RIGA GRADUATE SCHOOL OF LAW

BACHELOR THESIS

Analysis of the issues of the Interest representation declaration system in the Law on Disclosure of Interest Representation of Latvia

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DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed) ……

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ABSTRACT

The Bachelor thesis analyzes the Interest Representation Declaration System, which is the cornerstone of Latvia's Law on Disclosure of Interest Representation. The Law is created to achieve transparency in the interest representation process and to ensure a mechanism where politicians declare any cases of interest representation that they have been part of. The research is built around the exploration of potential problems that the System might face, such as lack of penalties or the law being too general, thus too open for interpretation. There are conducted interviews with multiple experts from the relevant field to provide their insight into the effectiveness of the law and potential solutions to the challenges. The hypothesis of the thesis is that the current regulation will not be able to fully eradicate the problem of hidden lobbying, and the paper concludes by evaluation of the potential effectiveness and practical solutions to the possible issues.

SUMMARY

The Law on Disclosure of Interest Representation is Latvia's first lobbying regulation. It was a product that was perfected for multiple years in the 13th Saeima, and only two weeks before the final plenary session, the law was accepted. It entered into force on 1 January 2023, but currently, it does not put many obligations to the actors of the law.

The law's focal point is the System of Declaration of Interest Representation, which is the system where most politicians and other representatives of public authority will have to declare the cases of interest representation in which they have been involved. The system will start to function only on September 1, 2025, so there still is time to understand the differences that the law will bring to the everyday life of representatives of public authority, but there are many unclear questions and potential issues that the system and the law might have.

The hypothesis of the thesis was that the current regulation will not be able to fully eradicate the problem of hidden lobbying. The hypothesis was later analyzed through the perspective of the brought-up issues, and whether they would result in the stated possibility. The concerns about the effectiveness of the regulation are based on the general legal norms, which do not clearly define many of the questions, and secondly that there is no possibility to enforce the law, as the legislators currently have not provided any liability for violating the law.

The research is based on understanding the law and especially the System of Declaration of Interest Representation, firstly because there are many new things that the law introduces to the Latvian legal system. There are four different new definitions that all have to be present to consider a situation to be an interest representation. The law defines the interest representative and the representative of public authority, which are the two persons between who the conversation is happening to affect 'public decision', which is also defined in the legal norms. Of course, interest representation is also explained. There are many exceptions for situations that are not considered to be interest representation, and the study reveals that in many situations it will be up to the actors of the law to understand the basis of each case.

In the research, there is a comprehensive analysis of the penalty implementation, as having a law of this nature without any liability provisions is unusual, and can result in the compliance of the System being just voluntary. The studies found, that even though there are

laws without penalty, it cannot be the case for this law, mainly because of the political culture and situation of lobbying transparency before the law.

Another important implication of the research is the analysis of the initial ideas that the legislators had put in the draft law regarding penalties. It is possible that when the time of implementing fines into the legal norms, they would act similarly as when creating these legal norms for the draft law, but the studies found that with such writing of legal norms and the possible amount of the fines, there would be a very high possibility that the penalties would not reach its purpose. It was confirmed also by the research of the Lithuanian lobbying regulation, which has many times higher the ceiling of the fines than the potential legal norms in the Latvian law had. Analysis of the Lithuanian lobbying law also showed a great example of how to regulate the application of the penalties, as many situations are unusual for interest representation or lobbying cases, where the usual procedure in Law on Administrative Liability would not be the best solution, but regardless Author understood that in the Latvian legal system, relying on the Law on Administrative Liability is the only possible option.

A big field of studies in this research was devoted to understanding the issue of the law being too general and broad, thus being too open for interpretation, which could result in problems in the application process. It was concluded that the legislators cannot be blamed for this problem, as it is the nature of the Latvian legal system to not write very detailed legal norms unless they are about penalties, thus they acted in accordance with the common practice. Nevertheless, the problem still has to be addressed, and the best possible solution for that was found to be with secondary sources, such as guidelines, recommendations, or handbooks.

Regarding the secondary sources, the studies found the best solution to be guidelines, which is also the most common solution for such cases, while such documents as handbooks and recommendations could also be useful. The relevant institution for the creation of such a document was an ambiguous question, but it was concluded that there shall be a state institution responsible for it. Regarding the contents of the document, there was an established precise list of signs that implicate that the communication might be interest representation, which possibly could be used for the secondary source.

Overall, the thesis provides with analysis of the main problems but also gives insight from the research on how to solve them. It shows the potential challenges that the System might have when it will start to work, and the studies found that the risk of ineffectiveness is high.

INTRODUCTION

After more than a decade of lasting conversations, debates, discussions, and negotiations between the politicians and other specialists, Egils Levits, the president of Latvia, on October 25, 2022, put his signature below seven articles, that from that moment became the first lobbying regulation in Latvia's history, named as the Law on Disclosure of Interest Representation[1] (in the further text – the "**law**"), which will also be the main legislative act of the thesis.

[1] Interešu pārstāvības atklātības likums (Law on Disclosure of Interest Representation) (1 Janurary, 2023). Available on: https://likumi.lv/ta/id/336676-interesu-parstavibas-atklatibas-likums. Accessed February 12, 2023.

Currently, the Ministry of Justice and State Chancellery are working together on additional regulations by the Cabinet of Ministers that will have to be approved on September 2023, which will be largely about the technical specification of the System of Declaration of Interest Representation and Register of Interest Representation, which is the focal point of the law and will start to work only in 2025. Thus, it is crucial to understand already detectable problems and their potential solutions, which can help to solve them in the upcoming regulation or future amendments.

Lobbying regulation, in general, is becoming a more and more debated topic in the European Union, as society is starting to demand the decision-making process to finally become more transparent. Likewise, the Law on Disclosure of Interest Representation has also been a highly important topic in Latvia too, however, currently, it is very difficult to understand how effective and functioning the law will be.

The Author of the paper during the writing process has been employed in the Latvian Parliament as an assistant to a Member of Parliament. Thus, the Author is experiencing daily the situations that the law is trying to regulate and has been part of many interest representation cases. The experience shows that it is often difficult to understand the intention of the conversation, which was the reason why this topic was chosen – to understand, clarify and help to solve the potential problems that the System of Declaration of Interest Representation might have. It was chosen to analyze the System of Declaration of Interest Representation because in there the representatives of public authority will declare the most important information while the Register of Interest Representation will not be so active.

The Author of the paper has also taken part in a working group created by the Ministry of Justice, where with many experts from non-governmental organizations, the public field, and sworn attorney offices they debated on the information that needed to be included in these regulations by the Cabinet of Ministers. Thus, the Author has already given his contribution to improving the interest representation regulation and is looking to give even more with this paper.

The legal problem of the research is to analyze the issues related to the Interest Representation Declaration System in the Law on Disclosure of Interest Representation, which will be about the two main problems in the Author's opinion, lack of penalties and the law being too general. The paper will be based largely on two methodologies – the doctrinal legal research method and the empirical research method. The doctrinal legal research method will be used in the analysis of legal norms, and principles that they are based around. Also, the annotation will have very a large role in the paper, which will be analyzed also with doctrinal research method. In addition to that, there will be large use of empirical research methods, as the Author has conducted many interviews with experts from the relevant field, which will also be quoted a lot in the paper. The interviews will be used to gather more in-depth information about the law, and the legislation process of it, and to see the opinion of experts on how to solve the potential issues. There will also be used comparative research method, as there will be an analysis of the enforcement mechanism of penalties in Lithuanian lobbying regulation, and there will be also done study on the amount of penalties for violating legal norms of lobbying in Europe.

The research paper's hypothesis is that - the current regulation will not be able to fully eradicate the problem of hidden lobbying. Such a hypothesis was formulated because of the Author's concerns that the law in the current version is not well drafted and when the Interest

Representation Declaration System will start to work, there will be many actors of the law that do not comply with the legal norms.

The interdisciplinary aspect of the paper is throughout whole paper, as the law that is analyzed and studied is about political processes and state actors. Consequently, there will be a lot of research on the content of the law, which is about politics, which is also needed to understand the legal issues of the law.

One of the objectives of the thesis is to assess the challenges that the Interest Representation Declaration System can have when it starts to work, largely with the lack of actions from the representatives of public authority. Also, the objectives are to evaluate the potential effectiveness and largely to propose real and practical solutions on how the challenges faced can be addressed and solved.

Limitations of the paper are that the law is very recent and only into force for a few months, thus it lacks academic sources, that analyze this regulation. There will be tries to minimize this limitation by organizing interviews with the experts and by using other countries' similar experiences. Another limitation is that the amount of interest representatives and representatives of public authority is so large in the context of this law, and their professional tasks are so different, that it might be problematic to take into consideration all of the unique situations.

Firstly, the author of the paper will analyze the most significant aspects of the law. That includes an in-depth examination of how both registers that the law will introduce shall work. Also, in this chapter of the paper, there will be done research on all the definitions that are relevant for the law to function. It is very crucial to have a precise understanding of what the definitions mean, as with them the people will understand how to act when engaging with legal norms from this law.

Secondly, there will be researched first of two biggest threats and problems of the law's efficiency, which is the lack of penalties. Having some sort of way to enforce the law is almost an obligatory requirement for all legal obligations, and not having it, makes it dangerous that the actors will not comply with legal norms. There will be an analysis of the possibility to have the law without any penalties, but more importantly, there will be an examination of how the penalties shall be implemented in the law, as it seems that after a few years, the legislators are planning to make these amendments. The Author will also include an analysis of the Lithuanian lobbying regulation, which has liability for violating lobbying rules and has functioning lobbying regulation for many decades.

Lastly, the final chapter of the paper will be an analysis of the second large problem that the law has, which is the risk of uncontrollable interpretation of legal norms. The law is very general and unspecific, which is not optimal for such a complicated field as lobbying, as there will be a chance to adjust the legal norms in their favor. Thus, there will be an analysis of potential changes in the law that could be made to address this issue and then there will be an analysis of how to improve the problem with supplementary documents, such as recommendations and guidebooks.

The author interviewed one of the senior policy analysts from the public policy think tank Līga Stafecka, who had a very big role in representing the opinion of non-governmental organizations in the legislation process. Ms. Stafecka was a member of the mentioned working group, where she participated in the discussions, which is important for a precise understanding

of the law. Also, the author interviewed one of the main politicians in the legislation process – Andrejs Judins, who also was a member of the working group and has been a member of the Parliament. As he is a lawyer and the chairman of the judicial commission in the Parliament, his expertise and experience are very useful for the comprehension of the situation and what can be done.

Lastly, there is an interview with the parliamentary secretary of the Ministry of Justice – Lauma Paegļkalna. The Cabinet of Ministers will have a very big role in the continuation of the law, as they have been delegated to specify many things in the law. Thus, having a specialist from there and also from the relevant ministry gives the paper strong insight. Ms. Paegļkalna has also been a judge relating administrative cases in the Supreme Court Senate of Latvia, thus she also has a very deep understanding of the legal issues brought up in the paper.

1. THE FUNDAMENTAL ASPECTS OF THE LAW

The Law on Disclosure of Interest Representation was adopted on one of the last sittings of the 13th Latvian Parliament[2], where the members of Saeima voted unanimously in favor of adopting the law[3]. It entered into force on January 1, 2023[4], but either way, there are many unclear things that the lobbyists or in the law referred to as "interest representatives" and the representatives of public authority have.

These two sides, the public authority representative and interest representative, are both crucial for the law, and without any of them, the process of interest representation or better known as lobbying cannot happen in the context of this set of legal norms[5]. In this chapter there will be firstly an analysis of the objectives of the law, which is a crucial aspect of any regulation, then there will be an examination of all the definitions in the law, which will be followed by the analysis of the registers that the law will introduce.

1.1. Objectives of the Law

The objectives are a significant part of any law[6], and some scholars believe that: "When writing a law, the most important thing is its purpose."[7] Thus, the Author believes that before examination of the definitions or how the registers will work, it is crucial to analyze the agreed objectives of the law. The objectives of the law are pivotal in the application of legal norms, as the courts and state authorities very often take into account the stated objectives when

[2] Latvijas Republikas 13. Saeima. Saeimas sēžu darba kārtības. Available on: https://titania.saeima.lv/LIVS13/saeimalivs2_dk.nsf/DK?ReadForm Accessed February 26, 2023.
[3] Latvijas Republikas 13. Saeima. 2022. gada 13.oktobra Saeimas kārtējās sēdes darba kārtība. Available on: https://titania.saeima.lv/LIVS13/saeimalivs2_dk.nsf/DK?ReadForm&nr=a6e0ad0b-287b-4aa1-9a7a-e983985256e2. Accessed February 26, 2023.
[4] *Supra* note 1..
[5] *Supra* note 1, Article 1 (1).
[6] Andrei Marmor, *Positive Law and Objective Values* (Oxford: Clarendon Press, 2001). Available on: https://books.google.lv/books?id=bNGrq31fURsC&dq=objectives+of+a+law+book&lr=&source=gbs_navlinks_s Accessed March 2, 2023.
[7] Latvijas Vēstnesis. Likumu rakstot, svarīgākais ir tā mērķis. Ingrīda Labucka, tieslietu ministre, — "Latvijas Vēstnesim". (2002). Available on: https://www.vestnesis.lv/ta/id/57911 Accessed February 26, 2023.

interpreting the articles[8]. Also, if there is an application of the law in the Supreme Court of Latvia, objectives will play a very serious role in the analysis of whether the law or some part of it is in accordance with the Constitution[9].

1.1.1. Transparency of the interest representation, and public trust

The legislators chose to include the objectives of the law as an article of the legal act[10], which is not the case in every law, but it is the usual practice. The article is divided into two parts, which are the two objectives. The first part of the article states the following:

> The purpose of the law is to provide transparency in the interest representation process, promoting public trust in interest representatives participating in the initiation, development, adoption, or application of public decisions, and in public authority.[11]

Technically, the Author believes, that this purpose sustains two different parts that could be regarded as separate objectives – to provide openness and to promote public trust. Nevertheless, the public trust is believed to come from the fact that the interest representation is now public.

Having open and publicly available is the main objective of every lobbying regulation[12], which is also the case in the European Parliament's obligations on lobbyists: "Its main objective is to make lobbying more transparent."[13]

The first part of this objective is so self-evident, because if there is an analysis of what the law will mainly introduce – it is the System of Declaration of Interest Representation and the Register of Interest Representation, which are registers that will allow the public to see the lobbying activities, consequently making the process transparent. The importance of such objects is also approved by one of the interviewed experts – Līga Stafecka, who comments on this objective, as follows:

> In principle, the main goal of lobbying regulation is that the decision-making process becomes traceable and understandable, and arguments, stakeholders, and the like are visible.[14]

The second part of this objective, which is about promoting trust in the actors of the interest representation is more complicated. Public trust is something that cannot be achieved by creating specific regulations, as it is a consequent objective that can be reached if the law in general works efficiently. Thus, to increase trust, there is needed the transparency, which is the reason why these two objectives are combined:

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[8] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta, 17 October 2012, Judgement, Nr. SKC-637/2012. Available on: https://www.at.gov.lv/downloadlawfile/3096 Accessed March 14, 2023.
[9] Latvijas Republikas Satversmes tiesa, 14 October 2021, Judgement, Nr. 2021-03-03. Available on: https://www.satv.tiesa.gov.lv/wp-content/uploads/2021/01/2021-03-03_Spriedums.pdf Accessed March 14, 2023.
[10] *Supra* note 1, Article 2.
[11] *Supra* note 1, Article 2 (1).
[12] Transparency International, "International Standards for Lobbying Regulation – Towards greater transparency, integrity and participation." (2015): p. 4. Available on: https://lobbyingtransparency.net/lobbyingtransparency.pdf Accessed February 26, 2023.
[13] Robert Mack. "Lobbying effectively in Brussels and Washington – Getting the right result" *Journal of Communication Management* (2005). Available on: https://www.emerald.com/insight/content/doi/10.1108/13632540510621669/full/html Accessed February 12, 2023.
[14] Interview with Līga Stafecka. Available as Annex 1 of the Bachelor thesis. Interview was made on 16 March, 2023.

> When there is a better, more transparent process, then people see more how decisions are made, there is less suspicion that something happens behind closed doors with hidden interests, then this also increases their trust.[15]

Public trust is something that the representatives of public authority shall focus on, as the current situation is very critical – the latest OECD data shows that Latvia of 41 countries, about which there was collected data, had the fourth worst result, with only 29.5% trusting the government.[16] It cannot be blamed on the region, as Lithuania and Estonia have better results, and it can be concluded that there have been some mistakes made in the past, and implementing lobbying regulation is a step forward, but it is very sought by the politicians[17].

1.1.2. Fair and equal opportunities

The legislators decided to include in the law also quite an unusual objective for lobbying regulation, which is not common practice in different legislations, and the wording for it is, as follows:

> The purpose of the law is to ensure fair and equal opportunities for all interested individuals to engage in interest representation.[18]

It is unclear, how the persons who drafted the law believed that the objective can be achieved. Usually, the law's purpose should be something that is achieved with the legal norms[19], but in this case, there are no articles that could accomplish that, as in Article 6 it is only stated that the representative of public authority cannot disregard the principle of equality[20].

