

THE PRINCIPLES OF DEMOCRACY IN ADOPTION OF NORMATIVE ACTS

Ilga KRAMPUZA

Mg.iur., Mg.soc.sc., lecturer, researcher, Rezekne Academy of Technologies, Rezekne,
Latvia, e-mail: ilgakrampuza@rta.lv

Abstract. *The report describes the current problem - the disproportionately large increase in the number of normative acts. Such a situation frightens the society, creates distrust to the state administration and causes errors in adoption of normative acts, which shall be corrected. Therefore, the excessive increase in the number of normative acts is negative. Before adopting the normative acts, it is proposed to consider all possibilities for solving a specific problem. The importance of the principle of democracy in reducing the increase of normative acts has been raised.*

The aim of the report is to provide a general insight into the tasks of normative acts; to update general guidelines on the basis of the principle of democracy, which confirms that the adoption of normative acts should be evaluated in conjunction with the consideration of other criteria for solving a specific problem.

The tasks of the research are the following: to update the connection of the adoption of normative acts with the essence of the principle of democracy; to analyse the growth rates of normative acts; to study the reasons for the increase in the number of normative acts; to put forward the principle of democracy as a limiter for the growth of normative acts.

In the research, the grammatical method is used to present description of the normative acts adoption process, as well as to provide review of the reasons for the increase in the number of normative acts. The systemic method is used to assess the possibilities of interpreting the principle of democracy, based on the case law of the Constitutional Court of the Republic of Latvia and the legal doctrine. The analytical method is used to describe the disproportionately rapid increase of normative acts. The analytical method is applied to evaluate the possibilities of using the principle of democracy to reduce the number of normative acts. Using the teleological method, an increase in the number of normative acts is considered in the context of the essence of the principle of democracy.

The results of the research are reflected in the main conclusions: the increase in the number of normative acts in the recent years has to be regarded as unreasonable and contrary to the public interest; the principle of democracy requires that solution to the problem, firstly, shall be sought for in the legal system; based on the principle of democracy, the usefulness, purpose and implementation of the public interest in adoption of new normative acts should be considered.

Keywords: *normative acts, principles, principles of democracy.*

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Introduction

The research has shown that the legislators have become enthusiastic about adopting new laws. As a result, the excessive number of normative acts has become a disadvantageous administrative burden for the entrepreneurs and every citizen. Given the enormous amount of the normative acts, it is not

possible to achieve a coherence between them and to ensure quality. Therefore, the issue under discussion is topical for every citizen.

In the research, the data for the period 2016-2018 is used. The research was conducted in 2018.

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The research is structured in the theory of law, considering the significant rise in normativity in the context of the principle of democracy.

The hypothesis of the research is that the adoption of normative acts should be considered as a process that starts only after the evaluation of other possible solutions of the problem.

In the research, the grammatical method is used. With its help, a description of the process of adoption of normative acts is presented, as well as a review of the reasons for the increase in the number of normative acts. The systemic method was used to assess the possibilities of interpreting the principle of democracy, based on the case law of the Constitutional Court of the Republic of Latvia and the legal doctrine. The analytical method is used to describe the disproportionately rapid increase of normative acts. Using the analytical method, the possibilities of using the principle of democracy to reduce the number of normative acts have been evaluated. Using the teleological method, an increase in the number of normative acts is considered in the context of the essence of the principle of democracy.

Manifestation of the principle of democracy in the adoption of normative acts.

The principle of a democratic law-governed state follows from Section 1 of the Constitution of the Republic of Latvia: "Latvia is an independent democratic republic" (Latvijas Republikas Satversme, 1922). Based on this principle, the drafting and adoption of normative acts as the form of external expression of rights take place.

