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EU External Actions, Legal Order and International Relations in Post-Lisbon Period

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Abstract

The article describes most urgent issues of the EU external actions in line with the growing role of the Union in international relations and law. Main changes in the EU external relations have been reflected in the Lisbon Treaty, which entered into force in December 2009. Major Treaty's provisions are reviewed showing the role of external activity's regulations within the EU legal order and international relations.

Keywords: Union's external activity, common foreign and security policy, international law and the EU legal order.

Introduction

The EU spheres of international relations are defined in the Lisbon Treaty as "common foreign and security policy... and other areas of external action" (art. 21, para 1, TEU). Due to utmost importance of such actions, they are formulated and decided unanimously by the European Council on a recommendation from the Council of Ministers. The implementation of these European Council decisions is done in accordance with the procedures provided for in the Treaties (art. 22, TEU). Hence, in the Lisbon Treaty's constituent parts (the TEU and TFEU) important provisions are resolved to the Union's external actions, i.e. Title V in TEU (out of 6) and Part V in TFEU (out of 7). Although EU international relations are not the primary part of the Union's activity, the latter is mainly devoted to the functioning of the internal market, the external relations occupy an important role in the EU basic law [1].

Thus, TFEU in its part V has shown the Union's triple approach to external actions: first, international aspects of the EU-27 internal market policies; second, Union's external actions, and third, common foreign and security policy (CFSP).

Present EU role on international scene is spectacular. In 2011, France held the G-20 presidency and President N. Sarkozy chaired the G-20 summit in Cannes (3–4 November, 2011); Mexico will be the next G-20 presidency in 2012. The EU with its more than half a billion inhabitants accounts for 7% of the world's population; it is the third largest member among the G-20 states in terms of population. The EU accounts for 25.8% of the world's GDP; in per capita account (in €) in EU-27 it is on average 24,400 (and in euro-area – 27,7000), which places Europe among the five most performing economies. In the euro area's GDP alone, with just over 9 billion euro, it is more than twice as high as the GDP of China with its 4,434 bln euro (2010). The EU is the largest exporter and the largest importer of goods among the G-20; the EU benefits from being one of the most open economies in the world. By 2015, about 90% of future economic growth will be generated outside of Europe. The EU trade with the rest of the world doubled between 1999 and 2010; in 2010, roughly ¼ of the EU growth came from international trade. For instance,

in 2011 the EU concluded a Free Trade Agreement which offers new export opportunities worth nearly € 20 bln for the EU. The EU inward investment from the rest of the world plays an increasingly important role in GDP growth [2].

Union's external relations and actions: legal approach

It is confirmed in the TEU Preamble EU-27 attachment to the principles of democracy, the rule of law, promoting peace, security and progress in Europe and in the world. In line with this, in TEU "Common provisions" it is formulated that "in its relations with the wider world, the EU ...**shall contribute to the strict observance & development of international law** (bold mine, EE), including respect for the principles of the UN Charter" (art. 3, para 5, TEU). In another TEU chapter – "Provisions on Institutions" is said that "High Representative shall conduct the Union's common foreign, security & defense policy (art. 18, TEU). Besides, there is a specific TEU Title V – Union's external actions & CFSP (art. 21–46, TEU).

In the TFEU Preamble a specific notion is formulated "*confirming solidarity with the overseas countries, in accordance with the UN Charter; pooling resources to strengthen peace & liberty*" (italics – EE). The Union's international agreements (as well as those of the member states in specific fields) have become the Union's exclusive competence. It means that only the EU institutions may legislate and adopt legally binding acts (art. 2, para 1 in TFEU Part I "Categories & Areas of Union Competence"). The article stipulates that the EU member states "are able to do so themselves only if so empowered by the Union or for implementation of Union acts".

Besides, in the Union's exclusive spheres there is another "competence", i.e. "to define and implement a common foreign and security policy, including the progressive framing of common defence policy" (art. 2, para 4, TFEU). The EU institutions are responsible for the conclusion of international agreements, though under certain conditions: these agreements have to be in line with the Union's basic values, advances in the wider world, international law principles and a proper exercise of EU's internal market integration. The Communities external competences have been always the subject of extensive research [3].

As to **Union's external actions,** the main ideas of the EU-27 common efforts in external relations are described in part V of the TFEU under the title "External Actions by the Union" which included the following issues**:** a) general provisions on the Union's external actions, b) Common commercial policy (with some aspects of the Customs Union, e.g. abolition of restrictions on international trade; generally these competences are within the duties of EU trade commissioner, Karel de Gucht); c) cooperation with 3rd countries & humanitarian aid (two commissioners – for Development Aid, A. Piebalgs and for Humanitarian Aid, Kr. Georgieva; these competences are specified in art. 208–214 TFEU); d) restrictive measures; e) international agreements, art. 216–219, TFEU; f) the EU relations with international organizations and third countries, as well as those of the EU delegations; and, finally, g) solidarity clause, art. 222, TFEU.

