assessed in context of the public interest and then amendments to legal regulation may be implemented.

Although conceptually the respective understanding of assessment of compliance with the principle of legitimate expectations is not wrong, it shall be noted that in the Latvian legal system the assessment of possible violation of the legitimate expectations methodologically even more resembles the understanding existent in the 1960s in the German legal system. According to this understanding legitimate expectations of addressees of legal norms were assessed without opposing it to the public interest, mainly assessing how significant expectations it might have caused to the addressees of legal norms. This conclusion is related to the fact that the Constitutional Court of Latvia is not using the respective legal method to oppose the interests of addressees of legal norms to the public interest, because already during analysis of legitimate expectations it often recognizes that expectations are not justified.³⁶ Consequently public interest and interest of addressees of

³⁴ Paragraph 10.1 of judgement in the case No. 2012-21-01 of 12 June by the Constitutional Court of Latvia „Par 2009. gada 12. marta likuma "Grozījumi Iekšlietu ministrijas sistēmas iestāžu un Ieslodzījuma vietu pārvaldes amatpersonu ar speciālajām dienesta pakāpēm dienesta gaitas likumā" 5.panta atbilstību Latvijas Republikas Satversmes 1. un 91.pantam”. Latvijas Vēstnesis, 14 June 2013, No.114 (4920).

Judgement in the case No. 2010-02-01 of 19 June 2010 by the Constitutional Court of Latvia "Par likuma "Par nodokļiem un nodevām" 16.panta 10.punkta atbilstību Latvijas Republikas Satversmes 1. un 105.pantam". Latvijas Vēstnesis, 28 June 2010, No.100 (4292).

³⁵ Paragraph 22.2 of judgement in the case No. 2011-04-01 of 22 November 2011 by the Constitutional Court of Latvia „Par Maksātnešpējas likuma 13.panta pirmās daļas 2.punkta, ciktāl tas attiecas uz personām, kuras savu darbību maksātnešpējas procesa administratora amatā ir uzsākušas saskaņā ar likuma "Par uzņēmumu un uzņēmējsabiedrību maksātnešpēju" 13.panta prasību par augstāko izglītību ekonomikas, vadības vai finanšu jomā, un Maksātnešpējas likuma pārejas noteikumu 7.punkta atbilstību Latvijas Republikas Satversmes 1., 91. un 106.pantam”. Latvijas Vēstnesis, 24 November 2011, No.185 (4583).

³⁶ “Applicants could trust into the fact that the legislator would ensure them with the possibility of early retirement up to 31 December 2011, however, legitimate trust into the

legal norms are assessed not in all cases but only if reliance of addressees of legal norms on the norm under dispute is legitimate, justified and reasonable and legal regulation itself is certain and unchangeable enough to be trusted upon.³⁷

2.2. Assessment of legal norms passed with immediate effect on basis of proportionality test

The other legal method to assess legitimacy of legal norms passed with immediate effect resembles the understanding described previously, however, it identifies more precisely how to recognize the possible violation of the legitimate expectations. To recognize legal norms passed with immediate effect to be legitimate the following three aspects have to be complied with: (1) legal regulation shall be appropriate to reach the planned goal; (2) legal regulation is necessary, i.e., there are no means that are less restricting from the point of view of time applying which the goal may be reached; and (3) as a result of assessment of the violated expectations of addressees of legal norms it can be concluded that reasonable there is no imbalance caused between the interests under assessment.³⁸

In light of the above, it was concluded that legal norms passed with immediate effect are assessed on basis of proportionality test that is traditionally used for other purposes – to assess the conceptual aspect rather than temporal aspect of legal norms.³⁹ Moreover, applying the respective

amount of the early old-age pension to be disbursed could not result thereby.” Paragraph 23 of judgement in the case No. 2010-29-01 of 18 February 2011 by the Constitutional Court of the Republic of Latvia „Par likuma "Par valsts pensijām" pārejas noteikumu 30.punkta atbilstību Latvijas Republikas Satversmes 1., 91. un 109.pantam”. Latvijas Vēstnesis, 22 February, No.29 (4427).

