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THE QUALITY OF COURT JUDGEMENTS

CENTRE FOR PUBLIC POLICY PROVIDUS

UDK 347(075.8)
Sk 822

THE SOROS
FOUNDATION
LATVIA

This study has been prepared as part of the Centre for Public Policy PROVIDUS Public Policy Fellowship Program, which is financed by the Soros Foundation – Latvia, the Open Society Institute Justice Initiative Program (JI), and the Local Government and Public Service Reform Initiative (LGI).

The author takes full responsibility for accuracy of the data.
The study is available in Latvian and English on the Internet: www.politika.lv or www.policy.lv

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ISBN 9984–751–10–4

EXECUTIVE SUMMARY

Law courts apply the law and administer justice in the disputes that are brought before them and, in doing so, they have three important functions to perform in a democratic society. The **first** function is to provide clear answers to the parties in a court action as to who is right and wrong, and why. The **second** function is to effectively communicate their reasoning to public administrators who must know how to amend their decision-making to conform to the court's interpretation of the law. And the **third** function is to effectively communicate their decisions to the wider public, so that the individual who may be contemplating legal action knows exactly what can be expected of the court. The quality of judicial opinions is negatively or positively affected by how well law courts are able to perform these three functions.

But how effectively are courts in Latvia likely to perform these three functions? This study took a sample of judgements, submitting each to an in-depth analysis, and came to three conclusions:

- court judgements tend to be difficult for the reader to understand;
- they tend to contain incomplete information;
- the conclusions drawn by the courts tend to lack argumentation.

Unless there is quick and effective reform, legal judgments in Latvia are unlikely to have the effect expected of them in a democracy. The study recommends:

- new guidelines, which explain in greater detail the requirements of the law regarding the necessary components and characteristics of a high-quality judgement;
- analyses of court judgements in publications or in seminars held for this purpose;
- intensification of in-service training for judges, with focus on reasoning and argumentation;

- increased attention to the quality of legal education;
- increased attention to the selection and certification of new judges;
- increased transparency of the judicial system and unhindered access to court judgements.

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INTRODUCTION

Law courts have an important role to play in a democratic society. They apply the law and administer justice in the disputes that are brought before them. The parties in a court action expect the court to provide an answer to the question of who is right and who is wrong. They also want to know why the court has ruled in the way that it has and not otherwise. Not only those who are involved in a dispute want to know this. Public administrators must know how to amend their decision-making to ensure that it conforms with the court's interpretation of the law. And the individual who might at some time in the future have to take legal action also wants to know what he or she can expect.

Clarity in a judgement made by the court and the appropriate argumentation would be the answer to these different requirements. It would give the parties in a court action certainty that the judgment is fair and that the judge has performed his task in a competent, impartial and independent way. A public administration that knows precisely what it must do can improve its work more quickly and expediently. The individual who is contemplating legal action can work out how advisable it would be to file suit and what protection the court can provide.

The demand for court judgements of high quality is an absolute must in a democratic society. Latvian law imposes upon judges the duty to make reasoned judgements based on the law. It also prescribes the mandatory parts of a judgement and the information that these must contain. However, there are doubts about whether these requirements are actually fulfilled in practice. A study on the transparency of Latvia's judicial system that was published in 2002[1] suggests that the judicial training program should pay special attention to Western-style legal argumentation, since insufficient argumentation is one of the major problems in Latvian court judgements. The most recent EU progress

[1] The study "Transparency of the Judicial System" was part of the European Union Phare project Corruption Prevention in the Judicial System. Published in Latvian and English on the public policy website www.politika.lv, http://www.politika.lv/index.php?id=102794&lang=lv

reports[2] and the USA State Department's 2002 report on human rights in Latvia[3] also point to the relatively poor qualifications of judges.

What are the quality problems of Latvian court judgements and how can they be resolved? Can these problems be associated with the quality of legal education, the system for appointing judges, judicial training, the way in which the work of judges is controlled, or other factors? This policy analysis looks to find answers to these questions and to provide recommendations for eliminating the quality problems that were identified during the course of the study.

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[2] The European Commission's 2001 Regular Report on Latvia's Progress Towards Accession and 2002 Regular Report on Latvia's Progress Towards Accession, published on the websites http://www.europa.eu.int/comm/enlargement/report2001/lv en.pdf and http://www.europa.eu.int/comm/enlargement/report2002/lv en.pdf

[3] The USA State Department's Human Rights Report 2002, published in English on the State Department's homepage http://www.state.gov/g/drl/rls/hrrpt/2002/18375.htm

ANALYSIS OF THE QUALITY OF COURT JUDGEMENTS

I. METHODOLOGY

1. FORM OF THE ANALYSIS

The study analyzes a specific number of judgements made by Riga city courts in two categories of cases involving the relationship between the individual and the State:

- complaints over administrative sanctions imposed by a public official, and
- complaints over the unlawful conduct of a public official, by which the rights of a natural or legal person have been violated.

The need to choose only certain categories of cases adjudicated in specific courts was dictated by:

(1) the large number of judgements that are made in Latvian courts each year;

(2) the fact that the study comprises an analysis not only of the form but also of the content of court judgements, which means that the author had to choose a category of cases within her competence; and

(3) the limited amount of time available for the study.

Cases that involve administrative law were chosen for two reasons: (1) In this category of cases, courts are required to apply human rights and the general principles of law to a greater extent than would be the case in other categories. (2) At the end of 2001, the Administrative Procedures Law was adopted in Latvia and will come into force on July 1, 2003.[4] This law anticipates the creation of special administrative law courts and the appointment of special administrative judges. Although these judges are already being

[4] At the time of completion of the manuscript, the Cabinet Committee had reviewed amendments to the Administrative Procedures Law and to the Law on Implementation of the Administrative Procedures Law, which anticipated deferral of the implementation of the Administrative Procedures Law until February 1, 2004. The amendments to the Administrative Procedures Law were approved by the Cabinet Committee on April 28, 2003. The amendments to the Law on Implementation of the Administrative Procedures Law were approved by the Cabinet Committee on April 28, 2003. www.mk.gov.lv

trained, an analysis of the quality of court judgements could give their training additional input and improve the handling of such cases in the future.

The analysis of the quality of court judgements examines judgements made by Riga city courts in the period from 2000–2001. The author examined a total of 60 judgements – about 10 judgements made by each Riga city court. The study uses judgements that were selected at the written request of the author by court clerks at each one of the city courts. The selections were based on two criteria: 1) the category of the cases, and 2) the time of the judgement. Since it was not the intention of the study to evaluate the quality of the work of a concrete judge, the judgements used for this study have not been identified. However, those who are interested can view these judgements at the University of Latvia Human Rights Institute.

The study analyzes both the form and the content of the judgements. For the purposes of this study, the form of a judgement refers to the mandatory components of a judgement as required by law: 1) introduction, 2) description, 3) reasoning and 4) decision. The form of a judgement is examined for **whether** the judgement sets apart these components, which are prescribed by the law. The content, on the other hand, is examined for **how** the judgement observes the requirements of the law regarding the form of a judgement, with particular focus on the description and the reasoning.

The analysis of each court judgement is based on the provisions of procedural and substantive law that were in force at the time when the case was brought before the court. In cases involving administrative law – the relationship between the individual and the state – until such time when the Administrative Procedures Law[5] enters into force (July 1, 2003)[6] court procedure is regulated by the general provisions of the Civil Procedures Law and the relevant parts of the Civil Procedures Code of Latvia[7]. With regard to the analysis of whether or not the conduct of a public official conforms to procedural and

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[5] Administrative Procedures Law, adopted on October 25, 2001. *Latvijas Vēstnesis* No. 164, November 14, 2001. See also the Law on Implementation of the Administrative Procedures Code, adopted on June 13, 2002. *Latvijas Vēstnesis* No. 97, June 28, 2002.

[6] At the time of completion of the manuscript, the Cabinet Committee had reviewed amendments to the Administrative Procedures Law and to the Law on Implementation of the Administrative Procedures Law, which anticipated deferral of the implementation of the Administrative Procedures Code until February 1, 2004. The amendments to the Administrative Procedures Code were approved by the Cabinet Committee on April 28, 2003. The amendments to the Law on Implementation of the Administrative Procedures Code were approved by the Cabinet Committee on April 28, 2003. www.mk.gov.lv

[7] Civil Procedures Law, adopted on October 14, 1998. *Latvijas Vēstnesis* No. 326/330, November 3, 1998. Court procedure for complaints over administrative sanctions imposed by public officials is regulated by Sections 234–239 of Latvia's Civil Procedures Code (CPC). Complaints over the unlawful conduct of a public official, by which the rights of a natural or legal person have been violated, are regulated by CPC Sections 239.1–239.7.

formal requirements, it should be kept in mind that in cases concerning administrative sanctions these requirements are different from those involving the unlawful conduct of a public official, by which the rights of a natural or legal person have been violated. In the first case, these requirements are set out in the Administrative Offenses Code[8]; in the second case – in the Rules on Administrative Procedure[9]. When examining whether the conduct of a public official conforms to the requirements of substantive law, courts apply the Constitution, laws, the general principles of law and international conventions that are binding for Latvia. Where necessary, they examine the hierarchy of provisions, provide their interpretation, and apply the principle of proportionality.

In the process of analyzing the judgements, it is kept in mind that (1) courts do not exceed the limits of the claim when making their judgements, and (2) since cases involving administrative law are currently tried in accordance with the Civil Procedures Law, the principle of competition prescribed by this law is observed.

2. FORM AND CONTENT OF COURT JUDGEMENTS

2.1. Form

The form of a court judgement is precisely defined in the Civil Procedures Law. A judgement must comprise the following components: 1) introduction, 2) description, 3) reasoning and 4) decision. This applies to all judgements made in all courts.

This part of the study analyzes whether judgements incorporate all of the parts prescribed by the Civil Procedures Law. The analysis of the quality of the form of court judgements begins with a reference to the components of a judgement and their content, as prescribed in the Civil Procedures Law, and continues with the author's assessment of whether or not these components can be found in the court judgements.

2.2. Content

The analysis of the content of court judgements deals with the descriptive part and the reasoning, these being the most important parts in assessing the quality of a judgement. The description explains why a case has come before the court, and the reasoning explains whether and why there are grounds for a court to have jurisdiction over a case, whether and why a case must be adjudicated or dismissed.

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[8] Administrative Offenses Code, adopted on December 7, 1984. *Ziņotājs* No. 51, January 1, 1984.

[9] Cabinet of Ministers Regulation No. 154, Rules on Administrative Procedure, adopted on June 13, 1995. *Latvijas Vēstnesis* No. 100, July 4, 1995.

The content of court judgements is analyzed on the basis of the specific circumstances in each case, keeping in mind, however, that the aim of the study is to provide conclusions about form and content of court judgements and make recommendations on the basis of these conclusions.

2.2.1. Description

The descriptive part of a court judgement comprises the claim of the plaintiff, with an explanation of the substance of the issue, and the objections of the defendant, also with an explanation of the substance. Basically, this information is obtained from the explanations that are submitted to the court by the parties in written form before the beginning of a court session and, later, orally during a court session.

Taking into consideration the fact that in Latvia the public has access only to court judgements and not to the complete file of a case, the description of the case is examined in conjunction with the reasoning. This can help to provide a more complete picture of the plaintiff's and the defendant's explanations if these are not fully disclosed in the description.

The analysis of the quality of the descriptive part of court judgements begins with a reference to the requirements set out in the Civil Procedures Law as to what must be included in this part of a judgement, and continues with the author's assessment of whether or not these requirements have been observed.

2.2.2. Reasoning

When preparing the reasoning, a judge must in fact perform the following three functions: (a) establish the circumstances in the case; (b) find the provisions applicable in the case; (c) provide a legal assessment of the circumstances in the case. By carrying out these three functions, the judge provides a justification for his or her decision. The judge also explains why the arguments and evidence presented by either of the parties have been accepted or dismissed.

The study analyzes how the above functions have been carried out in the judgements examined for the purposes of this study.

The analysis of the quality of the reasoning begins with a detailed explanation of all of the above-mentioned functions and continues with the author's assessment of whether or not the judge has performed these functions.

II. ANALYSIS

1. FORM

1.1. Law

The Civil Procedures Law prescribes the same form for judgements made in all courts of law. A judgement must comprise the following: 1) introduction, 2) description, 3) reasoning and 4) decision.

The **introduction** must indicate that the judgement has been made in the name of the Republic of Latvia. It must include the date of the judgement, the name of the court that has made the judgement, the names of the judges, the court stenographer, the parties involved in the action, and the subject matter of the dispute. The judgement of an appellate court must also include the name of the appellant and the court judgement that is being appealed. The judgement of a cassation court is not pronounced in the name of the Republic of Latvia, and it must indicate the names of the persons who have submitted the cassation appeal (counterappeal) or have joined it.

The **description** must include the claim of the plaintiff, the counterclaim of the defendant, and the substance of the explanations submitted by the parties. The judgement of an appellate court must also include the content of the judgement of the lower court, the content of the appeal (counterappeal) and the objection. The judgement of a cassation court must include a brief description of the circumstances of the case, the substance of the appellate court's judgement, the reasons for the cassation appeal or counterappeal, or the substance of the explanations.

The **reasoning** must include the facts established in the case, the evidence upon which the court judgement is based, and the arguments by which such or other evidence has been dismissed. This part also indicates the legal acts on the basis of which the court has taken its decision, and it is in this part that a legal assessment of the circumstances established in the case and the conclusions as to admissibility or inadmissibility of the claim must be provided. The judgement of an appellate court must substantiate its position with respect to the judgement of the lower court and to the appeal (counterappeal). The judgement of a cassation court must, when dismissing a cassation appeal, indicate its reasons for doing so and, when satisfying a cassation appeal, bring arguments to show that the appellate court has violated or incorrectly interpreted legal provisions, or that it has overstepped its competence.