Some historic aspects have to be mentioned:

- EU's legal order has been the creation of supra-national motives & ideas;
- main direction in the founding treaties (1952–1957) was to create an internal market with 4 basic freedoms; i.e. "to eliminate barriers which divide Europe" (Preamble to EECT, 1957);
- international issues in the founding treaties were mentioned only twice: a) in regard to "abolition of restrictions on international trade" (hence common commercial policy, presently exclusive), and b) on solidarity with overseas countries in accordance with the UN Charter and international law.

Since the Maastricht Treaty, 1992 the following changes occurred in the "common legal fabric":

- only a few sectoral issues have been regulated by the Community on the international scene being included later into the EU exclusive competence (e.g. common commerce, customs, maritime affairs and competition);
- since Maastricht Treaty, the guiding instrument in external relations was **intergovernmental cooperation** (Second & Third Pillars of the EU Temple);

- after Laeken European Council's Declaration (December 2001) and Constitutional Treaty's Draft (October 2004) the new trends appeared to include EU's international relations into the Union's basic law;
- at the final step, i.e. Lisbon Treaty (signed in 2007 and entered into force in 2009) the division of competences provided for the delimitation of the member states-EU involvement in the Union's activities towards "external world".

Hence, the EU's six exclusive competences (art. 3, TFEU) are: Customs Union; competition issues; monetary union for the eurozone 17 members; conservation of marine biological resources; common commercial policy, and concluding international treaties**.** It has to be specifically mentioned that legal personality in international relations the European Communities have acquired already in March 1980 at the Fishing Conference in Northern Atlantic concerning commercial issues.

As to concluding international agreements, the EU institutions can make such agreements with non-member states (so-called "third countries") and various international organizations, both on general and special issues. Among the former are numerous association agreements: maintaining special links between certain EU member states and non-member countries (e.g. EU-ACP Partnership Agreements between the EU and 70 states in Africa, the Caribbean and the Pacific); as preparation for accession to the EU (or for establishing customs union) and agreements with the European Economic Area, EEA (Iceland, Liechtenstein and Norway). Besides, there are numerous cooperation agreements aimed at intensive economic cooperation with North African and Middle Eastern states [4].

Of particular to external dimension of the EU single market are the EU trade agreements with individual non-member states, with groupings of such countries and international trade organizations (mainly, on tariffs and trade policy, on promoting free, fair and open trade). Most important are agreements on WTO, GATS, intellectual property rights, rules and procedures on disputes settlements, etc. In the European Council's draft the necessity to conclude the WTO Doha Round and Free Trade Agreement in 2011 was underlined, following the Commission's proposal on priorities for dismantling barriers to trade in third countries [5].

However, a durable nature of the EU external relations has to be mentioned; besides internal market social-economic issues, a specific attention is devoted to: External Actions (in general), and Common Security & Defence. It is the European Council that "shall identify strategic interests and objectives of the Union" (art. 22, TEU). These "interests and objectives" are related – among other spheres – to: a) Common Foreign & Security Policy, CFSP, and b) other areas of EU external actions (with specific & general provisions attached). As to decision-making in these objectives, the European Council shall act unanimously on a recommendation from the Council. The TEU also refers to changes that affect two Council configurations, i.e. General Affairs and Foreign and Security policy, FSP (art. 16, p. 6); hence, the Council configurations extended to 10.

As to the qualified majority voting, the TL significantly increased the number of sectors of "common interest" (by 44 sectors and items), where the Council may decide by qualified majority. For example, in 24 cases related to legal bases in the Treaties (which required unanimity before and presently under QMV), in particular those concerning the area of freedom, security and justice, border controls, asylum, immigration, Eurojust and Europol. The same is for proposals under the CFSP made by the HR in common foreign, security and defence policy at the request of the European Council, and the arrangements for monitoring the exercise of the Commission's executive powers ("comitology").

As to the EU supranational character, some historic references shall be mentioned. Mainly, the EU intergovernmental relations and the Union's supranational character have been directed through the Court of Justice's (CoJ) decisions through the efforts to support the supreme effect and direct applicability of the EU legal system. Some main, the so-called constitutional CoJ cases, have made the member states recognize the specific character of the "newly created Community's legal order". Among the main decisions in this regard is *Van Gen en Loos* (1963) specifying that the Community has created a new legal order in international law (*sui generis*), and the member states limited their sovereign rights/competences for the "common good"; *Costa v. ENEL* (1964) postulating that national laws contradicting Community's values are void. In a number of landmark-cases the CoJ ruled that the EU has the competence to conclude international agreements [6].