³⁷ Paragraph 3.2 of the Concluding part of judgement in the case No. 2001-12-01 of 19 March 2002 by the Constitutional Court of the Republic of Latvia „Par likuma "Par valsts pensijām" pārejas noteikumu 26. punkta atbilstību Satversmes 91. un 109. pantam”. Latvijas Vēstnesis, 20 March 2002, No. 44 (2619).

Paragraph 7 of judgement in the case No. 2004-03-01 of 25 October 2004 by the Constitutional Court of the Republic of Latvia „Par likuma "Par valsts pensijām" 30. panta piektās un sestās daļas atbilstību Latvijas Republikas Satversmes 1. un 91. pantam”. Latvijas Vēstnesis, 26 October 2004, No.169 (3117).

³⁸ Ruling No. 1 BvI 44, 48-92 of 15 October 1996 by the First Senate of the Constitutional Court of Germany. *Entscheidungen des Bundesverfassungsgerichts*, 92.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1997, p.64–96 (p.87). Ruling No. 1 BvI 9, 11, 12/00, 5/01, 10/04 of 13 June 2006 by the First Senate of the Constitutional Court of Germany. Published: *Entscheidungen des Bundesverfassungsgerichts*, 116.Band. Tübingen: Mohr Siebeck, 2007, p. 96–135 (p. 132).

³⁹ „In die damit erforderliche grundrechtliche Bewertung fließen freilich die allgemeinen rechtstaatlichen Grundsätze des Vertrauensschutzes, der Rechtssicherheit, aber auch der Verhältnismäßigkeit (hier beschränkt auf den Gesichtspunkt der Vergangenheitsanknüpfung) in der Weise ein, wie dies allgemein bei der Auslegung und

methodology to assess the immediate effect, the Constitutional Court of Germany has *expressis verbis* indicated that immediate effect shall be assessed on the basis not only of the legitimate expectations but also principle of proportionality. If the legal norm under analysis is unlawful because to the principles of legitimate expectations or proportionality, it might be recognized as illegitimate.⁴⁰

At the same time it shall be noted that assessment of legitimacy of legal norms passed with immediate effect, in light of the public interest and interest of addressees of legal norms through the principle of proportionality, has become the main doctrine in the German legal system. Understanding that it is necessary not only to balance interest of addressees of legal norms and public interests but also clarify whether legislator had a necessity to pass the legal regulation with an immediate effect was introduced in the German legal system only twenty years ago.⁴¹ It shall be also noted that, regardless of

Anwendung von Grundrechten im Hinblick auf die Fragen des materiellen Rechts geschieht.“ (Translation: “Assessment has been performed on basis of general principles of legitimate expectations and legal certainty, as well as proportionality (restricted assessing adjustments from the point of view of the relation to the past) in a way that it is usually performed in interpreting and applying material legal norms”). Ruling No. 2 BvL 2/83 of 14 May 1986 by the Second Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 72.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1987, p. 200–276 (p. 242).

⁴⁰ „Sie ist verfassungsrechtlich grundsätzlich zulässig [...]. Jedoch können sich aus dem Grundsatz des Vertrauensschutzes und dem Verhältnismäßigkeitsprinzip Grenzen der Zulässigkeit ergeben. Das ist dann der Fall, wenn die vom Gesetzgeber angeordnete unechte Rückwirkung zur Erreichung des Gesetzeszwecks nicht geeignet oder erforderlich ist oder wenn die Bestandsinteressen der Betroffenen die Veränderungsgründe des Gesetzgebers überwiegen.“ (Translation: “Generally those (amendments – M.O.) are legitimate [...]. However, due to violation of principles of legitimate expectations and proportionality they might be recognized as inadmissible. This is in case the immediate effect prescribed by legislator has not been applied or necessary to reach the goal of amendments, or interests of addressees of legal norms are more important than the basis of the amendments to legal regulation.”). Ruling No. 2 BvR 9 /85 and 3/86 of 8 June 1988 by the Second Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 78.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1989, p. 249–289 (p. 284). Ruling No. 1 BvL 44, 48-92 of 15 October 1996 by the First Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 92.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1997, p. 64–96 (p. 86). Ruling No. 1 BvR 3076/08 of 18 February 2009 by the First Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 122.Band. Tübingen: Mohr Siebeck, 2009, p. 374–397 (p. 394).