The **decision** comprises the court's ruling in regard to full or partial satisfaction of a claim, or full or partial dismissal thereof, and the substance of the court judgement. It also names the party that shall bear the costs of the proceedings and the amount of the costs, and specifies the deadline and the order for appealing the judgement.

1.2. Court Practice

When preparing their judgements, courts generally do observe the requirements of the law regarding the form of the judgement. The mandatory components of a court judgement are usually set apart from each other. The descriptive part of the judgement is usually separated from the introduction with the phrase, "The court has established:...," which is then followed by the claim of the plaintiff and the objections of the defendant, as well as the substance of the explanations of both. The decision begins with the phrase, "The court has ruled…." The descriptive part of a judgement is usually separated from the reasoning by the following sentence: "The court, having heard the explanations of the parties, having examined and evaluated the documents in the case, finds the claim to be founded/unfounded and therefore to be satisfied/dismissed." Although this sentence basically separates the elaboration of the case as seen by the two parties from the assessment of the case as seen by the court, to make the judgement easier to understand this sentence should perhaps be followed by the phrase "for the following reasons…," or an example should be taken from the form of judgement used by the Constitutional Court, in which the description is followed by the words, "The Constitutional Court has concluded:…"

When preparing their judgements, courts pay very little attention to the formal appearance of a judgement and to whether or not the way in which the information that must be included is arranged will make it comprehensible – first and foremost, to the disputing parties, and also to society at large and to public authorities.

As to the form of court judgements, cases should also be mentioned in which judges fail to deal with a new aspect in their reasoning in a separate paragraph, but insert it into a paragraph that analyzes some other aspect. This can make a judgement difficult and sometimes even impossible to understand.

2. CONTENT

2.1. Description

2.1.1. Law

The Civil Procedures Law states that the descriptive part of a court judgement must include the claim of the plaintiff, the counterclaim of the defendant, the objections, and the substance of the explanations of both parties.

The information that must be included in the description can be found in the explanations that are submitted to the court by the disputing parties in written form before the

court session and orally during the court session. However, since in Latvia the public is allowed access only to court judgements and not to the complete file of a case, for the purposes of this study the content of the descriptive part is analyzed only on the basis of the information provided in the judgement.

2.1.2. Court practice

The degree of attention to detail in expounding the claim of the plaintiff, the objections of the defendant and the explanations of both varies from case to case. The claim itself and the objections thereto are short and concise. Latvian courts do not usually separate the claim and the objections from the explanations of the plaintiff and the defendant.

> In a court judgement that was made in respect of a complaint over the unlawful conduct of a police official, the failure to separate the complaint from the explanation looks as follows:
>
> "[…] filed a complaint over the refusal of the chief of the […] Police to extend his license for holding and carrying a firearm because he has not been found guilty of committing any administrative offense in the past two years."
>
> Here, the court has combined both the complaint and the explanation in a single sentence.

There are also court judgements which, when expounding the explanations of plaintiff and defendant, explain precisely the reasons that have led the parties to argue the validity of their claim or objections in one way or the other.

> In a court judgement that was made in respect of a case in which the plaintiff demanded that the decision of a municipal administrative committee to impose sanctions for the arbitrary use of premises be revoked, the arguments of the parties were presented as follows:
>
> "During the court hearing, counsel for the plaintiff upheld the complaint and explained that the decision of the administrative committee must be revoked because:
>
> Firstly, the company […] had not occupied the […] premises arbitrarily. The rooms were being used on the basis of a rental contract concluded with the previous owners of the building, which was valid until […].

> Inasmuch as ownership of the building had changed, the future use of the premises had become the subject of a civil dispute between the plaintiff and the Riga City Council, which had now come before the court.
>
> Secondly, in making the decision, the administrative committee had ignored the requirements of Section 37 of the Administrative Offenses Code, which anticipate a period of no more than two months for the levy of administrative sanctions. The Riga City Council had registered the presence of the company […] on the disputed premises on August 11, 2000, but the decision to impose administrative sanctions had been taken only on November 8, 2000.
>
> During the court hearing, counsel for the administrative committee challenged the complaint and explained that following the ownership change of the […] building, the company […'s] rental contract with the previous owners was no longer valid and was not binding for the new owner inasmuch as it was not registered in the Registry of Deeds. The company […] had been refused a new rental contract, and was therefore obliged to vacate the premises that it was occupying without a legal basis. The company […] had not fulfilled this obligation.
>
> As regards fulfillment of the requirements of Section 37 of the Administrative Offenses Code, counsel for the administrative committee explained that an administrative report was drawn up on October 25, 2000 and the decision taken on November 8, 2000. This means that the aforementioned provision has not been violated…"

However, there are also court judgements in which the "substance of the explanations" simply establishes that one of the parties considers the disputed decision to be either "conform with the law" or "unlawful," without answering the question of why this is so. In such cases, the court does not provide any concrete details about the explanations of plaintiff and defendant, simply stating: "The plaintiff upheld his complaint on the grounds indicated therein." However, none of these grounds are revealed in the court judgement.

Sometimes, in the descriptive part of the judgement,

(1) only the explanations of one of the conflicting parties are elaborated:

> The court judgement in a case involving a complaint over the unlawful conduct of an official at the Department of Citizenship and Migration Affairs (DCMA) sets forth the explanations of both parties as follows:

> "During the court hearing, the plaintiff upheld the complaint and in his explanation reaffirmed the grounds indicated in the complaint.
>
> Counsel for DCMA denied the validity of the complaint and explained that an investigation to determine whether registration of the plaintiff was justified had revealed that the plaintiff's personal code had been deleted from the code book and that there was nothing in the registry's journals to indicate that any information about […] had been registered in the Residents' Registry. According to an entry in [...'s] former USSR passport, he had been registered as living at […] from [the year…] to [the year…]. A check on this information revealed, however, that another family was registered as living at [this address] from […] to […]."
>
> In this judgement, the court sets forth only the explanations of the one party, but the reasons presented by the plaintiff to substantiate the complaint are not revealed.

or

(2) nothing at all is said in the court judgement about the substance of the explanations of either party:

> In a case where the plaintiffs had contested the decision of a DCMA official to annul their personal codes, the court judgement read as follows:
>
> "On […], 2000, the plaintiffs filed a complaint over the unlawful conduct of DCMA officials and asked the court to annul departure order No. […], dated […], 1999, and charge DCMA with renewing [the plaintiffs'] personal codes in the Latvian Resident's Registry and issuing residents' permits.
>
> At the court hearing, the plaintiffs upheld the complaint and in the explanation reaffirmed the grounds indicated in the complaint.
> Counsel for DCMA denied the validity of the complaint."
>
> In this court judgement, neither the explanations of the plaintiffs nor the defendant are mentioned.

Since the parties in a legal action can present their explanations either in written form before the court hearing or orally during the hearing, the same information is sometimes repeated twice in the descriptive part of the court judgements.

> The court judgement states that on the date in question "the plaintiff asked the court to revoke the decision of the […] institution and explained that…." This is followed by a detailed account of the explanation. After several paragraphs dealing with the objections of the defendant, the court points out that "at the court hearing, the plaintiff upheld his complaint and explained that…." This is again followed by a detailed account of the explanation. The court repeats the same information twice, and this needlessly takes up space in the judgement.

At the same time, there are also cases where the court has avoided such repetitions, replacing them with phrases such as: "the plaintiff upheld the complaint at the court hearing," "in addition to the reasons indicated in the complaint, the plaintiff explained that …," or "at the court hearing, the plaintiff upheld the complaint and in the explanation reaffirmed the reasons indicated in the complaint."

2.1.3. Conclusions

The degree of attention to detail in the descriptive part of a court judgement varies from case to case because the amount of information that must be included in this part of the judgement is left to the discretion of the judge. The claims of the plaintiff and the objections of the defendant are brief, concise and general. This kind of approach to presenting claims and objections cannot immediately have a negative effect on the quality of the judgement because the demands of the plaintiff and the objections of the defendant are only a part of the information that must be included in the descriptive part of the judgement. More important is the information that follows the claim and the objection, i.e., the substance of the explanations to both.

In regard to the way that the explanations of the disputing parties are treated, a negative effect is produced in cases where an account of the explanations is restricted to general phrases that do not provide an answer to the question of why one or the other party has defended a certain position. The same is true in cases where the court presents the arguments of only one party, or those of neither party. This kind of approach can even raise doubts about the final result of a case. If the court fails to present the arguments of both parties, it is theoretically possible that it has not dealt with all of the aspects of the case and this, in turn, can cast doubt on the objectivity of the final result.

In the presentation of the explanations, information that has already been included in one of the preceding paragraphs is often unnecessarily repeated. This can make it appear that the judgment has been written according to the principle that "more is better."

2.2. Reasoning

2.2.1. Law

The Civil Procedures Law stipulates that the reasoning must include:

a) the facts that have been established in the case, the evidence upon which the court's conclusions are based, and the arguments by which such or other evidence has been dismissed;

b) the legal acts applicable in the case;

c) a legal assessment of the circumstances in the case and the conclusions of the court as to the validity of the claim.

Establishment of the facts. There are three steps to establishing the facts in a case: (aa) finding the facts; (bb) isolating the legally relevant facts; (cc) examining and proving the facts.[10]

This study analyzes whether and how in cases involving complaints over the decisions of public officials the courts clarify the circumstances in a case, whether and how they isolate the legally relevant facts, and whether and how the facts are examined and proved.

Choice of the relevant provision. If the facts that have been established are to have the proper legal consequences, it is necessary to find the provision of law that provides for such consequences. In cases involving administrative law, the court first takes a look at the provision that has been applied by the public official. This, however, does not end the search for the relevant provision. Where the circumstances demand this, the court must determine whether there is some other provision that should be applied in the concrete case. The general principles of law should be considered, and the search for the relevant provision should also include the study of case law and doctrine.

This study analyzes whether or not court judgements include references to the provisions that have been applied in making a judgement. Where these references are placed and the way in which they are included in this part of the judgement are also questions that are examined. The study separately analyzes the approach that courts take to searching for provisions that could be applied in addition to those referred to in the decision of a public official.

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[10] In this context, see, for example, Neimanis, Jānis. "Lietas faktisko apstākļu apzināšana un juridiska noteikšana [Establishment and legal qualification of the circumstances in a case]." *Likums un Tiesības*, Vol 2, No. 6 (10), June 2000, pp. 180–185.

Legal assessment of the facts. Once the facts in a case have been established and a potentially applicable provision found, a legal assessment of the facts must be carried out. This is done by examining the facts in the light of the relevant provision. If the search for the provision has produced a potentially applicable provision, the court must at this stage determine whether the circumstances in the case are in fact covered by the provision in question. During this process, it is the duty of the court to argue why this and no other provision is relevant and, consequently, applicable to the case.

This study analyzes whether or not courts verify the applicability of a specific provision to the actual facts in a case and how the results of this verification are put into practice. The study further examines how courts apply the relevant provision, paying special attention to how, in cases involving administrative law, courts apply the general principles of law and the international conventions that are binding for Latvia, and how they carry out a verification of the hierarchy of provisions and the interpretation of provisions. The study also analyzes whether the arguments of both plaintiff and defendant are considered in the reasoning, whether the court provides any arguments for the decision that it has reached and whether these arguments are relevant and adequate.

2.2.2. Court practice

a) Establishment of the facts

Finding the facts. During the course of the study, not a single court judgment was found that did not contain any reference at all to the incident that was the cause of the dispute. However, cases were examined where reference to the circumstances in the case was found only in the descriptive part of the judgement and not in the reasoning, as is required by law. In such cases, the reasoning does not provide any information whatsoever about the circumstances that have been established, but begins right off with reference to the applicable provision and a legal assessment of the concrete case. The reason for this could be that, inasmuch as a detailed account of each party's version of the circumstances in the case is given in the descriptive part of the judgement, the courts take this to be a sufficient elaboration of the facts that have been established in the case.

It is clear that the claim of the plaintiff, the objections of the defendant and the explanations set forth by both parties include a description of the incident. In the judgement, this information plays an important role both in the presentation of the disputing parties' explanations as well as in the process of establishing the facts. Problems arise, however, when the court assumes that by presenting the versions of the incident as seen by plaintiff and defendant in the descriptive part of the judgement it has fulfilled its duty – to establish the facts in the case – as is required by the law in regard to the reasoning. And precisely this assumption was observed in court judgements. For example, the descriptive

part of a judgement begins with the establishment of a number of facts and only then is reference made to the plaintiff's reasons for filing the complaint. The reasoning begins right off with a legal assessment of the facts.

There is, however, a difference between the description of an incident as such and the establishment of the facts that are necessary for application of a specific provision. Not everything that is included in the description of an incident is always important for the application of a provision. Similarly, the description of an incident can be too incomplete to allow the application of a specific provision. This is why the description of the incident in the explanations of the disputing parties does not necessarily include the facts that the judge must establish in the reasoning in order to apply a specific provision.

In court judgements where the reasoning does contain information about the facts that have been established in the case, in the process of determining these facts the court is guided by the explanations provided by plaintiff and defendant both in written and in oral form during the court hearing.

Isolating the legally relevant facts. In order to make it easier to find the appropriate provision and evaluate the facts, the adjudicator must determine which circumstances are important for an assessment in the context of potentially applicable provisions.[11] The adjudicator both shortens and supplements the original narration and eliminates all facts except those that could be important for the application of these provisions.[12] Isolation of the legally relevant facts is simpler in cases involving administrative law than it is in other cases inasmuch as the decision that is contested by the plaintiff already contains reference to a specific provision. When the court has before it both the incident and the provision that has been applied to it, it is easier for the court to determine which facts could be legally relevant in the case and which not.