The CoJ specifically underlined that the EU has created a supreme legal order (placed over the member states (MS) laws which represent an independent legal system. It seems, however, that the active CoJ's position in the international sphere is over: first, most of the controversial issues have been already resolved; second, the new Lisbon Treaty made the EU-27 block's intention clear: to streamline external affairs in the basic law.

The EU member states have committed themselves to a Common Foreign Security Policy for the European Union. The European Security and Defence Policy aims to strengthen the EU's external ability to act through the development of civilian and military capabilities in conflict prevention and crisis management. To influence policies violating international law or human rights, or policies disrespectful of the rule of law or democratic principles, the EU has designed sanctions of a diplomatic and/or economic nature. The EU is also the leading international actor in the fight against illicit accumulation and trafficking of small arms and light weapons [7].

European security strategy

The present EU external framework as a unique supranational entity with a division of competences dates back to October 1999, when Javier Solana, the first Union's High Representative elaborated the practical aspects of establishing a coherent "common" European security & defence policy, ESDP. He also drafted the initial the previously approved security strategy by the European Council on 12 December 2003. In its present form, the strategy was approved by the European Council in December 2008; it was drafted by the EU High Representative Javier Solana too [8].

The EU security model's draft was adopted in February 2010; a "consolidated security model", the strategy underlines, is based on the EU principles and values: respect for human rights and fundamental freedoms, the rule of law, democracy, dialogue, tolerance, transparency and solidarity [9].

EU international relationships

There are several spheres that involve the EU international relations; some most valid shall be mentioned: Enlargement: a special Commissioner, Stefan Fule is responsible for the EU Enlargement and European Neighborhood Policy; External Development policy: a special Commissioner, Andris Piebalgs is responsible for the development aid; EU External Action: High Representative of the Union for Foreign Affairs and Security Policy (HR), Catherine Ashton. The High Representative is assisted by the European External Action Service, EEAS; Humanitarian Aid: a special commissioner Kristalina Georgieva is responsible for the EU international cooperation, Humanitarian aid and Crisis Management; International Trade: EU Trade Commissioner Karel De Gucht with the help of all other Commissioners is responsible for shaping an international trade environment.

Foreign Affairs Council (FAC) and European External Action Service (EEAS) occupy specific place. Thus, **FAC** (as one of the Council's ten configurations) is composed of member states' ministers responsible for foreign affairs, defence, etc. FAC's monthly meetings are chaired by the High Representative C. Ashton; she is also the Vice-President of the European Commission, ensuring the consistency and coordination of the EU external action at the EU institutional level. It is expected that **EEAS** would finally include about 5 thousand civil servants, incl. 1/3 – nominated from the EU-27 member states.

Already 3 months after the Lisbon Treaty entered into force, new HR and vice-president of the Commission, Lady Ashton launched the new European External Action Service, EEAS. In November 2009, the European Council appointed Catherine Ashton the High Representative of the Union for Foreign Affairs and Security Policy. In this capacity she chairs the Foreign Affairs Council. She is also the Vice-President of the European Commission and ensures consistency and coordination of EU external action.

Presently, Union's HR for Foreign Affairs & Security Policy is presiding over the Foreign Affairs Council, art. 18, TEU. Union's External Actions and Specific provisions of the EU Common Foreign & Security Policy are formulated in TFEU Chapter 2 (art. 21–46). The Treaty of Lisbon contains two important

institutional innovations that have had an impact on the EU external action: it created: the President of the European Council (renewable every two and a half year term) and the High Representative of the Union for Foreign Affairs and Security Policy (for five year term).

The High Representative is assisted by the European External Action Service (EEAS). EEAS staff comes from the European Commission, the General Secretariat of the Council and the Diplomatic Services of EU Member States.

During the last year, some new nominations in the EEAS took place:

- Christian Berger (from Austria) was appointed in June 2011 to the post of Director for North Africa, Middle East, Arabian Peninsula, Iran and Iraq. He has been previously the EU Representative to the Quartet Special Envoy and political advisor on the Middle East in former DG Relex;
- Maira Mora (LV), former LV's ambassador to Belarus was appointed the head of the EU Delegation to Belarus;
- Frans Jacob Potuyt, a Dutch diplomat, since August 2011has been appointed as the Director for Security Management. As former Security Director of the Netherlands Foreign Ministry, he gained extensive security management experience in high risk places such as Beirut, the Balkans, Palestine and Afghanistan;
- Koen Vervaeke, a Belgian diplomat, became Director for the Horn of Africa, East and Southern Africa and the Indian Ocean region;
- Fernando Gentilini, an Italian diplomat, became Director for Western Europe, the Western Balkans and Turkey [10].

