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Role of the case law to ensure judicial power

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Abstract. The research substantiates the need for uniform court practice, by underscoring the importance of it in complying with uniform administration of justice, increase of procedural economy and effectiveness, and ensuring indivisibility of judicial power. Practical part of the research is constituted by study of the practice of the application of laws in the judicial system of the Republic of Latvia. Focus is on the decisions on undisputed compulsory execution of obligations. For more objective substantiation of the problem also other adjudications are analysed with regard to essential civil law matters.

According to ***democratic form*** of government, independence of the judiciary strengthened by the laws and regulations in itself does not ensure efficiency of judiciary, as well as compliance with fairness and legal stability criteria when applying the law. The justification for existence of justice mainly lies in the protection of the rights of the person, by preserving or restoring justice. In this respect the courts should ensure performance of basic tasks, which at the same time requires both establishment of the legal consequences in the form of sound and legitimate adjudications, and the term as short as possible for such determination.

The research substantiates the importance and the need for uniform court practice both in the civil procedure law, in relation to achievement of efficiency as high as possible in the provision of justice, and in the field of ensuring constitutional law, in terms of indivisibility and unity of the judiciary.

Special attention is paid to the role of the authority in the judicial system itself. In this respect, analysis is provided on the significance and the need of the abolished legal concept of Plenary Session of the Senate of the Supreme Court (general meeting of judges of the Senate and Departments of the Supreme Court) for renewal of the authority. In strengthening of uniform court practice the key role of case law and compliance there with is highlighted.

Materials and methods

Work aims at updating of the implication of inheritability and uniformity of the court adjudications (similar cases should be dealt with in a similar way, the same laws shall apply to similar actual conditions that are identical in terms of legally significant signs), as well as negative consequences for undue departure from case law and non-application of prejudicial rulings (understanding of the concept in the context of study is not regarded as equal to “case-law” in terms of the common law system).

At the same time, the emphasis is placed on the link and the need for compliance with the principles of equity and legal stability in connection with the possibility to provide the basic functions of courts.

To achieve the aim, court decisions on procedural progress of civil matters, judgments and decisions on undisputed compulsory execution of obligations (hereinafter referred to as the UCEO) and the adjudications on the legal status of the principal debtor and the guarantor, in total of more than 100 adjudications were collected and analysed.

Results

In the objective reality circumstances, judicial potential is not being used, justice is not ensured, in respect of similar actual conditions different or even contrary legal consequences are found, adoption of the court adjudications is not ensured within a reasonable period of time.

In the country there is expressed diversity of the court adjudications and their mutual discrepancy when adjudicating similar cases is present. Different view exists as between the courts of one instance and the court instances at various levels. Lower courts frequently do not follow interpretation of the law provisions by the Supreme Court, contradictions are found also between adjudications of the Supreme Court. Different interpretation is applied both for substantive and procedural law, and even in frequent situations, such as finding of legal consequences for liability of the principal debtor and the guarantor.

There is no systematisation of the court adjudications compliant with case law requirements and methods for application of case law. Ungrounded departure from the accepted court practice shall be assessed as serious violation of professional ethics, however neither judicial authorities, nor the Ministry of Justice is giving due importance to it. Different adjudications are often rendered within one region of courts and even within one court. Satisfying or dismissing of the claim to a large extent has become dependent not only from the substantive law grounds of the claim, but also from jurisdiction of particular court over the matter, or falling of application for adjudication of a particular judge.

Decisions of Plenums of the Supreme Court have been replaced with summaries of court practice of the Supreme Court, but it has failed to achieve the desired result. Within the framework of the judicial system compliance with uniformity of judicature, adjudging is an individual initiative of each judge, without development of systemic and comprehensive involvement of appliers of law provisions in creation of a uniform court practice.

Incompletely reasoned departure from the formerly established judicature in the area of undisputed compulsory execution of obligations has caused an extended transition process lasting for five years. During this time period there was an expressed diversity in the application of the law provisions present, which in general has placed a substantial burden on the judicial system. Under the current circumstances, unsuccessful change of court practice has result in the said legal concept significantly facilitating procedural economy has lost its topicality. Creditors are more widely using the actions in court proceeding matters, which in turn requires greater involvement of the judicial system resources.