The study showed that courts manage quite successfully to establish the legally relevant facts and isolate them from facts that have no bearing on the case at hand.

> In the case where an individual had filed a complaint contesting the legitimacy of a public official's decision to deny extension of a permit to possess and carry a firearm, the court established only the facts that were legally relevant.

[11] Neimanis, J. "Lietas faktisko apstākļu apzināšana un juridiska noteikšana [Establishment and legal qualification of the circumstances in a case]." *Likums un Tiesības*, June 2000, p. 183.

[12] Ibid.

In this case, the official's decision was based on Section 7, Clause 4 of the Law on Firearms and Special Devices for Self-defense[13]. This law lays down restrictions on the purchase, possession and carrying of firearms and tear-gas guns for persons *upon whom administrative sanctions have been imposed within the past two years for violent disorders or offenses connected with the use of alcohol, or narcotic, psychotropic or toxic substances, or about whom the state police has information which allows the assumption that a firearm could be used with malicious intent.*

Here, as far as the facts are concerned, the court established only whether, how often and for which offenses the individual had received administrative sanctions.

Another case can also be mentioned as a positive example in this context.

The plaintiff contested the decision of a DCMA official to annul the plaintiff's personal code, among other reasons on the grounds that the plaintiff's husband had been retired from active military service after January 28, 1992.

Pursuant to Section 1, Paragraph 3, Clause 3 of the Law on the Status of Former USSR Citizens not in Possession of Latvian or Other Citizenship[14], the plaintiff, as spouse, could not be considered a subject of this law and, consequently, the personal code that had previously been granted was annulled.

In its reasoning, the court establishes that the marriage of these two persons had been dissolved, but that both parties had submitted contradictory evidence as to the date of the plaintiff's divorce from her husband. The court found, however, that the date of the divorce was "not consequential for determining the plaintiff's status in the Republic of Latvia, inasmuch as the court considers it to be a proven fact that […'s] former husband […] was retired from service in the USSR armed forces [before January 28, 1992]."

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[13] Law on Firearms and Special Devices for Self-defence, adopted on February 23, 1993. *Ziņotājs* No. 8, April 3, 1993. Since January 1, 2003, this law is no longer in force and has been replaced by the Law on Firearms Commerce, adopted on June 6, 2002. *Latvijas Vēstnesis* No. 95, June 26, 2002.

[14] Law on the Status of Former USSR Citizens not in Possession of Latvian or Other Citizenship, adopted on April 12, 1995. *Latvijas Vēstnesis* No. 63, April 24, 1995.

However, another case was found during the course of the study where the court had incompletely mentioned a legally relevant fact:

> In the case where the plaintiff had contested the decision of a DCMA official to annul the plaintiff's personal code, the court refers to a number of legally relevant facts, but mentions them incompletely.
>
> For example, when establishing the circumstances in the case the court writes:
>
> "[…'s] personal code was annulled on August 8, 1996," which is followed by, "On October 21,1999, […'s] personal code was annulled…."
>
> The court does not indicate on what grounds and on what legal basis the DCMA official had annulled the personal code twice. It also does not indicate which institution had taken the decision to do so.

Examining and proving the facts. At present, administrative procedure in court is governed by the Civil Procedures Law. This also means that complaints are adjudicated on the basis of the principle of competition – each of the parties in a legal action must prove the facts upon which the claim or the objections are based. Where the submission of evidence is concerned, the courts currently play a passive role. Pursuant to the Civil Procedures Law, the court may either request evidence at the demand of either one of the disputing parties, or it may give the parties time to collect the missing evidence. At the same time, judgements were found where, when adjudicating complaints in accordance with the Civil Procedures Law, the court refers directly to the principle of objective investigation. In a democratic system, this is one of the most important principles of administrative procedure in courts and it is also included in the Administrative Procedures Law (Section 150). However, such cases were observed in only one court and in the judgements of only one judge.

It must also be pointed out that, since this study analyzes only court judgements and not all of the documents in a case (including the arguments submitted in writing by the plaintiff and the defendant and the minutes of the court hearing), it is impossible to tell whether the courts have collected evidence on their own initiative or at the demand of plaintiff or defendant, and whether or not the principle of objective investigation has been observed.

> In a case where a legal person had contested a decision by the Center for the Protection of Consumer Rights, the court judgement mentioned that the court had requested another expert opinion in addition to the one provided by the Center for the Protection of Consumer Rights.

However, it is not possible to tell whether this was done at the court's initiative or that of the disputing parties.

An important role in proving the facts is played by the assessment of evidence. It is particularly important to analyze cases where contradictory evidence has been submitted. During the course of the study, examples were found where the court had to choose between two or more contradictory pieces of evidence and to argue its choice. In cases where individuals had filed complaints over administrative sanctions and where the statements of such individuals contradicted those of the public officials, courts applied the administrative procedures principle that doubt must be interpreted in favor of the individual.

In a case where the plaintiff contested the decision of a Traffic Police inspector to impose administrative sanctions because the individual had crossed an intersection at a red light, the court concluded that the police officers were making contradictory statements about the incident, while the individual had not changed his testimony. The court underlined that, where there is doubt, the individual is in the right.

In another case where an individual complained, among other things, that the Traffic Police officer had not introduced himself after stopping the car, the court pointed out that

"pursuant to the administrative [procedures] principle, the court interprets doubt in favor of the individual, but at the same time finds that in view of all of the other circumstances that have been established in this case this violation of the law cannot be sufficient reason to revoke the decision that has been contested."

In cases where individuals have filed complaints over the unlawful acts of public officials, by which the rights of natural and legal persons have been violated, the courts have also weighed the contradictory evidence and explained why they have accepted one piece of evidence, but dismissed another.

In the case where an individual had filed a complaint over the decision of a public official to annul the plaintiff's personal code and issue a departure order, there was contradictory evidence about the date when the plaintiff's spouse had been retired from the USSR armed forces. A lower court gave preference to the evidence that was submitted by the plaintiff, with the argument that the documents submitted by the agency had not been legally obtained.

When the case was taken to the court of appeal, this court was also required to evaluate the contradictory evidence. The result differed, and the appellate court explained why it disagreed with the lower court and why it found that preference should be given to the evidence submitted by the agency:

"In view of the fact that the aforementioned documentary evidence was received from competent government agencies in the Russian Federation at the request of the Immigration Police or the DCMA, and in view of the fact that this evidence differs substantially from other evidence presented in this case by the plaintiff, the Civil Court prefers this evidence to the documents submitted by the plaintiff…."

It is possible that this argument could be contested, especially in view of the fact that the plaintiff had obtained her evidence from the Social Security Office at the Consular Department of the Russian Embassy in Latvia, which could also be considered a competent government agency in the Russian Federation. It is positive, however, that in cases where there is contradictory evidence, courts give their reasons for preferring one piece of evidence to another.

Conclusions. Courts tend to exclude information about the facts that have been established in a case from the reasoning, although it would help to identify the relevant provisions of law and, subsequently, to apply them. In these cases, courts do not separate the explanations of the plaintiff and the defendant, which are expounded in the descriptive part of the judgement, from establishment of the facts necessary for application of a specific provision.

In court judgements where the facts are separately presented in the reasoning, the isolation of the legally relevant facts can be seen as a positive trend, with courts successfully identifying the facts relevant to the case and separating them from other facts. But there is also a negative trend, with courts mentioning facts that are legally relevant only fragmentarily.

Examining and proving facts is usually limited to the evidence collected by the conflicting parties and to their explanations. The court also refers to the principle of objective investigation. However, there is no information about how effectively this principle is applied in practice because this study has analyzed only court judgements and not all of the documents in a case. This makes it impossible to determine whether a court has attempted to find evidence or obtain evidence from the parties on its own initiative.

When evaluating evidence, especially contradictory evidence, for example, in cases involving administrative offenses, courts will refer to the administrative procedures principle that doubt must be interpreted in favor of the individual. In the other cases analyzed for this study, courts also gave grounds for their decisions when evaluating contradictory evidence.

b) Choice of the relevant provision

Reference to a provision. In principle, courts acquaint themselves with the provision upon which a public official has based his or her decision.

During the course of the study, only two cases were found where the court judgement made no reference to either the provision applied by the official, or that applied by the judge. In one other case, no reference was made to the provision applied by the judge.

> For example, in one of the cases, a person serving time in prison had filed a complaint over the refusal of the prison administration to grant him parole. The court judgement makes no mention of the legal reason for the refusal.
>
> The court finds that the prison administration has acted in accordance with the law and argues its decision as follows:
>
> "The documents in the case show that the prisoner has not yet served a sufficient length of time to be eligible for parole. Pre-trial detention cannot be counted as part of the prison term. Furthermore, counsel for the administration also finds that there is no guarantee that the prisoner, if released, will not continue to engage in criminal activities."
>
> Here, the court has sustained the decision of the prison administration, but has not supported its decision with reference to any provision of law.

At the same time, several court judgements were found in which the court refers to the provision applied by an official in the introduction or in the descriptive part of the court judgement, but makes no more reference to it in the reasoning, although it is precisely in this part of the judgement that the court is required to refer to the provisions that are applicable to a case and, subsequently, to apply them (see Section 193, Part 5 of the Civil Procedures Law). This was particularly characteristic for cases where courts adjudicated complaints over sanctions imposed for administrative offenses that the Administrative Offenses Code (AOC) deals with in a so-called blanket provision (the substance of the offence is defined in another provision of law).

In a case where a complaint had been filed over the levy of administrative sanctions in accordance with AOC Section 176 (an arbitrary act, i.e., an act performed arbitrarily, by circumventing the law, if the legitimacy of this act is challenged by another person) the court made no reference to this section of the law, but instead analyzed the laws that had provided the grounds for the dispute.

In another case, where a complaint had been filed over sanctions imposed pursuant to the same section of the AOC, the court also made no mention of AOC Section 176.

However, if no reference is made to this section of the AOC, it remains unclear which regulations have been applied when imposing the sanctions.

Positioning of the reference. Although courts do acquaint themselves with the provisions that are mentioned in the decision of a public official, they seem to have difficulty in finding the right place in the judgement for referring to the provisions that are applicable in the case and thus rendering the judgement clearer and easier to understand. The court judgements analyzed for the purposes of this study showed that courts have different approaches to this question.

There are judgements in which the court makes reference to the provisions immediately after establishing the facts and before applying the relevant provision to the concrete case.

In one court judgement, the reasoning began with establishment of the facts relevant to the case:

"In accordance with Instruction No. 80 issued by the chairman of the Riga City Council, the aforementioned object, the Kolonāde kiosk, has been placed under the tenure of SIA Rīgas nami and is listed on the balance sheet of SIA Rīgas nami."

This was followed by a reference to the provisions applicable in the dispute and an assessment of their relevancy to the concrete case:

"Pursuant to the Law on Property Taxes[15], the taxpayer is SIA Rīgas nami, as the legal person under whose legitimate tenure the aforementioned property is found. The Law on Property Taxes has been in effect since

[15] Law on Property Taxes, adopted on June 4, 1997. *Latvijas Vēstnesis* No. 145, June 17, 1997.

January 1, 1998 and, pursuant to this law, property tax is imposed on land. Taxation of buildings and constructions began on January 1, 2000.

The transition regulations for the taxation of buildings and constructions during the transition period up to December 31, 2000 were adopted on January 21, 2000 and, pursuant to these regulations, 'the payable property tax on buildings and constructions shall be calculated by the taxpayer and the taxpayer shall be responsible for calculating this tax correctly'."

And the final conclusion:

"The court finds that SIA Kolonāde is not the taxpayer for the land and property tax, i.e., the subject, pursuant to the Law on Land Tax and the Law on Property Tax. The conduct of the Riga City Council's Financial Department shall be regarded as unlawful and the levy of payment on SIA Kolonāde on a no-contestation basis as unjustified."

However, there are also court judgements where reference to the provisions applicable to the case appears only after verification of the relevancy and applicability of these provisions to the case at hand.

In one court judgement, the reasoning begins with the court's assessment: "In view of the fact that the plaintiff has married after serving his sentence and after issue of the departure order, as well as the fact that DCMA has eased the restrictions on entry into the Republic of Latvia and the fact that the plaintiff has submitted to DCMA all documents necessary for the issue of a limited residence permit and has not violated the terms of the visas that have been issued…"

After this assessment the court concludes that thus

"the possibility is given to issue to [the plaintiff] a residence permit pursuant to Section 25.1 of the Law on Immigration to and Residence in the Republic of Latvia by Foreign Citizens and Stateless Persons[16]."

In this example, the court first gives its assessment and only then refers to the provision that was applied and on the basis of which the assessment was made. This approach – information about the provision that has been applied to the specific circumstances in a case is provided only after appli-

[16] Law on Immigration to and Residence in the Republic of Latvia by Foreign Citizens and Stateless Persons, adopted on June 9, 1992. *Ziņotājs* No. 27/28, July 9, 1992.

cation of the provision – requires the reader of the judgement to return to the court's assessment to make sure how the provision has been applied to the concrete case.

Form of the reference. When considering the provisions mentioned in a public official's decision and determining the appropriate place in the judgement for referring to such, courts are faced with the next question – must the court judgement disclose the content of the provision?

At first glance, such a requirement might appear unimportant or even unnecessary, but there is a reason for it. Disclosure of the content of a provision makes it easier to check in what way a court has applied a concrete provision to a concrete case. It makes it easier for everyone to understand a court judgement. And it gives courts the certitude that they have applied the relevant provision comprehensively.