EU legal order and international law

Concluding international agreements have become an exclusive EU competence (necessary to enable the Union to exercise its internal tasks, art. 3, TFEU). Members of the European Parliament issued a call for the EU seat in the UN Security Council as part of the EU progress in the EU common foreign, defence and security policies; Germany & Portugal have been elected non-permanent members for 2011–2012. Together with France and the UK (as permanent members) European countries represent more than 25% of the UN body responsible for peace and security in the world. At the EP's Strasbourg plenary session in May 2011, the EP debated the EU priorities in this field for several years ahead. In forming the optimal relations between the EU legal order and international agreements, the Council, Commission and the EP play vital roles. Thus, the EU may conclude agreements with one or more 3rd countries and/or international organizations (IO): the HR for CFSP and the Commission shall "exercise" all forms of cooperation with IO (art. 216, TFEU). Important competences are reserved for the Council of Ministers: e.g. to authorize the opening and the signing of such negotiations (as well as concluding them), and adopting negotiating directives. The Council's decision for concluding the Union's agreement (except the CFSP sphere) is adopted after obtaining the consent of the European Parliament or after consulting it.

The EU adapts to international law through some sectoral issues. Both the EU and international law (IL) are in a constant transition: quick and dynamic transformation in private & public IL; as well as in the law of international organisations; developing international agenda: military & regional conflicts, climate change, disarmament, human rights, terrorism; UN-MDGoals; traditional IL's definitions in modern context: e.g. global economic/financial governance; crisis in Europe, crisis in the IL: two sides of the "common threat"; sectoral private IL's issues. To exemplify, In March 2010, the European Commission proposed new rules for international couples. The proposed EU legislation was supposed to help couples of different nationalities, e.g. couples living apart in different countries or living together in a country other than their home country. The aim is to reduce the burden on children and to protect weaker partners during divorce disputes (there are around 300,000 international marriages per year in the EU). The proposal followed a request from 10 Member States (Austria, Bulgaria, France, Greece, Hungary, Italy, Luxembourg, Romania, Slovenia and Spain) to use the "enhanced cooperation" mechanism. In July 2010, the Council adopted a decision on divorce and legal separation [11].

EU external priorities in 2011

Five major challenges for the Union in 2011 appeared in the Commission President's "State of the Union"; they have become the background for the EU international relations (in September 2010, at the EP Plenary Session the "State of the Union" was adopted). The following have been the main aspects for the external policy:

- dealing with the economic crisis and governance;
- restoring growth for jobs by accelerating the EU-2020 strategy implementation;
- building an area of freedom, security & justice;
- launching negotiations for a modern EU budget;
- pulling "European weight" on the global stage.

Hence, on the global scene the EU formulates its external policy according to the following important factors in global agenda:

- further progress in global economic coordination; Commission's President underlined in his speech in March 2011 that being a global player also means standing up for the EU values;
- more stable and responsible financial markets and agreement on reform of international financial institutions;
- more effective global financial safety nets;
- more progress on a G-20 development agenda;

Besides, the European Union promised an extra € 1 bln to the UN Millennium Development Goals. "Global Europe" means additional competition in the world. Global economic integration is quickening, driven by growing trade volumes, falling transportation costs, and a revolution in information and communications technology (ICT). This creates opportunities for growth and development; but it also puts new pressures on global resources and creates new competition for EU workers and industries.

There are some exceptional approaches to CFSPs in the LT. First, these issues are placed in the TEU rather than in the TFEU (the TEU describes the Commission's general competences and those of the new EU High Representative for Foreign Affairs and SecurityPpolicy (HRFASP) while the TFEU mainly concentrates on the Commission's internal working procedures); second, there is a predominated **unanimity** within the European Council decision procedures, in contrast to other EU policies; third, these issues are subject to specific rules and procedures, i.e. they are excluded from any competence to adopt legislative acts ("the adoption of legislative acts shall be excluded", art. 24, para 1, TEU); fourth, the HR plays a special role in the EU foreign affairs; fifth, there is a marginal Commission & EP's influence on these issues. Virtual exclusion of CFSP's issues from the CoJ's jurisdiction should be specifically mentioned (art. 24, TEU).

The post of HRFASP or just HR (occupied by Catherine Ashton), who is at the same time the Commission's vice-president (in addition to six other vice-presidents), does not create new powers but streamline the work by merging three previous "competences". It is done in order to avoid duplication and confusion. The "combined posts" are the former Council's foreign policy representative (previously Javier Solana), the Commission's external relations Commissioner (previously Benita Ferrero-Waldner) and that of chairperson of External Affairs Council (previously taken by 6-months rotating presidency). This is expected to allow greater consistency between the work of the Commission and the Member States in developing and presenting agreed foreign policy and external actions on a global scene [12].