Corruption regulation expert Līga Stafecka believes that the law did not need this objective[21], and believes that there is no practical meaning behind it:

> The goal of equality is more decorative because what does it mean in practice? Does it instruct the official to do anything more in practice? In the sense that equality is a matter of course, representatives of various interests come to the official, talk to them and he does not refuse, even if a lobbyist with opposing interests comes.[22]

The author believes that this is an incompetent action from the legislators that are responsible for drafting the annotation of the law[23], where the objectives are initially stated and which is one of the most significant parts of any legal regulation.[24]

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[15] *Supra* note 14.
[16] OECD. Trust in government. Available on: https://data.oecd.org/gga/trust-in-government.htm Accessed February 12, 2023.
[17] Muhamad Shehram Shah Syed, Elena Pirogova, Margaret Lech, Prediction of Public Trust in Politicians Using a Multimodal Fusion Approach, Electronics (2021). Available on: https://www.mdpi.com/2079-9292/10/11/1259 Accessed March 4, 2023.
[18] *Supra* note 1, Article 2(2).
[19] *Supra* note 7.
[20] *Supra* note 1, Article 6 (1)(1).
[21] *Supra* note 14.
[22] *Supra* note 14.
[23] Likumprojekta anotācija. Interešu pārstāvības atklātības likums. Available on: https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/970BA5ED16A3769FC22587E20033863E?OpenDocument#B Accessed February 10, 2023.
[24] *Supra* note 7.
[24] Article 6 (1)(1). *Supra* note 1.

Sometimes some objectives are abstract for example Law on Submissions[25], where the purpose is: "to promote the participation of a private person in the State administration."[26] Nevertheless, in a case like this, the legal norms in the law are promoting participation, while in the Law on Disclosure of Interest Representation, the equality obligations from the actors are not properly regulated, as the article that regulates the question is very general.

1.2. Definition of interest representation

There is no doubt that one of the biggest problems that the Law will have is the understanding of what is interest representation, as it will be the question that will be under a lot of uncertainty. The legislators have defined the term 'interest representation', as follows:

> Any direct or indirect communication of a private person in the interests of himself or other private persons with a representative of public authority to influence the initiation, development, adoption, or application of a public decision.[27]

The first part of the definition is about the type of communication that is considered to be interest representation, and the legislators have decided that it does not need to be only direct communication, where the interest representative makes it clear that he is doing lobbying. Indirect communication is described as: "when the speaker does not explicitly state what their intentions or feelings are."[28]

Thus, it means that the representatives of public authority have to understand even in cases where the lobbyist is not clearly showing their intentions, making it very difficult for the person on the other end. At the same time, in the future, there shall be penalties for not complying with the law, and such misunderstanding could be punished by the supervisory institution, proving the potential risks of the ineffectiveness of the law.

The following part of the definition of the person that executes the interest representation will be analyzed in the next sub-chapter. Meanwhile, the intentions of the interest representative have been stated as to influence the initiation, development, adoption, or application of a public decision[29], which in the Author's opinion means, that all the options, that the representative of public authority can do with the public decision, are covered by these four words. Thus, if the interest representative wants the representative of public authority to do any action regarding a public decision, then it has to be considered as interest representation.

Lastly, the legislators have also made sure that the interest representation can be done not only for the interests of the person that executes the lobbying but also if it is done for other people's interests, which is very often the case of professional lobbying, where the person is getting paid to achieve some specific results with the public authority[30].

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[25] Iesniegumu likums (Law on Submission) (1 Janurary 2008). Available on: https://likumi.lv/ta/en/en/id/164501 Accessed March 4, 2023.
[26] *Ibid*.
[27] *Supra* note 1, Article 1(1).
[28] Study.com. "Direct vs. Indirect Communication | Examples and Definition". Available on: https://study.com/learn/lesson/direct-indirect-communication-examples.html#:~:text=Indirect%20communication%20is%20when%20the,to%20get%20their%20point%20across. Accessed March 4, 2023.
[29] *Supra* note 1, Article 1(1)
[30] Elisabeth Bauer, Piotr Pielucha, Marie Thiel, "Lobbying regulation framework in Poland", *European Parliamentary Research Service (EPRS)* (2016). Available on:

The definition in the Author's opinion is technically well written, but having it does not answer all the questions, as there are many situations in real life where it is unclear whether it fits the definition or not - the concept of communication, its purpose, even the parties between which the communication is happening and other factors.

Thus, it is very possible that when the actors of the law will have to decide whether to declare such information or not, it will be left to the persons involved to interpret the situation on a case-by-case basis:

> There will also be situations where there is no desire to avoid registers, but there is simply no understanding of how to act.[31]

It is never a good sign when such a big part of the law being effective is devoted to the interpretation, as there are many interpretation methods, such as textual, verbal, grammatical, systematic, structural, contextual, or historical methods[32], which can lead to different understanding on how the law shall be complied to[33]. Thus, for the law to be effective, it is better if there will be some way to avoid the interpretation, which will be further analyzed in Chapter 3 of this paper.

There are five subsections for the definition[34], in which there are disclosed exceptions that do not count as interest representation. Firstly, it is when a representative of public authority meets with a member of a political party or alliance in the form of public political discussions or discussions where there is no presence of the interest representative[35]. In this exception, there are only mentioned public discussions, but as the member of the working group that drafted the law Līga Stafecka explained, it does not mean that the party members cannot lobby their interest to the representatives of public authority:

> Internal party negotiations do not appear in the law, but in any case, such conversations are never lobbying, in any country, it would be absurd, in which case the party cannot exist. In this case, it is common sense that says that mutual communication between members is not a representation of interests.[36]

Thus, the law has to be interpreted in the way that such an exception is not made not because the action is considered to be interest representation, but because the exception is not needed as the action itself cannot be considered interest representation. In the first and second hearings of the law, there was a provision that would include such conversations in the exceptions[37], but in the last hearing, it was modified to the current wording of the law[38].

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https://policycommons.net/artifacts/1339462/lobbying-regulation-framework-in-poland/1949154/ Accessed March 4, 2023.

[31] *Supra* note 14.

[32] Winfried Brugger. Legal Interpretation, Schools of Jurisprudence, and Anthropology: Some Remarks from a German Point of View, *American Journal of Comparative Law* 42 (1994): p. 396. Available on Hein Online Database. Accessed March 10, 2023.

[33] Kim Lane Scheppele, "Facing Facts in Legal Interpretation" *Representations* 30 (1990). Available on: https://online.ucpress.edu/representations/article-abstract/doi/10.2307/2928446/82310/Facing-Facts-in-Legal-Interpretation?redirectedFrom=PDF Accessed March 10, 2023.

[34] *Supra* note 1, Article 1(1).

[35] *Supra* note 1, Article 1(1)(a).

[36] *Supra* note 14.

[37] Interešu pārstāvības atklātības likums (Nr.1341/Lp13) – Likumprojekts otrajam lasījumam. Available on: https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/WEBRespDocumByNum?OpenView&restricttocategory=1341/Lp13|6078| Accessed February 20, 2023.

[38] Interešu pārstāvības atklātības likums (Nr.1341/Lp13) – Likumprojekts trešajam lasījumam. Available on: https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/WEBRespDocumByNum?OpenView&restricttocategory=1341/Lp13|6533| Accessed February 20, 2023.

The only case when such communication shall be declared is when in the inner party's discussions there is the presence of an interest representative, which can be quite difficult to track:

> Therefore, the parties in the internal organization of the work will have to carefully assess which of the party's discussion participants is a representative of interests and on which issue.[39]

Another action that is not considered to be interest representation is a communication from a person that is an employee of the diplomatic and consular service of another country.[40] Analyzing the legal norm, in this exception, it must not apply if the employee has exceeded the functions that their position has, as it is technically possible that the employee of such services has interests that are not related to this profession.

The third exception includes many cases of legal proceedings, including administrative proceedings, civil proceedings, pre-trial criminal proceedings, or even out-of-court dispute resolution[41]. Whenever there is a such dispute that is within the mentioned proceedings, there can be communication with the representative of public authority that does not have to be registered in the System.

In the Author's opinion, the most crucial exception is that communication that occurs publicly and that has been performed using electronic media, press releases, or social networks is not considered to be interest representation in the context of the Law[42]. Without this exception the Law would be ineffective and could not be followed – public communication using the internet has become one of the cornerstones of the politician's everyday life[43], and has become a very crucial part to gain popularity:

> Politicians in many established democracies frequently try to present themselves as accessible, relatable, and authentic individuals. (..) The media also helps cultivate this less formal and relatable image of some politicians by representing them in 'private' or backstage settings such as on holiday, at home, and with family.[44]

Thus, by allowing such communication to take place without the need to register it in the System, the legislators have avoided the massive issue of putting too big of a burden on the representatives of public authority.

The last exception is that when participating in pickets, marches, or other meetings in public, public officials do not have to submit any information in the System about actions that happened during these events[45]. This, of course, is needed regulation, and same as with social media and the internet, it would simply be impossible to comply with the Law if such an

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[39] Edgars Pastars. "Interešu pārstāvības atklātības likums: kā to vislabāk ievērot" Jurista Vārds 3 (2023). Available on: https://m.juristavards.lv/doc/282620-interesu-parstavibas-atklatibas-likums-ka-to-vislabak-ieverot/ Accessed February 18, 2023.
[40] *Supra* note 1, Article 1(1)(b).
[41] *Supra* note 1, Article 1(1)(c).
[42] *Supra* note 1, Article 1(1)(d).
[43] Stefan Stieglitz, Linh Dang-Xuan, "Social media and political communication: a social media analytics framework" *Social Network Analysis and Mining* 3 (2013): p. 1277. Available on: https://link.springer.com/article/10.1007/s13278-012-0079-3 Accessed March 12, 2023.
[44] Nathan Manning, Ruth Penfold-Mounce, Brian D. Loader, Ariadne Vromen and Michael Xenos. "Politicians, celebrities and social media: a case of informalisation?" *Journal of Youth Studies* 20 (2016): p. 127. Available on: https://www.tandfonline.com/doi/full/10.1080/13676261.2016.1206867?scroll=top&needAccess=true&role=tab Accessed February 27, 2023.
[45] *Supra* note 1, Article 1(1)(e).

exception would not exist, as the representative of public authority cannot know all the persons that are participating in these public events.

In this exception, the legislators have also included a provision that submission of applications also is not interest representation. This also is a very necessary provision, as the representatives of public authority, from Author's experience from working in the Latvian Parliament, very often receive such applications, especially e-mails from non-governmental organizations, associations, and people from society in general. Firstly, such a process is very needed for quality legislation and other decision-making processes, as having society's insight on the decisions is crucial[46], and applying obligations to declare it, can cause a situation that such action is stopped or at least limited. Secondly, the members of parliament, for example, receive multiple such applications every day, and having them declare all of them, would not help the law reach its objectives in Author's opinion.

1.3. Definition of the main actors of the law

The two main persons in the Law are representatives of public authority and interest representatives, and both have to be present for the situation to be considered as interest representation[47]. That is defined in the interest representation definition that was analyzed in the previous chapter.

1.3.1. Definition of the representative of public authority

The public authority representative has a pretty broad definition, and with a reason, as the law "covers the entire spectrum of the public sector"[48]. The legal norm is, as follows:

> A representative of public authority is a public person, its institution, official, or employee, as well as a private person in relation to the administrative task delegated to him. A representative of the public authority is also a member of the Saeima, a member of a municipal council, and a freelance advisor hired by a public person.[49]

The first thing that can be taken from these two sentences is that primary the person that in the understanding of the Law is a public authority representative is a public person or a person that is under subordination of the public person. As stated in the law, it can be its institution, official, or employee. Municipalities or the Latvian Parliament (Saeima) is not considered to be a public person, but the legislators have decided to include them in the definition of representative of a public person.

On the other hand, there is also an option to be subject to private law and to be considered a representative of public authority. Firstly, it is when a person is working on a task, that is delegated to him by a public authority, thus it has the capacity to affect the public decision in one or many of the ways that are listed in the definition of interest representation. The same is for the freelance advisors that are not public persons or their subordinates but still can be able

[46] Marianne Ryghaug, Tomas Moe Skjolsvold, *Pilot Society and the Energy Transition* (Trondheim: Palgrave Macmillan, 2021). Available on: https://library.oapen.org/bitstream/handle/20.500.12657/47289/9783030611842.pdf?sequence=1&isAllowed=y Accessed March 14, 2023.
[47] *Supra* note 1, Article 1(1).
[48] *Supra* note 14.
[49] *Supra* note 1, Article 1(3).

to fulfill the purposes of interest representation, consequently, because of the potential risks, the legislators have also included this group of people as the representatives of a public person.

It is important to note that the state servants are not considered to be representatives of public authority, as they have only the power to execute public decisions but not affect their initiation, development, adoption, or application. Thus, there are not as many people that fit the definition, as it might seem at first look.

1.3.2. Definition of interest representative

The definition of the interest representative has also been provided at the beginning of the law, where it stated that an interest representative is: "a private person who performs interest representation with or without compensation, regardless of legal status or registration."[50] This definition is simpler than it is for the interest representation or the representative of public authority, as there are not so many requirements or criteria that a person has to meet to be understood as an interest representative.

The most important part of the definition in the Author's opinion is that an interest representative is a private person. It means that if you are working in a public authority, then it is impossible to do interest representation. A private person also means that they are an individual and not a company[51], which has to be subject to private law. Thus, as long as it performs the tasks described in the definition of interest representation, and is subject to private law, it can be understood as interest representative.

1.3.3. Definition of public decision

Same as the rest of the definitions, the public decision definition is also provided in Article 1 of the law. This definition is needed because, in the explanation of the interest representation, there has to be a public decision that can be influenced by the representative of state authority and is tried to be influenced by the interest representative.

The public decision in the law is described as a "regulatory act, policy planning document, political decision or administrative act issued by political state officials."[52] Thus, the legislators have decided to include four options that the legal document can be to consider as public decisions.

A regulatory act is a definition that includes such collections of legal norms, as the Constitution, laws issued by the Parliament, regulations by the Cabinet of Ministers, regulations of municipalities, international agreements, agreements of the European Union, and the normative acts issued on their basis.[53] The policy planning document, in the Author's opinion, is meant to be a legal document where the public authority is agreeing on the future steps in a specific field of action, which technically would not be a binding document, but could be used in the future as a secondary source. A political decision is a decision by:

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[50] *Supra* note 1, Article 1(2).
[51] Article 1(11). Valsts pārvaldes iekārta likums (State Administration Structure Law) (1 January 2003). Available on: https://likumi.lv/ta/en/en/id/63545 Accessed February 10, 2023.
[52] *Supra* note 1, Article 1 (4).
[53] Article 1 (5). Administratīvā procesa likums. (Administrative Procedure law) (1 February 2004). Available on: https://likumi.lv/ta/id/55567-administrativa-procesa-likums. Accessed February 10, 2023.

> The Saeima, the President, the Cabinet, or a local government council (a political statement, declaration, invitation, and notification of the election of officials, etc.)[54]

Such decisions shall not be connected to legislation processes. Also, administrative acts issued by state officials mean administrative acts that the state officials are responsible for.

1.4. Registers

Two new registers will be introduced by the new Law – the Register of Interest Representation[55] and The System of Declaration of Interest Representation[56] (in the further text – the "**System**"). Both, the Register and the System have to start functioning after more than two years – on September 1, 2025[57].

Thus, it can be only speculated now how the registers will look in real life. In the current regulation, it has been agreed that the Enterprise Register is responsible for the creation and maintenance of both registers[5859]. Nevertheless, it is still up to the Cabinet of Ministers to specify the current legal regulation with additional information on what information will have to be disclosed in both registers.

1.4.1. Register of Interest Representation

The Register of Interest Representation (in the further text – the "**Register**") will be created only for the interest representatives, where they have to apply themselves if they have performed systematic interest representation[60]. Systematic interest representation is understood as when the interest representative has performed at least three times an action that can be considered as interest representation within 12 months since the first time[61].

It is thought-provoking that the Parliament chose to apply the "systematic" requirement for the interest representatives to have an obligation to apply in the Register, as in the next article of the law such rule is not applied to the representatives of public authority[62]. The Author believes that such a decision was mainly based on the fact that there can be a significant difference between these two representatives, and the interest representatives are usually under less strict rules than the state servants and institutions[63].

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[54] *Supra* note 53, Article 1 (3)(4).
[55] *Supra* note 1, Article 3.
[56] *Supra* note 1, Article 4.
[57] *Supra* note 1, Pārejas noteikumi (Transitional provisions).
[58] *Supra* note 1, Article 3 (1).
[59] *Supra* note 1, Article 4 (1).
[60] *Supra* note 1, Article 3 (2).
[61] *Ibid*.
[62] *Supra* note 1, Article 4.
[63] Thomas Braendle, Alois Stutzer, "Selection of public servants into politics" *Journal of Comparative Economics* 44 (2016). Available on: https://www.sciencedirect.com/science/article/abs/pii/S0147596715001146?casa_token=fwfPnDH0vosAAAAA:tvfXjbRceDAVB40ivHE6S4LRv9QPLb9KNspwkA4OzM4be4gPjre1_vbQGCVdx0lkYf3a5xUX0BM Accessed March 20, 2023.