During the course of the study, two trends were observed in this context. In some court judgements, courts, when referring to a provision, disclose its content.

In one court judgement, the court refers to Clause 42 of Cabinet of Ministers Regulation No. 62, Regulations on Electronic Equipment and Systems for the Registration of Tax and Other Payments[17], which had been violated in this particular case, and explains what this clause stipulates:

"The user of cash registers and cash systems shall ensure the registration of all payments for transactions made in cash, by bank check, charge card, credit card or other document certifying payment in a cash register or cash system and issue a sales slip to the client."

The court then establishes that violation of the aforementioned clause constitutes an administrative offense pursuant to Section 156, Paragraph 3 of the Administrative Offenses Code. The court judgement also discloses the content of this section of the Code:

AOC Section 156, Paragraph 3 anticipates administrative liability "for failure to use approved cash registers for cash and account operations in trade establishments where the use of such is prescribed by law or regulation if such operations are carried out at venues where excise products are sold."

[17] Cabinet of Ministers Regulation No. 62, Regulations on Electronic Equipment and Systems for the Registration of Tax and Other Payments, adopted on February 23, 1999. *Latvijas Vēstnesis* No. 57/59, March 2, 1999.

The second approach tends not to disclose the content of the provision.

> In one court judgement, the court refers to Clause 1.1.2 of the Regulations on Safety Equipment on Ships of the Merchant Fleet[18] and Section 22 of the Law on Job Safety[19], but does not disclose the content of these provisions.

In regard to the form in which courts refer to provisions, mention must also be made of cases where the court refers not just to one, but to several provisions. In such cases, courts tend to refer to all of the provisions at the same time and then to relate and apply them to the concrete case. Such an approach should not immediately be considered incorrect if all of these provisions follow from each other and cannot be considered individually in respect of the facts in a specific case. However, there are cases where this is not so, and the courts actually apply only a few of the provisions that are mentioned. This could suggest that courts prepare their judgements according to the principle that "more is better." Although this in no way affects the final result, it does make it more difficult to understand a judgment.

> In one court judgement, the court refers to four provisions, one after the other, in a single paragraph. All of these provisions are found in one law and each one regulates something else. First, the court finds that the administrative act violates the Cabinet of Ministers July 13, 1995 Regulation No. 154, Rules on Administrative Procedure. Then the court lists, one by one, the provisions that have been violated and discloses their content (Clause 10, Clause 27, Clause 63.4 and Clause 73, Paragraph 2).
>
> However, an explanation of how these provisions have been violated does not follow.

Precision. It was observed that when courts refer to provisions pursuant to which public officials have made their decisions there is a lack of precision in regard to the date when the law or regulation was adopted and the correct title of such.

> In one case, where an individual had contested the levy of administrative sanctions for violation of the regulations of a local government, in its

[18] Have not been issued as a regulatory enactment, not published.

[19] Law on Job Safety, adopted on May 4, 1993. *Ziņotājs* No. 20, May 27, 1993. No longer in force since January 1, 2002, replaced by the Law on Job Safety that was adopted on June 20, 2001 and published in *Latvijas Vēstnesis* No. 105, July 6, 2001.

judgement the court, in two different places, mentions two different dates for adoption of the regulations (December 9, 1998, and December 13, 1998). Furthermore, in both cases the date that is mentioned is not the correct date (December 8, 1998).

In the same judgement, the court identifies the regulations only by their number and by the incorrect date of adoption. The full title of the regulations is not given anywhere in the judgement.

Choice of provisions other than those applied by a public official. An analysis of the courts' approach to applying provisions other than those referred to in the decision of a public official was carried out separately for cases involving complaints over administrative sanctions imposed by public officials and cases involving violation of the rights of natural and legal persons by public officials. The need to evaluate this question in two separate categories arose from the fact that the law imposes different requirements for each of these categories.

Complaints over administrative sanctions imposed by public officials

In regard to complaints over administrative sanctions imposed by public officials, the court can consider only those provisions of substantive law upon which an official has based the decision to impose sanctions (see Section 238 of the Civil Procedures Code). If the court finds that the individual is not guilty of the offense for which sanctions have been imposed, it revokes the decision and refers the case back for repeated review or dismisses it. If the court is aware that the individual is guilty of an administrative offense pursuant to some other provision, it cannot apply this other provision on its own initiative unless empowered by the Administrative Offenses Code to do so.[20]

However, in cases involving complaints over administrative sanctions, courts may also be required to investigate other provisions of substantive law, which could be applied in addition to those referred to in the public official's decision. This requirement may be valid in the following cases: (1) if administrative sanctions have been imposed for the violation of a so-called blanket provision, i.e., if the provision that has been violated is set forth in some other law; (2) where this is demanded by disclosure of a conflict with a higher ranking provision; or (3) when considering the justification of the administrative sanctions, in which case courts must frequently apply such general principles of law as the principle of proportionality, the principle of equality of arms, and the principle of legitimate expectations.

[20] See Republic of Latvia Administrative Offenses Code (AOC), Section 213, which defines the rights of district (city) courts to adjudicate certain cases involving administrative offenses.

Since the study analyzes only court judgements and not the whole case file (including the written explanations submitted by plaintiff and defendant and the minutes of the court hearing), it is impossible to tell whether or not the court has sought to find these provisions on its own initiative. However, it is absolutely clear that courts do apply other provisions, which, in addition to those cited by the public official, could apply in cases involving complaints about the levy of administrative sanctions, the grounds for which are provided not in the AOC but in other legislation.

> In the case where an individual had contested administrative sanctions imposed for arbitrary occupation of premises, the court referred to several provisions of the Civil Law[21] and explained why this could not be considered a case of arbitrary occupation of premises.
>
> Similarly, in another case where an individual had contested administrative sanctions imposed for violation of accounting regulations, the court referred to a concrete law in order to explain why administrative sanctions were not applicable in the case.

During the course of the study, cases were also found in which the plaintiff referred to one of the human rights guaranteed in the Latvian Constitution[22]. However, in all of these cases, the courts paid no attention to this reference.

> In one case involving an administrative offense, the plaintiff referred to Section 96 of the Latvian Constitution, which guarantees every person respect for the privacy of the home. In another case, the plaintiff cited Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms[23]. However, in all of these cases the court did not find it necessary to consider the applicability of these human rights to the concrete case.
>
> In this context it should be taken into account, however, that refusal to consider the arguments of one party can have a conclusive effect on the outcome of the case and can even result in a violation of the right to a fair trial.

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[21] The Civil Law of Latvia was adopted on January 28, 1937. The consolidated text of the Civil Law of Latvia in English is available from the Translation and Terminology Center (2001).

[22] The Constitution of the Republic of Latvia, adopted on February 15, 1922. *Latvijas Vēstnesis* No. 43, July 1, 1993.

[23] Law on the November 4, 1950 Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols 1, 2, 4, 7, and 11, adopted on June 4, 1997. *Latvijas Vēstnesis* No. 143/144, June 13, 1997.

Where appraisal of the validity of the imposed sanctions is concerned, in order to determine the size of a fine, courts not only consider the circumstances set out in AOC Section 32 (general provisions on the application of sanctions for administrative offenses), they also apply the general principles of law.

> In one judgement, the court ruled as follows:
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> "In imposing punishment pursuant to Section 32 of Latvia's Administrative Offenses Code, the court has taken into account the nature of the offense, the personality of the offender, the offender's degree of guilt, financial status, and extenuating or aggravating circumstances. The personality of the offender must be taken into account to ensure individualization of the punishment. The documents in the case do not indicate whether any previous administrative sanctions have been imposed on […], no property damage has been inflicted.
>
> Pursuant to Section 34 of Latvia's Administrative Offenses Code, no aggravating circumstances have been established.
>
> Pursuant to Section 33 of Latvia's Administrative Offenses Code, extenuating circumstances have been established, and the offender has expressed regret for his actions. The court holds the offender's admission of guilt to be an extenuating circumstance."

However, court judgments can still be found in which neither the provisions of AOC Section 32, nor the general principles of law are quoted when appraising the validity of administrative sanctions.

> For example, a plaintiff contested administrative sanctions imposed by the National Labor Inspectorate, constituting a fine of 50 LVL, for neglecting to control whether ships are equipped with safety instructions, thus violating Clause 1.1.2 of the Regulations on Safety Equipment on Ships of the Merchant Fleet and Section 22 of the Law on Job Safety. Administrative sanctions were imposed pursuant to AOC Section 41, Paragraph 1, which anticipates a fine of up to 250 LVL.
>
> The court affirmed the fine (fifty lats) imposed by the National Labor Inspectorate and argued as follows:
>
> "Administrative sanctions were imposed in accordance with the law, there are no grounds to revoke the fine."

> However, when the court upheld the sanctions imposed by the National Labor Inspectorate it did not explain the circumstances under which the sanctions were to remain in force.

Complaints over the unlawful conduct of public officials, by which the rights of natural and legal persons have been violated

In cases involving complaints over the unlawful conduct of public officials, by which the rights of natural and legal persons have been violated, it is always the duty of the court to examine whether, in addition to the provisions cited in the decision of the official, there are other provisions that might apply to the case. This duty follows from the Rules on Administrative Procedure, which, among other things, also determine the legal force of administrative acts issued by an administrative body. This means that the court must examine whether the institution that has issued the administrative act has observed the principle of legality and the general hierarchy of Latvia's legal provisions, and whether it has applied methods of interpreting provisions.

Courts basically refer to the provisions that have already been cited in the disputed decision. This study cannot fully evaluate whether in cases where the court has referred to other provisions it has done so on its own initiative, or whether either of the parties involved in the legal action has pointed out to the court the inapplicability to the concrete case of the provision referred to in the decision and to the necessity of referring to some other provision.

However, when examining whether there are cases in which courts fail to refer to a provision that could clearly affect the outcome of the case, the study revealed that courts show a tendency to disregard the provisions of the Rules on Administrative Procedure, which determine in which cases certain types of administrative acts must be revoked (see Section XVIII of the Rules).

> In one case, the plaintiff filed a complaint over the decision of an official to revoke a previous administrative act that had been favorable to the interests of the plaintiff for another, which was unfavorable.
>
> When considering the legality of the official's conduct, the court neglected to check the requirements set out in the Rules on Administrative Procedure, which define the cases in which a previous administrative act that is favorable to the interests of an individual may be revoked. Similarly, the court did not consider whether this favorable administrative act had been lawfully or unlawfully adopted.

This case was brought before two higher courts; however, both of these courts also failed to pay any attention to this fact.

During the course of the study, another case was examined where the court did not apply the general principles of law and where application of these principles may have led to a different outcome.

In this case, the plaintiff had filed a complaint contesting the decision of an official at the Inspectorate for Quality Control of Health Care and Certification of Fitness for Work (hereinafter referred to as Inspectorate) to annul a sick leave certificate issued by a doctor. The facts show that the plaintiff was dismissed for not coming to work on the days for which the plaintiff had a sick leave certificate. The plaintiff found that annulment of the certificate denied him the chance of being reinstated in his job and receiving compensation for forced leave.

The decision of the official was based on Clauses 3.1 and 17 of Cabinet of Ministers Regulation No. 419, Procedure for the Issue of Sick Leave Certificates[24]. The plaintiff had not been registered as an out-patient at the health care institution, no out-patient's card had subsequently been filled out, but entries had been made on sheets of paper that could hardly be called a medical document that fulfilled official record-keeping requirements. These papers had no registration number, no doctor's signature, two different addresses, and there was no corresponding entry in the registration journal for sick leave certificates, no medical card. The certificate had been backdated, and there were, in point of fact, no grounds for certifying the patient's incapacity. Administrative sanctions were imposed on the doctor who had issued this irregular sick leave certificate, an indication that the doctor had committed an error in filling out the sick leave certificate and confirming the patient's incapacity.

In this context it is important to bring attention to the fact that the court, when checking the legitimacy of the Inspectorate's decision, disregarded the question of whether in this case the plaintiff was or was not protected by the principle of legitimate expectations. The plaintiff had received the sick leave certificate from a doctor who, in accordance with the law,

[24] Cabinet of Ministers Regulation No. 419, Procedure for the Issue of Sick Leave Certificates, adopted on October 29, 1996. *Latvijas Vēstnesis* No. 184/185, November 1, 1996. No longer in force since May 1, 2001, replaced by Cabinet of Ministers Regulation No. 152, Procedure for the Issue of Sick Leave Certificates, adopted on April 3, 2001. *Latvijas Vēstnesis* No. 56, April 6, 2001.

had taken the decision to issue to this concrete person a sick leave certificate and had thus established a concrete legal relationship, which is governed by public law. In accordance with the principle of legitimate expectations, an error committed by a doctor when making a decision in the realm of public law, and for which a person cannot be held responsible, should not bear negative consequences for such person.

When the court affirmed the decision of the Inspectorate, it should, nevertheless, have considered which departures from the principle of legitimate expectations are permissible in such cases, but this was not done. It should certainly have been done, inasmuch as the plaintiff himself had pointed out that he could not be made "responsible for violations committed by a doctor when issuing a sick leave certificate."

Conclusions. Court judgments usually contain reference to the provision that is applicable to the concrete case. In some cases this reference appears in the descriptive part of the judgement and not in the reasoning, as required by law.

Courts have different approaches to the question of where in the reasoning reference should be made to the applicable provision. Two approaches were observed in this context: 1) the court makes reference to the provision immediately after establishing the facts and before applying the relevant provision to the concrete case; 2) the court makes reference to the provision only after verification of the relevancy and applicability of this provision to the concrete case. If a court applies the second method, there is a greater likelihood that the judgement will be difficult or even impossible to understand.