⁴¹ „Der Gesetzgeber muss aber, soweit er für künftige Rechtsfolgen an zurückliegende Sachverhalte anknüpft, dem verfassungsrechtlich gebotenen Vertrauensschutz in hinreichendem Maß Rechnung tragen. Die Interessen der Allgemeinheit, die mit der Regelung verfolgt werden, und das Vertrauen des Einzelnen auf die Fortgeltung der Rechtslage sind abzuwägen [...] Der Grundsatz der Verhältnismäßigkeit muss gewahrt sein.“

advantages of the method and contents that are methodologically correct, in practice the respective doctrine has been used comparatively inconsistently and superficially, mainly assessing public interest and interests of addressees of legal norms. More rarely, however, the alternative means are assessed, through which a less significant interference with the past would be possible.

For example, analysing restrictions imposed upon rights of officials employed by educational institutions, the Constitutional Court of Germany has noted that due to political reasons the existing rights may be applied to the new conditions. Therefore it is possible to attribute the legal regulation to issues the realization of which has been commenced in the past – to the legal status of officials.⁴² Similarly in other disputes the Constitutional Court of Germany has concluded that, as a result of discretion of legislator, legal expectations of legal subjects are stated to comparatively narrow assessment.⁴³ Moreover, the main problems of this legal method are related to a rather abstract and generally incomparable comparison of interests. For example, the Constitutional Court of Germany has noted that amendments to legal regulation with an immediate effect are necessary to ensure the stability of the country, to finance the reunification of Germany, the basis of which cannot be assessed neither in its terms not methodologically opposing it to reliance interests of addressees of legal norms.

3. Conditions that may impact legitimacy of legal norms passed with immediate effect

Evaluation of legal norms with immediate effect acknowledge that only in rare cases trust upon retaining the existing regulation shall be placed above legislator's interest to interfere with the past dimension.⁴⁴ Therefore,

(Translation: "Legislator is obliged to comply with the principle of legitimate expectations, if legal consequences are attributed to actual issues completed or commencement of their realization has been commenced. It is necessary to assess general interests, why the legal regulation is adjusted and reliance of addressees of legal norms upon the regulation to be in effect further on. [...] Principle of proportionality shall be observed.")

Ruling No. 2 BvR 748, 753, 1738/05 of 7 July 2010 by the Second Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 127.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 2011, p. 61–87 (p. 76–77).

⁴² Ruling No. 2 BvR 19/82 of 10 April 1984 by the Second Senate of the Constitutional Court of Germany. Entscheidungen des Bundesverfassungsgerichts, 67.Band. Tübingen: Mohr Siebeck, 1985, p. 1–25 (p. 15).

⁴³ Ruling No. 1 BvI 9, 11, 12/00, 5/01, 10/04 of 13 June 2006 by the First Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 116.Band. Tübingen: Mohr Siebeck, 2007, p. 96–135 (p. 132).

⁴⁴ Ruling No. 2 BvL 2/66, 2BvR 326, 327, 341, 342, 343, 344, 345/69 of 9 March 1971 by the Second Senate of the Constitutional Court of Germany. Published: Entscheidungen des

for example, until 1987 only four legal norms passed with immediate effect were recognized illegitimate from the point of view by the Constitutional Court of Germany.⁴⁵ Similarly, since 1987 only in several cases legal norms with immediate effect have been recognized as illegitimate.⁴⁶ A similar concept is present also in the Latvian legal system. Therefore further in the article have been analysed the main conditions on basis of which the legal norms can be recognized illegitimate. Keeping in mind the aforementioned, following analysis creates not only theoretical but also practical understanding of admissibility of legal norms from the point of view of time.