A very critical part of any register is the information that has to be put into it[64]. The legislators, in the Author's opinion, have chosen to go the safer way, by not putting a too big bureaucratic burden on the interest representatives, which is a dilemma that the legislators face:

> It is a decision for the legislator to make sure that the Register is not too burdensome for people, while on the other hand, for this side to give some information.[65]

Currently, the decision is to require from the interest representatives no too much information - their basic information, which includes legal or personal name, registration number or personal code, country of residence, etc., data about the company's structure, if the interest representative is a legal person, unique identification number, the private person for who the lobbying was done and more. [66]

Also, the interest representatives will need to provide a field where they are working as interest representatives. The possible fields are still not available and it will be up to the Cabinet of Ministers to determine them[67]. This is a very crucial part of the Register, as it will be currently the only way how to find out in what area the lobbyist is working, which will give some plain insight. Many persons that work with interest representation are working with many laws, thus, the legislators decided to not go into such details[68]. A provisional option for how to improve the regulation in the future was provided by the Providus senior policy analyst Līga Stafecka, who thinks that there could be a requirement for interest representatives to also declare the meetings with the representatives of public authority, but without naming the laws that the meeting was about[69].

1.4.2. System of Declaration of Interest Representation

More relevant for the paper is the System of Declaration of Interest Representation (in the further text – the "**System**"), which is the register where the representatives of public authority will declare the instances where they have had communication with the lobbyists. The System is the main aspect of the Law, which will be the main tool to achieve all the objectives that the authors of the Law have stated. Also, the System is very reliant on the regulations that are still yet to be approved by the Cabinet of Ministers, but the most important questions are answered in the Law.

Also, the creation of a functioning System is the duty of the Enterprise Register[70], which will have to be done in a bit more than two years. In the System, the representatives will have an obligation to declare all the cases that fit the definition of interest representation (chapter 1.2.) within two weeks from the time of the event[71].

Unlike in the Register, the representatives of public authority will have more requirements on what information has to be declared, and, also, it will have to be done the first time, not the third as is the case with the Register. It is already known that the representatives

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[64] Michele Crepaz, Raj Chari, John Hogan, Gary Murphy, *International Dynamics in Lobbying Regulation* (Springer Cham, 2019).
[65] *Supra* note 14.
[66] *Supra* note 1, Article 3 (4).
[67] *Supra* note 1, Article 3(4)(5).
[68] *Supra* note 14.
[69] *Supra* note 14.
[70] *Supra* note 1, Article 4(1).
[71] *Ibid.*

of public authority will have to disclose the time of the communication, its format, the participants, the discussed questions, a private person for which the interest representation was done[72], and other things that are yet to be known after the Cabinet of Ministers will finalize the additions to these norms[73].

It is important to note, that there is an exception to not include communication that threatens state security or causes different disproportionate risks to society[74]. There is no doubt about the importance of such exception[75], because of the importance of the many questions that the politicians are working with, which is becoming more and more relevant:

> With the increased awareness of national security concerns associated with the unauthorized disclosure of State secrets, the legal protection of State secrets on national security grounds has assumed renewed significance.[76]

Nevertheless, this exception does not mean that this interest representation does not have to be declared at all, as in the legal norm it is stated, that the representatives of public authority: "ensure the inclusion of this information in a separate document"[77], although it is not clear what is meant with a separate document and to who such document has to be submitted.

In the Author's opinion, one of the most important sentences in the whole law is in Article 4, Section four, where it is stated that: "Information published in the System are publicly available free of charge"[78]. Of course, the law could not exist without such a rule, and this provision will be the one with who the law shall achieve transparency: "The main principle of the law is that we want openness"[79]. It means that everyone will be able to see the interest representations that the representatives of public authority have been involved in, and it will be widely known information.

Declared information in Author's opinion could cause some trouble for the media and the society for the involved parties, if they are following their obligations and fulfilling all the tasks that are required, as there can be cases of lobbying that are against the representative's public ideology, promises or, for example, the other side of the communication can be with bad reputation. In the System, there is an option for the interest representatives to file a complaint about the information that has been declared by the representative of a public person within 12 months since it has been posted in the System[80]. If it occurs then the representative of public authority that posted the information has an obligation to look through the case in compliance with the Administrative Procedure Law.[81]

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[72] *Supra* note 1, Article 4(2).
[73] *Supra* note 1, Article 4(7).
[74] *Supra* note 1, Article 4(3).
[75] Dorota Mokrosinska, "Why states have no right to privacy, but may be entitled to secrecy: a non-consequentialist defense of state secrecy" *Critical Review of International Social and Political Philosophy* 23 (2018). Available on: https://www.tandfonline.com/doi/full/10.1080/13698230.2018.1482097 Accessed April 12, 2023.
[76] Hitoshi Nasu. "State Secrets Law and National Security" *Cambridge University Press* (2015). Available on: https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/abs/state-secrets-law-and-national-security/2216010C9AAE71A1026355AB62A838A9 Accessed March 2, 2023.
[77] *Supra* note 1, Article 4(3).
[78] *Supra* note 1, Article 4(4).
[79] Interview with Andrejs Judins. Available as Annex III of the Bachelor Thesis. Interview was made on 23 March 2023.
[80] *Supra* note 1, Article 4(6).
[81] *Ibid.*

The Author believes there is still large uncertainty on how the filing process of a complaint will look in real life, as almost every representative of public authority has no experience in acting as the institution that reviews complaints in compliance with Administrative procedure law, especially from the side of acting as an institution. It is also unclear how often such cases could happen, as the law affects a very broad range of people, and technically there is a possibility that after the review by the representative of public authority, all the cases would go through the Administrative courts. It would bring a massive workload for the judges of these courts, and in courts of Latvia and especially Riga, the waiting time already is too extensive[82], and it is possible that this could worsen the problem. As interest representation is something that gets a lot of attention from society[83], it is a real possibility that complaints and appeals of decisions will not happen rarely, as public reputation is an important aspect for people working as representatives of public authority[84] and in some cases Author believes that also as interest representatives.

An important section of Article 4 is the last one which states what questions the Cabinet of Ministers will create regulations[85]. The first thing that they will create will be a list of other kinds of information that the representatives will have to submit when declaring their interest in representation[86]. The other thing will be more technical, as the Cabinet of Ministers will disclose the way how the representatives of public authority shall access the System.[87] It is an important regulation, as it will be an instruction for the Enterprise Register:

> In principle, the Cabinet of Ministers should develop the technical specification for the registers to understand what information will be collected in these registers, so that the Enterprise Register can build these systems - both the register and the declaration system, and understand what kind of information will be put there, how much of it will be seen by the public, how can the public access the information, etc.[88]

That means that the continuation of the System and the Lobbying regulation in Latvia will be heavily dependent on the actions of the Cabinet of Ministers. These rules will be issued until September 1, 2023[89], so there is still time for the state servants to prepare these legal norms, but only a few months. These regulations will be very crucial for the law in general, as it is the following stage that is needed for having a fully functioning legal system that achieves transparency in the lobbying processes, which is confirmed by Andrejs Judins:

> It is necessary to proceed step by step, we have adopted a general law, and there will be regulations by the Cabinet of Ministers, but there will also be amendments to the law.[90]

Thus, the chairman of the Legal Commission of the Saeima believes that the law will get back to the parliament for amendments, which in Author's opinion is understandable, as by the time the legislators will see the possible improvements in the System and law in general.

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[82] Sannija Matule. "Reorganizācijas ceļā top lielākā tiesa Latvijā" *Jurista Vārds*. Available on: https://juristavards.lv/doc/281259-reorganizacijas-cela-top-lielaka-tiesa-latvija/ Accessed March 12, 2023.
[83] Congressman Jack Bergman. BERGMAN INTRODUCES THINK TANK TRANSPARENCY ACT OF 2023, REQUIRING TRANSPARENCY OF NON-PROFITS LOBBYING FOR FOREIGN GOVERNMENTS. Available on: https://bergman.house.gov/news/documentsingle.aspx?DocumentID=1042 Accessed April 25, 2023.
[84] Supra note 17.
[85] *Supra* note 1, Article 4(7).
[86] *Supra* note 1, Article 4(7)(1).
[87] *Supra* note 1, Article 4(7)(2).
[88] *Supra* note 14.
[89] *Supra* note 1, Pārejas noteikumi (Transitional provisions).
[90] *Supra* note 79.

An issue regarding the System which in Author's opinion is not talked about enough when debating on how it will look is the aspect of privacy when information about you is declared without a person's consent. Within the information that has to be registered in the System, there are: "participants and the issues discussed, the private person for whose benefit the representation of interests is carried out[91]". It means that there is publicly available information about the interest representative's name, the issues that the person has raised, and the person who benefits from a conversation, which all can be interpreted as privacy that has to be protected[92].

In Latvia's Constitution privacy is protected by Article 96: "Everyone has the right to inviolability of his or her private life, home, and correspondence.[93]" Consequently, there is a real possibility that the interest representative can turn to the Constitutional Court, if there has been information published about him, as the person has not given his consent, and there has been an invasion in his private life, as there is public information about its professional life, its conversations and other aspects that have to be protected.[94]

2. PENALTIES

It is a unique situation that there is a law, that has entered into force, but it has no enforcement mechanism for it, which is the case for the Law on Disclosure of Interest Representation. It is not fully clear why such a decision was made by the legislators, whether it was a lack of time, a choice to wait on the implementation, or a decision to delegate the rights to implement penalties in the law to the Cabinet of Ministers.

Firstly, in this chapter the Author will look into the option of keeping the law without penalties, to see if the enforcement mechanisms are necessary. That will be followed by an analysis of the legal norms in the draft law, where penalties were included, and then there will be an examination of liability provisions in the Lithuanian lobbying law. In the end, the Author will try to provide real suggestions on how to regulate the cases of violations of the law.

2.1. Law without penalties

It is not widely spread practice in Latvia or any legal system to have a law that has no penalties in case of not being compliant with the law, but such cases still exist. Thus, there can be a debate about whether there can be a law without any liability, what laws can be left without enforcement, and whether this law can work without any penalties.

The discussion on whether the law can be effective without having penalties is in Author's opinion a lot related to the discussion between the supporters of natural and positive law. Natural law theory believes in people's morals:

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[91] *Supra* note 1, Article 4 (2).
[92] Cilvektiesibugids.lv. Protection of privacy. Available on: https://www.cilvektiesibugids.lv/en/themes/freedom-of-expression-media/freedom-of-expression/protection-of-privacy#:~:text=The%20right%20to%20private%20life,have%20negative%20or%20harmful%20consequences. Accessed May 11, 2023.
[93] Article 96. Latvijas Republikas Satversme (The Constitution of the Republic of Latvia) (7 November 1922). Available on: https://likumi.lv/ta/en/en/id/57980 Accessed February 20, 2023.
[94] *Supra* note 95.

> Natural law asserts that there is an objective moral order that human intelligence can understand and that societies are bound in conscience to follow.[95]

This means that in the context of this law, the natural law theory believes that if the law will be just, then the representatives of public authority would still declare the information in the System, even if there are no enforcement mechanisms. While the positive law theory is more about trust in the written legal norms:

> Positive law is law whose content is clear, specific, and determinate enough to guide and coordinate human conduct, to create stable expectations, and to be enforceable in court.[96]

Even though these two legal philosophies are more about the validity of laws and their legal norms, there can be seen connection also with a question about the necessity of penalties. The supporters of natural law would argue that enforcement is not a must in all cases, by trusting the morals of a majority of the people to obey the law.[97] The opposite would be for the positive law supporters who would stand by the opinion that the law can only be effective if there are penalties written in the legal norms.[98]

The Author believes that both of these theories are partly correct, as there can be laws that can be left without any enforcement mechanisms, while at the same time, it should be the case for very few laws, and the majority should have penalties implemented in the law.

A big part of the natural compliance question plays the practice that is already in place before the law is approved.[99] If before the regulation was implemented there was no compliance, then it is very unlikely that the actors of the law would do it without having penalties in place, but it is more likely if people based on their morals or goodwill were already following the approved provider.[100]

An example where natural law theory was not successful in this context could be mentioned the previous Construction Law of Latvia[101], which newly written version has been in force since 2014[102]. The experts from the Providus research center and Transparency International Latvia stated that ineffective supervision of law is causing corruption risks in the field of construction[103], thus confirming that lack of penalties or lack of penalty enforcement can cause problems in the compliance of the law.

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[95] Marie T. Nolan, " Natural law as a unifying ethic" *Journal of Professional Nursing* (2004): p. 358. Available on: https://www.sciencedirect.com/science/article/abs/pii/875572239290099K Accessed March 14, 2023.
[96] James Bernard Murphy, *The Philosophy of Positive Law: Foundations of Jurisprudence* (New Haven: Yale University Press, 2005).
[97] *Supra* note 95.
[98] *Supra* note 96.
[99] T.W. Bennet, T. Vermeulen, "Codification of Customary Law" *Journal of African Law* (2009). Available on: https://www.cambridge.org/core/journals/journal-of-african-law/article/abs/codification-of-customary-law/06C40FC4A1F14690A9C0D7D398AEB9B5 Accessed March 14, 2023.
[100] *Ibid*.
[101] Būvniecības likums (Construction Law) (13 September 1995). Available on: https://likumi.lv/ta/id/36531-buvniecibas-likums. Accessed March 20, 2023.
[102] Supra note 101.
[103] LETA. Eksperte: Neskaidri likumi, neefektīva uzraudzība un liela rīcības brīvība rada korupcijas risku būvniecības jomā (2007). Available on: https://abc.lv/raksts/D9F9CBA4-0A0E-4467-9195-42CC91699CCF Accessed March 20, 2023.

In the Author's opinion, a positive example of legal provision existing and being effective is the Law on the National Flag of Latvia[104] and Procedures for the Application of the Law on the National Flag of Latvia[105], which put an obligation to place the flag on the specific dates during the year. Nevertheless, the Latvian Constitutional court made a judgment No. 2015-01-01[106], where it was stated that it is against the Constitution to apply administrative penalties to natural persons for not placing the flag on their building, as it violates the freedom of expression[107]. Consequently, currently, this legal provision is now without any penalties for natural persons, but it can be said that it is still largely followed.

These two examples of course are not the same or even very similar to the Law on Disclosure of Interest Representation, but they show the points that the supporters of both sides would argue and both would also disagree with the other one. The construction law's bad enforcement situation showed that having a situation where there is no effective enforcement mechanism, can cause problems in the field.

Having transparency in politics and having state officials that are willing to promote transparency with actions is a question of political culture[108], which is not so easy to change, as it takes a long time. The political culture was also the main reason why Līga Stafecka believed that this law cannot exist without penalties:

> In this case, penalties are necessary because we don't have a political culture where we can trust the public to comply with these requirements because a registry makes sense when the majority does it, not just when a few volunteers do it.[109]

The culture is most probably also the answer to why the rule about the hoisting of the Latvian flag can still work and this law cannot – most people believe and understand that displaying the flag on these special dates during the year is important[110]. Thus, the majority of the people would still do it regardless of whether there is a presence of authority that is threatening to punish them or not.

The same cannot be said about this law, simply just because there has not been lobbying regulation before the law, thus the actors will not be used to declaring all the information. This will happen over time, and, as member of Parliament Andrejs Judins pointed out, there have been already very similar cases:

> Now is the stage where we are getting people used to this idea of openness. Earlier, for example, there was no income declaration for officials, and there were many objections

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[104] Latvijas valsts karoga likums (Law on the National Flag of Latvia) (18 November 2009). Available on: https://likumi.lv/ta/en/en/id/200642. Accessed March 20, 2023.

[105] Latvijas valsts karoga likuma piemērošanas noteikumi, Ministru kabineta noteikumi Nr.405 (Procedures for the Application of the Law on the National Flag of Latvia, Cabinet Regulation No. 405) (1 May 2010). Available on: https://likumi.lv/ta/en/en/id/209092. Accessed March 20, 2023.

[106] Satversmes tiesa, 2 July 2015, Judgement, Nr. 2015-01-01. Available on: https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2015-01-01_Spriedums.pdf. Accessed March 23, 2023.

[107] *Ibid*.

[108] Michael Schudson, *The Rise of the Right to Know: Politics and the Culture of Transparency, 1945–1975*, (Harvard University Press, 2015).

[109] *Supra* note 14.

[110] World Intellectual Property Organization (WIPO). CUSTOMARY LAW, TRADITIONAL KNOWLEDGE AND INTELLECTUAL PROPERTY: AN OUTLINE OF THE ISSUES. Available on: https://www.wipo.int/export/sites/www/tk/en/resources/pdf/overview_customary_law.pdf Accessed April 23, 2023.

> and confusions – "Why do I have to report and declare something", but now it is self-evident to everyone.[111]

Even though Mr. Judins believes that currently, it is time for adjusting, he still states that: "In general, it is clear that there must be penalties."[112] Thus, there is an agreement among the experts that the current version of the law will not be sufficient to make the regulation effective, and there will be a need for amendments.

2.2. The potential legal scope of penalties

As mentioned, currently in the law there are no provisions that provide penalties, but very likely that sooner or later that will change. Thus, it is important to analyze how should the penalties be implemented into the legal norms and what would they address specifically.