The HR creation is one of the major institutional innovations introduced by the LT aimed to ensure consistency in the EU relations with foreign countries and international bodies. The HR has a dual role: representing the Council on common foreign and security policy matters and also being the Commissioner for external relations. Conducting both common foreign policy and common defence policy, Lady Ashton chairs the periodic meetings of member countries' foreign ministers (the "Foreign Affairs Council"). She represents the EU's common foreign and security policy internationally, assisted by a new European External Service, composed by officials from the Council, Commission and national diplomatic services [13].

Other issues in the EU external agenda

The new European External Service, created as a diplomatic corps of the EU-27 throughout the world, assists EU citizens in finding support even if the member states' embassy is not present in this territory. For example, effect for the Baltic States is such that the citizens of the Baltic States can benefit from the new EU external action. Thus, they can rely on EES's diplomatic and consular protection for all these countries citizens when traveling and residing, as well as living abroad.

The external agenda issues are becoming an essential part of the EU's yearly "State of the Union" program: e.g. in the Program for 2011 the following issues were underlined in developing an ambitious and coherent external agenda with global coverage, e.g. besides the establishment of the European External Action service, implementation of trade strategy in EU-2020, steering the enlargement process, action plan for the 2015 Millennium Development Goals summit and developing key bilateral relationships.

Another issue is that of economic aspects of external aid and formulating the EU's development policy. In a number of spheres, which fall within the Union's external and shared competences, the Union can enter into the international agreements. They include, for example:

- Spheres of science, research and technology: the Union may make provisions for cooperation in this sphere with third countries or international organisations (art. 186, TFEU);
- Spheres of environmental, nature protection and climate change: in this sphere, both the Union and the member states may negotiate agreements with international bodies and parties (art. 191, etc.);
- Transport sector (art. 207 and 218, TFEU); the latter article specifies the procedures for agreements between the Union and third countries or international organisations [14].

EU "Policy Coherence for Development" plays the central role in reinforcing the EU contribution to developing countries progress towards the Millennium Development Goals, MDG. The MDG's aim is to maximise the positive impact of these policies on partner countries and to correct incoherence. The EU seeks to build synergies between policies other than development cooperation that have a strong impact on developing countries, for the benefit of overseas development ("policy coherence for development"). Making development policy in isolation will not bring sufficient results [15].

Conclusion

In the issues concerning the EU and the outside world, opinions divide as to the whether the EU can assume its "claimed leading role" in the modern world. The "eternal question" is: whether the EU can be among the most important players in the world in the coming decades.

As to the organizational aspects, representation figures in the EU's external administration and diplomacy leaves more room for maneuver for the member states. On the other hand, the EU legal order and the international law system have a lot in common; hence, both the European External Action Service and European diplomatic corpus need *Acquis Diplomatique*.

The EU's challenges in a restructured global economic, political and legal order make the international aspects of the EU legal order ever more important and significant. The item "security and citizenship" in the EU spending commitments is constantly expanding, e.g. for 2007–2013 budget it is expected to be at the level of 1.3%; in the EU spending proposals for 2014–2020 (according to the Commission's estimates), the amounts would increase to 1.8% out of more than € 1 trillion in the total EU budget.

The EU law has been initially a supranational creation; then followed the EU institutional legal activity with the extensive secondary legislation. The constant legal path has developed from an "international treaty" (EEC, 1957) to the process of reductions in national sovereignty. Thus, among 6 EU exclusive competences one has become for concluding international agreements (art. 3, TFEU).

Legal background for the present EU structure towards "the outside world" includes the following: 1) EU's strategic interests & objectives, which are identified by the European Council; 2) Common Foreign & Security Policy, CFSP; 3) other areas of EU's External actions. Besides, vital "ingredients" have been formed within the CFSP, i.e. Common Union Defence Policy & Defence Agency (with civilian & military assets).

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Hidden Advertising in Latvian Media Content: Reasons, Editorial Strategies and Advertiser Practice

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Abstract

Since 2002 parliamentary and municipal elections in Latvia, media content researches have shown a considerable amount of hidden advertising (HA): media publish information that is paid-for, yet not identified as advertising, assigning this information with the qualities of independent content, therefore, misleading its audience. In order to analyse this practice, a research was commissioned to find out why Latvian media publish hidden advertising, what the force behind this practice is, and who the commissioners and developers of such practice are. The findings were analysed from the point of view of media normative theories, identifying a specific character of Latvian media culture.