3.1. Passing legal norms with immediate effect impacting rights assigned by an individual act

The key argument of the current case-law on basis of which it would be possible to recognize legal norms passed with immediate effect illegitimate is existence of an individual legislative act.⁴⁷ Namely, regardless of condition, whether public legal relations have been established by the administrative act, for example, providing social support benefit, or relations of private law nature, for example, there has been a loan agreement concluded between the parties, in all the cases addressees of legal norms may have a reasonable reliance upon retaining the legal regulation. In other words, in cases when addressees of legal norms have already been provided with a privilege, legal norms ensuring the privilege shall be respected with a larger degree of protection.⁴⁸

For example, in the case No. 2009-86-01 adjudicated by the Constitutional Court of Latvia that was assessing the amendments reducing pensions for public prosecutors, however, not only due to lack of transitional provisions and immediate coming into force but also due to recognition of an individual legislative act is concluded that cut of pension with an immediate effect is considered illegitimate from the point of view of time.⁴⁹ As the

Bundesverfassungsgerichts, 30.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1971, p. 250–272 (p. 268).

⁴⁵ Aschke M. *Übergangsregelungen als verfassungsrechtliches Problem*. Frankfurt am Main: Verlag Peter Lang, 1987, p. 258.

⁴⁶ See, for example, ruling No. 2 BvR 748, 753, 1738/05 of 7 July 2010 by the Second Senate of the Constitutional Court of Germany. *Entscheidungen des Bundesverfassungsgerichts*, 127.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 2011, p.61–87 (p.76).

⁴⁷ Türk A. *Judicial Review in EU Law*. Edward Elgar Publishing Limited, 2009, p.130.

⁴⁸ Cited by: Stötzel M. *Vertrauensschutz und Gesetzesrückwirkung. Grundtypen abgeleitet aus der Rückwirkungsrechtsprechung des Bundesverfassungsgerichts*. Frankfurt am Main: Peter Lang Europäischer Verlag der Wissenschaften, 2002, p.57.

⁴⁹ Judgement in the case No. 2009-86-01 of 21 April 2010 by the Constitutional Court of the Republic of Latvia "Par Prokuroru izdianas pensiju likuma pārejas noteikumu 8.punkta

public prosecutors' pensions have been already granted when the administrative act prescribing the amount of the pension, application of the legal norms to the granted pensions in this case was not admissible. Similar judgements by the Constitutional Court of Latvia have been passed in several other cases, assessing legitimacy of cut of pensions or other continued legal relations. One of the disputes adjudicated by the Constitutional Court of Latvia was the case No. 2009-43-01 prescribing that cut of regular pensions with an immediate effect is illegitimate due to lack of transitional provisions and assessment of alternative restrictions.⁵⁰ Based upon the arguments referred to above, amendments to legal regulation of the law On Service Pensions for Ministry of the Interior System Employees with Special Service Ranks have been recognized illegitimate.⁵¹

Not only recognizing administrative acts but also individual contractual relations can be considered as a significant argument to recognize legal norms passed with immediate effect illegitimate. If a person during the period of concluding contractual relations has relied upon the certain legal regulation to be effective also when regulating further legal relations, passing new legal norms in order to change the commenced legal relations may serve as one of the main arguments to restrict the legal norms passed with immediate effect.

However, unlike the understanding of the law in the 19th century, when continued contractual relations were fully protected, nowadays there is no such large protection against interference with contractual relations.⁵² As of the beginning of the 20th century, a larger understanding of impacting contractual relations has been developed, prescribing that state cannot ensure protection to persons who have established contractual relations against the

atbilstību Latvijas Republikas Satversmes 1., 91. un 109.pantam". Latvijas Vēstnesis, 23 April 2010, No.65 (4257)

⁵⁰ Judgement in the case no. 2009-43-01 of 21 December 2009 by the Constitutional Court of the Republic of Latvia „Par likuma "Par valsts pensiju un valsts pabalstu izmaksu laika periodā no 2009.gada līdz 2012.gadam" 2. panta pirmās daļas atbilstību Latvijas Republikas Satversmes 1. un 109. pantam un 3. panta pirmās daļas atbilstību Latvijas Republikas Satversmes 1., 91., 105. un 109. pantam". Latvijas Vēstnesis, 22 December 2009, No.201 (4187).