2.2.1. Analysis of Penalties in the draft law

Even though later removed, the legislators had included in the first two hearings, where the legislators provided three potential violations, for which there would be a possibility to apply administrative penalties. The latest wording of the law went, as follows:

> A warning or a fine of up to thirty fine units shall be applied for non-compliance with the interest representative's obligation to register in the Register within the specified period, non-compliance with the registration procedure, or provision of false information.[113]

In this version which was approved in the second hearing, the potential penalties would only be for the interest representatives, and not the representatives of public authority. This version was not supported by the public policy think tank Providus, which proposed in the third hearing to change the article about administrative responsibility to the version which was accepted in the first hearing[114]. The wording of the legal provision in the first hearing[115] is almost the same, but the difference is that the potential violations applied also to the representatives of public authority.[116]

For the third and final hearing of the law, the relevant commission reviewing the law - Defense, Internal Affairs and Corruption Prevention Commission, came up with a proposal to exclude Article 8 or the article that regulates the penalties that the law imposes from the law. This proposal came from the working group where the law was discussed, and its chairwoman Inese Voika in the commission hearing commented on the decision as follows:

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[111] *Supra* note 79.
[112] *Supra* note 79.
[113] *Supra* note 37.
[114] Providus domnīca. Atzinums par likumprojektu "Interešu pārstāvības atklātības likums". Available on: https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/644C292FC4EC64EEC22588B4002C1770?OpenDocument Accessed February 20, 2023.
[115] Interešu pārstāvības atklātības likums (Nr.1341/Lp13) – Likumprojekts pirmajam lasījumam. Available on: https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/WEBRespDocumByNum?OpenView&restricttocategory=1341/Lp13|5421| Accessed February 20, 2023.
[116] *Supra* note 38.

> The discussions were extensive regarding how the declaration of interest representation and the system will look like, but on the question of penalties, it is necessary to go back after there is a practice to be more precise.[117]

It seems to the Author that the official explanation as to why there are no penalties is that implementing them later would make them more effective. There is a reason to believe that a possible reason for the absence of liability could be a lack of time, as the Parliament accepted the law only 18 days before the last day of the 13th Saeima[118]. Implementing provisions that sustain provisions who there can be applied to real administrative penalties is a very important but difficult job, as they have to be of very high quality, so neither of the sides could not interpret it in their favor. The provided law is very broad and general[119], thus it was a difficult job to make sanctions that could be even applied fairly, as Andrejs Judins states:

> If it is not clear what the regulation will be, if a semi-finished product has been created, then it is not correct to write sanctions because there is no detailed regulation. Sanctions can only be applied when the violation is clearly defined.[120]

The Author believes, that all these reports from the specialists prove that the current situation was not the initial plan, and not how they believed the law should look. Regardless, the situation during the legislation process provided bigger threats if the idea of sanctions were not to be put aside, for example, establishing potential penalties that are unfair and inconsistent, or delaying the process of implementation of penalties to the point where the acceptance is left to the next parliament.

2.2.2. Analysis of penalties in different jurisdictions

The legislators could not use comparative method to compare the interest representation regulation with the other Latvian laws, as the law is unlike others, but they could use this method to analyze the lobbying regulations in other countries. As mentioned, such regulation is not accepted in every EU member state and not even in the majority of them[121]. Many of the states that have some kind of lobbying register, do not have implemented penalties, thus making the register voluntary.[122] For this chapter, only the ones with effective supervision of the compliance of the law are useful. The author has chosen to analyze the closest country to Latvia's lobbying regulation, which also has implemented penalties, which is Lithuania.

Lithuania was chosen because it is the closest country to Latvia that has functioning lobbying law, which also provides liability for the actors of the law if they fail to comply.

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[117] Aizsardzības, iekšlietu un korupcijas novēršanas komisija (13.Saeima), October 5, 2022. Available on: https://titania.saeima.lv/livs/saeimasnotikumi.nsf/0/211950B8DE2D8C61C22588CD0023D50E?OpenDocument&srcv=dt Accessed February 20, 2023.

[118] Diena. Pēdējā 13.Saeimas sēdē plāno pieņemt četrus likumus. Available on: https://www.diena.lv/raksts/latvija/politika/pedeja-13.saeimas-sede-plano-pienemt-cetrus-likumus-14288446 Accessed April 25, 2023.

[119] *Supra* note 79.

[120] *Supra* note 79.

[121] European Commssion for Democracy Through Law. Report on the Legal Framework for the Regulation of Lobbying in the Council of Europe Member States. Available on: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-DEM(2011)002-e Accessed March 19, 2023.

[122] *Ibid*.

Lithuania was one of the first countries that had such regulation in Europe, the law entering into force back in 2000[123], thus they have gained quality information and knowledge.

In Lithuania, the law that regulates the lobbying register and the field itself is called Law on Lobbying Activities[124]. First of all, what can be seen from the law regarding the penalties is that, in comparison to Latvia, the chapter which regulates the liability is longer than the whole law. The legislators have chosen to write down all the details that could occur when applying the law, which in case of sanctions shall be the optimal case, as stated by Andrejs Judins: "Penalties can only be applied when the violation is clearly defined."[125]

Also, in Lithuania, violations of interest representation or lobbying are under both - the procedure established in the Code of Administrative Offenses and the lobbying law itself. In the lobbying law, the legislators have only included liability provisions for legal persons[126], while the potential penalties for natural persons are disclosed in the Code of Administrative Offenses[127]. The responsible authority which is the Chief Official Ethics Commission can impose penalties from 1000 to 4000 euros for legal persons[128], while for natural persons it can be from 144 to 579 euros[129].

The Lithuanian legislators have included an unusual provision, which is neither of the drafts was included in Latvia's law – if there is caused damage by illegal lobbying, the person responsible for damages is responsible for compensating them[130]. It is unclear what illegal lobbying activities can cause such damage to specifically someone. There could be situations in that there is a law accepted because of unregistered lobbying activities, and the supervisory institution finds the representative of a public authority responsible for it, the number of people that have been caused damages because of this illegal activity is hundreds or thousands of them. Such regulation provides an option that civil courts would have more than the usual amount of collective litigation cases, which are usually quite comprehensive and often lead to settlement.[131]

A very crucial aspect of imposing the liability is that the Lithuanian legislators have chosen to not impose penalties on legal persons if the violation can be deemed as a minor violation[132]. Such a decision was probably made to mitigate the workload that the Chief Official Ethics Commission might have, as the imposition of the penalty can extend the process. The legal person still gets a warning, which should still have its effect: "In general, warnings

[123] Meta Advisory. Discussion and questionable outcomes. Available on: https://metaadvisory.lt/lobbying-regulation-endless-discussion-and-questionable-outcomes/ Accessed March 13, 2023.
[124] Lithuania. LOBISTINĖS VEIKLOS ĮSTATYMAS (Law on Lobbying Activities) (27 June 2000). Available on: https://vtek.lt/wp-content/uploads/2021/06/EN_Law_on_Lobbying_Activities_2021.docx Accessed March 13, 2023.
[125] *Supra* note 79.
[126] *Supra* note 124.
[127] Lithuania. Administracinių nusižengimų kodeksas (Code of Administrative Offenses) (10 July 2015). Available on: https://e-seimas.lrs.lt/portal/legalActEditions/lt/TAD/b8d908c0215b11e58a4198cd62929b7a. Accessed March 13, 2023.
[128] *Supra* note 124, Article 14.
[129] *Supra* note 127, Article 172^{25}.
[130] *Supra* note 124, Article 13.
[131] Mark Tuil, Louis Visscher, *New Trends in Financing Civil Litigation in Europe: A Legal, Empirical, and Economic Analysis* (Edward Elgar Publishing, 2010): p. 63.
[132] *Supra* note 124, Article 15.

indicate stronger future enforcement."[133] The author believes that such a provision is useful, and it gives a signal to society that the law does not have repressive intentions, and there is also no reason to think that the option to impose warnings will result in the actors of the law being not as compliant than without them.

In the Author's opinion, there shall not be a doubt that when they will add penalties to the Latvian lobbying law, there will also be an option to give a warning and not fines, but it is different from how it is regulated. In Lithuania, the warnings apply to all minor violations[134], while in Latvia KNAB most probably will have to decide themselves, as it was provided in the draft laws. In the Author's opinion, the Lithuanian model is not optimal, and potential Latvia's regulation would be better, as the Lithuanian supervisory authority has to apply warnings to all cases that fit the criteria of specific articles, but there should be still the option to provide harsher penalty if there are external circumstances which make the violation more serious. Warnings are special in that there can be cases when there is no violation found, but the private person is still given out the warning, as has been stated by the Higher Court of Latvia:

> In order to issue a warning, it is not necessary to establish that a person has committed a violation of the law, but it is sufficient to see signs in the person's possession that indicate the possibility of illegal activity.[135]

This and other aspects are reasons why warnings will always be less serious than fines, which is supposed to be so, but they still shall be effective enforcement tools to use, as it shows that some kind of violation has been found or suspected[136].

Lithuanian legislators have marvelously explained the process that the Chief Official Ethics Commission go through when reviewing potential violation of the lobbying rules[137]. This was not the case in Latvia where in the second hearing there was an approved version of the legal norm, where in two sentences the whole section of liability was included[138]. The process consists of eight steps, from which the first one is the investigation process led by authorized members of the Commission or civil servants, which are called violation investigators.[139] That is followed by drafting the violation protocol and sending out the protocol to the relevant person. After that, and when the person in question has been introduced to the process, there is a hearing of the violation case, where the arguments of the parties can be brought up, which is done in writing, but a legal person can request it to be done orally.[140] Finally, the Commission shall make the decision, whether to impose a fine, terminate the violation case and give an oral remark (warning), terminate the violation case and serve a written order to rectify the violation

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[133] Heather Eckert, "Inspections, warnings, and compliance: the case of petroleum storage regulation", *Journal of Environmental Economics and Management* 47 (2004): p. 233. Available on: https://www.sciencedirect.com/science/article/pii/S0095069603000792. Accessed March 14, 2023.
[134] *Supra* note 124, Article 15.
[135] Latvijas Republikas Augstākā tiesas Senāts, Administratīvo lietu departaments, 2 December 2010, Judgement, SKA-764/2010. Available on: https://www.tiesas.lv/nolemumi/pdf/20540.pdf Accessed March 27, 2023.
[136] Sandra Roussaeu, "The use of warnings in the presence of errors" *International Review of Law and Economics* 29 (2009): p. 191. Available on: https://www.sciencedirect.com/science/article/pii/S0144818809000027?casa_token=_nH3WiXGvpgAAAAA:aAZzkCJQaN0Sd8qt_n3a1zXC3jAceB7ika_YNafSNqLy2bVrh5ANFqHmww2z4l-Yzn8vBG6r_Q Accessed March 27, 2023.
[137] *Supra* note 124, Article 16.
[138] *Supra* note 38.
[139] *Supra* note 124, Article 16
[140] *Ibid*.

or terminate the violation case without any further actions.[141] Each of these steps is explained thoroughly, where there is no place for interpretation left for the actors, which is more than crucial when the topic is about imposing penalties.[142]

The Lithuanians have had the law for a while, and they still have large problems with the effectiveness of the law[143], but the penalties are not something that they see as the biggest barrier to having flawless regulation, as it is not mentioned within the main problems[144], thus there definitely shall be a lot to take from them. Detailed writing and specific instructions are what is needed when implementing liability in the law[145], thus when the legislators after two, or probably more[146], years then such regulation as in Lithuania, in Author's opinion, definitely shall be a template and not the version in the draft laws.

2.3. Suggestions for implementing penalties

There was an analysis of the current situation, where the experts are united that this version of the law will have to be improved with sanctions in the following years, there was an analysis of the provisions about penalties in the draft laws, and there was an analysis of the Lithuanian regulation regarding liability. The research provided crucial information that shall be used when these amendments will be made, starting from the amount of the penalties to the way to impose them, warnings, and wording of the law.

The research in previous sub-chapters will be used to get real proposals on how to regulate the liability questions in the Latvian regulation of interest representation. Firstly, there will be a proposal on how to regulate the supervisory institution, which is still not agreed upon in the law, then the investigation process, and the amount of penalties.

2.3.1. Supervisory institution and application of legal norms

As the liability for violating the law is not implemented in the legal norms, the legislators did not have an obligation to name the institution that will be responsible for controlling the enforcement of the law. This must be the authority that has the legal power to impose administrative penalties[147], as only 50 institutions have such rights[148]. Thus, Enterprise Register, which is currently the main institution involved in the effectiveness of the law, cannot be the responsible institution, as they are not named in the list of organizations that can start administrative penalty proceedings[149].

The Author does not believe that there should be created a new institution that will be responsible for the enforcement of interest representation of the law. Latvia in 2020 had the 8th

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[141] *Ibid*.
[142] *Ibid*.
[143] Alvidas Lukošaitis, LOBBYING IN LITHUANIA AND ABROAD: THE PROBLEMS OF LEGAL REGULATION ANDINSTITUTIONALIZATION, *Politologija* (2015). Available on: https://www.zurnalai.vu.lt/politologija/article/view/8273 Accessed March 27, 2023.
[144] *Ibid*.
[145] *Supra* note 79.
[146] *Supra* note 79.
[147] Administratīvās atbildības likums (Law on Administrative Liability) (1 July 2020). Available on: https://likumi.lv/ta/en/en/id/303007. Accessed April 20, 2023
[148] *Ibid*.
[149] *Ibid*.

highest government employment as a percentage of total employment in the EU[150], and creating another institution, which would just be responsible for this law would seem unnecessary, and only cultivate the issue of too many bureaucratic institutions.

The closest institution that has daily tasks relating to the violations of the law, is the Corruption Prevention and Combating Bureau (KNAB). Its tasks are to prevent and combat corruption, but also control the financing regulations of political organizations[151]. Thus, KNAB is not only strictly an institution that is responsible for corruptive actions, and there can be some leeway.

In the draft laws KNAB was mentioned as the institution responsible for penalties[152], but in reality, there was no confirmation that they would do it. As stated by a member of the working group that drafted the law, KNAB was not very interested in accepting these obligations: "KNAB was not very responsive, but it is possible that KNAB's consent could be reached through discussions."[153]

Of course, this brings some problems, as there is no one who willingly wants to accept the tasks, but member of the parliament Andrejs Judins was stricter regarding this question:

> It must be KNAB because we try to separate the representation of interests from corrupt activities, so I don't see any other options for the supervisory institution. Currently, KNAB might not want to because of this great uncertainty, because it is not clear what to do.[154]

It seems that there is a consensus that KNAB is the most appropriate institution to be responsible for this, as in Author's opinion state police would lack expertise in such cases, Enterprise register cannot legally do it, and a new institution would be too redundant effort. KNAB is not an independent institution, but it is also not part of the Ministry of the Interior, as it is the direct administrative institution of the Prime Minister[155].

In comparison to the Lithuanian system, Latvian legislators do not have to include in the legal norms a detailed explanation of how the violations of the lobbying or interest representation regulation have to be applied, as it is in detail explained in the Law on Administrative Liability[156]. Thus, in the law, it has to be stated that KNAB is responsible for the starting and investigation of the administrative liability process in case of violation of the law.

In Administrative liability cases, the first way to appeal the imposed liability is within the institution that was responsible for it.[157] In this case, it shall be KNAB, or another chosen institution, where the appeal process is also described in the Law on Administrative Liability.[158]

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[150] Eurostat. Share of government employment nearly stable. Available on: https://ec.europa.eu/eurostat/cache/digpub/european_economy/bloc-4d.html?lang=en. Accessed April 4, 2023.
[151] Article 2. Korupcijas novēršanas un apkarošanas biroja likums (Law on Corruption Prevention and Combating Bureau) (1 May 2002). Available on: https://likumi.lv/ta/id/61679-korupcijas-noversanas-un-apkarosanas-biroja-likums Accessed April 23, 2023.
[152] Supra note 38.
[153] *Supra* note 14.
[154] *Supra* note 79.
[155] *Supra* note 151.
[156] *Supra* note 147.
[157] *Ibid*.
[158] *Ibid*.

After it, if the person is still unsatisfied with the decision, then there is an opportunity to appeal it within two administrative court instances[159]. In the Author's opinion, for the appeal process, the law must be improved from the current version, or there have to be quality secondary sources, for the institution and court to make a just decision, which is the reason why Chapter 3 of this paper will be so crucial, as the penalties will be largely dependent on limiting the interpretation options.

2.3.2. Suggestions for penalties

Previously in this chapter, there was an analysis of the penalty system for lobbying regulation violations in Lithuania, where the legislators in the Law on Lobbying Activities have disclosed the penalties for legal persons, while in the Administrative Code, the number of potential penalties is disclosed for natural persons. In Latvia, it is against the practice of the legal system to disclose the penalty in specific numbers, as it is in Lithuania, as the amount has to be stated in fine units[160]. Fine units are an optimal way to not have to amend the law all the time because of inflation or change in the economic situation in the country, but just change the amount of how worth fine units are, which is correlating with the minimum wage in the country.

Thus, when discussing the amount, it has to be kept in account, that progressively this amount will rise. In the latest draft law where the liability was still in place, the legislators had chosen to have the liability from warning up to 30 fine units[161], and as one fine unit currently is five euros[162], it would be up to 150 euros.

In the Author's opinion, the maximum penalty is extremely low. It is possible that it was initially chosen to be this low, because of the distrust in the regulation, and thinking that the danger of having a big penalty for a violation, which cannot be easily proven, is dangerous. Nevertheless, as found in Chapter 2.1., the penalties play a very serious role in the effectiveness of the law, and if the penalties are this low, there can be similar effects to not having any enforcement in general, as there would be no fear of facing consequences.

It is possible, that the legislators intended to put a small fine at the beginning, but, as stated, Lithuania has penalties for legal persons from 1000 to 4000 euros[163], and from 144 to 579 euros for natural persons[164]. Thus, if such legislation would be accepted, Latvia's biggest potential for legal persons including would be only six euros more than the smallest penalty (besides a warning) for natural persons in Lithuania. The Author does not believe that this is proportionate, and the fines definitely shall be bigger.