The problem of disproportionally long court proceedings is still present in the country, which is not effectively addressed by amending statutory basis of the law. The most fundamental measure in this regard is the application of law in accordance with findings of the legal method doctrine, where an integral part is the application of a preliminary ruling, which, unfortunately is not widely used.

Difference in opinions of judges has reached such a degree that in some cases indicates existence of the power of judges rather than the judicial power and this situation is getting in significant contradiction to the constitutional status of the existence of independent judicial power.

Discusion

The need for uniformity in the administration of justice is based on the Satversme (Constitution) of the Republic of Latvia, in accordance with Article 82 thereof, in Latvia, court cases shall be heard by district (city) courts, regional courts and the Supreme Court, but in the event of war or a state of emergency, also

by military courts. Article 92 of the Constitution provides for everyone the right to defend his or her rights and lawful interests in a fair court.[1] These law provisions have delegated provision of justice to unified judicial power and its representative bodies. While uniformity in the administration of justice is an indispensable measure for expression of such a unified judicial power when rendering of legitimate and justified adjudication is not affected by jurisdiction of the court and referral for adjudication to a specific judge.

Indivisibility of judicial power stipulated by constitutional law provisions is specified also in the Law On Judicial Power. However, here we observe the development of law, which is unfavourable for uniform court practice. Second paragraph of Section 49 of the said Law (wording of the Law, which was in force until 2 December 2002) provided that the Plenary Session shall adopt explanations that are binding for the courts on the interpretation of the application of the law.[2] The legal concept of decisions of the plenary session was approved also by Professor E. Meļķisis, one of the leading law scientists of the Republic of Latvia: "Important measure that has been taken from the Soviet law to ensure uniformity in the administration of justice, still are the decisions of Plenary Session of the Supreme Court".[3]

The wording of this Article was changed later, "The Plenary Session shall discuss current norms of law interpretation issues"[4], significantly limiting the competence of Supreme Court in the development and strengthening of uniform court practice.

After the said amendments referred application of different legal rules under similar actual conditions has pervaded also in the Supreme Court adjudications, resulted in a loss of authority and non-observance of the previous practice has became a common phenomenon throughout the judicial system.

The established situation as a whole has to be assessed as significant non-compliance with the civil procedural order prescribed in the country. The Civil Procedure Law contains direct instructions for compliance with uniform court practice and basically explains nature of the uniformity in the administration of justice. According to Paragraph three of Section 189 of the said Law, a judgment must be lawful and well-founded.[5] Lawful and well-founded court adjudication contains a sufficient argumentation for application of the law provisions and, as a whole, complies with requirements of the law system. Therefore also in further adjudications, when deciding about the like actual conditions, the abovementioned justified understanding in finding of legal consequences should be maintained. In practice the courts to a large extent also tend to be guided by such benchmark judgments or preliminary judgements of the court, thus ensuring uniformity and continuity in the administration of justice, and legal stability at all.[6] Preliminary judgment is the court judgment having become into effect, in which the same matter of law that you need to decide anew, the court has already decided, by adjudicating in another matter. In addition, the preliminary role instead of the court judgment in itself, shall rather play the answer to the matter of law included in the reasoned part of this judgment, to which now the court in the life event subject to decision should reply again.[7]

Of course, the court adjudication affects only legal status of participants in the specific matter. The judgment of the court having become into effect shall be deemed to be individual source of law

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[1] Tiesību aktu krājums (2005). Par tiesu iekārtu un tiesnešu darbību. Tiesu namu aģentūra.

[2] http://www.likumi.lv/doc.php?id=62847&version_date=01.01.2002

[3] Autoru kolektīvs Dr.habil.iur., profesora E. Meļķiša zinātniskā redakcijā. Juridiskās metodes pamati. 11 soļi tiesību normu piemērošanā. BO SIA Ratio iuris. 188 lpp. (in Latvian).