⁵¹ Judgement in the case No. 2009-76-01 of 31 March 2010 by the Constitutional Court of the Republic of Latvia „Par likuma "Par izdienas pensijām Iekšlietu ministrijas sistēmas darbiniekiem ar speciālajām dienesta pakāpēm" pārejas noteikumu 20.punkta atbilstību Latvijas Republikas Satversmes 1. un 109.pantam". Latvijas Vēstnesis, 6 April 2010, No.54 (4246).

⁵² Hellman H., Pfeiffer K. Verfassungsrechtliche Probleme der rückwirkenden Fusionskontrolle. Beiträge zum Wirtschaftsrecht, Festschrift für Heinz Kaufmann zum 65. Geburtstag. Köln-Marienburg, 1972, S.198.

market laws⁵³ that, in certain conditions, require amending legal regulation to protect the existing interests. For example, as regards changes in contractual relations, the legal doctrine indicates that persons who, according to the current legal regulation, are engaged in business activities and make decisions related thereto, take risk that laws passed afterwards and affect economics in any direction may inconvenience the plans of business or completely terminate the further activities.⁵⁴ Therefore, if norms of the private law impacting contracts concluded in relation to future and there are no significant public interest in implementing amendments to the respective legal regulation, amendments passed with immediate effect may be considered legitimate.⁵⁵

However, recognizing that contractual relations impacted by the immediate effect, it should be at first assessed what consequences have been caused by the legal norm passed with immediate effect. For example, the legal doctrine differentiates between several aspects that might be impacted within the contractual relations: (1) amendments may terminate their activities; (2) contractual terms may be changed conceptually, including, change or restriction of fulfilment of a contract, or (3) prohibiting the fulfilment of undertakings.⁵⁶ Therefore, clarifying admissibility of legal norms from the point of view of time, in each individual case it should be assessed whether and to what extent contractual relations have been impacted by the amendments to legal regulation with immediate effect, as well as what consequences it may cause as regards the joint economic stability. Moreover, reliance of subjects of a contract should be especially protected if the state prior to concluding contracts and undertaking liabilities would have particularly emphasized that the legal regulation shall not be changed.⁵⁷

⁵³ Götz V. Bundesverfassungsgericht und Vertrauensschutz. Bundesverfassungsgericht und Grundgesetz. Festgabe aus Anlaß des 25jährigen Bestehens des Bundesverfassungsgerichts. Zweiter Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1976, p.421–453.

⁵⁴ Klußmann M. Zulässigkeit und Grenzen von nachträglichen Eingriffen des Gesetzgebers in laufende Verträge. Berlin: Duncker & Humblot, 1970, p.122.

⁵⁵ See, for example, annotation of 20 December 2006 No. 16/3945 to the law On reforming the insurance contracts (“Entwurf eines Gesetzes zur Reform des Versicherungsvertragsrechts”).

Available: <http://dip21.bundestag.de/dip21/btd/16/039/1603945.pdf> [accessed on 10 April 2013]

⁵⁶ Klußmann M. Zulässigkeit und Grenzen von nachträglichen Eingriffen des Gesetzgebers in laufende Verträge. Berlin: Duncker & Humblot, 1970, p.42.

⁵⁷ Ibid., p.140.

3.2. Passing legal norms with immediate effect in the sphere of tax law

Another circumstance that might significantly impact legitimacy of legal norms passed with immediate effect is related to amendments made in the sphere of tax law. As of the 1960s, identification of immediate effect in the German legal system was related to principle of tax period (in German – *das Veranlagungszeitraum*). Legal norms passed within the sphere of tax law are considered to be retroactive if those come into effect after the end of the calendar year and imposes tax to transactions performed during the previous calendar year.⁵⁸ Therefore, if a legal norm comes into effect on 1 January or later and regulates transactions performed in the period as of 1 January to 31 December of the previous year, the legal norm has impacted completed legal relations. However, if identical legal regulation relating to the whole calendar year has come into effect on 31 December, legal norm is not impacting a completed legal conditions and therefore it has an immediate effect. An identical approach has been implemented in the French legal doctrine where there is an understanding of a year as a unified tax period.⁵⁹