Judging by the media professionals' attitude towards hidden advertising, one must admit that the number of media that follow honest media practice and avoid integrating hidden advertising in editorial content is only decreasing. Many editorial boards do not work independently, and even consider inclusion of biased information into editorial content desirable and necessary. Most common domains of hidden advertising in Latvian media space are: politics, pharmacy business, telecommunications and financial services, and consumer foodstuff. Hidden advertising can be found on public broadcasters, newspapers and magazines, as well as commercial radio and TV broadcasts. Media executives confirm that the inclusion of hidden advertising is strictly controlled, institutionalized, secured by contracts and pay checks; media are more likely to try to control that the advertising does not appear without formal acceptance of media executives, rather than control appearance as such of hidden advertising.

Keywords: hidden advertising, media management, media culture, clientelism, media content producing.

Introduction

Hidden advertising has a low value in the view of all media market participants; its impact and efficiency is not evaluated. It is most common for media with an insecure place within the market to include hidden advertising as it is often the only way of income. Essentially, the main driving force behind the spread of hidden advertising and its justification is a weak state of advertising market.

Media representatives have not noticed that HA can have a negative impact on audience behaviour. Constant presence of hidden advertising in media content in Latvia is influenced, on the one hand, by media profit drive and advertisers' wish to integrate their messages into editorial content, and, on the other hand, the practice of hidden advertising is not condemned by the public, therefore there is no encouragement to give it up.

The list of the research questions of this particular study included following subtopics: understanding of hidden advertising and its evaluation, particular person's and medium's experience in the field of hidden advertising, reasons for advertising to appear in a particular medium, process of developing hidden advertising, its placement and efficiency.

To achieve the goals of this research, qualitative semi-structured interviews were conducted with media executives and persons in charge of media advertising departments. The respondents represent all media types. In order to gather substantive information on the practice from advertisers' point of view, there were additional interviews with advertising and PR agency executives. The information gathered by this research includes both political adverts, as well as various business domains that use hidden advertising, because the presence of hidden advertising in media content is constant, and its appearance is not directly linked to time before elections.

Taking into account the aims of this research and the problematic character of the questions, a decision was made to conduct anonymous interviews in order to put emphasis on honest information and in-depth research of media practise, rather than trying to name particular media and particular persons responsible for leaking sensitive information, from medium's point of view, which often has been linked with the information on business secrets or influence on one's reputation.

Twenty interviews were conducted during this research, and various editors-in-chief, journalists, producers, content directors, advertising directors, representatives of advertising and public relations agencies were among the respondents. Interviews were conducted in August, September and October 2010; their length: one to two hours.

The data was batched by Anda Rozukalne; the interviews were conducted by Anda Rozukalne, Tatjana Hanova and Ruta Silina.

The time for flourishing of media commercialism

Attitude towards hidden advertising is dependent on particular medium's defined values and aims. If the medium is dedicated to producing faithful information, following norms of journalism ethics and acting responsibly as the basis for their work, then its managers regard inclusion of hidden advertising as a negative factor. However the executives of these media admit regularly receiving offers to include hidden advertising, or – which is rare – dishonest journalists include in their content information that resembles HA. At the same time, several representatives from this media group do evaluate, under the influence of constant offerings and behaviour from the rest of market participants, whether to offer advertisers such advertising formats that resemble hidden advertising, yet not break the law. This understanding is also in conflict with the normative approach that states that the aim of media is to work honestly, transparently and in accordance with "social and cultural values" [McQuail 2005: 164]. The interviewed media professionals regard HA as biased information that is not, by the audience, distinguishable from the media content, for which a medium has received payment.

This situation is defined by several historical and market-related reasons. The media market in Latvia (and other Baltic states) is very small – there are about 2 million inhabitants in Latvia; in addition, the media environment is divided by Latvian-speaking and Russian-speaking media. In fact, the larger media markets which are able to operate with the greater resources can provide "a greater diversity" [Doyle, 2002: 16–18] and higher level of professionalism of content than smaller markets. In addition, media scholars admitted that recent changes brought in the market of post-soviet countries a larger amount of media chanels, but at the same time created the situation the main principles of which are the "homogenization of journalism, the rise of sensationalist and more entertainment-oriented reporting as well as to the blurring of boundaries between news and advertising" [Balcytiene and Harro-Loit, 2007; Harro-Loit and Saks, 2006]. This process is characterized by the "hybrid discourses" [Balcytiene, 2009: 42] that creates mixed genres of journalism and advertising.