[4] http://www.likumi.lv/doc.php?id=62847&version_date=03.12.2002

[5] http://www.likumi.lv/doc.php?id=50500

[6] Larenz K., Canaris C.W. Methodenlehre der Rechtswissenschaft.3. Aufl. Berlin, Heidelberg: Springer – Verlag, 1995, S. 252 – 253; Kalniņš E. Publiskās ticamības princips tiesu praksē. Likums un tiesības, 1999,1. sēj.nr.3, 83. lpp.

[7] Larenz K., Canaris C.W. Methodenlehre der Rechtswissenschaft.3. Aufl. Berlin, Heidelberg: Springer – Verlag, 1995, S. 253; Vainovskis M. Tiesu prakses veidošanas nozīme lietās par nodokļu likumdošanas piemērošanu. Latvijas Universitātes Zinātniskie Raksti. 632.Tiesu prakses veidošana. Rīga: Latvijas Universitāte, 2001, 142.lpp.

for participants in the respective matter.[8] However, the following considerations apply only to the established legal consequences, not to the interpretation of the reasoned part of the judgment, and law provisions. Directly to the contrary, regularities of application of the law provisions are extending beyond the limits of judicial system and demonstrate a broad impact on the legal system as a whole. Since there is a high actual probability that the courts of lower instances will be guided by preliminary judgments rendered by the courts of higher instances and the established judicial practice in general, also legal practitioners take that into consideration and support it. As a result, such preliminary rulings after a certain period of time may in fact be regarded as existing law.[9]

The practice for application of law provisions has certain indications of the source of law, however, in the countries belonging to Romano-Germanic legal system the requirement for succession in the administration of justice is not equivalent to compliance with the law. Whether interpretation of the law contained in a preliminary judgment is considered to be internally correct, the judge in any case is obliged to critically reassess, when he had to decide the same legal issue.[10] Therefore a question in relation to the role of court practice in the administration of justice may arise only for limited duty of its observance.[11] Court practice has a rebuttable presumptive binding force[12], which implies, among other things, transfer of the obligation of justification to the judge having decided to derogate from the existing court practice.[13] Derogation from the previously observed interpretation of the law provisions is possible and should be considered as part of the process of further development of the law, however, in this case for the judge explicit requirement is made to justify the necessity of derogation, in addition, this justification should contain adequate legal arguments on better protection of the interests protected with the law due to changes in values of the legal system, in order to appliers of law provisions also further continue to make use of this practice.

Equity and legal stability are not the only principles for compliance with which uniformity of the administration of justice is required. Following the preliminary ruling is also based on the considerations of usefulness. Section 28 of Law on the judiciary, which contains the need for compliance with the principle of procedural economy, imposes an obligation to a judge to adjudicate a matter as fast as possible.[14]

When making analysis of judicial adjudications, substantial derogations from these theoretical settings have to be established in the inheritability and uniformity of court practice. Let's refer to some of the most striking examples.

A broad discussion was initiated by changes to court practice due to application of the UCEO regulatory provisions of the Civil Procedure Law. According to Clause 1 of Paragraph one of Section 400 of the said Law, UCEO is permitted pursuant to agreements regarding obligations which are secured with a public mortgage or a commercial pledge.[15] It was interpretation of exactly this provision that was subject to the most changes. The UCEO legal concept in the Republic of Latvia has functioned since 3 October 1996 and until making of decision of the Department of Civil Cases of the Senate, dated 27 August 2008, in case No. SPC-49, the court decision with regard to UCEO was considered as executive document of full value, in compulsory execution whereof all the compulsory means provided for in the law shall be used. With the said decision without objective substantiation the court practice was

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[8] Kramer E.A. Juristische Methodenlehre. Bern: Stampfli Verlag AG, 1998, S. 175.

[9] Larenz K., Canaris C.W. Methodenlehre der Rechtswissenschaft.3. Aufl. Berlin, Heidelberg: Springer – Verlag, 1995, S. 253.