In light of the above, legal norms passed with immediate effect in the tax law have been more frequently recognized as illegitimate. For example, in ruling of 7 July 2010 the Constitutional Court of Germany has concluded that amendments to the Law on Income Tax (in German – *Einkommensteuergesetz*) passed with immediate effect have violated the principle of legitimate expectations and therefore can be partially recognized illegitimate.⁶⁰ Although, to ensure the common good, legislator's actions cannot be paralysed, interests of addressees of legal norms cannot be exposed to uncontrolled impact. Consequently cancellation of income tax compensations is illegitimate in cases when income tax-payers prior to the legal regulation coming into force have complied with all the preconditions necessary to receive the prescribed compensations but their rights were affected by the immediate effect. In addition, the last case when the Constitutional Court of Germany has recognised legal norms passed with immediate effect illegitimate was on 10 October 2012, when the court identified an illegitimate legal norm in the Law on Profit Tax (in German -

⁵⁸ Vogel K. Rückwirkung: eine festgefahrene Diskussion, Ein Versuch die Blockade zu lösen, in Festschrift für Martin Heckel. Tübingen: Mohr Siebeck, 1999, p.875–884.

⁵⁹ See, for example: Schloßmacher S. Die systemtragenden Prinzipien des französischen und belgischen Steuerrechts im Vergleich mit den systemtragenden Prinzipien des deutschen Steuerrechts. Dissertation an der Universität zu Köln, p.18–20.

⁶⁰ Ruling No. 2 BvR 748, 753, 1738/05 of 7 July 2010 by the Second Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 127.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 2011, p. 61–87 (p.76).

Gewerbsteuergesetz).⁶¹ Arguments in the case under review was similar – although taxable operations were performed during the previous legal regulation, amendments to legal regulation were passed with immediate effect, which respectively impacted also these operations performed in the tax period.

As already identified, such understanding of immediate effect in tax law might be considered a favourable tendency in order to evaluate and admit inadmissibility of legal norms passed with immediate effect. However, a presumption may be expressed that legal norms passed with immediate effect in the sphere of tax law shall be recognized illegitimate not due to a general protection of interests of addressees of legal norms against the immediate effect but in order to separate methodological deficiencies in immediate and retroactive effect. Passing amendments to tax law in relation to income or profit tax, retroactive effect shall be recognized only if changes in tax regulation are attributable to taxable operations performed during the previous calendar year. Moreover, operations performed during the respective calendar year shall be considered as impacted by the immediate effect. Therefore, in the tax law, objectively there is a larger possibility that legal norms passed with immediate effect may violate legitimate expectations of addressees of legal norms.

3.3. Significance of transitional period in assessment of legal norms passed with immediate effect

It is important to understand that in certain cases legal norms with immediate effect may be recognized illegitimate as there is no transitional period prescribed. Namely, legal norms passed with immediate effect come into force immediately after they have been adopted, not providing addressees of legal norms to adopt their already realized activities to the new legal regulation. At the same time although prescribing transitional period is one of the ways to ensure legitimacy of legal norms passed with immediate effect, however, it cannot be considered as an obligatory conditions to pass a legal norm with immediate effect.⁶²

⁶¹ Ruling No. 1 BvL 6/07 of 10 October 2012 by the First Senate of the Constitutional Court of Germany. Available (not published in the collection of rulings):

http://www.bundesverfassungsgericht.de/entscheidungen/1s20121010_1bvl000607.html
[accessed on 15 August 2013]

⁶² „Das aus dem Rechtsstaatsprinzip abgeleitete Gebot des Vertrauensschutzes [...] ist durch das Fehlen von Übergangsvorschriften für den prüfungsfreien Zugang ebenfalls nicht beeinträchtigt.“ (Translation: “Principle of legitimate expectations derived from the principle of the state of law is not impacted by the fact that no transitional period has been prescribed.”) Ruling No. 1 BvR 228, 311/73 of 18 November 1980 by the First Senate of the Constitutional Court of Germany. Published: Entscheidungen des