The level of commercialization of the Baltic media and market-oriented logic in Lithuania, Latvia and Estonia [Balcytiene, 2009] have created such mass media environment in which a weak journalist professional orientation and content creation is dependant on commercial interests not on reflecting

the professional interests of journalists. Although, the idea of indispensability of journalism in the development of democracy and social responsibility [McChesney, 2002; Perse, 2006] is prominent, the research of Baltic media content and practice regularly indicates problems with media responsibility [Brikse, Sulmane, Tjarve, 2002; Rossland, 2005; Balcytiene, 2010] and accountability.

Therefore, it is worth considering that the economic recession reduced the quality of media content and the ability to fulfil their function of social responsibility in democratic society, as Baltic media representatives find it harder to answer the question "Who would pay for good journalism?" [Salovaara, Juzefovics, 2012]. Within the framework of media market orientation, the quality of journalism can only somewhat be influenced by the general audience [Rozukalne, 2009], as media content is predominantly influenced by such factors as advertisers, competition and media owners [Croteau, 2000; Croteau, 2001; Harcup, 2005].

During the formation of media system, two basic trends become significant: first, media from the Soviet era were searching for scenarios of further existence; second, newly formed media were using principles of free press and quality of journalism, offering a model of operation similar to the Western press. Journalists have tried to accept and adopt global professional norms that emerged in the context of on-going media developments in many developed countries in the world, although in Latvia such professional norms of journalists like neutrality, objectivity, pluralism etc. "were adopted very quickly and without any real understanding or analysis of the norms in concrete situations" [Vihalem, 2002: 99]. The lack of free press and professional journalism tradition created the situation when professional principles were more commonly used to defend journalism from criticism, but in reality their use had a situational nature. The quality of journalism and conformity with the principles of professional ethics in the first decade after independence, were dependent on what goals were defined by each individual media owner. In fact, foreign companies owned (mostly of Scandinavian origin) Latvian media; thus, professional standards were much higher than for locally owned media. The development of this trend, more than a decade later, is discussed in another media content study [Salovaara, Juzefovics, 2012].

Understanding of hidden advertising and clientelism

Hidden advertising is not a popular topic within media content or media practice research. In fact, media researchers are known to use varying terminology to describe content, which, from the one point of view, resembles journalism and represents interests of an advertiser at the same time, therefore diminishing the quality of journalism. Mostly, hidden advertising, emphasizing advertisers' influence on its content, in various studies is referred to as an "advertorial". This format of media content is predominantly described, criticising advertiser influenced content of consumer magazines [Johnson, Prijatel, 1999: 298] or booming service journalism in all media and the excessively large advertiser influence over it, because an advertorial clearly demonstrates the dominance of values of consumer society in media environment. However, this study distinguishes advertorials, because the format of these materials resembles journalistic text (including audio and video), but media indicates that an advertising fee has been received for them. An advertorial is considered a hybrid [Erjavec, Kovacic, 2010], which is a product of the relationship between journalism and advertising.

Hidden advertising is a principally different media practice, because in the case of HA content paid for by advertisers is not identified, it is, on the contrary, presented as independently, objectively, neutrally produced. This practice indicates a breach of professional ethics, as well as infringement of several regulatory acts[1]. Advertorials simulate content made by journalists, its format, genres and design; however, its creation is in complete control of the advertiser, thus, gaining the necessary benefit – the trust of the consumer. An advertorial is described as an illegal practice by researchers [Erjavec, Kovacic, 2010],

[1] Hidden advertisement is prohibited by the following laws in Latvia: Press and Other Mass Media Law, Advertising Law; Electronic Media Law.

who mention that this type of content is sometimes referred to as "paid news", "unlabeled advertorials" or "transaction reports". Advertorials are presented in Latvian media, and are usually identified as "promotional articles", "paid information", "collaborative format", thus differentiating them from the rest of media content. This approach increases advertisers' influence on media content, causing potential self-censorship during the production of advertiser influenced articles, but the use of these terms for advertorials helps the reader to distinguish the content produced by the editorial staff and the content paid for by advertisers.

References to the potential influence of hidden advertising on overall media quality are found in literature and studies which analyze the influence of commercialization on media environment. Analyzing the quality of Baltic journalism, researcher Aukse Balcytiene stresses the inaction of organizations of professional journalists and clientelism as an essential indication of media operation [Balcytiene, 2009: 48], which characterizes the inordinately close relationship between media professionals and their sources.

The understanding of clientelism is diverse. In media environment in the country of Latvia, where part of media is owned by politicians or people closely associated with them, clientelism is seen as a form of social political organization where access to public resources is controlled by powerful "patrons" and is delivered to less powerful "clients" in exchange for deference and other forms of service [Hallin and Mancini, 2004: 58–59]. However, in the context of hidden advertising, the understanding of this phenomenon, in which clientelism is characterized as a cultural feature: a belief that formal, universal rules are less important than personal connections [Roudakova, 2008: 42].