Courts tend not to disclose the content of the provision that is applicable to the case. In addition to the possibility that this can render the judgement unclear or even incomprehensible, in such cases there is also the risk that the court may not have considered a certain aspect of the relevant provision.

When referring to several provisions one after the other, courts do not apply all of them to the concrete case. In such cases, the judgement contains unnecessary information and this can possibly make it more difficult to understand.

When courts refer to a specific provision, they do not provide precise details, particularly in regard to the date and correct title of the law or regulation. Such inaccuracies can be counted among those that are permissible in a court judgement, and they cannot be taken as grounds for revoking a court decision, as long as they do not alter the outcome of the case.

Courts do not always apply provisions other than those cited in the disputed decision of a public official. Application of the principles of human rights and the general principles of law is still not a widespread practice in court judgements.

c) Legal assessment of the facts

Verification of the applicability of a provision of law. Verification of the applicability of a concrete provision to a concrete case is the first step to legal assessment of the circumstances in a case. During this process, the court examines whether the chosen provision is relevant to the concrete case, i.e., whether the provision can both **in form** and **in content** be applied to the circumstances in the case. Failure to do this can render further application of the provision absurd. How can a provision be applied, which is not relevant to the case?

In cases involving administrative law, the applicability **in form** of a provision to a concrete set of facts demands that the court verify whether the principle of legality has been observed.[25] Pursuant to Section 15, Paragraph 5 of the Law on the Structure of the Cabinet of Ministers[26], a government institution may perform an act that is directed externally only pursuant to the Constitution, the law or the Regulations on the Cabinet of Ministers, i.e., an external law or regulation, and not on an instruction, which is an internal regulation. The Regulations on Internal Procedures and Activities of the Cabinet of Ministers[27] anticipated that orders issued by the Cabinet, which constitute a burden on the addressee in the form of a prohibition or restriction, may only be issued pursuant to the Constitution, the law or the Regulations on the Cabinet of Ministers. But Cabinet orders that favor the addressee may also be issued in matters not regulated by a legal provision, as long as such orders do not contravene the Constitution, the law or the Regulations on the Cabinet of Ministers.

Court judgments do not separately indicate that the court has checked to establish whether the principle of legality has been observed. This is why in some cases where,

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[25] For more on the principle of legality see the December 19, 2001 judgement of the Constitutional Court in Case No. 2001–05–03 on Conformity with Articles 95 and 111 of the Constitution of the Republic of Latvia of the Provisional Regulations on the Procedure for Holding Persons Suspected, Accused or Convicted in Custody Pending Trial, approved with the Ministry of Justice May 9, 2001 Instruction No. 1–1/187. *Latvijas Vēstnesis*, December 22, 2001.

[26] Law on the Structure of the Cabinet of Ministers, adopted on July 15, 1993. *Ziņotājs* No. 28, August 19, 1993.

[27] Cabinet of Ministers Regulation No. 160, Regulations on Internal Procedures and Activities of the Cabinet of Ministers, adopted on April 30, 1996. *Latvijas Vēstnesis* No. 80, May 9, 1996. No longer in force since June 1, 2002, replaced by Cabinet of Ministers Regulation No. 111, Standing Orders of the Cabinet of Ministers, adopted on March 12, 2002. *Latvijas Vēstnesis* No. 42, March 15, 2002.

for example, a public official has argued a decision that bears negative consequences for the individual by quoting internal regulations (the regulations issued by an institution), the court does not first examine whether the quoted regulations are relevant to the issue in question, but proceeds right on to an assessment of whether or not the content of a specific provision of these regulations has been correctly applied.

> The plaintiff had approached the court because a local government institution had demanded proof of payment for public utilities before cancelling the plaintiff's registration of residence at her personally owned property. The local government based this demand on the regulations of its department for registration of residence. However, the plaintiff pointed out that, in accordance with Section 22 of Council of Ministers Resolution No. 76, Regulations on Registration and Deregistration of Residents[28], for deregistration of residence a person is required to submit a passport and a formal request indicating the reason for departing the country and the destination. These regulations do not call for documents on payment of public utilities bills.
>
> Regarding applicability of the local government agency's regulations to this case: instead of establishing whether these internal regulations can be applied to the case at hand in accordance with the principle of legality, the court examines the applicability of the regulations by interpreting the relevant provision and concluding that it governs other types of cases.

Where applicability **in content** of a provision to the specific circumstances of a case is concerned, it was often observed that court judgments do not indicate whether the court, when finding the provision that will eventually be applied, checks to make certain that it actually applies to the case. Courts immediately proceed with the process of applying the provision to the given circumstances.

> In a case where the court cited an international convention between Latvia and the Russian Federation on legal aid and legal relations in matters involving civil, family and criminal law[29] as the reason for disregarding

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[28] Council of Ministers Resolution No. 76, Regulations on Registration and Deregistration of Residents, adopted on February 12, 1993. *Latvijas Vēstnesis* No. 1, February 25, 1993. No longer in force since February 1, 2002, replaced by Cabinet of Ministers Regulation No. 542, Provisional Procedure for Registration and Deregistration of Persons, adopted on December 27, 2001. *Latvijas Vēstnesis* No. 188, December 28, 2001.

[29] Convention between Latvia and the Russian Federation on Legal Aid and Legal Relations in Matters Involving Civil, Family and Criminal Law. February 3, 1993. *Latvijas Vēstnesis* No. 394, November 30, 1999. The convention was ratified on June 1, 1993.

> evidence submitted by a government agency, the court did not consider whether the convention was applicable to legal relations between the individual and the State such as those between the individual and the government agency in this particular case.
>
> As a consequence, the judgement was revoked by a higher court.

A court judgement usually indicates that the court has examined whether or not a provision can be applied to the specific circumstances in a case if one of the parties involved in the dispute has pointed out the need to carry out such an examination.

> In a case where the plaintiff argued that he was the wrong person to be held liable for an administrative offense, the court considered the argument and before applying the provision was able to conclude whether or not the provision in question was actually applicable in this case.

In cases where the court has examined the applicability of a provision to the given circumstances and reached the conclusion that the provision cannot be applied, there appears to be a problem with putting the results of this examination into practice. These are cases where the court, upon finding that a provision is not applicable, nevertheless proceeds to apply it.

> In the aforementioned case, where the wrong person was being held liable for an administrative offense and where the court itself had come to this conclusion, the court continued to examine whether the case had been adjudicated in accordance with all procedural requirements and whether the administrative sanctions that had been imposed were legitimate.

Application of the relevant provision

Application of the general principles of law and international conventions that are binding for Latvia. The general principles of law and the provisions of international conventions that are binding for Latvia must also be applied when resolving disputes involving administrative law, in the same way that the provisions of laws and regulations must be applied. However, for the purposes of this study, their application in cases involving administrative law is examined separately. The reason for this is that these independently applicable legal sources were not applied in the Soviet judicial system. However, ignoring them can prove hazardous is a democratic system.

In cases involving administrative law, observance of the general principles of law is most widespread in cases where courts, when considering the administrative sanctions that have been imposed, refer to the principle of proportionality. The principle that doubt must be interpreted in favor of the individual is also applied. During the course of the study, the author also found court judgements in which the court established a violation of the principle of legitimate expectations in a public official's decision to impose administrative sanctions.

In regard to application of the principle of proportionality, it was observed that courts tend to explain the principle of proportionality in a few sentences in the court judgement, but fail to explain how the principle applies to the actual circumstances in a particular case, making do with only general statements.

> In one case involving an administrative offense the court finds:
>
> "…the decision taken in this case cannot be considered as supported by the law or conform with the provisions thereof. Neither have principles of administrative procedure such as the principle of proportionality been observed. Public execution of power must be appropriate, necessary and proportional in respect of the objective. The court finds that, in this case, the objective, which was to compel the company managed by the plaintiff to observe the requirements of the Law on Alcohol Commerce as regards invoices, could have effectively been achieved by other means, which would have had a less negative impact on the plaintiff's rights and legitimate interests....
>
> The decision was taken without considering whether the public benefit is proportional to the restrictions on the interests of the plaintiff...."
>
> After each one of these statements, the court does not indicate how these conclusions should be applied to the concrete case. The court judgement does not dwell on what these "other means" might be or explain in what way they would have "a less negative impact on the plaintiff's rights and legitimate interests," or what exactly was not considered in weighing the public benefit against the interests of the plaintiff. The court also fails to provide an appraisal of different aspects of the principle of proportionality to which it has referred.

Cases can still be found where consideration of the principle of proportionality is reduced to citation of the public interest as a reason for observing the principle of proportionality.

In one case involving an administrative offense, during examination of whether the principle of proportionality has been observed, the court finds that in this specific case the principle has been observed because

" …there is no doubt that it is in the public interest to ensure consistent obeyance of traffic regulations in the interests of maintaining public order, which is why the public benefit in pursuing this goal is proportional to the restrictions on the interests of the plaintiff...."

From this example, one can conclude that the court finds the fact itself that there is a public interest to mean that the principle of proportionality has been observed. However, it should be kept in mind that, when considering application of the principle of proportionality, it is not enough to simply identify a public interest that must be protected. It is also important to answer the question of whether this public interest takes preference over restrictions imposed on the interests of the individual in a concrete case and whether restrictions with a less negative impact on the interests of the individual would not suffice.

The application of the general principles of law is less widespread in cases involving the unlawful conduct of public officials, by which the rights of natural or legal persons are violated. For example, among the judgements examined for this study, there was at least one case in which the outcome might have been different if the court had considered whether the principle of legitimate expectations had been observed and, consequently, ruled in favor of the plaintiff. These are primarily cases where individuals have filed complaints over the unlawful conduct of Department of Citizenship and Migration Affairs officials who have revoked an earlier administrative act, which had been positive for the individual, and replaced it with a new administrative act, which was negative.

At the same time, there are also examples where courts, when adjudicating cases involving complaints about the unlawful conduct of public officials, apply general principles of law such as the principle of proportionality, the principle that a public official must substantiate a decision, or even the concept of a democratic State as a general principle of law.

For example, a legal person had filed a complaint against the State Revenue Service (SRS), asking the court to revoke an SRS decision to collect payment of VAT and impose a fine because the person's consignment invoices did not indicate the legal addresses of suppliers, but their actual

addresses. The court found that since the State had received all due payments for the disputed transactions and had not incurred any losses, the decision of the SRS had not been proportional to the circumstances that were established.

In a case where an individual had appealed the decision of a local government's administrative committee to impose administrative sanctions in accordance with Section 176 (arbitrary action) of the Administrative Offenses Code, the court ruled in favor of the individual, citing **the general principle of public law, which requires that a public administration or local government agency (official) justify its administrative acts.**

Citation of the concept of a democratic State to back up one or the other inference originates from the judgements of the Constitutional Court. However, reference to these is unfortunately still rarely encountered in the judgements made by courts of general jurisdiction.

In a case where the plaintiff had appealed to the court to review the refusal of a Ministry of Economics official to provide information about contracts that had been awarded for public procurement, the court referred to the July 6, 1999 judgement of the Constitutional Court[30], in which the Constitutional Court pointed out that

"...an essential aspect of public administration in a democratic system is its transparency and the accessibility of information regarding the use of public funds...."

In regard to the application of international conventions that are binding for Latvia, for example, the European Convention for the Protection of Human Rights, when adjudicating cases that involve administrative law, courts are reluctant to consider whether the State has fulfilled the human rights obligations that are imposed on it by this international document.[31]

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[30] The July 6, 1999 judgement of the Constitutional Court in Case No. 04–02 (99) on Conformity of Cabinet of Ministers Regulation No. 46, Regulations on Management Contracts, with the Law on Transparency of Information. *Latvijas Vēstnesis* No. 221, July 7, 1999.

[31] See Section 2.2.2 b): Choice of the relevant provision.

In cases where the court does refer to the European Convention for the Protection of Human Rights to argue a conclusion, it does not analyze the content of the relevant provision.

> In a case where the plaintiff referred to Article 8 of the European Convention for the Protection of Human Rights to substantiate his claim, the court had this to say:
>
> "Article 8 of the Convention states that everyone has the right to respect for his private and family life.
>
> Cabinet of Ministers Regulation No. 310, Regulations on Latvian Citizens' Passports[32], stipulates that a person's name and surname shall be entered in accordance with the rules of Latvian orthography. If the person so wishes, the original form of the person's name and surname shall, on the basis of documentary proof, be entered on the Special Remarks page (page 14).
>
> In this case, these requirements have been fulfilled. The surname […] has been entered in the passport and the surname […], which is the original form, has been entered on the Special Remarks page.
>
> Under these circumstances, the court had reason to rule that […'s] private and family life had not been violated."

In this judgement, the court did not consider the content of the provision on the right to a private and family life or explain why the case before it was not protected by these rights.

Verification of conformity with the hierarchy of provisions. Verification of the hierarchy of provisions is necessary in cases where there is a conflict between two or more provisions of law. During the course of the study, it was observed that court judgements do not usually indicate whether the court has checked to make sure that the hierarchy of provisions has been observed in each concrete case. Even in cases where this would clearly have been necessary, the court either failed to dwell on the conflicting provisions at all, or admitted the existence of a conflict only indirectly, without verifying the hierarchy of the provisions involved.

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[32] Cabinet of Ministers Regulation No. 310, Regulations on Latvian Citizens' Passports, adopted on October 24, 1995. *Latvijas Vēstnesis* No. 169, November 1, 1995. No longer in force since July 1, 2002, replaced by Cabinet of Ministers Regulation No. 245, Regulations on Latvian Citizens' Passports, Non-Citizens' Passports and Stateless Persons' Travel Documents, adopted on June 18, 2002. *Latvijas Vēstnesis* No. 97, June 28, 2002.