To put the potential penalties in more clear perspective, in Poland the imposed amount can be 3000 zlotys to 50 000 zlotys[165] (655 euros to 10928 euros[166]), in Austria for a single

[159] *Ibid*.
[160] Likumi.lv. Administratībās atbildības ceļvedis. Available on: https://likumi.lv/ta/tema/administrativas-atbildibas-celvedis/ Accessed April 20, 2023.
[161] *Supra* note 38.
[162] *Supra* note 160.
[163] *Supra* note 124.
[164] *Supra* note 127.
[165] Mateusz Zuk, Rudolf Ostrihansky, Government lobbying in Poland, *Sołtysiński Kawecki & Szlęzak* (2019). Available on: https://www.lexology.com/library/detail.aspx?g=8465683d-4579-4a0e-bfc6-3931c3d0c03a. Accessed April 15, 2023.
[166] Forbes. PLN to EUR. Available on: https://www.forbes.com/advisor/money-transfer/currency-converter/pln-eur/. Accessed April 28, 2023.

violation the fine can be up to 20 000 euros, while in cases of repeat violation up to 60 000 euros[167], in Ireland up to two years in prison or up to 2500 euros fine[168], and in the United Kingdom the fine is up 7500 British pounds[169] (8555 euros[170]).

The author is confident that currently in the foreseeable future, Latvian legislators should not consider following Ireland's example, and not implement criminal liability for such violations. Firstly, because the regulation is not close as good to hold someone criminally liable for these legal norms, there is too big a risk of unjust result of the case. Secondly, because it does not seem necessary for actions relating to the Register and System, there shall be a serious liability.

When the penalties will be introduced in the law, the fines should be more similar to the regulations in other European countries. The Author believes that the Lithuanian example of the distinction between natural and legal persons is objective, and legal persons shall face bigger fines than natural persons, thus this version should be considered.

Regarding warnings, the Author suggests that there is no real leeway, and it shall be kept as in the draft version, where there is no separation between warnings and fines, and they are considered the same administrative liability. This is because of the practice of Latvian law, and the Lithuanian version of the regulation would go against it.

3. INTERPRETATION

In the Author's opinion, the law's most significant problem is and in the near future will be the interpretation of the legal norms. From the issue of interpretation also comes the problem of implementing penalties in the law, which can result in the law being in force but ineffective. As the law is only seven articles long and is not very complex, there are justified claims that the law is at risk of being too open for interpretation, thus making the application process too difficult.

3.1. Debate on the necessity of detailed law

The reason why the Author and others[171][172] believe that the law can face issues in its efficiency is because of the level of abstractedness that the legal norms have. The law will regulate the activities and relations of hundreds of thousands of people, but it is currently hoped to successfully be achieved with very few numbers of legal norms in the law and the regulations established by the Cabinet of Ministers.

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[167] Federal Ministry of Justice, Report - The Austrian Transparency Act 2013 for Lobbying and Interest Representation. Available on: https://www.bmj.gv.at/dam/jcr:99f2bda7-4e79-4e7d-8b10-975c64cf0374/report_on_the_austrian_transparency_act2013.pdf Accessed April 15, 2023.

[168] Sean Killing, Sharon Feeney, John Hogan, Transparency, Transparency:Comparing the New Lobbying Transparency, Transparency:Comparing the New Lobbying Legislation in Ireland and the UK Legislation in Ireland and the UK, Technological University Dublin (2017). Available on: https://arrow.tudublin.ie/cgi/viewcontent.cgi?article=1014&context=buschgraart Accessed April 15, 2023.

[169] *Ibid*.

[170] Forbes. GBP to EUR. Available on: https://www.forbes.com/advisor/money-transfer/currency-converter/gbp-eur/. Accessed April 28, 2023.

[171] *Supra* note 14.

[172] *Supra* note 79.

As in many cases of legal debates, the interpretation in Author's opinion also requires balance, and it would be dangerous to put all the responsibility to legislators in describing every possible case, but it is also inefficient to just include in the law some general points, leaving the enforcers of the law with a difficult task to impose the legal norms. Legal interpretation in general is a very big field of study with many different opinions on what should be the most important aspect when performing such tasks and how the process shall happen[173], but for this paper, the crucial aspect is the application of especially the interest representation regulation, as the methods will always depend on the enforcer and there will never be the perfect method, as stated by Hans Kelsen:

> There are always a number of possible interpretations and that there is no method in the law for singling out one of them as 'correct'.[174]

The concreteness of the law and its legal norms is the variable aspect on which the need for interpretation will depend, thus, the less abstract the law, the less need for interpretation[175]. On the other hand, when the enforcer is working with such law, it can only apply to the cases that are written down in the legal norms, thus when a situation occurs which has been left out of the law, the enforcer's hands are tied, and it cannot with legal interpretation methods, by analyzing the purpose of the legal norms, and other aspects, still apply the law[176]. Whenever such a situation happens, and there is an unregulated question, the legislators will be forced to open up the law and make amendments, and as it has to go through all the hearings in the Parliament and other legislation processes, it costs a lot of manpower and efforts, when it could be prevented. For this reason, the parliamentary secretary and former judge of the Supreme Court Lauma Paegļkalna believes that the precise law is not the optimal way to go:

> When talking about patterns of behavior or regulating relationships, the law doesn't have to be an instruction, it has to determine the big things, and then the law enforcer has to be smart when working with it.[177]

It seems to be a consensus among the interviewed experts that the situation when there is not very detailed text in the legal norms, is not something that the legislator is guilty of, but at the same time, all of them agree that there is a problem of interpretation. The reason for this, as mentioned, is the nature of how the law is written, that the optimal situation is not to create the legal norms by describing each case, but by creating a principle. As pointed out by Andrejs Judins, this is the practice of the Latvian legal system in general, and writing excessive legal norms is not the common practice:

Latvia has such legal specificity that the only way to solve the problem of interpretation is with guidelines, because there are countries where articles are explained much more in detail, but in Latvia, the legislators write as short and general as possible, without details, so we need something any comments:

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[173] Rosemary J. Coombe, "Same as It Ever Was: Rethinking the Politics of Legal Interpretation" *McGill Law Journal* 34 (1988): p. 614. Available on Hein Online Database. Accessed April 23, 2023.

[174] Stanley L. Paulson. Kelsen on legal interpretation. *Legal Studies* (2018): p. 144. Available on: https://www.cambridge.org/core/journals/legal-studies/article/abs/kelsen-on-legal-interpretation/F826957A001C46BA4D15D9C979299494 Accessed April 12, 2023.

[175] Martin Krygier, "Law as tradition" *Law and Philosophy* 5 (1986): p. 242. Available on: https://link.springer.com/article/10.1007/BF00190762#citeas. Accessed April 24, 2023.

[176] *Ibid*.

[177] Interview with Lauma Paegļkalna. Available as Annex II of the Bachelor Thesis. Interview was made on 13 April 2023.

> Latvia has such legal specificity that the only way to solve the problem of interpretation is with guidelines, because there are countries where there is an article, and then it is followed by a large part with explanations, but in Latvia, we write as short and general as possible, without details, so a document is needed, which explains the law.[178]

Thus, it can be concluded that it is not the fault of the working group that drafted the law nor the politicians who accepted that the law is under such risk of being too open to interpretation, but it is more caused by the practice in the legal system and the nature of interest representation. It does not mean that the problem does not have to be solved, but it means that there is no necessity for big amendments in the legal norms, and the situation will have to be improved with other tools, such as guidelines or commentary of the law.

Nevertheless, as pointed out by Lauma Paegļkalna[179], the mentioned aspects are different when there are legal norms about imposing penalties, as they require way more preciseness and there cannot be abstract nature.

> Of course, if it is some kind of question about the punitive element, then there must be a lot of clarity so that the person understands what he is being punished for.[180]

There cannot be left a lot of space for interpretation in these legal norms, because if it is understood by a person differently than it is by the enforcer of the law, the results can be very unpleasant or even life-changing for the person.

There is a reason why Lauma Paegļkalna in the interview when naming the major laws that are working well with a lot of responsibility being left on the enforcer of the law[181], such laws as Criminal Law[182] or Law on Administrative Liability[183] were not mentioned, as they are written very precisely and each case is described separately. Nevertheless, having penalties in the law is also very dependent on the rest of the legal norms[184], thus the guidelines or different supplementary documents might be necessary before the penalties are added to the current seven articles.

Nevertheless, even Criminal law has its commentaries[185] and it is impossible to regulate all the small-scale problems. It means that even though the legal norms with punitive nature are and have to be more precisely explained, there still will be a big role for the judge to analyze the legal norms: "Interpretation of the criminal law is a 'dialogue' between the judge and the text of the law.[186]" The Author believes that the quote also perfectly applies to administrative penalties and not exclusively criminal law, as stated in the quote.

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[178] *Supra* note 79.
[179] *Supra* note 177.
[180] *Supra* note 177.
[181] *Supra* note 177.
[182] Krimināllikums (Criminal law) (1 April 1999). Available on: https://likumi.lv/ta/en/en/id/88966. Accessed April 20, 2023.
[183] *Supra* note 147.
[184] *Supra* note 79.
[185] Uldis Krastiņš, Valentija Liholaja, *Krimināllikuma komentāri. Pirmā daļa (I-VIII. 2.nodaļa). Trešais papildinātais izdevums* (Rīga: Tiesu namu aģentūra, 2021).
[186] Simeneh Kiros Assefa. Methods and Manners of Interpretation of Criminal Norms. *Mizan Law Review* (2017): p. 89. Available on: https://www.ajol.info/index.php/mlr/article/view/161606. Accessed April 20, 2023.

3.2. Analysis of the supplementary document

In the previous sub-chapter, the Author concluded from the opinions of the interviewed experts, that there is a need for a supplementary document, besides the regulations that will be released by the Cabinet of Ministers, that will be in detail and on a case-by-case basis explain the articles in the law: "Without some kind of instructions, manuals or guidelines, it will be difficult to apply the law through various institutions.[187]"

Such a document would have to be non-binding, as it would be released just as an opinion of an institution or independent person, and not as a legislative act. Such a document is considered to be the law's secondary source, which has a serious role in the existence of a law: "Secondary sources are materials that discuss, explain, analyze, and critique the law.[188]" Such document is usually used by the judges in their judgments[189], but in this case the main target by creating the secondary source would be the actors of the law, to clear up some unclear questions that they might have.

A very crucial aspect of this document would be the "critique of the law[190]", as the creation of the secondary source would allow us to see the disadvantages that the current regulation is holding: "From these guidelines, it would also be easier to identify problems that should be eliminated by the law."[191]

3.2.1. Format of the document

Even though there is a general agreement between the Members of the Parliament, representatives of relevant ministries, and specialists from non-governmental organizations, that an official secondary source for the law is needed, it is unclear how exactly the document shall look. The word that has been mentioned the most regarding the format is 'guidelines', but there have also been conversations about the commentary of the law, recommendations, and handbook. Guidelines, which seem, currently the most popular solution, would have a role in proposing to the actors of the law how to comply with the legal norms, as guidelines: "attempt to define the scope of fair use for specific applications"[192].

Guidelines are very popular in the consumer rights protection field[193] , where the relevant institution – the Consumer Rights Protection Centre, has released a lot of guidelines

[187] *Supra* note 14.
[188] NYU Law. "Law Library Basics: Legal Research – Secondary Sources". Available on: https://nyulaw.libguides.com/c.php?g=773842&p=5551762#:~:text=Secondary%20sources%20are%20materials%20that,to%20start%20your%20legal%20research. Accessed April 22, 2023.
[189] Russell Smyth. "Other than "Accepted Sources of Law"?: A Quantitative Study of Secondary Source Citations in the High Court" *University of New South Wales Law Journal* 22 (1999): p. 21. Available on Hein Online Database. Accessed April 22, 2023.
[190] *Supra* note 188.
[191] *Supra* note 14.
[192] Kenneth D. Crews, "The Law of Fair Use and the Illusion of Fair-Use Guidelines Symposium: The Impact of Technological Change on the Creation, Dissemination, and Protection of Intellectual Property" *Ohio State Law Journal* 62 (2001). Available on: Hein Online Database. Accessed April 25, 2023.
[193] Patērētāju tiesību aizsardzības centrs. Vadlīnijas komersantiem. Available on: https://www.ptac.gov.lv/lv/vadlinijas-komersantiem?utm_source=https%3A%2F%2Fwww.google.com%2F Accessed April 25, 2023.

regarding many aspects of this field. This field relies so much on guidelines, because: "regulating something as dynamic as the consumer market is never easy and never dull.[194]"

The Author believes that consumer rights protection is a perfect example of interest representation regulation on how there can be a well-established system, even though the law is very abstract[195], there is still a very high level of compliance with the legal norms. A big reason for that in Author's opinion is because of the guidelines, as the legal norms are way easier to apply, as the relevant institution and administrative courts have some non-binding documents that they can look into when analyzing the situations.

Recommendations will not be analyzed separately from the guidelines, as in Author's opinion there is no significant difference between them, and the word that is chosen by the authority, that will release the document, will not have big relevance if it is between these two. That cannot be said about the commentary of law, which has also been stated as an option[196], as it has some relevant differences to the two previously mentioned documents in this paragraph.

Commentary as shown in an example by the Labor Law with comments[197], that this document is explaining the cases, obligations, and rights from the perspective of each article. The fact that the interest representation regulation is written in a way that the most important aspect of the System is written in one article, it would make the commentaries just about one or two articles, which is not the optimal solution.

More interesting is the conversation about the handbook that would explain to the actors how they should act in different circumstances. This is not a traditional solution to solve the interpretation problem, but it is still used, for example, State Chancellery released a handbook for disinformation[198], but in Author's opinion, this would not be the worst solution, at least as a supplementary secondary source to the guidelines.

The interest representation regulation is affecting a wide range of institutions, and handbooks could be an option for how each of these institutions could be advised, as it is possible that it will not be possible to regulate all the institutions in the general guidelines. Nevertheless, the Author is confident that guidelines/recommendations shall be the appropriate measure that has to be chosen, and other secondary sources can be supplementary.

3.2.2. Relevant institution for the supplementary document

Even though there is a general agreement on the necessity of secondary sources, there is still left a large question – who will be the person or institution that will be responsible for creating this document? The first question is - should the responsible person or authority be from the private or public sector, and secondly, of course, who specifically shall it be?

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[194] Gerain Howells, Stephen Weatherill, Consumer Protection Law, Routledge. (2017). Available on: https://books.google.lv/books?id=jK40DwAAQBAJ&dq=consumer+protection+law+%22general%22&lr=&source=gbs_navlinks_s Accessed April 25, 2023.
[195] *Supra* note 177.
[196] *Supra* note 79.
[197] Irēna Liepiņa, Kaspars Rācenājs, Vita Liberte, Liene Blūma, Sintija Platā, Dārta Eglīte, Jānis Ciguzis, Darba Likums ar Komentāriem, Latvijas Brīvo Arodbiedrību Savienība (2020). Available on: https://arodbiedribas.lv/wp-content/uploads/2020/02/new_dl_ar_kom.pdf Accessed May 28, 2023.
[198] Ministru Kabinets. Rokasgrāmata pret dezinformāciju. Available on: https://www.mk.gov.lv/lv/rokasgramata-pret-dezinformaciju Accessed May 28, 2023.

From interviewed experts two out of three believed that it shall be a state institution, while Andrejs Judins believed that it shall be an independent author. Andrejs Judins explained his point of view from the perspective that if the state institutions would create the document, it would have too close to meaning than binding laws, and that neutral expert is more common practice in secondary sources, that courts still respect a lot[199]. Meanwhile, Lauma Paegļkalna pointed out the importance of the signals that not trusting state institutions can give, and trust in the state is something that is also Author's opinion should be cultivated more:

> We have to trust that policymakers and institutions are also competent to determine the legal framework, otherwise, the state apparatus loses its meaning. If the institutions develop the regulation, then they also take responsibility for the result. If these institutions draft the law, then there should be no problem in drafting the guidelines as well.[200]

The common practice in the state is to make such guidelines by its institutions, as there are also Regulations by the Cabinet of Ministers on how to create such guidelines[201], especially in the cases where the guidelines are really necessary for the existence of the law, for example, competition law or previously mentioned consumer rights protection law. In cases like civil law, where there are no official secondary sources by state, the many published commentaries are initiated by scholars, and in Author's opinion even though they have a role in the application of the legal norms, the commentaries are not critically necessary.

Usually, the institution that is responsible for the field and the enforcement also adopts the guidelines, but as there is no such institution found, it is impossible to say for sure, which institution shall the task. Previously in the paper, it was concluded that logically KNAB is the institution that shall take the responsibility to create guidelines, which is a common practice by this institution[202].

3.3. Content in the supplementary document

It is significant to note that just as in any legal document, binding or non-binding, the quality of it is crucial for its impact. If the guidelines will be written poorly then the issues that they will be meant to solve will stay in place. Thus, analysis of the contents is needed, which is also a reason why discussions regarding interest representation regulation are so public, as these questions require a lot of analysis from different sides.

In this sub-chapter the Author will provide his beliefs on the general questions and not the specifics of the guidelines or different kinds of secondary sources, as there are still so many things unclear that can only be predicted and not critically reviewed.