By reference to case-law of the Constitutional Court of Germany, the Constitutional Court of Latvia has noted that “the principle of legal legitimate expectations cannot be interpreted in such a broad manner that would protect a person from any disappointment. In certain cases, when balancing the amount of the restriction of legitimate expectations and the necessity and urgency of amendments to legal regulation, deviation from the rights guaranteed to a person is permissible without providing a transitional period.”⁶³ As the rights of legislator to pass norms with immediate effect, the necessity to provide an appropriate transitional regulation result from the principle of proportionality⁶⁴ and principle of legitimate expectations.⁶⁵ Consequently it is of a special importance to pass transitional regulations in cases when the legal regulation has been effective for a long time and on basis of which inhabitants have planned and implemented their operations.⁶⁶

In relation to the above, firstly, it has to be noted that existence or lack of transitional provisions does not change the will and action of legislator passing legal norms with immediate effect. Transitional period actually only hinders the commencement of the legal regulation coming into force. Therefore, assessing legitimacy of legal norms passed with immediate effect appropriately and correctly, necessity to provide transitional period would be assessed only when it has been clarified that legal norms passed

Bundesverfassungsgerichts, 55.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1980, p.185–204 (p.203).

⁶³ Paragraph 25 of judgement in the case No. 2009-08-01 of 26 November 2009 by the Constitutional Court of the Republic of Latvia „Par 2009.gada 12.marta likuma "Grozījumi likumā "Par valsts pensijām" 2.panta vārdu "valsts pensijas 2009.gadā pārskatītas netiek" atbilstību Latvijas Republikas Satversmes 1. un 109.pantam“. Latvijas Vēstnesis, 27 November 2009, No.187 (4173).

⁶⁴ Ruling No. 2 BvR 9/85 and 3/86 of 8 June 1988 by the Second Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 78.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1989, p.249–289 (p.285).

⁶⁵ The existence and scope of transitional regulations depend on the interests of legal security of addressees of legal norms and the corresponding public interest in all cases to determine a comprehensive and unified legal regulation. Maurer H. Staatsrecht. München: C.H. Beck'sche Verlagsbuchhandlung, 1999, p.595.

⁶⁶ “Establishment of a reasonable term or provision of compensation is generally applicable to cases when a person is deprived of or restricted rights already granted or anticipated. If exercise of the rights of a person depends on a certain precondition that cannot be fulfilled in the nearest future or it is likely that it would never be fulfilled, no lenient transition is necessary and it can be substituted by other mechanisms.” Para 12.4. of judgement in the case No. 2010-60-01 of 30 March 2011 by the Constitutional Court of the Republic of Latvia „Par Kredītiestāžu likuma 59.²panta, 59.³panta, 59.⁴ panta, 117.panta ceturtais daļas 3.punkta, 173.panta ceturtais daļas un 185.panta pirmās prim daļas atbilstību Latvijas Republikas Satversmes 1., 90., 91., 92. un 105.pantam“. Latvijas Vēstnesis, 31 March 2011, No.51 (4449).

with immediate effect are legitimate. Namely, if only legal norms passed with immediate effect do not impact the legitimate expectations of the addressees of legal norms so materially that those are recognized illegitimate, afterwards it shall be assessed whether implementation of such regulation without a transitional period or with insufficient transitional period complies with the interests of addressees of legal norms. At the same time, in cases when legal norms have been recognized illegitimate assessing a particular impact of immediate effect, analysis of legitimacy of transitional provisions is not necessary anymore.

Therefore, the main function of transitional provisions is to protect interests of addressees of legal norms in case if they might face insufficient legitimate expectations that amendments to legal regulation passed with immediate effect may be recognized illegitimate *per se*. In addition, the Constitutional Court of Germany has noted that regardless of the fact that interference to the past with an immediate effect generally is legitimate, the principle of proportionality prescribes the responsibility to ensure that an appropriate and adequate transitional period is provide.⁶⁷ Therefore, although not providing a transitional period is not an compulsory condition violating the legitimate expectations it is one of the aspects assessing whether it was not possible to impact the addressees of legal norms with more proportional regulation.