In one case, an individual had contested the demand of a public official that confirmation from the Latvenergo and Latvijas Gāze companies and the property management office must be submitted to the competent municipal authorities to show that the individual had no outstanding public utility bills before the registration of the individual's residence at his personally owned property could be cancelled. Here, the court referred to both the municipal regulations, which demanded such documents, and the Council of Ministers regulations on registration and deregistration of residents, which did not demand such information.

Although there was a clear conflict between both of these regulations, this was not acknowledged in a direct manner in the court judgement.

In another case where the court was faced with two conflicting provisions – one in the Law on Customs[33] and the other in the Law on Alcohol Commerce[34] – the court, without arguing its decision in any way whatsoever, referred to the provision of the Law on Customs.

Another example even suggests that the court has confused verification of the hierarchy of provisions with interpretation of these provisions.

In a case where an individual had contested the refusal of a municipal authority to annul the service housing status of the individual's apartment, the court ruled in favor of the plaintiff. The court found that the provision cited by the official could not be applied in the concrete case and that the official had disregarded the hierarchy of provisions.

However, the contention that the official had not observed this hierarchy is not explained in the court judgement and, what is even more important, there is no reference to the provision that is in conflict with the one applied by the official. As a result, there is uncertainty about whether there is any need at all to verify the hierarchy of provisions in this particular case and whether this is not a question of interpreting the provision in question.

[33] Law on Customs, adopted on June 11, 1997. *Latvijas Vēstnesis* No. 155, June 27, 1997.

[34] Law on Alcohol Commerce, adopted on October 14, 1998. *Latvijas Vēstnesis* No. 322/325, October 30, 1998.

Interpretation of the relevant provision. During the course of the study, it was observed that when courts apply provisions, they usually apply a strictly grammatical interpretation of these provisions.

> In a case involving an administrative offense, the plaintiff claimed that a police officer had violated Section 248 of the Administrative Offenses Code by refusing to give the plaintiff an extra sheet of paper for adding the plaintiff's explanations to the report on the incident.
>
> Section 248 of the Administrative Offenses Code says that a person who has committed an offense is entitled to submit an explanation, which must be added to the report.
>
> The court found that this does not mean that the officer writing the report at the scene of the offense must necessarily make sure that the offender has paper for writing an explanation. Therefore, there was no reason to find that by failing to supply paper for the explanation the police officer had violated the law.
>
> In this case, the court applied a strictly grammatical interpretation of the provision, without considering the need to view it from the aspect of expediency.

> In another case involving a dispute over the refusal of a public official to annul the service housing status of the plaintiff's living accommodations, the court found that the provisions cited by the official – Sections 23 and 24 of the Law on Housing Rents[35] – did not cover annulment of service status.
>
> Section 23 of this law sets out the basic principles for rental of service housing, but Section 24 deals with closure and termination of rental contracts for service housing.
>
> At the court hearing, the official explained that he had referred to the above provisions because there were no other laws or regulations governing annulment of the service housing status of living accommodations, but the court did not in any way react to this argument in its judgment. Here, the court should probably have examined whether the above sections of

[35] Law on Housing Rents, adopted on February 16, 1993. *Ziņotājs* No. 7, February 18, 1993.

> the law could not be interpreted in a way that would make it possible to apply them to the annulment of service status and to explain this in its judgement.

At the same time, there are also court judgements in which the court, when applying the relevant provision, does not adhere to a strictly grammatical interpretation.

> For example, one court clarifies the objective of a provision when applying Section 8, Paragraph 6 of the Law on Value Added Tax[36]. The court finds that
>
> "…the requirement, set out in Section 8, Paragraph 6 of the Law on Value Added Tax, for the indicated documents to be presented follows from the need of the tax authorities to receive complete information about the transactions that have been performed and, in accordance therewith, to control collection of payments owing to the State…."

In another case that can be mentioned as an example,

> the court considered the intentions of the legislators, i.e., whether among the numerous offenses listed in Section 122.1, Paragraph 2 of the Administrative Offenses Code the legislators had singled out the ignoring of traffic signs as a less serious violation.
>
> Clause 4 of the Traffic Regulations says that all traffic participants must obey these regulations and the instructions of police officers and other persons who are authorized to regulate traffic, as well as traffic lights, traffic signs and road signs. In its reference to this clause, the court did not find that the legislators had singled out the ignoring of traffic signs as a less serious violation.

Incomplete interpretation of a provision was observed in one case where a specific provision was applied by the court. It should be kept in mind that such behavior could eventually lead to errors in the adjudication of a case. A good example of this is a case involving an administrative offence, where

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[36] Law on Value Added Tax, adopted on March 9, 1995. *Latvijas Vēstnesis* No. 49, March 30, 1995.

administrative sanctions had been imposed on a driver pursuant to Section 126, Paragraph 3 of the Administrative Offenses Code, for driving without a driver's license.

The documents in the case indicated that, according to the Road Traffic Safety Department, the driver in question had been issued a driver's license, which is why the driver held the view that sanctions should be imposed in accordance with Section 126, Paragraph 1 of the Administrative Offenses Code, which was applicable in cases when the driver was not carrying his driver's license.

The court found, however, that Section 126, Paragraph 3 did apply in this case because

"inasmuch as Clause 25.1 of the Traffic Regulations[37] anticipates that a driver must carry with him a document certifying his right to drive a certain category of motor vehicle and must show it upon demand, and inasmuch as, pursuant to Section 23 of the Law on Road Traffic[38], the right to drive such vehicles is certified by a driver's license of the proper category, the court finds that the plaintiff has driven without a driver's license of the proper category because he has not shown the officers a document certifying his right to drive a motor vehicle."

When applying the above provision in conjunction with the provision of another law, the court not only forgets to apply the grammatical interpretation method, it also forgets to consider Section 126, Paragraph 3 of the Administrative Offenses Code in conjunction with what is stipulated in the other paragraphs in this section of the Code.

Argumentation of the court's decision. In evaluating the circumstances in a concrete case, the court must argue its decision. The argumentation must be adequate and sufficiently exhaustive. The principle of the equality of arms demands that the court respond to the arguments that have been presented by both parties in a concrete case. This study has analyzed the way in which courts fulfil this requirement.

The existence of arguments. Courts argue their decisions in a brief and laconic manner. Basically, these arguments are based on the provisions that are comprised in the laws

[37] Cabinet of Ministers Regulation No. 15, Traffic Regulations, adopted on January 19, 1999. *Latvijas Vēstnesis* No. 19, January 22, 1999.

[38] Law on Road Traffic, adopted on October 1, 1997. *Latvijas Vēstnesis* No. 274/276, October 21, 1997.

and regulations that a court has chosen to apply. The general principles of law are also used as arguments, but it is too early yet to speak of widespread use, even when taking into account the judgements of the Constitutional Court, where reference to the general principles of law is a common phenomenon. The Constitutional Court's interpretation of these principles would be a good instrument for the courts of general jurisdiction to use in applying the general principles of law more actively. Customary law, case law, doctrine and analogy are practically not applied when courts argue their decisions.

Although the brevity and laconic style of the arguments does not automatically mean that the judgements lack sufficient argumentation for the courts' decisions, in many cases this kind of approach can pose more questions than provide answers to questions that must be resolved in the context of a concrete case.

During the course of the study, it was observed that in some cases statements made by the court lack substantiation, i.e., an answer to the question of how they apply to the concrete case.

> For example, when reviewing a case involving an administrative offense, the court claims that the violation of administrative procedure was not of such a nature that it could have resulted in a mistrial of the case. The court does not provide any arguments for this assertion.

> Or in another case, the court finds that when making its decision the local government's administrative committee has
>
> "even inadequately applied the method of grammatical interpretation, and made no attempt to clarify the provision from the aspect of reciprocity, sense and objective, in order to reach the most expedient and fair result."
>
> At the same time, the court does not explain where exactly it was apparent that the official had failed to interpret a specific provision in accordance with the methods of interpreting laws and regulations.

In other cases that were examined, the courts' argumentation consisted of the text of the applied provision, without an explanation of how this provision related to the circumstances in a particular case.

In a case where the defendant had demanded that the case be dismissed pursuant to the Section 223 of the Civil Procedures Law, the court ruled as follows:

"The court finds that this demand cannot be satisfied because the quoted section of the law stipulates that a court shall dismiss a case if adjudication of such case is not within the competence of the court. The court finds adjudication of this case to be within the competence of the court."

The judgement does not explain why this case is within the competence of the court.

In another case, an individual had filed a complaint over the decision of a public official to revoke a previous decision, which had positively affected the interests of the individual, and replace it with another, which had been negative. Here, the court referred to Section 87.1 of the Rules on Administrative Procedure, which define the cases in which a previously taken incorrect administrative decision that is positive for an individual may be revoked, but did not provide any arguments for why the official had been justified in revoking the incorrect administrative decision that had been positive for the individual.

The relevancy of arguments. The relevancy of the courts' arguments can be assessed on the basis of both the form of the chosen argument and the application of its content. These, then, were the objects of the study when analyzing the relevancy of the argumentation of court judgements. The fact that courts basically refer only to the provisions comprised in laws and regulations to argue their conclusions raises a question about their relevancy in regard to the argumentation of a specific conclusion. The aforementioned example on disregard of the principle of legitimate expectations suggests that there is good reason for such concern.[39]

*The adequacy of argument*s. The fact that the courts' argumentation for their decisions is brief and laconic and that courts basically use only arguments that are supported by the law also raises the question of the adequacy of these arguments. During the course of the study, it was observed that doubts about the adequacy of the arguments arise in cases where the court must consider two or more conflicting provisions and where it must apply the general principles of law.

[39] See Section 2.2.2. b): Choice of the relevant provision.

> In one case involving an administrative offense, the court had to decide whether or not the conduct of a public official, who had taken into consideration a person's financial status when imposing administrative sanctions, constituted a discrimination of this person.
>
> In this case, the court agreed with the plaintiff and decided that consideration of a person's financial status when imposing administrative sanctions is discriminating. The court referred to Article 89 of the Constitution and to Section 4 of the Law on Judicial Power[40], which forbids the discrimination of persons on the basis of financial status.
>
> At the same time, the court did not consider in which way the ban on discrimination that is anchored in the aforementioned laws must be applied in conjunction with a provision of the Administrative Offenses Code, which stipulates that a person's financial status must be taken into consideration when applying administrative sanctions.

In regard to application of the general principles of law, the arguments provided by the court must be considered inadequate in cases where the court does not apply these to the specific circumstances of a case, but refers to them in an abstract manner.

> When examining whether or not the principle of proportionality has been observed in a case, the courts' only argument is that the principle was disregarded since "it was possible to apply other means."

*Assessment of plaintiff's and defendant's argument*s. For the purposes of this study, the question of whether or not courts consider the arguments presented by the disputing parties could be examined only on the basis of the information contained in the court judgements because the public in Latvia has access only to the judgements and not to the whole case file. During the course of the study, the author found several cases in which the court included an argument presented by one of the parties in the descriptive part of the judgement, but failed to consider this argument in the reasoning.

> In one case involving an administrative offense, the plaintiff argued that he could not be accused of committing an administrative offense because he could not be called to account either under Section 14, Paragraph 1 of

[40] Law on Judicial Power, adopted on December 15, 1992. *Ziņotājs* No. 1, January 14, 1993.

> the Administrative Offenses Code or under Paragraph 2 of this same section. The plaintiff pointed out that his duties did not include the tasks for the neglect of which he had received administrative sanctions. The court did not provide an assessment of the validity of the plaintiff's arguments.

> In a court judgement that was made in a case where the plaintiff had filed a complaint over the unlawful conduct of a public official, the court wrote that the plaintiff
>
> "feels that by doing so [the institution] has violated her right to privacy…."
>
> However, the court did not consider this argument in the reasoning.

Conclusions. When verifying the applicability in form of a provision to a concrete case, the majority of the court judgements that were analyzed do not indicate separately that the court has verified whether or not public officials have observed the principle of legality in making their decisions.

In regard to the applicability in content of a provision to the specific circumstances in a case, the majority of the court judgements that were analyzed do not show that courts, when choosing the provision that will eventually be applied, have verified the applicability of this provision to the case before them. This is usually indicated in the judgement only in cases where one of the parties has pointed out the need for such verification.

In some cases, although the court finds that a certain provision cannot be applied to the concrete incident, it nevertheless continues to apply this provision.

Courts often apply the general principles of law in cases involving administrative offenses, in particular the principle of proportionality, the principle that doubt must be interpreted in favor of the individual, and the principle of legitimate expectations. The general principles of law are less actively applied in cases involving the unlawful conduct of public officials, by which the rights of natural and legal persons are violated.

When applying the general principles of law, in particular the principle of proportionality, courts tend to explain the substance of the principle in a few sentences, but neglect to explain its applicability to the concrete circumstances in the case. Court judgements rarely contain a reference to Constitutional Court judgements where the general principles of law and their application are explained.

In regard to the application of international conventions that are binding for Latvia – for example, the European Convention for the Protection of Human Rights – in cases involving administrative offenses, courts are reluctant to concern themselves with the responsibilities of the State for the protection of human rights that are anchored in this document. In cases where courts do refer to the European Convention for the Protection of Human Rights in order to justify their conclusions, they tend to avoid analyzing the content of the relevant provision.

Verification of the whether or not the hierarchy of provisions has been observed is not reflected in the judgement in cases where there is a conflict between two or more provisions of different validity.

In their application of the provisions of laws and regulations, courts are guided primarily by a grammatical interpretation of these provisions. There are also cases, however, where courts attempt to establish the objective of a provision or to interpret the intentions of the legislators at the time when the provision was adopted.