The recommendations shall largely focus on how to identify the interest representation, as all the interpretation problems, such as knowing when to declare, correlation with the Constitution's Article 31[203], knowing the difference between criminally liable communication

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[199] *Supra* note 79.
[200] *Supra* note 177.
[201] Ministru kabineta noteikumi Nr. 558 (Cabinet Regulation No. 558) (7 September 2018). Available on: https://likumi.lv/ta/en/en/id/301436 Accessed April 20, 2023.
[202] KNAB. Metodiskie Materiāli. Available on: https://www.knab.gov.lv/lv/metodiskie-materiali. Accessed April 29, 2023.
[203] *Supra* note 39.

and communication subject to the law, as it is very thin margin[204], etc., are all matter of understanding what is interest representation. As stated, it is unclear where on many of these questions the responsible authority will stand, which makes it difficult to analyze it in detail.

Nevertheless, the definition of interest representation is provided, meaning that the idea of how the interest representation shall look, to be registered in the System, is clear. There have to be ways for representatives of public authority to understand that this communication fits the criteria, and that is what guidelines how to be about – to help identify the unclear questions.

In the debate panel, called organized by the Ministry of Justice, which was called "Interešu pārstāvības atklātības likuma piemērošana – ko un kā ietvert sistēmās?", where the Author participated - he, together with Līga Stafecka and Employers' Confederation of Latvia (LDDK) director general Kaspars Gorkšs came up with a system on how to understand if the communication has to be considered to be interest representation or not[205]. There were identified as five separate aspects that are indicators that the conversation could be interest representation.[206] There was agreement that all five of them do not have to be found, for it to be considered as interest representation, but the exact number was also not agreed upon, but that is the less important question.[207]

The first aspect is the intention to influence a decision, as often there can be criticism, and demands for better work, but those things do not make the conversation lobbying. Influencing a decision shall mean that it is possible to see clear intentions of a specific question that is raised to make a favorable decision for the interest representative.[208] Second is that the representative of public authority has objective possibilities to affect the public decision, which was chosen because representatives of public authority can be many, but not all of them can have a real saying regarding the discussed question.[209]

Third is not easy to detect in real life, but there have to be signals or clear signs of the results that the interest representative is trying to achieve with the communication, as interest representation is not something abstract and there have to be real questions raised.[210] Fourth is the easiest of them all, which is that the initiator of the communication is not the representative of public authority.[211] Finally, the fifth is that the interest representative approaches the other party in circumstances that are outside the standard events of the public decision.[212]

The Author believes, that the guidelines should largely be about these five signs, and there should be a depth analysis of each of these signs and specifics for the fields that the

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[204] Aldis Pundurs, "Par diviem Augstākās tiesas Senāta spriedumiem" *Jurista vārds* 26 (2012). Avalable on: https://m.juristavards.lv/doc/249545-par-diviem-augstakas-tiesas-senata-spriedumiem/ Accessed April 24, 2023.
[205] The idea was partly Author's, as it was created in an event organized by Ministry of Justice, where the Author was in a group that formulated this idea. The event was called "darbnīcā "Interešu pārstāvības atklātības likuma piemērošana – ko un kā ietvert sistēmās?" Besides the Author, in the smaller working group, that came up with the idea, also participated Līga Stafecka and Kaspars Gorkšs. The discussed ideas are not owned by any person, and they were made in order to help the Ministry of Justice and State Chancellory in the process of creating regulations. The event happened on 27 April, 2023 in the premises of the Cabinet of Ministers.
[206] *Ibid*.
[207] *Ibid*.
[208] *Ibid*.
[209] *Ibid*.
[210] *Ibid*.
[211] *Ibid*.
[212] *Ibid*.

representative of public authority can do its professional duties. The guidelines must be easy to understand and easy to follow[213], and with these features, it shall be possible.

CONCLUSIONS

In the paper, there was a comprehensive examination of multiple key aspects of the law which regulates interest representation in Latvia, and the Author identified several potential problems that the System might face when it starts to function. As there are still two years until the System will start to work, these issues are brought up to potentially solve them or at least reduce the severity of the problems.

Firstly, the Author explained in detail the objectives of the law, which is a crucial aspect to understand how the System shall work, and what should be the main focus points when trying to identify, analyze and solve the issues of the law. Furthermore, it was very important to explain and analyze each definition of the law and how the Register and System will work, all of it is something new to the Latvian legal system. Understanding these definitions and registers was crucial for all the further analysis in the paper, as without that it would be unclear how to solve the issue of penalties and interpretation.

Regarding penalties, the researchers discovered that there is a very high risk of having a law that has no enforcement mechanism, and the situation, especially regarding interest representation, where declaring needed information in the System is technically voluntary, is far from optimal. Consequently, the effectiveness of having such regulation is very much at risk, and the Author proposes that there shall be some kind of penalties for non-compliance before the System starts to work.

A very crucial aspect, was the analysis of Lithuania's legal system's regulation on lobbying, as they have multiple decades of experience. The results showed that they have been very detailed in the explanation of the application of penalties, which possibly has given them an opportunity to also apply large fines.

The findings suggest that when penalties will be implemented in the law, they shall be substantial enough to motivate or petrify the actors of the regulation to comply with the legal norms, or else the effectiveness will not be reached. The initial amount discussed in the draft laws was found to be far from sufficient and could hinder the chance to achieve the goals of the law.

Additionally, the research found that the current legal norms have a very high risk of being too ambiguous, which can also lead to effectiveness problems. The best solution for this issue was found to be not to modify the law, but to release a document that would be a secondary source, which would provide an in-depth analysis of how to act in potential situations.

The guidelines or different kinds of secondary sources would serve as a guide for representatives of public authority and interest representatives, assisting them in understanding the legal norms. The research found that such a document would be able to solve the interpretation risks and is often used in many other similar fields.

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[213] Eric van Wijlick, Marian Verkerk, Alexander de Graeff, and Johan Legemaate. "Palliative Sedation in The Netherlands: Starting-points and Contents of a National Guideline" *European Journal of Health Law* (2007). Available on: https://brill.com/view/journals/ejhl/14/1/article-p61_5.xml Accessed April 29, 2023.

In the initial phase of the research, the Author proposed a hypothesis where he stated that – the current regulation will not be able to fully eradicate the problem of hidden lobbying. The Author has concluded that the research proved that the hypothesis has been validated. The research showed that both two big problems of the law, the lack of penalties and risk of interpretation are very present, and they directly will affect the eradication of hidden lobbying, as the process will not become transparent if the regulation is not corrected.

Nevertheless, the findings suggest that this is not a global issue of interest representation regulation and that there are potential solutions for it. For penalties, Author believes that the solution is just to implement them before the System starts to function. The penalties have to be strong enough, while for interpretation the solution shall be looked at in supplementary documents and not the law itself. Thus, it is possible that when the System will start to function in the second part of 2025, the regulation by then will be able to eradicate this issue in political processes, but currently, as long as there are no enforcement mechanisms, and legal norms remain wide open to interpretation, transparency will remain a large issue, and the effectiveness of the System will be limited.

It is worth noting that the research had some limitations, that restricted the possibility to analyze even better the brought-up issues. First and the most serious of them, was the lack of academic sources that analyze the law and interest representation or lobbying registers, in general. This limitation made it difficult to have a wide range of opinions on all brought-up issues and questions. However, this limitation was addressed by the Author by inviting three highly respectable experts from the relevant field – Member of the Parliament Andrejs Judins, Ministry of Justice parliamentary secretary Lauma Paegļkalna and Providus senior policy analyst in anti-corruption and good governance Līga Stafecka. They all provided very professional expertise about the asked questions regarding the research, but they did not agree on many things, thus providing very thought-provoking aspects to analyze.

Another limitation is the evolving nature of the regulation, as it is still a very recent law, and the Cabinet of Ministers is yet to release their regulations about the System, and there shall be published secondary sources too. Consequently, the Author had to take in mind that some of the analyzed things could change soon, but as the research is about the current regulation, this limitation shall not be as meaningful. This limitation also appeared in the fact that there are no judgments in the Latvian courts regarding the law, as there cannot be imposed penalties, and either way, it would probably not be enough time to have judgments already publicly available.

It is important to note what could be the prospects in this field of study, and how this research paper could be used in other studies. Firstly, as noted, this law and lobbying regulation in general in Latvia is lacking research. The Author believes that further research could analyze penalties and interpretation in more depth. There must be done research in the future, after additional regulations or supplementary documents are released, to update the findings of this paper, but the Author believes that this paper will play an important role as the base research.

In conclusion, the Bachelor thesis provided in-depth initial research of the law that regulates interest representation, which helped to identify the essential aspects that have to be improved before the System starts to function. Many of the problems the Author has already stated in the public discussion organized by the Ministry of Justice, where he was granted a chance to participate because of the thesis, and he believes that the goal to positively affect further interest representation regulation changes will be achieved by this research.

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ANNEX 1 – INTERVIEW WITH LĪGA STAFECKA

- *THE INTERVIEWEE HAS SIGNED AN AGREEMENT FOR THE USE OF THE INTERVIEW AND A PERSONAL DATA PROCESSING AGREEMENT*

Edgars Oļģerts Pavlovskis (EOP):
Labdien, liels paldies, ka piekritāt tikties uz sarunu!

Pirmais jautājums man ir par Ministru kabinetu – tam drīzumā vajag papildināt likumu deleģētajos jautājums, tāpēc gribu pajautāt Jūsu viedokli, uz kurām tēmām jābūt fokusam un kādiem jābūt šiem papildinājumiem?

Līga Stafecka:
Ministru kabinetam principā jāizstrādā pati tehniskā specifikācija reģistriem, lai saprastu kādu informāciju šajos reģistros ievāks, lai tālāk Uzņēmumu Reģistrs varētu uzbūvēt šīs sistēmas - gan reģistru, gan deklarēšanās sistēmu, un saprastu kāda veida informāciju tur liks, cik daudz no tā sabiedrība redzēs, kā sabiedrība piekļūs informācijai utt. jo šis likums aptver ļoti plašu cilvēku loku. Ir nepieciešams saprast, kā šo visu administrēt, kas ir praktiskā puse, bet tā ir arī daļēji saturiskā puse, jo tas arī ietekmē ievācamās ziņas no frpersonām. Tas, kas šiem papildinājumiem ir jādara, ir jāpanāk, lai labāk var saprast, kā šo likumu piemērot praksē, detalizētāk izskaidrot tieši lobēšanas aktivitātes – ko no tām aktivitātēm papildus jādeklarē, jo likumā ir vispārīgi pateikts, piemēram, aprakstītas tikšanās, bet ko tieši ar tikšanām saprot, vai tās ir tikai klātienes tikšanās, vai arī tiešsaistes saziņa, kas mūsdienās ir tikšanās, bet tikai attālinātā formā. Tur būs diskusijas, lai kopumā saprastu, kā palīdzēt labāk piemērot.

Edgars Oļģerts Pavlovskis:
Vai tā ir cerība, ka Ministru kabinets šo visu izdarīs, vai reāls plāns?

Līga Stafecka:
Ministru kabinetam ir uzdevums, un viņiem tas ir jāpilda, tas ir viņu pienākums. Pēc tam šī likuma iedzīvināšana ļoti daudz balstās uz cerībām, taču šādā līmenī, tur kur ir Ministru kabinets, ierēdņiem vienkārši ir jāizpilda tas, kas likumā ir aprakstīts.

Edgars Oļģerts Pavlovskis:
Šim likumam ir divi mērķi, kurus var sadalīt trīs mērķos – interešu pārstāvības atklātība, sabiedrības uzticēšanās veicināšana interešu pārstāvjiem un publiskās varas pārstāvjiem, kā arī interešu pārstāvju vienlīdzības veicināšana, tāpēc es gribētu jautāt, ar kuru no šiem mērķiem varētu būt vislielākās problēmas to panākt, un kurš varētu būt visreālākais?

Līga Stafecka:
Principā tam likumam pietiktu ar mērķi veicināt interešu pārstāvības atklātību, kas principā ir lobēšanas regulēšanas pamatmērķis, ka lēmumu pieņemšanas process kļūst izsekojams, saprotams, redzami argumenti, iesaistītās puses un tamlīdzīgi. Vienlīdzības mērķis ir vairāk dekoratīvs, jo ko tas praksē nozīmē? Vai tas uzdod amatpersonai praksē darīt kaut ko vairāk? Tādā ziņā, ka vienlīdzība ir pašsaprotama lieta, pie amatpersonas nāk dažādi interešu pārstāvji, ar tiem runā un viņš neatsaka, pat ja nāk lobists ar pretējām interesēm, bet amatpersonai proaktīvi tāpat nekas nav jādara, jo, ja mežu cirtēji atnāk, bet vides aizstāvji neatnāk, tad amatpersonai nav pienākums aicināt vides aizstāvjus, lai gan, protams, normālā likumdošanas procesā tie ir jāiesaista, bet tas nav obligāti lobēšanas procesos. Tad, kad amatpersona izstrādā

kādu regulējumu, tad gan ir jādomā, lai intereses ir sabalansētas, bet, kad lobists nāk, tad, ko tā vienlīdzība nozīmē? Primāri mērķis ir atklātība, tas arī ir būtiskākais šajā likumā.

Edgars Oļģerts Pavlovskis:
Kāds ir jūsu viedoklis par uzticības veicināšanas mērķi?

Līga Stafecka:
Šis mērķis īstenojas pastarpināti, jo kad ir labāks, caurskatāmāks process, tad cilvēki vairāk redz kā tiek pieņemti lēmumi, mazāk ir aizdomas, ka kaut kas notiek aiz slēgtām durvīm ar slēptām interesēm, tad tas arī to uzticību veicina.

Edgars Oļģerts Pavlovskis:
Ja salīdzinām interešu pārstāvju reģistra prasības ar deklarēšanās sistēmu publiskai varai, tad šīs prasības interešu pārstāvjiem ir salīdzinoši mazākas, jo nav jānorāda tik daudz informācijas, jāreģistrējas tikai pēc trešās interešu pārstāvības reizes utt., vai, Jūsuprāt, šāda likumdevēja pieeja bijusi apzināta, un kāds varētu tam būt pamatojums?

Līga Stafecka:
Es domāju, ka šobrīd tas, kas tiek prasīts, ir pietiekams apjoms - tik cik sākotnēji vajadzīgs. Tas, kas radīja diskusijas bija, vai nākotnē varētu paplašināt ar to, ka paši lobētāji norāda savas aktivitātes, nevis tikai publiskās varas puse. Šobrīd nav pietiekami daudz nepieciešams norādīt, par ko tā lobēšana notikusi. Tā ir izšķiršanās likumdevējam par to, vai reģistrs nav pārāk apgrūtinošs cilvēkiem, vienlaikus no otras puses, lai tas kaut kādu informāciju šī puse dotu.

Piemēram, var prasīt darbības jomas, kas Kabinetam būs jānosaka, kas jau parādīs to virzienu, kurās lobists ir iesaistījies, bet neprasot konkrētus likumus un likumprojektus, jo ir arguments, ka daudzi lobisti katru dienu strādā ar vairākiem likumiem, kas būtu pārāk birokrātiski noslogojuši katru dienu prasīt, lai kaut kas tiktu reģistrēts. Manā organizācijā arī ir tāda situācija, bet mēs esam salīdzinoši neliela organizācija, bet LDDK, LTRK, tur ir ļoti plašs cilvēku apjoms, kas strādā ar vairākiem likumiem, kas būtu ļoti sarežģīti šādām organizācijām visu to deklarēt. Tāpēc pagaidām ir atstāts šādi, bet nākotnē varētu papildināt ne tik daudz par likumprojektiem, palikt pie darbības jomām, bet, piemēram, ka lobists arī no savas puses reģistrē tikšanās reizes, lai būtu abu pušu apstiprinājums.

Edgars Oļģerts Pavlovskis:
Runājot par motivāciju, likumam nepieciešama arī politiskā motivācija, tāpēc vēlos jautāt, kā Jūs vērtētu likumdošanas procesu - vai tas bija visas 13. Saeimas plānos, jo vismaz pēdējā lasījumā visa Saeima atbalstīja likumu, vai tas bija tīri koalīcijas mērķis, un opozīcija nevēlējās iestāties pret atklātību, vai arī tomēr tikai vienas frakcijas, Attīstībai/PAR, plānos, jo no viņiem tika panākts, ka šis jautājums tika iekļauts valdības deklarācijā, un tikai tāpēc beidzot tika pieņemts šis likums?

Līga Stafecka:
Būtiskākais ir tas, kad šis likums tika pieņemts – tas notika piecas minūtes pirms 13. Saeima beidza savu darbu, līdz ar to likuma pieņemšana notika ļoti straujā tempā.

Grūti šo jautājumu no malas novērtēt, taču vienai partijai šis likums bija ar politisku interesi, panākt ka viņi savu plānu ir izpildījuši attiecībā uz šo jautājumu. Tomēr, skatoties šo procesu, pēdējās komisijas sēdēs deputātiem nebija jautājumu, līdz ar ko diskusiju starp politiķiem nebija. Tāpēc es teiktu, ka vai nu politiskie spēki bija vienojušies, ka pieņems šo likumu, kāds tas ir, vai nu nebija liela interese par to. Darbs uz šī likuma pieņemšanu bija ilgs, Covid šo

procesu ļoti ieildzināja, un iesaistītās puses gribēja, lai tas beidzas rezultatīvi, ko noteikti vēlējās arī deputāti, kas darbojās šajā komisijā, tāpēc bija tik svarīgi, ka likums tiek apstiprināts.

Edgars Oļģerts Pavlovskis:
Viens no sāpīgākajiem tematiem par šo likumu ir tas, ka nav īsti veidu, kā piespiest šo likumu īstenot jeb šim likumam nav sankciju. Tāpēc vēlos jautāt – kā Jūs komentētu likumdevēja izvēli neiekļaut sankcijas?

