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PRINCIPLES OF LEGAL RIGHTS IN OPERATIONAL POWERS OF THE STATE BORDER GUARD

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Abstract. *The current Border Guard Law, which came into force in 1998, from jurisdictional perspective and in terms of content and is out-dated since it only reflects some of the legal principles that the State Border Guard must apply as a national regulatory authority in its activities. The novelty of the article is that the author proposes the development of the Border Guard Law in a new version, which would include specific principles of the Border Guard, in close conjunction with the authority's powers, rights and responsibilities.*

The aim of the study is to develop and propose a number of special Border Guard operational principles for their inclusion into the regulatory framework of the Border Guard. The research tasks are to investigate the current normative regulations, legal practices, the conclusions of Latvian and foreign law researchers using analytical, historical and comparative methods.

The principles of law are reflected in many regulatory enactments and they must be observed and applied to each state administration institution, including the State Border Guard, and their repetition is not required by the special laws binding on the State Border Guard. The application of the principles of law is closely related to the fulfilment of the tasks, rights and obligations assigned to the State Border Guard, therefore the author seeks to investigate their development in historical dynamics.

The main achievement of the research is that the author has tried to define the main special principles of the State Border Guard.

Keywords: *Border Guard Law, legal principles, regulatory framework, powers, state administration institution.*

JEL code: K19.

Introduction

The principles of the State Border Guard's activities, powers, rights and responsibilities and other competences are determined by the Border Guard Law which has been in force for more than 20 years. During this period Latvia has joined the European Union and joined the Schengen area. The normative basis of border guards' activities has developed considerably and has changed dramatically. The Border Guard Law sets out only a few principles of law, which in its current wording cannot meet the high requirements arising from the international, European Union and

Latvian regulatory enactments. The topicality of the research arises from is the necessity to establish such (perhaps special) principles of operation of the State Border Guard that would be in line with the implementation of the powers, rights and responsibilities established by the State Border Guard, both in national and international aspects.

The research period is mainly related to the period from 2004, when Latvia joined the European Union and undertook the application of European Union legislation in Latvia.

The following methods were used during research:

1) The historical method - studying the development of the regulatory framework in the historical context, within the framework of the evolution of the European Union and the national regulatory framework;

2) Analytical method - analysing the international, European Union, Schengen and national regulatory enactments, legal practices, knowledge of Latvian and foreign law scholars;

3) Comparative method - comparing different national laws, as well as relevant European Union and international regulatory framework.

The purpose and tasks of the research are to study the current normative regulation, legal practices, the findings and conclusions of Latvian and foreign law scholars in the aspect of the principles and powers of the State Border Guard, to develop and provide suggestions for the improvement of the current Law on Border Guard or developing a new version of law including several special principles of Border Guard's operations.

Hypothesis - The current Border Guard Law does not comply with modern requirements and does not contribute to the efficiency of the State Border Guard. A new Border Guard law is required to be adopted that would harmoniously be included in the legal basis for the State Border Guard.

The evolution and relation of the State Border Guard's operation principles and powers

By April 24, 2014, there have been 19 amendments to the Border Guard Law made. From 1999 to 2004 amendments to the law were made regarding Border Guard cooperation with other institutions, Border Guard tasks, Border Guard resources for carrying out tasks at sea, the use of physical force, special means and service dogs, use of firearms, border guards' assistants, and border guards' rights to accommodation and prohibitions to border guards.

In amendments of April 22, 2004, in relation to the accession of Latvia to the EU in Article 4 *Cooperation of the Border Guard with Other Institutions*

the scope of cooperation issues was widened related to the control of compliance with the rules of entry, residence, departure and transit of aliens and stateless persons, and the cooperation with other state and municipal institutions, merchants and international organizations, unions or communities (Border Guard Law, 1997). Thus, the principle of the unity of the operation system of the structural units of the State Border Guard was emphasized, which is impossible without close cooperation within the State Border Guard, as well as the principle of national and international cooperation and non-interference in the internal affairs of neighbouring countries.

During the period from September 20, 2001 to May 16, 2005, amendments to the law supplemented the rights of border guards with the right to guard, escort and hold under guarding detained persons; the right to be present on the technical means of the National Armed Forces, watercraft and aircraft; rights related to the control of compliance with the regulations on entry, residence, exit and transit of aliens and stateless persons and prevention of violations; the right to operate outside the border area, border control and border crossing points. The implementation of such competences is not possible without the principle of non-discrimination and the principle of justice, the promotion and observance of human rights and fundamental rights principle (Kēnigs, 2010), and respect for the principle of humanity.

The amendments of 16th May 2005 clarified and expanded the definition and functions of the Border Guard to ensure the inviolability of the State Border and the prevention of illegal migration, which have been preserved in this version until now. Thus, the principles that are essential for national sovereignty were emphasized which derive from international law: the principle of the inviolability of the state border; national sovereignty, territorial inviolability and integrity principle.