The arguments provided by courts to argue their decisions are brief and laconic. Basically these arguments are based on the provisions comprised in the law or regulation that is applied. Although the general principles of law are used as arguments, it is too early yet to speak of their widespread use. Customary law, case law, doctrine and analogy are practically not applied at all as arguments for court decisions.

Although the brevity and the laconic style of the argumentation does not automatically mean that the judgement suffers from a lack of arguments, in many cases this kind of approach to the argumentation of a judgement can pose more questions than provide answers to the questions that must be resolved in the context of a concrete case.

Statements made by the court often lack substantiation, and in some cases the court's arguments for its decision are nothing more than the text of the applied provision, without an explanation of how the text of this provision relates to the circumstances in the case.

The fact that courts provide only brief and laconic arguments for their decisions and that these arguments are based more or less only on laws and regulations raises questions about the adequacy of the arguments provided in the judgements. Doubts arise in cases where the court must consider two or more conflicting provisions, or where the general principles of law must be applied.

Courts tend to include the arguments presented by one of the parties in the descriptive part of the judgement, but fail to consider them in the reasoning. This observation has been made only on the basis of the information contained in the judgement and an examination of whether or not the court has included the arguments presented by all of the parties in the descriptive part of the judgement.

III. SUMMARY

The study basically reflects three main problems in regard to the quality of court judgements.

First, **court judgements tend to be difficult for the reader to understand.** Courts pay a minimum of attention to the formal appearance of a judgement and to the arrangement of the information that must be included. The conclusions drawn by the court are often not separated from each other, which means that the reader must reread a judgement several times in order to understand where one conclusion ends and the next one begins. Similarly, the positioning in the judgment of a reference to the applicable provision and the form of this reference can render the judgement unclear, even unconvincing, if the content of the relevant provision and the fact that the content of this provision applies to the actual circumstances in the case does not become clear to the reader from reading the judgement. Likewise, the fact that a court judgement often contains unnecessary information can upset the coordination of the judgement and, thereby, its comprehensibility.

Second, **court judgements tend to contain incomplete information.** The recapitulation of the explanations put forward by the disputing parties for their claims or objections often contains general phrases and does not provide an answer to the question of why one or the other party defends a certain position. In some cases, the judgement concerns itself with the explanation of only one of the parties. Court judgements sometimes fail to separate a description of the circumstances as seen by the disputing parties from the facts that have been established in order to apply a specific provision. A lack of precision in regard, for example, to the date when a law has been adopted or the correct title of the law also suggests that the judgement contains incomplete information. Similarly, in cases where the circumstances call for the application of another provision, or require the court to consider the hierarchy of provisions, or to interpret a provision not only from its grammatical aspect, but also to apply other methods of interpretation, and where this is not reflected in the court judgement, the judgement contains incomplete information. The absence of information regarding verification of the applicability of a provision to the circumstances in a case also indicates that a court judgement is incomplete.

Third, **the conclusions drawn by the court tend to lack argumentation**. The fact that the courts' argumentation is brief and laconic and that courts essentially use only arguments that are based on the applied laws or regulations also gives reason to question the relevancy and adequacy of the arguments used in court judgements. During the course of the study, cases were examined where the arguments for the decision taken by the court consisted only of the text of the applied provision, with no explanation of how this provision relates to the actual circumstances in the case. In cases where courts

include the arguments of one of the parties in the descriptive part of the judgement, but fail to consider them in the reasoning, it is not clear whether or not they have considered these arguments when making their decision.

STATISTICS
on the quality problems of court judgements

The following statistics are based on the court judgements analyzed for this study. The author examined a total of 60 judgements in cases involving administrative law made by Riga city courts in the period from 2000 to 2001. These statistics show precisely how many of these judgements displayed the quality problems identified in this study.

I. Court judgements tend to be difficult for the reader to understand.

1. Reference to the provision that has been applied in the case does not appear before the legal asessment of the facts.

Reference does not appear before assessment	**Reference appears before assessment**	**Provision not indicated at all**
24 judgements (40%)	33 judgements (55%)	3 judgements (5%)

2. The judgement does not reveal the content of the applicable provision.

Content not revealed	**Content revealed**	**Provision not indicated at all**
31 judgements* (52%)	26 judgements (43%)	3 judgements (5%)

* In 5 cases, the content of only some of the provisions applied in the case was revealed.

3. In cases where a number of conclusions are drawn in the judgment, these are not separated from each other.

Not separated	**Separated**	**Only one conclusion**
7 judgements (12%)	36 judgements (60%)	17 judgements (28%)

II. Court judgments tend to contain incomplete information.

1. The court judgement does not reveal the concrete arguments of the conflicting parties in their explanations.[41]

Arguments not revealed	Arguments revealed	No explanations at all	Explanations of only one party
3 judgements (5%)	34 judgements (57%)	5 judgements (8%)	18 judgements* (30%)

* In one judgement, the court explained that the other party had not submitted any objections or explanations.

2. The court judgement does not expound the essence of the conflicting parties' explanations.[42]

Expounds the explanations of both sides	Expounds the explanations of only one side	Does not expound the explanations of either side
37 judgements (62%)	18 judgements* (30%)	5 judgements (8%)

* In one judgement, the court explained that the other party had not submitted any objections or explanations.

3. The versions of the conflicting parties are not separated from the establishment of the facts, which is necessary for the application of a specific provision.

Not separated	Separated
17 judgements (28%)	43 judgements (72%)

4. The court judgement does not indicate whether or not the relevancy of the applicable provision has been examined.

Not indicated	Indicated	Provision not indicated at all
47 judgements (78%)	10 judgements (17%)	3 judgements (5%)

[41] Data obtained from the information contained in the court judgements. Explanations submitted by the parties or records of the court sessions were not examined.

[42] Data obtained from the information contained in the court judgements. Explanations submitted by the parties or records of the court sessions were not examined.

III. Decisions made by the court tend to lack substantiation.

1. The court judgement does not provide arguments for the decision.

Arguments not provided	Arguments provided	One of the court's decisions is not explained
3 judgements (5%)	43 judgements (72%)	14 judgements (23%)

2. The only argument for the court's decision is a provision of law.

Only argument	Not only argument	The court's decision is not explained
48 judgements (80%)	9 judgements (15%)	3 judgements (5%)

3. The court explains its decision by referring to a specific provision, but no explanation is provided for how this provision applies to the concrete circumstances in the case.

No explanation	Explanation provided	The court's decision is not explained
18 judgements (30%)	39 judgements (65%)	3 judgements (5%)

4. In court judgements where the arguments of the conflicting parties are included in the descriptive part, not all of these arguments are also dealt with in the reasoning.[43]

Arguments not assessed in reasoning	Arguments assessed in reasoning	Arguments of the parties are not revealed at all	Arguments of only one party are considered
20 judgements (34%)	23 judgements (38%)	8 judgements (13%)	9 judgements* (15%)

* In one judgement, the court explained that the other party had not submitted any objections or explanations.

[43] Data obtained from the information contained in the court judgements. Explanations submitted by the parties or records of the court sessions were not examined.

FACTORS AFFECTING THE QUALITY OF COURT JUDGEMENTS

I. GENERAL OUTLINE OF FACTORS AFFECTING THE QUALITY OF COURT JUDGEMENTS

Behind every court judgement there is the person who has prepared it. This person is the judge, who has acquired the necessary professional education and experience, and who has proved that he or she has the skills required to be appointed and to continue serving as a judge. The way in which a judge hears a court case and the way in which this is reflected in the court judgement is influenced by many different factors. This study distinguishes between the objective factors and the subjective factors.

The objective factors are closely related to a judge's skills when hearing court cases and representing this process in the court judgement. Objective factors include: legal training, legal experience, qualification requirements for judgeship candidates, opportunities for practicing judges to improve their qualifications, mechanisms for controlling the work of judges, unrestricted public access to court judgements, and the role of legal science in the analysis of court judgements.

Subjective factors, such as the personality of the judge, the size of the salary, social guarantees, working environment and the ability to organize one's work can, in individual cases, also affect the overall quality of a judge's work. A judge, too, is only human and wishes to work in a well-organized environment, to live in prosperity and social security. A subjective factor such as the corruptibility of a judge can have a particularly negative impact on the quality of a court judgement. In such cases, there can be serious doubts about whether a judgement is based solely on the provisions of current legislation, on what is right and just, or whether it had been made to serve the interests of one of the conflicting parties or the coordinated interests of both.

This study analyzes only the possible influence of individual objective factors on the quality of court judgements in Latvia: legal education, qualification requirements for potential judges, in-service training, and mechanisms for controlling the work of judges. It does not, however, provide an answer to the question of the extent to which these objective factors affect the quality of court judgements in Latvia, which would be the object of a separate study. In this part of the study, the author simply establishes how individual objective factors could affect the quality of court judgements in Latvia.

II. POTENTIAL IMPACT OF INDIVIDUAL OBJECTIVE FACTORS ON THE QUALITY OF COURT JUDGEMENTS

Legal education. When analyzing the influence of legal education on the quality of court judgements, it is important to keep in mind that the Latvian court system, as it was formed in 1992 following adoption of the Law on Judicial Power[44], employs both judges who have studied law during the Soviet period and judges who have studied law after the renewal of independence. Statistics show that 38 percent of those currently working as judges were working in the judicial system in 1992, and 62 percent of those currently employed are newcomers to the system.[45] There are no statistics to show how many of the judges who had originally studied Soviet law, but who are working in today's judicial system, have or have not obtained a lawyer's diploma or a Master's degree in law after the renewal of independence. However, the aforementioned figures clearly indicate that a great number of the judges working in Latvian law courts have received their legal education in the Soviet system. In the first years after the renewal of independence, these judges were required to carry out their functions in a system that was based on the principles of democracy and the rule of law, but they were unfamiliar both with their role in the new system and with the application of these principles, inasmuch as they were foreign to Soviet law. The only way to acquire this new knowledge was self-instruction, renewed law studies at an institution of higher education, or systematic and regular training of these judges. The education that these judges had acquired in various branches of Soviet law was actually of little use to those working in Latvia's judicial system today.

On the other hand, in the case of the judges who have studied law after the renewal of independence, a very important role in the way that they carry out their official duties is played by the legal education that they have received at an institution of higher education. A legal education imparts the skill of reading and applying laws, thereby assuming a central role in the work of a judge, but the importance of a legal education is also indicated by the requirements that a candidate must fulfill in order to be considered for a judgeship. Until the end of the year 2002, a candidate was required to have two years experience in law. This experience, however, may have been gained during the course of law studies, prior to graduation from law school. A candidate eligible for a judgeship must complete an apprenticeship of no more than six months. This apprenticeship involves training at the Ministry of Justice Department of Courts, at the

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[44] Law on Judicial Power, adopted on December 15, 1992. *Ziņotājs*, January 14, 1993.

[45] Labucka, Ingrīda. "Pārskats par pašreizējo tiesu sistēmu – sasniegumi un trūkumi [Overview of the current judicial system – accomplishments and failures]." *Likums un Tiesības*, Vol. 4, No. 6 (34), June 2002, pp. 168–169.

Legislation Department and in a court. The apprenticeship is aimed at giving the candidate an opportunity to learn about the judicial administration system and the duties of a judge, and to acquire practical skills in addition to those that have already been acquired before applying for a judgeship. During the apprenticeship, no special courses are held for the candidates on, for example, the topics that may come up in the judicial examination, on the assumption that the theoretical knowledge that has been acquired in law school will suffice.

Secondly, during the first year of a newly appointed judge's term in office, training is focused on current problems in the application of substantive and procedural law. Since the courses are generally conducted by regional court or Supreme Court judges, the trend is to analyze court practice and not questions that should have been dealt with in law school. The same applies to courses that are held regularly each year for judges with greater tenure. These courses also focus on the examination of issues that courts are currently having to deal with, not on academic studies.

Since legal education is a significant factor in the work of a judge, a great deal of effort should be devoted to making certain that every law student – a potential future judge – receives the best possible legal education. However, the quality of legal education in Latvia is being disputed. For example, the quality of the education provided by the University of Latvia Law Faculty – and the majority of the judges working in Latvian courts today are graduates of this institution – is sharply criticized in two studies that were carried out in 2002[46]. The purpose of these studies was to proffer an optimal model for a law studies program at this institution.

Qualification requirements. The requirements that a candidate must fulfill in order to be considered for a judgeship can negatively affect the quality of court judgements if the nature of these requirements and their application to individual cases allows a fairly good chance for unsuitable persons to become judges. The study does not analyze how these qualification requirements are applied in practice.

In accordance with the current Law on Judicial Power, the qualification requirements for a judgeship are experience in the legal field, an apprenticeship prior to the judicial examination, and completion of the examination. As regards legal experience, until December 3, 2002, when amendments to the Law on Judicial Power took effect[47], it

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[46] Škutāns, Daimārs, Debora Pāvila and Edmunds Broks. "Curriculum Proposal for Law Studies at the Law Faculty of the University of Latvia"; Škoba, Laine, Jūlija Petkeviča and Elizabete Krivcova. "Curriculum Proposal for Law Studies at the Law Faculty of the University of Latvia." For a full text of these studies see the Internet homepage of the University of Latvia Eurofaculty: http://www.eurofaculty.lv/index_riga.htm

[47] Amendments to the Law on Judicial Power, adopted on October 31, 2002. *Latvijas Vēstnesis* No. 168, November 19, 2002.

was theoretically possible for a 25-year-old person to apply for a judgeship in a district (city) court on the day after receiving a diploma from law school, provided that such person was able to show two years of work experience in the legal profession while studying law. The law made it possible for persons with very little legal experience to become judges. In addition, it even admitted the possibility that any experience that the candidates had may have been gained prior to graduation from law school. The eligibility requirements for judges in regard to work experience did not basically differ from or were even more lenient than the requirements in other legal professions. For example, a person could become an attorney at law only after acquiring five years of work experience in the areas of the legal profession that are defined in the law. A candidate for notary public was required to have at least two years experience working as a notarial assistant, or five years experience working at other jobs in the judicial system. This situation suggests that the office of judge was not highly ranked in the legal profession and that the importance of its role in a democratic system was not sufficiently appreciated in Latvia.