Līga Stafecka:
Tam bija vairāki iemesli - viens praktisks iemesls, ka deputāti nepaguva izstrādāt šo normu, jo bija jāpaspēj pieņemt likumu. Sākotnējās redakcijās bija paredzētas nelielas sankcijas, bet tās tika izņemtas, jo nepaspēja kārtīgi šīs normas izstrādāt. Otra lieta bija, ka nekļuva skaidrs, kā notiktu sankciju piemērošana, jo Uzņēmuma Reģistram nav tiesību izmeklēt lietas, tāpēc jāiesaistās būtu, visticamāk, KNAB vai Valsts Policijai vai tamlīdzīgai institūcijai. KNAB nebija pārāk atsaucīgs, taču iespējams diskusiju ceļā pie KNAB tomēr varētu nonākt, bet tad ir jāvienojas par sankciju apmēru, jo ja tām ir tikai dekoratīva jēga, tad tas kļūst sarežģītāk. Vēl svarīgāk ir tas, kādi būtu nepieciešami pierādījumi, jo, ja piemēro smagākas sankcijas, tad ir grūti izsekot šādus pārkāpumus. Piemēram, starp amatpersonu vai kādu lobistu noticis čats vai *Zoom* zvans, un tad ir no amatpersonām atkarīgs vai šāda saruna tiktu deklarēta. Iestādei, kas to izmeklētu, būtu ārkārtīgi sarežģīti piemērot sankcijas, jo tai būtu jāsavāc pierādāmi fakti.

Šis ir tas gadījums, kad, neveicot vajadzīgo izpēti, var nodarīt kaitējumu, piemēram, ja ļoti daudz organizāciju negribēs riskēt ar sankcijām, tāpēc neiesaistīsies politiskajās darbībās, tad politiskā kvalitāte pasliktināsies, jo tad kaut kādas intereses netiks pārstāvētas. Lobēšana tomēr dod arī pienesumu publiskās varas procesam, sniedzot savus apsvērumus. Ar sankcijām ir sarežģīti, taču šobrīd likumam tas dod vājas pozīcijas tikt iedzīvinātam, jo tas būs atkarīgs no dažām personām vai iestādēm, kas sniegs priekšzīmes, un citi negribēs atpalikt, bet ļoti daudzviet tik ilgi, kamēr nebūs sankciju, šis likums tiks ignorēts, kas ir šī likuma vājums.

Likumā ir arī iestrādāts, ka Ministru Kabinetam ir jāziņo Saeimai par progresu likuma ieviešanā, un pēc diviem gadiem ir paredzēts iestrādāt idejas par sankciju paketi likumam. No otras puses tā nav slikta pieeja skatīties to, kas strādā un kas nē, un, uz to balstoties, var iestrādāt sankcijas, kas labāk strādātu. Tā kā no vienas puses tas attur cilvēkus no likuma ievērošanas, taču no otras puses tas ir ļoti sarežģīts jautājums. Ir jāskatās, cik tālu ar sankcijām iet, jo, ja paredz lielāku atbildību, tad jāskatās izmeklēšanas smagums, kas būtu diezgan nopietns.

Edgars Oļģerts Pavlovskis:
Labs piemērs par vēlmi īstenot likumu ir politiskās partijas, kuras pašlaik izskata iespēju ieviest publiski pieejamus iekšējus kalendārus, reģistrus, kur parāda šīs interešu pārstāvības reizes. Iespējams iestādes nākotnē arī līdzīgi rīkosies, kad negribēs izskatīties negodīgi sabiedrības acīs, tāpēc ievēros likumu?

Līga Stafecka:
Partijas tādā ziņā ir vismazākā puse, par ko jāuztraucas, jo likums ir spēkā, un visām pusēm ir jāievēro. Šobrīd arī Saeimai un citām institūcijām ir pienākums ievērot likumu, ko var darīt labi un ne tik labi. Institūcijām, kurām ir svarīgs to reitings un uzticība, īsti nav variantu, kā rīkoties. Iespējams, tās saskarsies ar kaut kādām piemērošanas grūtībām, taču pakāpeniski tas ieviešanas process notiks. Tā būtu ārkārtīgi slikta ziņa sabiedrībai, ja likumu, ko pati Saeima pieņēma, tā neievēro.

Edgars Oļģerts Pavlovskis:

Vai būtu iespējams atstāt šo likumu bez sankcijām, un, ka iesaistītās puses darbojas uz savu godaprātu, vai arī bez sankcijām šis likums īsti nevar eksistēt?

Līga Stafecka:
Ir pāris precedenti, kur likumi darbojas bez sankcijām, piemēram, par valsts karoga izkāršanu, par ko nav sankciju. Tomēr šajā gadījumā sankcijas ir vajadzīgas, jo mums nav tāda politiskā kultūra, kur varam paļauties, ka sabiedrība ievēros šīs prasības, jo no reģistra ir jēga, kad to dara lielākā daļa, nevis tikai tad, kad to dara daži brīvprātīgie. Visinteresantākā reģistra daļa nav biedrības, domnīcas, LTRK vai LDDK, jo šīs organizācijas to dara ļoti atklāti, bet mēs mazāk redzam profesionālos lobistus, kuriem par šo darbību maksā, un kuri veic konsultāciju darbu, kuri, neieviešot sankcijas, labprāt paliktu ēnā.

Edgars Oļģerts Pavlovskis:
Viena no lielākajām problēmām šim likumam varētu arī būt potenciāli lielā interpretēšana, jo nav īsti skaidrība, kas ir interešu pārstāvība, un kas nav. Varbūt jums ir idejas, kā ar šo problēmu var cīnīties?

Līga Stafecka:
Jā, tā ir problēma. Likumam ir tikai septiņi panti, taču tas aptver visu publiskā sektora spektru. Bez kaut kādām instrukcijām, rokasgrāmatas vai vadlīnijām būs grūti likumu piemērot caur dažādām institūcijām. Saeimai, Ministru Kabinetam, pašvaldībām ir sava atšķirīga specifika to darbībās. Manuprāt, noteikti jābūt vadlīnijām, tikai nav skaidrs, kas tās varētu izstrādāt. Saeimai gan jau būs interese pilnveidot šo likumu, tāpēc, iespējams, tas kaut kad tiks vērts vaļā. Principā ir nepieciešamas vadlīnijas, kur ir prakses apkopojums uz dažādām situācijām, kurās būs rakstīts par situācijām, un kā tajās reaģēt. Šādi arī veidotos prakse, ar kuru būtu lielāka skaidrība par likuma piemērošanu, un no šīm vadlīnijām arī būtu vieglāk identificēt problēmas, kuras likumā vajadzētu novērst. Likumu uzrakstīt abstrakti ir viens, bet dzīves situācijas ir kas cits. Un nāksies visu laiku vērtēt, kā šis likums jāpiemēro, vai ļoti plaši vai tikpat labi kā uzrakstīts. Būs arī situācijas, kurās nav vēlme izvairīties no reģistriem, bet vienkārši nav sapratne kā rīkoties, tāpēc vadlīnijas ir ļoti nepieciešamas. Iespējams, tās būtu jāizstrādā Ministru Kabinetam, strādājot ar likuma pilnveidošanu, izstrādāt arī palīgmateriālu, kā to piemērot, kā arī, iespējams, vadlīnijas būs jāprecizē no iestāžu perspektīvas. Saeimai varētu būt daudz atšķirīgu situāciju ar ierēdņiem. Problēma ir, ka Latvijā nav viena institūcija, kas atbild par lobēšanu, līdz ar ko nav skaidrs, kura iestāde šo situāciju centīsies atrisināt, un vai tai vispār būs pilnvaras to darīt.

Edgars Oļģerts Pavlovskis:
Vai šīs vadlīnijas varētu izmantot arī izvēlētā uzraugošā institūcija, vai tās būs domātas tikai, lai iesaistītie cilvēki labāk saprot šo likumu?

Līga Stafecka:
Vadlīnijām nekad nav juridisks spēks. To mērķis ir vienkārši izskaidrot paplašinātos teikumos, kas ar likumu ir domāts. Tas būtu paskaidrojošs vai metodoloģisks materiāls. Sankciju ieviešanā tās var būt noderīgas, taču šobrīd vadlīnijas ir nepieciešamas daudz ātrāk nekā sankcijas tiks ieviestas. Kādai no institūcijai jāuzņemas iniciatīva, vai tas ir Ministru kabinets, vai Tieslietu Ministrija vai Valsts Kanceleja, kuri izstrādā šādu dokumentu, palīdzot iestādēm piemērot likumu.

Edgars Oļģerts Pavlovskis:

Vai interešu pārstāvība ir arī starp politiskas partijas biedru un publiskās varas pārstāvi – jo likumā ir minēts, ka tikai publisku politisku diskusiju laikā notikusi komunikācija, nav interešu pārstāvība, kas nozīmē, ka privāta saruna ir?

Līga Stafecka:
Partiju iekšējās sarunas neparādās likumā, taču jebkurā gadījumā šādas sarunas nekad nav lobēšana, jebkurā valstī tas būtu absurds, tādā gadījumā partija nevar eksistēt. Šādā gadījumā tas ir veselais saprāts, kas saka, ka biedru savstarpēja komunikācija nav interešu pārstāvība. Ja biedrs ir uzņēmējs, kas arī ir interešu pārstāvis, tad faktiski tur nav interešu pārstāvība, jo tāpēc viņš ir partijā, lai ietekmētu politisko norisi. Tāpēc, šķiet, arī tika izņemts no regulējuma šāds izņēmums, jo tas ir pretēji loģikai. Protams, ir iespējams, ka biedrs ietekmē publiskās varas lēmumus, jo tas izsaka savu viedokli, bet nav iespējams nošķirt vai šis cilvēks to dara kā biedrs, vai kā interešu pārstāvis. Augsta standarta prakse būtu, ka partija arī norāda, ka ir komunicējuši ar šo biedru, un kādas intereses tas pārstāv, bet tas ir drīzāk integritātes jautājums, nevis regulēšanas.

Edgars Oļģerts Pavlovskis:
Manuprāt, problēma arī ir ar internetu un sociālajiem medijiem. Likumā ir minēts, ka publiska komunikācija internetā vai sociālajos medijos nav interešu pārstāvība, taču ir iespējams, ka šāda komunikācija notiek arī privātās grupās, vai caur profiliem, kuri ir privāti, līdz ar ko ne visiem ir pieejamība, bet arī komunikācija ir pieejama ne tikai iesaistītajām pusēm, vai šāda situācija skaitās, kā interešu pārstāvība?

Līga Stafecka:
Publisks ir domāts vispārpieejams saturs. Čata grupa nekad nav publiska komunikācija. Publisks tādā ziņā ir Twitter, Facebook, bet, ja persona sāk komunicēt privātā sarakstā vai *mesendžerī*, es to interpretēju, kā tikšanos, kas notiek attālinātajā vidē, kas mūsdienās tiek izmantota ļoti aktīvi interešu pārstāvībā, un šādas sarunas kļūst par deklarējamām.

Edgars Oļģerts Pavlovskis:
Vai ir reāli, ka politiskie pretinieki izmanto šo likumu, piemēram, ka 50 cilvēki aizsūta e-pastus deputātam, kuros aicina par kaut ko balsot, kas pēc tam jādeklarē?

Līga Stafecka:
Likumā ir izņēmums, ka šāda sarakste nav interešu pārstāvība, jo šāda komunikācija ir cilvēka iesniegums, kurš nekvalificējas, jo tas ir izņēmums. Cilvēks ir iesniedzis kaut kādu iesniegumu, un tas būtu muļķīgi, ja tas būtu jādeklarē. Ja šis cilvēks aizsūta vēstuli, pēc tam vēl vienu, tad tiekas ar publiskās varas pārstāvi, tad gan tā ir interešu pārstāvība, taču šādas petīcijas vai tāda tipa vēstules nav interešu pārstāvība šī likuma izpratnē.

Edgars Oļģerts Pavlovskis:
Vai līdz ar Attīstībai/Par vairs nebūšanu Saeimā, nebūs problēmas ar politisko motivāciju Saeimā ieviest sankcijai, lai panāktu mazāk efektīvu likumu?

Līga Stafecka:
Iespējams tā tas varētu būt, taču pašlaik ir maz sanācis redzēt Saeimu šī likuma kontekstā, lai varētu novērtēt viņu motivāciju. Ir skaidrs, ka viņi gribēs vairāk sevi pasargāt, panākot to, ka mazāk kaut ko darīt, ir labāk – vienmēr tāda motivācija ir. Saeima noteikti kaut kad vērs vaļā šo likumu, lai precizētu, iespējams, tikai tīri tehniski, bet tas bieži atver Pandoras lādi. Politiķiem parasti nepatīk ar šādām lietām, kā interešu pārstāvības reģistrēšana, nodarboties.

Edgars Oļģerts Pavlovskis:
Vēl man ir jautājums par Satversmes 31. pantu un šī likuma mijiedarbību, ka Saeimas deputāts var sarunāties ar vēlētājiem, un šo informāciju drīkst neizpaust dodot liecību, bet šeit sistēmā ir jādeklarē, kā tas strādātu?

Līga Stafecka:
Tas ir tāds konstitucionālu tiesību vingrinājums – ja mēs ejam šo ceļu, ka cilvēkiem nav jāatklāj šāda komunikācija, un tā uzskatāma par aizsargāmu, tad lobēšanas likums vienkārši nav iespējams. Ir skaidrs, ka šo normu nevar interpretēt tik plaši. Otrs punkts ir, ka vienmēr amatpersonai ir jāvērtē, vai šis cilvēks vienkārši runā kā vēlētājs, vai arī viņš cenšas aizstāvēt kaut kādu risinājumu.

Edgars Oļģerts Pavlovskis:
Es esmu uzdevis visus savus jautājumus, tāpēc teikšu – liels paldies par sarunu un lai Jums jauka diena!

Līga Stafecka:
Paldies, lai Jums veicās!

ANNEX 2 – INTERVIEW WITH LAUMA PAEGĻKALNA

- *THE INTERVIEWEE HAS SIGNED AN AGREEMENT FOR THE USE OF THE INTERVIEW AND A PERSONAL DATA PROCESSING AGREEMENT*

Edgars Oļģerts Pavlovskis:
Labdien, paldies, ka piekritāt uz šo sarunu!

Kā Jūs vērtētu likumdevēja praksi izveidot likumu bez sankcijām?

- *Lauma Paegļkalna:*
  Ir dažādas pieejas, kā risināt tiesiskās attiecības ar valsti. Valsts iedod ietvaru, kas šajā gadījumā ir Interešu pārstāvības atklātības likums, kurā valsts regulē, kā jānotiek šai interešu pārstāvībai politiskajā vidē. Protams, ir situācijas, kad pārkāpums aiziet līdz koruptīvām darbībām, piemēram, kukuļdošanas, kas ir klīniski gadījumi. Tad ir jautājums, vai ir kaut kas pa vidu – kas ir pārkāpums, bet nav krimināls odāms.

  Kad likums tiek gatavots, tā ir likumdevēja tīra izvēle, kā regulēt šādus pārkāpumus, taču liela loma ir arī politikas virzītājiem, kuri var konstatēt situāciju, ka ir nepilnīgs risinājums, un tad ietekmēt šo likumdevēja izvēli.

Edgars Oļģerts Pavlovskis:
Pašlaik likums ir uzrakstīts ļoti vispārīgi, tāpēc var būt problēma, ka likuma normas tiek interpretētas un ir problēmas ar to piemērošanu. Kā varētu risināt šādas situācijas - ar vadlīnijām, komentāriem, vai tomēr labāk grozīt likumu?

- *Lauma Paegļkalna:*
  Mans personīgs viedoklis ir, ka es likumu redzu kā lielo vērtību iezīmētāju. Likumdevējs mums iedod lielos virzienus, kā valsts kaut kādus jautājumus likumiski saredz. Protams, ja tas ir kaut kāds jautājums par sodošo elementu, tad tur ir jābūt ļoti lielai skaidrībai, lai cilvēks saprastu, par ko tiek sodīts. Bet, runājot par rīcības modeļiem vai attiecību regulēšanu, tad likumam nav jābūt instrukcijai, tam ir jānosaka lielās lietas, un tad tiesību piemērotājam ir jābūt gudram, kad tas ar to strādā. Šī ir diskusija starp pozitīvo tiesību jomu un mūsdienīgāku izpratni par tiesībām, kur tiesību piemērotājs ar visām interpretācijas metodēm cenšas nonākt pie taisnīga un tiesiska rezultāta.

  Arī iestāde dod savu redzējumu. Piemēram, patērētāju tiesībās, konkurences tiesībās, kur ir attiecību rāmis, un tad iestāde ar vadlīnijām pasaka, kā būtu pareizi rīkoties attiecīgās situācijās. Ja likumu padara kazuistisku, tad pastāv risks, ka tāpat būs attiecības, kas izies ārpus aprakstītajām situācijām. Bet, ja veido vairāk abstraktu likumu, tad ir iespējams vairāk skatīties, ko likumdevējs ir gribējis panākt ar likumu, nevis tikai uzrakstījis. Ir regulējumi Latvijā, kuri ļoti veiksmīgi darbojas ar augstu abstraktuma pakāpi, ļaujot gudram piemērotājam piepildīt likuma normas ar saturu, kā arī ir regulējumi, kur ir mēģinājumi noregulēt ļoti precīzi likumu, un tad parādās kaut kas jauns, un likumdevējs skrien pakaļ, mainot likumu. Ir redzēti vairāki jautājumi, kurus būtu iespējams atrisināt ar sākotnējo likuma redakciju, taču tiek veikti grozījumi. Ir jābūt arī gudram un saprātīgam likumdevējam, kas māk uzzīmēt kvalitatīvu lielo bildi.