With the amendments of May 16, 2005 6.¹ article a border guard is defined as an official of specialised civil service, however as of 2001 this definition is excluded from the law (Border Guard Law, 1997). By the fifth part of Article 15, in the exceptional case, if a person cannot comply with the state border crossing regulations, but the identity of this person has been clarified, the Border Guard chief had acquired the right to authorize the said person to cross the state border if he/she complies with international law, interests of the State of Latvia or is related with force majeure or humanitarian considerations. Such amendments highlighted the principle of promoting and respecting human rights and fundamental freedoms, the principles of humanity (Kēnigs, 2010), good faith and goodwill (*pacta sunt servanda*) principle (Bojārs, 2004).

Further amendments were introduced on November 10, by supplementing the Chapter I of the Border Guard Law article 5.¹ – „Participation of border guards in international missions and operations”, where the legal basis for the participation of border guards in international missions and operations was determined, the decision on the sending and sending of the order, as well as the conditions for the participation of border guards in these missions and operations were determined (Border Guard Law, 1997).

The amendments of year 2005 supplemented the tasks of the border guard to control compliance with the rules on entry, residence, departure and transit of aliens and stateless persons in the territory of Latvia, to carry out pre-trial investigations within the scope of their competence. To bring the Law on Border Guards closer to the requirements of the European Union and the Schengen acquis respectively, amendments to the *Saeima* (Parliament) were submitted on 4 July 2007, which clarified the terminology by replacing the terms *alien* and *stateless person* with the term *foreigner* as defined in Immigration Law since 2002. Section 17 on the use of physical force, special means and use of service dogs in accordance with the requirements of the EU and the Schengen acquis (Anderson et. al., 2002), the officials of the State Border Guard have the expanded right to use special means and use service dogs to restrain detainees if they do not obey or resist border guards during the escorting procedures, accommodation and removal procedures or there is reason to believe that they can escape or harm others or themselves. The rights of border guards in the area of combating illegal immigration and controlling the residence of foreigners (Border Guard Law, 1997) have significantly improved. The mentioned amendments emphasized the necessity of the principle of international cooperation and the professionalism of the State Border Guard and the need for efficiency and unity.

With the amendments to the Border Guard Law of April 28, 2014, the Border Guard Law abolished the prohibition on border guards to unite in trade unions (Border Guard Law, 1997). Although border guards are forbidden to participate in political parties and movements, the defence of border guards' rights can be implemented in public organizations as trade unions by observing border guard's choice of free will. Thus, the principle of the independence of political parties and public organizations can be implemented.

With the amendments to Border Guard Law of 13th November, 2008 the number of mandates (tasks, rights and obligations) stipulated in the Border Guard Law on has increased from 29 to 60 (Gaveika, 2011) since 1999, which indicates a sharp increase in the competence of the State Border Guard and the importance of the regulatory framework in the

operation of the institution. Article 15 of the Border Guard Law "*Border Guards' Rights*" defines not less than 27 rights, in Article 15 (Gaveika, 2010). "Rights of Border Guards to place detainees in a temporary custody room" - eight rights. The use of the word *right* in the aforementioned articles of the law does not confer sufficient legal force on many legal norms, because the word *right* in this case gives a certain freedom of choice to perform or not to perform certain activities. For example, a number of rights in terms of content and meaning are mandatory and should be defined as obligations in the law.

Furthermore, the general duties of officials of the institutions of the Ministry of the Interior system are set out in the Law On the Career Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prisons Administration (hereinafter –the Law On the Career Course), which, in essence, partly repeats the obligations set out in the special laws of the Ministry of the Interior. For example, Section 14, Paragraph two of the Border Guard Law actually reproduces the norms of Section 6, Paragraphs 1 and 2 of the Law On the Career Course; Section 14, Paragraph three of the Border Guard Law repeats the norm of Section 6, first and second paragraphs of the Law On the Career Course, and the Fire Safety and Fire-fighting Law (Fire Safety and Fire-fighting Law, 2002) Article 37 all four duties of officials actually duplicate the general duties (Law on officials of the Ministry of the Interior System and the Prison Administration, with special service levels, pay monthly salaries and special allowances, 2006) of the officials specified in Section 6, Paragraphs 1, 2, 3, 4 and 6 of the Law On the Career Course. The analysis of the aforementioned normative acts shows the necessity to systematically arrange the general obligations of law enforcement officers on the basis of the UN Convention on the Rights of the Child of 1979. December 17 Resolution No.34 / 169 "Code of Conduct for Law Enforcement Officials" (Code of Conduct for Law Enforcement Officials, 1979), Declaration on Police (Declaration on the Police, 1979), Committee of Ministers of the Council of Europe, 1982. Notes of June 3rd on Resolution 690 "Declaration on the Police" and 2001 Sept. 19 Recommendation 10 on the European Police Code of Ethics (Indrikovs, 2007). The significant extension of the powers of the State Border Guard officials and the requirements of the abovementioned international regulatory enactments to the officials of internal affairs authorities determined the necessity of the State Border Guard units' systems (Matvejevs, 2005) operations efficiency, unity, co-operation, transparency (Matvejevs, 2006) of activities and public assistance (Gabor, 2010).