[10] Larenz K., Canaris C.W. Methodenlehre der Rechtswissenschaft.3. Aufl. Berlin, Heidelberg: Springer – Verlag, 1995, S. 254.

[11] Riemer H.M. Die Einletungsartikel des Schweizerischen Zivilgesetzbuches (Art. 1 – 10 ZGB). Eine Eifuhrung. Bern: Verlag Stampfli & Cie AG, 1987, §4, no. 134.

[12] Bydlinski F. Juristische Methodenlehre und Rechtsbegriff. 2. Aufl. Wien. Springer – Verlag, 1991. S. 510.

[13] Larenz K., Canaris C.W. Methodenlehre der Rechtswissenschaft.3. Aufl. Berlin, Heidelberg: Springer – Verlag, 1995, S. 254–255, 257.

[14] http://www.likumi.lv/doc.php?id=62847

[15] Civilprocesa likums 9.izdevums (2007). Tiesu namu aģentūra.

changed, by restricting Clause 1 of Paragraph one of Section 400 of the CPL in terms of selection of the compulsory means. "If the sale results in obtaining a sum that is not sufficient to satisfy the mortgagee, then he retains the right to request the remainder debt from the debtor pursuant to procedure of actions in court proceeding matters."[16] Directing of recovery only against the debtor's property has been later confirmed also by of the Supreme Court 2010 summary of court practice with regard to UCEO.

Notwithstanding changes to court practice created by the Supreme Court in August 2008, the courts have further sustained delivery of obligations (interpretation of the law provision supported by the author) instead of mortgages to compulsory execution. In his decision of 29 October 2010 with regard to UCEO the judge of Rezekne court has rejected an application for UCEO and indicated that the mortgage contracts may not be subject to UCEO and the rights specified thereby shall be used in accordance with the provisions of property rights.[17] Judge of Daugavpils court on 20 July 2011 contrary to the established practice makes an obligation to be subject to UCEO.[18] Riga City Ziemeļu district court on 20 March 2012 dismisses claim statement by creditor for the part of the debt comprising difference between the amounts stipulated in the decision on the debtor's UCEO and the money recovered as a result of the mortgage. The court indicates that the creditor has fully disposed of their right to claim by application to the court with regard to UCEO.[19]

Parallel court practice continues, which is incompatible with the legislative framework of the UCEO legal concept at all. Despite the fact that the Civil Procedure Law does not provide for enclosing of the debt amount calculation to the UCEO application, the courts continue to maintain such requirements and reject the applications, as it is decided also in decisions of the Dobele district judge of 21 July 2010[20] and Jurmala city judge of 30 November 2012.[21]

A conclusion should be drawn that the district (city) courts in general are starting to accept the changes in court practice launched by the Supreme Court in 2008, but in general, such a changes have to get negative assessment. By making the proceedings more expensive and more complicated, for the creditor sometimes it is better to immediately initiate action in court proceeding matter. In addition, the specified transitional period of five years in changes to the court practice could not indicate the growth in authority of the Supreme Court.

The courts continue to apply also other law provisions in a contradictory manner. Problems are evident also in application of Section 128 and 129 of the Civil Procedure Law, there are different attitudes from the judges with regard to acceptance of the claim statement and initiation of the matter. By indication of multiple disadvantages in the content and form of application, Riga City Centre District Court in March 2012 has decided to leave the claim statement not proceeded with.[22] The Riga Regional Court in May 2012 dismissed the plaintiff's ancillary complaint considering the decision of the court of first instance to be justified.[23] Deficiencies have not been rectified, the application was returned to the plaintiff. The claim statement was submitted without changes to the same court, it was transferred to another judge, on 31 July 2012 the application was accepted and the matter initiated.

As looking from the positions of uniformity in the administration of justice, it would be interesting to deal with the features for establishment of legal consequences of the principal debtor and the guarantor in

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16 Augstākās tiesas Senāta Civillietu departamenta 2008.gada 27.augusta lēmums lietā Nr.SPC-49.