Edgars Oļģerts Pavlovskis:
Kas ir šie likumi, kuri darbojas ar augstu abstraktuma pakāpi?

- *Lauma Paegļkalna:*
  Vispirms jau Latvijas Republikas Satversme pati par sevi ir izcilības paraugs, mēs spējam mūsdienu telpai un laikam piepildīt ar saturu visas Satversmes normas. Satversme būtu tas ideālais variants. No procesuālajām tiesībām, manuprāt, labs piemērs ir Administratīvā procesa likums, arī Valsts pārvaldes iekārtas likums, tie ir regulējumi, kurus cenšas saglabāt esošajā redakcijā, maz grozot. Senāta Administratīvo lietu departamenta darba augstā kvalitāte parāda, ka tiesību normu var piemērot atbilstoši jēgai un likumdevēja plānam arī tad, ja likums gramatiski klusē. Civillikuma gadījumā ir tendences, kad tiesas reizēm ir pārlieku piesardzīgas, lai civiltiesiskās attiecības noteiktos gadījumos atrisinātu tikai ar Satversmi.

Edgars Oļģerts Pavlovskis:
Kam Jūsuprāt vajadzētu uzticēt šo vadlīniju izveidošanu, vai tai labāk būt kādai no valsts iestādēm vai orgāniem, vai labāk kādam neatkarīgam ekspertam?

- *Lauma Paegļkalna:*
  Mums ir jāpaļaujas, ka politikas veidotāji un iestādes ir arī kompetentas noteikt tiesisko rāmi, kā cilvēkiem ir jādzīvo, citādāk valsts aparātam zūd jēga. Ja iestādes izstrādā regulējumu, tad tās arī uzņemas atbildību par rezultātu. Ja šīs iestādes izstrādā likumu, tad nevajadzētu būt problēmām izstrādāt arī vadlīnijas. Tas, kā notiek šo normatīvu izstrāde, manuprāt, svarīgs ir process, kā tas notiek, lai tajā tiktu iekļauts dažādu ekspertu viedoklis, kas arī būtu nepieciešams šajās vadlīnijās, lai tiktu iedots dažāds skats uz situācijām. Tā arī praksē notiek, piemēram, Tieslietu Ministrija veido no nulles regulējumu, un piesaista nozares pārstāvjus, lai nonāktu pie labākā rezultāta.

  Šobrīd, piemēram, tas ir Labticīgā ieguvēja mantas aizsardzības regulējums, kuram arī tika izveidotas vairākas darba grupas, kur var būt arī akadēmiskie spēki, kuri iedod savu viedokli, un tad politikas izstrādātājs ir gala atbildīgais, kas noved to pie kaut kāda rezultāta. Tāpēc man tomēr šķiet, ka gala vārdam jābūt valstij, bet, protams, it sevišķi tādā lobija regulējumā, kur nav tikai juridiskie eksperti vajadzīgi, bet daudzu citu nozaru. Šeit varētu būt politikas eksperti, mediju eksperti un tā tālāk. Es esmu, protams, par kvalitatīvu diskusiju ar sociālajiem partneriem, tikai citreiz tā diskusija zaudē kvalitāti, jo šie partneri mēdz iestāties par savu pozīciju un neatkāpjas no tās. Līdz ar ko, tas ir visu iesaistīto milzīga atbildība to darīt, lai mēs nonāktu pie reāla rezultāta, nevis tikai diskutētu. Ir nepieciešams atrast šos punktus pie kā puses var vienoties, un arī šos principiālos, un tad ar kompromisiem tikt pie rezultāta. Šādi notiek gan MK noteikumu izstrāde, gan likumu izstrāde.

ANNEX 3 – INTERVIEW WITH ANDREJS JUDINS

- *THE INTERVIEWEE HAS SIGNED AN AGREEMENT FOR THE USE OF THE INTERVIEW AND A PERSONAL DATA PROCESSING AGREEMENT*

Edgars Oļģerts Pavlovskis:
Labdien. Vispirms es vēlētos jums uzdot pāris jautājumus par likumdošanas procesu un pēc tam vairāk par juridiska tipa jautājumiem.

Kā jūs vērtētu notikušo darba grupā, vai darbs bija produktīvs un veiksmīgs, vai tomēr bija problēmas?

Andrejs Judins:
Darba grupai bija produktīvs rezultāts, taču, darbojoties tajā, nebija īsti skaidrības kā visus jautājumus noregulēt likumā. Protams, bija citu valstu piemēri, tomēr mērķis pieņemt likumu bija lielāks, nekā iespējas visus jautājumus līdz galam izprast un precīzi noregulēt.

Process notika ar ļoti daudz diskusijām, bet likumam politiskā griba bija ļoti liela, līdz ar ko nebija īsti iespējams visu izvērtēt, tāpēc var teikt, ka process darba grupā bija saturīgāks nekā tā rezultāts.

Edgars Oļģerts Pavlovskis:
Vai var teikt, ka koalīcijai bija obligāts uzdevums pieņemt šo likumu?

Andrejs Judins:
Vienmēr ir iespēja nepieņemt likumu, jo, ja 10 gadus nepieņēma, tad to varēja izdarīt arī tagad. Likums bija vajadzīgs, un tā pieņemšanas faktu es vērtēju pozitīvi, jo tagad vismaz ir reāls normatīvais akts, jo, ja tiktu turpināta izvērtēšana, tad ir grūti iedomāties, kad būtu finmāls. Praktiski skatoties, šāds rezultāts ir labāks, nekā, ja netiktu pieņemts nekas, taču likumam trūkst kvalitāte. Likums ir vispārīgs, apņēmīgs un ar lielu cerību, ka valdība visu izdarīs, kas nav labi.

Šis likums iet uz atklātību, taču nav skaidrs, kādos gadījumos ir vajadzīga šī atklātība, un kad nav. Vissliktākais ir tas, ka neizdevās atšķirt, kas ir tas svarīgais no šī likuma, jo, kad mēs sākām strādāt ar to, tad runa bija par lobija likumu, taču pēc tam tas kļuva par interešu pārstāvības atklātības likumu, kas nav viens un tas pats. Parastam cilvēkam lobēšana asociējas ar kāda liela uzņēmuma pārstāvi, kas cenšas kaut ko sev labvēlīgi iegūt, taču atklātība ir daudz plašāks jēdziens, piemēram, cilvēks vai organizācija stāsta, ka smēķēšana ir slikta. Man ir bažas, ka cilvēki, kas izmanto koruptīvas pieeju, turpinās to darīt latenti, taču tie, kas cīnās par to, lai bērni nesmēķē, gan tiks deklarēti. Ir grūti likumā šo robežu nodefinēt.

Ir labi, ka likumā ir nodefinēts, ka interešu pārstāvība ir laba lieta, taču svarīgi ir, cik tīri ir šie mērķi, kādēļ interešu pārstāvība ir veikta, vai sava labuma dēļ vai sabiedrības.

Edgars Oļģerts Pavlovskis:
Likuma tapšanas stadijā bija arī SKDS aptauja, kurā rezultāts bija, ka sabiedrība vēlas šādu likumu, bet kā Jūs vispār vērtētu sabiedrības spiedienu šī likuma kontekstā?

Andrejs Judins:
Sabiedrības spiedienu ir ļoti grūti vērtēt, ja atver ziņu portālu, kur ir raksts par kaut kādu tēmu, ir cilvēks ar plakātu par to pašu jautājumu, un vēl ziņās to piemin, tad ir sajūta, ka ir milzīgs

spiediens, lai gan īstenībā var būt pretēji. Es neteiktu, ka bija milzīgs spiediens, bija divas nevalstiskās organizācijas, kas iestājās par šo likumu, bet tas nav tāds spiediens.

Es uztraucos, vai šis likums līdz galam atrisinās lobēšanu, jo lobēšana tikai daļēji ir pārstāvība, un likums iespējams ir pārāk plašs. Manuprāt, šim likumam ir jābūt vairāk fokusam ir uz tādu interešu pārstāvību, kur iemesls tam ir nauda, jo katram rakstīt par katru tikšanos ar NVO ir lieki, jo šāda komunikācija notiek tik bieža un tā ir vajadzīga. Būvnieku, kas cenšas dabūt aizliegtā vietā atļauju būvēt, cilvēki, kas stāsta, ka smēķēšana ir laba, vai cilvēki, kas stāsta par sankciju neievērošanu - šie ir tie galvenie jautājumi. Fokusam ir jābūt uz lietām, kur parādās savtīgums, nevis publiskas intereses.

Edgars Oļģerts Pavlovskis:
Kā Jūs vērtētu potenciālās uzraugošās iestādes šim likumam, kurš jūsuprāt būtu labākais variants?

Andrejs Judins:
Tam noteikti ir jābūt KNAB, jo mēs interešu pārstāvību cenšam norobežot no koruptīvām darbībām, tāpēc es neredzu citas iespējas uzraugošajai iestādei. Pašlaik KNAB varētu nevēlēties šīs lielās neskaidrības dēļ, jo nav skaidrs, ko darīt. Taču ir jāiet soli pa solim, mēs esam pieņēmuši vispārēju likumu, būs Ministru Kabineta noteikumi, bet būs arī likuma grozījumi. Vislielākais ieguvums šim likumam ir tas, ka varam teikt: "Mums ir normatīvais akts", ar ko esam pateikuši, ka šis jautājums noteikti ir jāregulē.

Edgars Oļģerts Pavlovskis:
Ir izteikts minējums, ka ir iespējams, ka, kad šo likumu Saeima atkal vērs vaļā, tad šis likums iestrēgs politiskās motivācijas dēļ, kā Jūs to komentētu?

Andrejs Judins:
Es nepiekrītu, ka var teikt, ka Saeima tikai grib visu nobremzēt, bet problēma ir, ka Saeimas deputātiem nav skaidrs, kā viņiem būs jādzīvo pēc 2025. gada, taču arī nevalstiskais sektors nepiedāvā skaidrus risinājumus, tāpēc nevar teikt, ka Saeima vienīgā nevēlās attīstīt šo likumu. Šis normatīvais akts ir vispārīgs regulējums, tam ir jābūt tādam, kur ikvienam ir skaidrs kā jārīkojas visādās situācijās. Galvenais pašlaik ir princips, ka mēs gribam atklātību, taču ir jautājums, uz ko mēs fokusējam šo reģistrēšanas pienākumu. Manuprāt, daudz vairāk pienākumiem jābūt organizācijām, kas profesionāli nodarbojas ar lobēšanu. Mūsu valstī ir problēma, ka ir organizācijas ar lielu atpazīstamību nozarēs, kur ne vienmēr ir skaidrs, kā labā šādas organizācijas rīkojas - vai tās to dara misijas dēļ, vai vienkārši tas tiek darīts par naudu pēc kāda lūguma no organizācijas biedra.

Ja kāds nāk un stāsta amatpersonai, ka būtu labi, ja tiktu ieviests kāds regulējums, tad ir jautājums, kāpēc šis cilvēks sāka interesēties par šo regulējumu, un, ja tas ir darīts par to naudu vai citu labumu, tad tas ir ļoti tuvu tirgošanai ar ietekmi, kas jau ir krimināls odāms pārkāpums.

Edgars Oļģerts Pavlovskis:
Kā jūsuprāt ir iespējams atrisināt problēmu par likuma interpretēšanu, vai rekomendācijas, rokasgrāmatas ir labs variants?

Andrejs Judins:
Tas ir vienīgais veids, kā to var darīt. Latvijā ir tāda juridiskā specifika, ka vienīgais veids kā atrisināt interpretācijas problēmu ir ar vadlīnijām, jo ir valstis, kur ir pants, un tad tam seko liela daļa ar paskaidrojumiem, taču Latvijā mēs rakstām maksimāli īsi un vispārīgi, bez detaļām,

tāpēc ir vajadzīgs dokuments, kas paskaidro likumu, kas arī nav MK noteikumi, jo tie nosaka kaut kādu kārtību, kas arī ir vajadzīgs, bet šim likumam noteikti vajadzīga arī rokasgrāmata.

Edgars Oļģerts Pavlovskis:
Vai to var darīt Saeima?

Andrejs Judins:
Saeima to nevar darīt, tā var noalgot kādu, kas to izdara, izveidot darba grupu, bet, ja Saeima balso, tad tas jau ir likums, taču šeit ir vajadzīgs kāds zinātnisks komentārs. Tam vajadzētu būt ļoti respektējamam, jo uz to atsauksies tiesas un citi, taču to nevar formulēt kā likumu. Man vistuvākajā jomā kriminālietās ir krimināllikums, un tad ir komentāri. Tiesa pēc tam citē savos spriedumos komentārus, Jurista Vārdu un tā tālāk, bet tas nav nevienam saistošs. Rokasgrāmatai būs tas pats, tā strādās, dzīvos savu dzīvi, un, ja būs šāds dokuments, tad tiesas to noteikti citēs. Tas noteikti ir jādara. Problēma ir, ka, ja mēs saprotam, ka likums būs jāgroza, tad nav jēga tagad pasūtīt komentārus, kur paskaidros šo redakciju, kas nav vispārēja, kur nebūtu iespējams daudz ko pateikt, tāpēc es teiktu, ka tagad ir jādomā par normatīvā akta kļūdām.

Edgars Oļģerts Pavlovskis:
Vai jūsuprāt tas bija pareizs lēmums atstāt likumu pašlaik bez sankcijām?

Andrejs Judins:
Ir skaidrs, ka vispār sankcijām ir jābūt, bet, ja nav skaidrs kāds būs regulējums, ja ir izveidots pusfabrikāts, tad nav pareizi rakstīt sankcijas, jo nav detalizēts regulējums. Sankcijas var piemērot tikai, kad ir skaidri definēts pārkāpums. Pašlaik notiek process, kur mēs pieradinām sabiedrību pie domas, ka nebūs tā kā agrāk, ka visam ir jābūt atklātam, un ar laiku mēs šo likumu pilnveidosim, taču nav skaidrs, cik ātri tas notiks. Sankciju nav, jo nav precīza regulējuma.

Mums vajadzētu nodefinēt administratīvos pārkāpumus, jo, ja būs, piemēram, rakstīts: "Ja cilvēks neatklāj savu dalību kaut kādos pasākumos, tad par to ir administratīvais sods", kas arī tā būs, tad būs liela neskaidrība. Taču tagad ir tas posms, kad mēs pieradinām cilvēkus pie šīs domas par atklātību. Agrāk, piemēram, nebija amatpersonu ienākumu deklarācija, un bija daudz iebildumu un neskaidrību – "kāpēc man ir kaut kas jāziņo un jādeklarē", taču tagad visiem tas ir pašsaprotami.

Daži uzskatīja, ka vispār nevajag neko ieviest, un, ka viss ir kārtībā. Runājot par Saeimu, ir Satversme, kurā ir rakstīts, ka deputātiem ir tiesības neatklāt avotus, kas tiem piegādā informāciju, tāpēc ir jautājums, kā mēs varam nošķirt, kas ir informācijas sniegšana, un kas ir ietekmēšana. Jo ietekmēšana nenotiek tik saprotami, piemēram, lobētāji taisa kampaņas, kur no vairākām pusēm notiek šī komunikācija, un rodas sajūta, ka visa sabiedrība tā domā, kas var būt aplami.

Edgars Oļģerts Pavlovskis:
Kā jūs vērtētu likuma efektivitāti, un vai ir risks, ka tas būs neefektīvs?

Andrejs Judins:
Pašreizējā redakcijā šis likums noteikti būs neefektīvs. Mums, protams, ir jāsagaida Ministru Kabineta noteikumi, taču man ir bažas, ka likuma pilnveidošana būs darbs nākamajai Saeimai. Jo pašlaik var aizbildināties ar to, ka vēl ir jāgaida 2025. gads, kā arī iepriekšējā Saeimā bija politisks spēks, kas uzskatīja, ka tas ir ļoti svarīgi pieņemt šo likumu. Līdz ar to, tas vēl prasīs laiku, bet mēs varam teikt, ka ar šī likuma pieņemšanu esam noslēguši pirmo posmu, jo mums

ir normatīvais akts, bet tas būs jāgroza un jāprecizē. Manuprāt, ir iespējams sašaurināt cilvēkus, uz ko šis likums attiecās, jo, ja tas būtu šaurāks, tad to būtu vieglāk piemērot. Konceptuāli šis likums ir paņemts ļoti plaši, jo aktīvie interešu pārstāvji ir nevalstiskais sektors, uz ko šis likums arī visvairāk attieksies, taču no otras puses vai tā tam vajadzētu būt. Protams, ja mēs neiekļautu NVO, tad gudrs lobētājs vienkārši dibinātu pats savu NVO, un tādā veidā to īstenotu, tāpēc šis jautājums nav tik vienkāršs. Šī tēma, protams, ir aktuāla, ko var pētīt, taču nebūs iespējams atrast kādu, kurš uz visām problēmām varēs atbildēt. Ir grūti runāt par šādām tēmām, kur nav skaidrība, jo, ja jūs pajautātu, kas ir zādzība, tad es vienkārši izskaidrotu, bet šeit ir liela nenoteiktība.