Principles of law in the regulatory framework of activity of the State Border Guard

In addition to the functions, tasks, competences and powers of the institution and officials, the Border Guard Law determines the institution's operating principles:

1) The operation of the border guard is organized in accordance with legality, humanity, human rights, openness, unity and on the basis of citizens' assistance;

2) The Border Guard protects the rights and legitimate interests of persons irrespective of their nationality, social, property and other status, race and nationality, gender and age, education and language, attitude to religion, political and other beliefs;

3) Border guard ensures that the rights of persons to move from one country to another country are respected;

4) The Border Guard enables the detained persons to exercise their rights to legal protection (Border Guard Law, 1997).

Analyzing the content of these principles, one can conclude that out of the 11 general principles (Law on Administrative process, 2001) of law established by the Administrative Procedure Law, only four principles are similar or directly laid down in the Law on Border Guard: the principle of respect for the rights of individuals, the principle of equality, the principle of the rule of law and law disclaimer principle. Moreover, unlike the Border Guard Law and other regulatory enactments in which the legal principles are only named, the Law on Administrative Procedure defines the essence and purpose of the legal principles.

Consequently, it is doubtful whether the Law on Border Guard is to duplicate the principles of law established in the Administrative Procedure Law, which, in addition, partly overlap with the principles of state administration (State Administration structure law, 2002) established by the Law on State Administration, partly repeats itself also in the draft of Law on Administrative Violations process (principle of equality, principle of legality, principle of innocence, principle of procedural justice) (Letter of Ministru of Justice of Latvia, 2012).

It is also necessary to agree with the opinion of Prof. V.Eglitis that the beginning stage of understanding and exploration of the principles of rights has passed, the criteria for the application of the principles must be developed and a hierarchical system of principles must be developed, in which there would be a horizontal and vertical structure. If the system is based on the formal activity of the legislator, then it is possible to

distinguish between the principles included in the law and the principles not included in the law (Eglītis, 2002).

From the author's point of view, auditing the essential part of the rights of law enforcement authorities by defining them as obligations follows also from professor K. Dislers believes that the post is not only lawful, but also duties: what an official has the right to do within the limits of his competence in the exercise of his service rights, this very often he needs to do as his official duty (Dišlers, 2002). Moreover, the application of the legal principles in the activities of officials is mandatory (Letter from the Ministry of the Interior, 2012),, which also defines the imperative nature of a number of currently defined rights and the need to define rights as obligations because "public law of a democratic state overcomes the principles of ensuring public protection against the state (in particular human rights), public control over the state, in particular the principle of priority of the law, the principle of lar disclaimer, the principle of separation of powers, including the control of judicial power over executive power and the rationality and efficiency of state activity (special internal organization principles)" (Briede, 2003). In addition performance of service duties and responsibilities is emphasized in the Law on Remuneration of Officials and Employees of State and Local Government Institutions and on the basis of this law was developed the Law on officials of the Ministry of the Interior System and the Prison Administration, with special service levels, pay monthly salaries and special allowances.

Taking into account the analogy with customs law, which contains 8 special customs law principles (Gulbis, 2007) and the specifics of the competence of the State Border Guard in applying international and European regulations (HUDOC, 2011), as well as the necessity of the legal competence of officials in applying the principles of law and public administration, some general and several special legal principles should be emphasized which should be included in the new Border Guard Law.

Conclusions and suggestions

The author believes that the hypothesis that the current Border Guard Law does not comply with modern requirements and does not promote the efficiency of the State Border Guard has been approved. A new Border Guard Law is required to be adopted that would harmoniously be included in the legal basis of State Border Guard activities. The new Border Guard Law does not need to repeat those principles of law that are binding on any state administration institution, any law enforcement authority and are already determined both in national and international regulatory

enactments. However, having in mind the specifics of the State Border Guard's activities both nationally and internationally, in order to ensure the systemic exercising of the powers, rights and obligations of the State Border Guard, the author proposes to develop a new Border Guard Law and include the following principles of law:

General principles of public administration:

- the principle of non-discrimination and fairness;
- the principle of promotion and respect of human rights and fundamental freedoms;
- the principle of humanism;

Special principles of governance (specific only to the State Border Guard) arising from the principles of international law, including the application of the Schengen acquis and the experience operation of principles of border control institutions in other countries:

- the principle of the inviolability of the state border;
- the principle of national sovereignty, territorial integrity and inviolability;
- the principle of peace preservation, peaceful coexistence and peaceful settlement of border incidents;
- the principle of equality of the neighbours, respect for the right of self-determination and equality of nations;
- the principle of international cooperation and non-interference in the internal affairs of neighbouring countries;
- the principle of good faith and goodwill (*pacta sunt servanda*);
- the principle of the independence from political parties and public organizations;
- the principle of the unity of the operation of the structural units of the State Border Guard;
- the principle of centralized autocracy;
- the principle of openness of the State Border Guard and public assistance;
- the principle of rational use and efficiency of the methods and resources of the State Border Guard.

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