17 Rēzeknes tiesas 2010.gada 29.oktobra lēmums lietā Nr.3-12/1388.

18 Daugavpils tiesas 2011.gada 20.jūlija lēmums lietā Nr.3-12/0900/2011.

19 Rīgas pilsētas Ziemeļu rajona tiesas 2012.gada 20.marta spriedums lietā Nr.C32287211.

20 Dobeles rajona tiesas 2010.gada 21.jūlija lēmums lietā Nr.3-12/824.

21 Jūrmalas pilsētas tiesas 2012.gada 30.novembra lēmums lietā Nr.3-12/0543.

22 Rīgas pilsētas Centra rajona tiesas 2012.gada 19.marta lēmums.

23 Rīgas apgabaltiesas Civillietu tiesu kolēģijas 2012.gada 29.maija lēmums lietā Nr.3-11/0062/2.

judgments of courts of the Republic of Latvia, where the creditor seeks joint and several recovery of the debt. Since 2010 in this regard there are three different court practices at the same time. There is a group of judges recovering the debt jointly and severally from the principal debtor and the guarantor, there are the judges recovering the debt initially from the principal debtor and in the event of impossibility of recovery from the guarantor, and there are appliers of law provisions who dismiss the claim fully if the creditor has asked for joint and several recovery.

Ventspils Court on 7 February 2013 has satisfied the claim in full.[24] Riga Regional Court on 8 April 2013 satisfied the claim in part by determination of the recovery from the guarantor in the event if recovery from the principal debtor becomes impossible.[25] Riga District Court on 27 September 2010 has dismissed the claim in full.[26] Riga Regional Court on 28 December 2011, in adjudicating the appellate complaint, is making a judgment contrary to the said and satisfies the claim in part.[27] Later on 25 February 2013 Sigulda Court, being within the Riga region of judiciary, fully dismisses the claim.[28] It should be noted that the specified diversity of judgments is not related to deficiencies in substantial law justification of the claims.

The said deficiencies to a large extent have affected the low international assessment of the judicial system of the Republic of Latvia. The ***Global Competitiveness Report*** 2010/2011[29] by ***the World Economic*** Forum in the category "Efficiency of the legal framework in settling disputes" Latvia is ranked as 118th from 139 countries. In the Report of 2012/2013[30] Latvia is ranked as 92nd from 144 countries.

Conclusions

Unified court practice constitutes an integral part of the judicial authority at the same time providing for three inevitable preconditions for its existence. Uniformity in the administration of justice within the framework of the judiciary system ensures establishment of equal legal consequences for all the persons throughout the territory of the country, in this way complying with requirements of equity and legal stability. The use of preliminary ruling makes the work of the courts easier and at the same time increases the efficiency of functions, since legally methodological substantiation for application of a legal provision has already been made. Only a unified court practice ensures indivisibility of the judicial power. Current trends and proportion of distinctive decisions has largely turned the judicial power institution into an uncontrolled expression of the power of judges.

Provision of uniformity in the administration of justice, taking into account the obligation of limited compliance with the court practice, can only be achieved with a powerful authority of the Supreme Court instance and at the same time, the existence of legal concept that makes the said obligation of limited compliance more interesting. By reference to the example of the Republic of Latvia, the significance of the legal concept of decisions of Plenary Sessions of the Senate of Supreme Court was noticed only after its abolition, and the identified instability of judiciary shows the need for restoration of status of Supreme Court in the field of uniformity of the administration of justice.

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[24] Ventspils tiesas 2013.gada 7.februāra spriedums lietā Nr.C40 1395 12.

[25] Rīgas apgabaltiesas Civillietu tiesu kolēģijas 2013.gada 8.aprīļa spriedums lietā Nr.C04414812.

[26] Rīgas rajona tiesas 2010.gada 27.septembra spriedums lietā Nr.C33277610.

[27] Rīgas apgabaltiesas Civillietu tiesas kolēģijas 2011.gada 28.decembra spriedums lietā Nr.C33277609.

[28] Siguldas tiesas 2013.gada 25.februāra spriedums lietā Nr.C35112412.

[29] http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf

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