Conclusions

1. In contrast to the nowadays used division of legal norms in three categories by their temporal binding nature, until the second half of the 20th century, i.e., the period after World War II, all legal norms were divided only in two groups. On the one hand, legal norms with binding nature that impacts completed legal relations or the realization of which was commenced in the past, i.e. retroactive and with immediate effect, were together separated. On the other hand, legal norms impacting the legal relations arising after the legal norms have been passed, were separated. Moreover, all legal norms in any way related to regulating issues completed in the past – both regarding the legal relations completed and those passed with immediate effect – where jointly referred to as “retroactive effect”.

2. After World War II establishing new understanding of retroactivity, the primary goal was not to identify, whether legal norms

⁶⁷ Ruling No. 1 BvR 79, 278, 282/70 of 8 February 1977 by the First Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 43.Band. Tübingen: J.C.B. Mohr (Paul Siebeck), 1977, p.242–291 (p.288). See also ruling No. 2 BvR 19/82 of 10 April 1984 by the Second Senate of the Constitutional Court of Germany. Published: Entscheidungen des Bundesverfassungsgerichts, 67.Band. Tübingen: Mohr Siebeck, 1985, p.1–25 (p.15).

passed with immediate effect are lawful, but to clear whether legal norms related to the past do not impact completed legal relations and have not been passed with retroactive effect and therefore are considered illegitimate from the point of view of time. On the basis of the above understanding, from the very beginning legal norms passed with immediate effect were recognized as generally admissible. Moreover, initially the aforementioned position was not analysed more largely. Only later methodology was developed to clarify whether in each separate case legal norms passed with immediate effect have not illegitimately violated the rights of addressees of legal norms to legitimate expectations.

3. Evaluating admissibility of legal norms passed with immediate effect, there shall be considered whether eventual breach of legitimate expectations of the addressees of legal norms is identified. Whether the legal norms passed with immediate effect are legitimate and lawful can be verified by assessing the mutual interest of addressees of legal norms and that of the public. Several methods have been developed in the case-law to assess the balancing of interests of addressees of legal norms and the public interest. One of the most effective methods in assessing admissibility of legal norms passed with immediate effect is usage of the traditional proportionality test, clarifying whether legal norm is proportional from the point of view of time.

4. As one of the main arguments on the basis of which legitimate expectations of addressees of legal norms might be affected, is recognition of an individual legislative act, according to which the imposed rights are impacted by the immediate effect. In addition, because of the wide understanding of immediate effect in the tax law sphere, there is a higher possibility that legal norms shall be recognized illegitimate. Finally, not providing appropriate transitional period may serve as a basis to recognize legal norms passed with immediate effect illegitimate.

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Case No. 2011-04-01 of 22 November 2011 by the Constitutional Court of Latvia „Par Maksātnespējas likuma 13.panta pirmās daļas 2.punkta, ciktāl tas attiecas uz personām, kuras savu darbību maksātnespējas procesa administratora amatā ir uzsākušas saskaņā ar likuma "Par uzņēmumu un uzņēmējsabiedrību maksātnespēju" 13.panta prasību par augstāko izglītību

ekonomikas, vadības vai finanšu jomā, un Maksātspējas likuma pārejas noteikumu 7.punkta atbilstību Latvijas Republikas Satversmes 1., 91. un 106.pantam”. Latvijas Vēstnesis, 24 November 2011, No.185 (4583).

Case No. 2010-60-01 of 30 March 2011 by the Constitutional Court of the Republic of Latvia „Par Kredītiestāžu likuma 59.²panta, 59.³panta, 59.⁴panta, 117.panta ceturtās daļas 3.punkta, 173.panta ceturtās daļas un 185.panta pirmās prim daļas atbilstību Latvijas Republikas Satversmes 1., 90., 91., 92. un 105.pantam“. Latvijas Vēstnesis, 31 March 2011, No.51 (4449).

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