As it follows from the Constitutional Court, one of the main characteristic features of legal regulation is that the legal regulation contains mandatory directives or generally binding regulations. On the basis of the

principles of justice and equity, by means of legal regulations, the state achieves a solution to both the already existing and potential conflicts of interest. (Latvijas Republikas Satversmes tiesas spriedums lietā Nr. 04-03(99), 1999, 3. punkts). In addition, the task of the legislator is to create preconditions for the uniform application of legal regulations and to effectively protect the fundamental rights of others through the legal regulations. (Latvijas Republikas Satversmes tiesas spriedums lietā Nr. 2013-09-01, 2013, 12. punkts). Therefore, the normative acts are not intended for one-off cases.

It is possible to draw conclusions that the state has a duty not only to adopt normative acts, regulating the behaviour of individuals in a wide range of legal relations, but also to create a mechanism that ensures the awareness of people about the changes and content of the legal regulations. At the same time, the state have to provide for the rights of a person, when entering into public legal relations with public authorities and other private persons, to be informed about his/her rights in the certain relationships.

In addition, the right of a person to know his/her rights also determines the scope of the legislator's activity. (Latvijas Republikas Satversmes tiesas spriedums lietā Nr. 2006-12-01, 2006, 16. punkts). Based on the definition of a legal regulation: a legal regulation defines the necessary behavioural pattern and is aimed at the establishment of certain legal consequences (Rezevska, 2015) for a body, which has the right to adopt normative acts, is obliged to assess whether in the given situation the adoption of a normative act is necessary.

How to decide whether it is necessary to adopt a new or to amend an existing normative act or to solve a problem by using other options?

On the one hand, Hermann Apsitis admits: "Where there are rights, there is an order, where there is an order, there is safety, but where there is safety, there is peace and harmony". On the other hand, the urgency in drafting normative acts and the desire to regulate all the possible situations of life in detail have led to so-called flood of legal regulations (normativism), where the same normative acts are amended several times a year and the legal system is fragmented (Normatīvo aktu projektu..., 2018).

Summarising the statistical data of the recent years, it can be seen that, in 2016 and 2017, there was an increase in the number of normative acts: the total number of the laws and the Cabinet regulations issued in 2016, as compared to 2015, had increased by almost 9%, while in 2017 - by almost 3% (Informatīvais ziņojums "Faktiskā situācija...", 2018). Since 1 January 2017, more than 100 legal regulations have come into force, including more than 60 laws (Izmaiņas likumos no 2017. gada 1. janvāra. Kur meklēt?, 2016) On 1 January 2018, 173 new legal acts came into force, including 49 laws and 71 Cabinet regulations (No 2018. gada spēkā..., 2017). It can be concluded

that the existing practice for creation of normative acts is increasingly based on the desire to regulate as many types of relationships in the society as possible by as detailed legal provisions as possible. It can be observed that the increase in the number of normative acts takes place in a “geometric progression” which can be considered as very negative.

It is reasonable and congratulatory that, in 2017, the idea, which had been raised since 2002, – to grant another legal entity the right to issue normative acts – was rejected. Namely, to give the ministers the right to issue external normative acts by themselves. The subject of empowering the ministers to issue external normative acts-regulations had been widely studied (Par konceptuālo ziņojumu..., 2017). The conclusion that the change of the issuer of the legal regulations does not in itself reduce the scope of the legal regulation and also does not ensure its quality seems to follow from the basic understanding of the issuance of normative acts in general. It is right to conclude that the introduction of the Ministerial Regulations Institute could have a negative impact on the quality of the legal regulations, because it would be based on a narrower approval process, a possible overlapping of competences, and, finally, there would most likely be contradictions between the regulations issued by different ministers.