The draft of the new Law on the Judiciary[48], like the amendments to the Law on Judicial Power that took effect on December 3, 2002, seeks to change this situation by requiring that a candidate for a judgeship at a district (city) court be at least 30 years of age and significantly raising the threshold for work experience in a legal profession. This second requirement would greatly reduce the chances for an incompetent person to become a judge. This could also contribute to raising the public prestige of the office and the ranking of judges among other legal professionals.

In regard to work experience requirements for regional court and Supreme Court judges as compared to those for district (city) court judges, both the current law and the draft law prescribe stricter eligibility requirements for these judges where legal experience is concerned and narrow the circle of legal professions in which such experience can be acquired. The requirements for legal experience are differentiated, depending on the level of judgeship for which a candidate has applied. This would seem to rule out the possibility of incompetent legal practitioners becoming regional court or Supreme Court judges.

In regard to the apprenticeship of candidates prior to the judicial examination, the duration of the apprenticeship may span from one to six months, depending on the relevant experience and professional skills of the candidate. The draft of the Law on the Judiciary allows the extension of an apprenticeship to one year. In the question of how great the chances are that the apprenticeship may make it possible for an unsuitable candidate to become a judge, more important than the duration of the apprenticeship,

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[48] For a full text of the proposed Law on the Judiciary see the Internet homepage of the Ministry of Justice: www.tm.gov.lv

which is prescribed by the responsible institution, is the effectiveness of the apprenticeship. This is determined, among other things, by whether, when considering the suitability of a candidate for a judgeship, the work of the candidate during the apprenticeship is evaluated and, even more important, how it is evaluated. The Statute of the Judicial Qualifications Board as approved by the Judicial Qualifications Board[49], which also sets out the procedure according to which the suitability of a candidate for a judicial post is evaluated, does not explicitly state whether, when evaluating the qualifications of a first-time candidate for a judgeship, attention is paid to where and how the candidate has served as apprentice and what the candidate has gained from the apprenticeship. Theoretically, it is possible for an apprenticeship to be no more than a formality, lacking any real purpose, inexpedient. It can fail to fulfill its mission – to prepare a judicial candidate for work in a law court and to provide the certainty that the candidate is well prepared to carry out this job.

In regard to the weight of the examination results in evaluating whether or not a candidate is prepared to carry out the functions of a judge, the way in which this examination is carried out, the grading criteria and whether or not it is possible for the candidate to receive an explanation of the outcome and a chance to appeal the decision are of major importance. The current procedure leaves much to the discretion of those evaluating the suitability of the judicial candidates. There is nothing that regulates the way in which the examinations must be carried out, establishes grading criteria, or determines whether a candidate is entitled to hear the reasons for a negative decision. There is also no way of appealing against the results of the examination. This, of course, does not automatically mean that the current procedure increases the likelihood of an incompetent person becoming a judge. Nevertheless, a detailed exposition of the examination procedure and assessment criteria would avert suspicions that those evaluating the judicial candidates are acting arbitrarily and reduce chances that persons who are ill prepared for carrying out the duties of a judge are appointed to this office.

Training. Training of judges is an important factor – one that has a positive effect on the quality of the judgements of each and every judge in Latvia. This is particularly so inasmuch as the legal education acquired at law school is either useless, if it has been acquired in Soviet law, or is possibly not good enough in specific branches of the law to allow judges to fulfil their duties without additional training.

The training of judges in Latvia is carried out by the Judicial Training Center (JTC), a non-governmental organization that has been set up specifically for this purpose. Up until 2000, training of judges took place irregularly, was based primarily on the support

[49] The Statute of the Judicial Qualifications Board, approved at a meeting of the Judicial Qualifications Board on April 23, 1999, has not been published.

of international organizations and, consequently, was focused on issues that were determined by these organizations. As of 2000, the national budget has allocated funding for the training of judges, which basically allows the JTC to function and organize "regular" seminars for all judges on issues involving civil law and civil procedures, criminal law and criminal procedures. The choice of subject matter for these seminars is left to the lecturers, who are usually regional court or Supreme Court judges and who, during these seminars, basically analyze concrete problems that have come up in recent court cases. Theoretical issues are also examined: for example, the interpretation of laws, the hierarchy of provisions, the general principles of law; beginning 2001, the basic difference between Western and Soviet law, modern interpretation of legal sources and provisions; beginning 2002, judge-made law. However, training in legal theory is only possible thanks to funding from Soros Foundation – Latvia, and this is gradually decreasing from year to year.

Regular one-to-two-week training courses for district (city) court judges are held once a year for the following five groups of judges: newly-appointed judges who have served less than one year; judges who have served from one to three years; judges who have served from three to six years; judges who have served from six to ten years; judges who have served ten and more years.

In addition to these regular training courses, seminars on specific topics are also organized with the support of Soros Foundation – Latvia and international organizations, and individual judges are also trained in European Union law and human rights. The intention is to prepare lecturers who will then pass their knowledge on to other Latvian judges.

However, the training courses organized by the Judicial Training Center are too few and far between, especially in view of the situation in Latvia with its huge number of working judges who have a legal education in Soviet law, which is of no practical use today in individual branches of the law. The training of judges is focused on issues involving substantive and procedural law and on problems connected with the application thereof in court practice. Individual lawyers are more intensively trained in European Union law and human rights. Theoretical issues involving the application of provisions have only in recent years been included in the training programs for judges. There is no special training for reasoning and argumentation of court decisions.

Control mechanism. The quality of court judgements can also be affected by whether and how the work of judges is controlled. There are basically three sources of control for the work of judges: the parties involved in a legal action, the judges themselves and legal science. Currently, great emphasis within this control mechanism is placed on the activity of the parties involved in a case. First of all, they are the ones who decide whether or not to appeal a concrete judgement or decision to a higher court and, thus,

give those who work in the higher courts an opportunity to acquaint themselves with the work of judges in the lower courts. Secondly, investigation of the work of a judge – which can result in disciplinary action and further consequences, including dismissal of the judge – may be carried out on the basis of a complaint submitted by one of the parties involved in a dispute to the chairman of a higher court, the chairman of the Supreme Court or the Ministry of Justice. This means that the control of the judges themselves over the work of their colleagues may actually depend on the initiative of the parties involved in a legal action.

This emphasis on the parties involved in a case is understandable for the simple reason that judges eligible to initiate a disciplinary action do not have the time to go over every single case that comes before a court. This is why the parties in a case – usually, of course, the party that is dissatisfied with the outcome – are the ones that point to possible errors made by the judge. The question is only, to what extent are such complaints, for example, complaints made to the Ministry of Justice, taken into account, and how effective is this mechanism? Statistics show that the number of complaints over the work of judges submitted to the Ministry of Justice – 920 complaints from natural persons and 201 complaints from legal persons in 2001[50] – is many times higher than the number of cases of disciplinary action (there were 11 cases of disciplinary action in 2001[51]). The possibility cannot be ruled out that the majority of these complaints were unfounded. Since the study simply establishes how the control mechanism could affect the quality of court judgements in Latvia and not the extent to which this mechanism actually affects the quality of court judgements, the study does not analyze the work of the Judges Disciplinary Board.

Another form of judges' control over the quality of the work of their colleagues can be observed at times when decisions are taken on granting qualification categories. The current Law on Judicial Power sets out six qualification categories for judges: from category five to category one and the highest category. Criteria for granting a specific qualification category are tenure, assessment of the quality of a judge's work, even factors such as participation in courses at the Judicial Training Center. Whether or not this mechanism has an effect on the quality of judgements depends on the content of the description of the judge's work and on the way that a judge's participation in JTC courses is assessed. If the assessment of a judge's work is purely formal, i.e., if it contains nothing but statistics on the number of judgements or decisions that have been appealed and the outcome of these appeals in a higher court, or if, for example, it claims that the judge has improved his professional qualifications without giving concrete examples, or if participation in JTC courses is taken to be simply the presence of

[50] Information provided by the Ministry of Justice.

[51] Information provided by the Ministry of Justice.

the judge at such courses, then the opportunities provided by the law for a judge to acquire a higher qualification category will not encourage a judge to improve the quality of his work, and the qualifications system will not have a significant effect on the quality of the work of a judge.

At present, legal science in Latvia has very little impact on the quality of judges' work. This is primarily due to difficult public access to court judgements in Latvian courts. The absence of this impact retards not only the professional development of judges, but also the development of the legal system as such.

The process of gaining access to the court judgements required for this study revealed a number of problems. For example, the mechanism that the courts have established for the way in which a person who is not one of the parties in a case may gain access to specific court judgements can be inconvenient for both court personnel and for persons attempting to gain access to the judgements. The main problem is the classification of the cases in the database. For example, if a person wishes to pick out cases that have involved CPC Section 239.[1], the database will show all cases involving administrative law (including all complaints over administrative sanctions). This is a huge number of cases. Similarly, the database will not necessarily show whether a specific judgement is still found in the court's files or has already been sent to the archives. This will unnecessarily inconvenience court clerks or, in individual cases, persons seeking a specific judgement.

In view of the importance of legal science for the work of judges and the need to establish common court practice, it would be expedient to separate court judgements from other documents in the case and file them separately. This would make access quicker and easier for persons interested in court judgements (not only students and researchers, but also practicing lawyers looking for precedents), and would pose less of an inconvenience for court clerks.

Conclusions. A major effect on the quality of court judgements in Latvia is produced by a judge's legal education and opportunities to improve professional qualifications.

The legal experience that was required of a judicial candidate until the end of the year 2002 and the current procedure by which a candidate is appointed to a judgeship make it possible for a person lacking in professional competence to become a judge. The effect of the mechanism for controlling the performance of a judge depends on how effectively this mechanism is put to work. Difficult public access to court judgements means that legal science has a minimal impact on the quality of judicial performance.

RECOMMENDATIONS

In view of the problems that were identified during the course of this study, the following is recommended:

Guidelines for the preparation of court judgements. These guidelines should explain in detail the requirements of the law regarding the components of a court judgement and the information that each part of the judgement must contain. The guidelines should also include recommendations for the formal appearance of a judgement and arrangement of the information that the judgement must contain. The initiative for preparation of the guidelines should be taken by the Judicial Training Center. The guidelines should be distributed to all judges working in Latvia and to all judicial candidates. The guidelines would be a good instrument to use in courses organized by the Judicial Training Center, especially courses on how to compose or how to argue a judgement.

Discussion, analysis and criticism of court judgements. These activities should be carried out in two parts. (1) Those who teach law should regularly publish analyses of current legal issues to acquaint lawyers and other members of the legal profession, as well as the general public, with these issues. However, for such publications to appear regularly, one condition is that access to court judgements must be simplified. (2) Such analyses should also be discussed. For example, selected court judgements on issues of current interest could be analyzed under the guidance of legal experts. The experts would be asked to express their views on a specific problem, and this would be followed by discussions in which all participants would have the opportunity to voice their opinions. The discussions organized on November 5, 2002 by Soros Foundation – Latvia on Application of the Case Law of the European Court of Human Rights by Latvian Courts showed how useful such an enterprise can be[52]. Here too, the initiative should be taken by the Judicial Training Center.

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[52] See Mārtiņš Mits', Vineta Skujeniece's and Gita Feldhūne's articles on application of the European Convention on Human Rights and Fundamental Freedoms and European Court of Human Rights Case Law in the decisions of Latvian courts. *Likums un Tiesības*, Vol. 4, No. 10 (38), October 2002, pp. 301–311. See also: Skujeniece, Vineta. "Latvijas tiesām jāmācās atslogot Strasbūra [Latvian courts must learn to relieve Strasbourg]." Public policy website www.politika.lv, http://www.politika.lv/index.php?id=104893&lang=lv

Assessment of legal education, the procedure for evaluating judicial candidates, the extent and content of in-service training, and the mechanism for controlling the work of judges. Since legal education plays an important role in the work of a judge, a lot of attention should be devoted to making sure that law students – potential future judges – get a good legal education. When evaluating the professional qualifications of judicial candidates, it is important to pay attention to how a candidate has conducted himself during an apprenticeship and how he has profited from it. It is also important to establish clear procedures and criteria for examining and grading judicial candidates. This would eliminate suspicion of discretionary conduct on the part of those evaluating the suitability of candidates for a judicial post and reduce the chances of an unsuitable candidate being appointed. The training of judges should be intensified, with special focus on reasoning and argumentation of court judgements. It is also important to facilitate public access to court judgements in order to give legal science a chance to make a contribution to improving the quality of court judgements.

Handbook for litigants. The purpose of this booklet would be to give litigants detailed information about the information that must be included in court judgements, particularly in regard to the court's obligation to consider the arguments of the litigants and make a well-reasoned decision. This type of booklet would help litigants to know their rights and to defend these rights with all the legal means at their disposal.

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Sagatavota iespiešanai SIA "Nordik". Reģ. apl. Nr. 2-0792. Adrese – Daugavgrīvas ielā 36–9, Rīgā, LV-1007, tālr. 7602672. Iespiesta un brošēta a/s "Preses nams" poligrāfijas grupā "Jāņa sēta".