The principle of democracy as a limiter of growing number of normative acts

The legal doctrine contains various opinions regarding the reasons for the increase in the number of normative acts. Both the historical experience and historical traditions are mentioned, as well as the “flood” of normative acts, typical for all the European Union, but in some areas, in particular, detailed regulation; as well as the decision to regulate every case as detailed as possible; and the fact that the adoption of a normative act is the most effective way for solving a situation (Platace, 2013). The flood of legal regulations arises from the fact that the officials do not have knowledge of legal methods, as well as the fact that the politicians lack understanding of the meaning and purpose of the creative work concerning normative acts (Amoliņa, 2015). Casuistical regulation is the consequence of people's actions and a confirmation of the unbelief of the state administration in the reasoning power of *homo sapiens* (Litvins, 2013). It can be seen that, on the one hand, the state's implemented hyper-regulation frightens the society, but, on the other hand, the increase in normative acts in some cases is regarded as means to improve life. Most likely, the excessive amount of normative acts can be explained by the fact that Latvia is still in the stage of development of the modern regulatory framework. Therefore, nowadays, the public administration tries to solve the problems not by the possibilities of a

legal system based on the principle of democracy, but based on adoption of a normative act for each new situation.

On 12 December 2012, the President of Latvia A. Bērziņš issued the Order No. 7 “On the Development of Proposals for the Reduction of the Number and Amount of Amendments to the Law” (Valsts prezidenta rīkojums Nr. 7 Rīgā 2012. gada 12. decembrī “Par priekšlikumu izstrādi likumu grozījumu skaita un apjoma samazināšanai”, 2012). From the order, the necessity to develop proposals for reducing the amount and extent of excessive creative work in the legal system, as well as to create preconditions for prevention of over-detailed and thorough legal regulation follows.

The legal doctrine emphasises that the administration of a law-governed state is characterised by the use of three principles: the determination of competence by law, limitation of administrative means of enforcement, subordination to the law (Dišlers, 2002). On the contrary, the too casual legal regulation may not be fair (Latvijas Republikas Satversmes tiesas spriedums lietā Nr. 2008-09-0106, 2008, 7.2. punkts). Instead of determining the most essential provisions applicable to a longer period, the detailed description of each situation in the normative act is in conflict with the principle of democracy.

It shall be accepted that the concepts with a high degree of legal abstraction make the legal regulations more flexible and more applicable to different situations (Bārdiņš, 2017). Moreover, the excessive number of normative acts is, the first of all, contrary to the principle of democracy, since based on the democratic principles, the legal stability is created, which requires the adoption of legally sustainable laws. The “flood” of normative acts creates an unnecessary administrative burden for the public administration. Secondly, it leads to a rejection of the society's attitude towards the normative acts, the legislator and the state as a whole, as well as negatively affects everyday life of every person, for example, the possibility to plan a commercial activity or other activities.

The legal doctrine has strengthened the view that, based on the basic rules of the legal system and understanding of the intrinsic rights, the general legal principles have special significance in the legal system of a democratic law-governed state (Rezevska, 2017). Again, the obligation of the state to adhere in its activities to the basic principles of a law-governed state, including the principle of the doctrine of legitimate expectations and the principle of legal certainty, follows from the principle of democracy, contained in Section 1 of the Constitution of the Republic of Latvia (Osipova, 2017). The certain principles shall be complied with within the entire normative act creation process, in order to ensure that the created normative regulation is qualitative, evaluated, coherent, and effective during application, without creating unnecessary burdens and uncertainties in its

application (Normatīvo aktu projektu..., 2018). Excessive drafting of normative acts inevitably leads to mistakes and, consequently, the mistakes made have to be corrected urgently.

As one of the solutions to the reduction of the flood of the normative acts and implementation of the democratic principles, is compliance with the legal principles, both in drafting of normative acts and their application. In the hierarchy of the rights sources of normative type, one can find the legal principles that, in terms of their legal force, are ranked above normative acts, because they are derived from the basic norm. The “legal system based on the principle of democracy” includes all the written and unwritten prescriptions needed to resolve the disputes in the legal system (Rezevska, 2015). The legal doctrine defines three groups of general legal principles that are essential in the legislative process: the general legal principles that are related with implementation of justice; semilogical general legal principles; instrumentally formulated legal principles (Rezevska, 2015). The principle of the power of law, in its turn, prescribes that laws shall be predictable and clear, as well as sufficiently stable and unchanged. Consequently, the legal regulation established by law cannot be changed unreasonably often, as the disproportionate change in the legal regulation complicates the compliance with the law. Moreover, the legal regulation shall be sufficiently stable, thus, an individual can, taking into account the legal provisions, not only make short-term decisions, but also plan his/her future in the long run. Also, the principle of legal certainty requires the state to ensure the certainty and stability of legal relations, as well as to observe the principle of legitimate expectations in order to promote the trust of the individual in the state and in the law (Latvijas Republikas Satversmes spriedums lietā Nr. 2004-03-01, 2004, 9.2. punkts). In addition, it is important that every citizen understands the regulation of normative acts.

The goal of the legislator should not be drafting laws at all costs, but a reasonable solution to the problem (Krūmiņa, Skujiņa, 2002). If it is expected that a draft of a normative act is not more qualitative, easier to perceive, simpler, clearer or otherwise more valuable than would be in case if the principles of democracy and its derivatives would be complied with, the drafter of a normative act should look for other formulations and solutions to the problem based on these basic principles.

When deciding whether a new law is needed, first of all, it shall be established whether there is a problem the resolution of which requires the adoption of normative acts; second, that the problem is most effectively solved by adopting a new one or making changes to the existing normative acts (Tiesību akta projekta..., 2014). Before drafting a normative act, a legislator should always make himself/herself certain that a problem identified and described cannot be addressed in any other way.

The most commonly used alternative solutions can be identified: application of existing regulations and improvement of control over implementation; raising public awareness of the nature of the existing regulation and its implementation. The explanation found in the case law that the use of legal methods can solve any legal matter, because it includes all the necessary and simultaneously sufficient set of methods for clarifying the content of legal norms – the true application of the principle of democracy shall be started. In addition, the legislator has very clearly regulated that the institution and the court should not refuse to settle an issue based on the fact that this issue is not regulated by law or by other external normative act (prohibition of legal obstruction of institutions and courts). They shall not refuse to apply a legal regulation on the ground that this legal regulation does not provide for a mechanism of application of the measures, that it is not comprehensive or that no other normative acts have been adopted which would more closely regulate the application of a relevant legal regulation (Amoliņa, 2015). The application of legal regulations in compliance with the Constitution includes finding and correct interpretation of the relevant legal regulation based on the principle of democracy defined in Section 1 of the Constitution of the Republic of Latvia.

It is necessary to join the opinion of E. Melkīsis that one of the most urgent tasks of the Latvian Association of Lawyers is to identify and implement the ideas of the theory of interpretation and legal argumentation in the law science and in the practice of application of norms in the amount and quality that corresponds to the standards of other democratic states” (Melkīsis, 1997).

The draft of a normative act should not be devised to solve any problem of momentary nature, because if a problem can be solved by way of interpretation of legal regulations, there is an option – to prepare a draft of a legislative act or not. From the figures specified above regarding the increase of normative acts, it is obvious that the “flood” should be stopped as soon as possible.

Conclusions and suggestions

1. The increase in the number of normative acts in the recent years has to be regarded as an unreasonable and contrary to the public interest – growing in a “geometric progression” which can be considered as very negative.
2. Excessive drafting of normative acts inevitably leads to mistakes and, consequently, these mistakes have to be corrected urgently. The normative acts are not intended for one-off cases.

3. Based on the principle of democracy, the use of legal methods can solve any legal matter, because it includes all the necessary and simultaneously sufficient set of methods for clarifying the content of legal norms. Based on this principle, the drafting and adoption of the normative acts as the form of external expression of rights take place.
4. The usefulness, purpose, and implementation of the public interest in adoption of new normative acts should be considered. The application of legal regulations in compliance with the Constitution includes finding and correct interpretation of the relevant legal regulation based on the principle of democracy defined in Section 1 of the Constitution of the Republic of Latvia. The draft of normative act should not be devised to solve any problem of momentary nature, because if a problem can be solved by interpreting the legal regulations, there are alternatives – to prepare draft of a legislative act or not.

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