As this study analyses two manifestations of hidden advertising, commercial and political, it is essential to discuss the concept of political parallelism [Hallin, Mancini, 2004], when media are not the mediators between the society and politics, but are carriers of political ideology themselves. Of course, those media organizations that have close relationships with politicians and their political interests (mostly in the level of ownership or top management) are used to publish larger amount of HA than those media which have a short time contracts with clients who are interested in inclusion HA within editorial content.

However, in the last three years (from 2008–2010) of economic recession, when the amount of the advertising market went down by even 46% (2009) in Latvia, bringing media organizations on the edge on bankruptcy, hidden advertising came back into media content. It is one of the methods that allow receiving at least small revenues from advertisers. Therefore, professional environment has seen a sharp decrease in a negative attitude towards HA; it is thought of as a necessary evil, and these reactions are employed in order to create attractive hidden advertising projects. Interestingly, in recent years forms of HA have become more sophisticated; it now much more resembles journalism than previously published adverts that were openly one-sided, journalistically poor, praising their advertisers. For example, media professionals tell that, before the last parliamentary elections, the candidates agreed to pay for an interview or a presence at a panel discussion even if it meant receiving uneasy questions, because the fact of publicity itself seemed to be more relevant. It means that hidden advertising has become harder to be recognised.

Undoubtedly, hidden advertising, as a regular media practice, indicates problems with media responsibility [Rozukalne, 2010], therefore decreasing journalistic quality and encouraging questioning of the media ability to provide the society with reliable and diverse information. The aforementioned phenomenon is characteristic of several countries – a shift of priorities in media content in the researchers' discussion is considered as insufficient conduct of a "watch dog" function [Pinto, 2008], as well as an increase of sensationalism and dramatization in reflection of information [Vihalem, 2002], because the narrowing gap between journalists and their sources, and the complementary content created by it, forces the compensation of quality, while searching a brighter from of presentation. Evaluating the causes of problems in Latvian media system, this study analyses hidden advertising as a practice performed by a few individuals has evolved into an essential part of the media business model. Most common domains of hidden advertising in Latvian media space are: politics, pharmacy business, telecommunications and financial services, and consumer foodstuff.

The data on particular HA study shows that media executives regard hidden advertising as normal and constant part of their job.

A newspaper publishing house executive has defined idden advertising as an uncritical journalism. One of its distinctive features is a straight-forward complimentarism, creating pieces on starting from business sphere up to politics. The expert does not claim that one must be critical about every single case, thing or event, yet the executive is certain that complimentarism shows the classic approach to hidden advertising.

One can see the difference between accounts of hidden advertising among different media executives. Only a few of them regard it as a negative phenomenon, as something that reduces the quality of medium's content: public broadcasters and several media that wish to follow professional journalistic and media responsibility criteria or do not want to lose audience's trust. Media that avoid accepting HA are leaders of the market and believe that they can afford not to give in to advertisers' attempts to integrate hidden advertising into their content, because audience's trust is more important, and besides that, the success in the market of the media in question and the profit are not merely dependent on hidden advertising. These views reflect different approaches that help media organizations solve the controversy between the principal of social responsibility and "business goals" [McQuail, 2005: 164].

Media editors emphasized the fact that HA often is something that shows up in content, yet is not fixed in documents. That is, media editors do not welcome such situations where some of the staff members work in conflict with journalism ethics [McQuail, 2005] and, out of greed, publish hidden advertising, profiting from it, rather than a situation where medium's company agrees with an advertiser about "unconventional" advertising technique and essentially legalise dishonest practise in the market and attitude towards their audience. Media executives confirm that the inclusion of HA is strictly controlled, institutionalized, secured by contracts and pay checks; media are more likely to try to control that the advertising does not appear without formal acceptance of media executives, rather than control appearance as such of hidden advertising. Meanwhile, they [Johnson, Prijatel, 1999] admit that advertorials are not effective enough from advertisers' point of view.

An essential source of HA is media agencies – firms that offer media space to advertisers. As mentioned in an interview by an expert in advertising, all media agencies are in equal position in the market, their prices are similar, therefore, in order to get the advantage in terms of competition, media agencies create an additional offer – hidden advertising. For example, by offering classic commercial space, media agencies offer paid interviews, paid features in broadcasting media, paid news that will appear as editorial content. These offers are created in order to make particular agency more attractive to advertisers and create an impression on the client that the invested capital brings back more profit.

However, most of the interviewed media executives regard HA as an inevitable or even necessary part of media existence. The study reveals that hidden advertising is viewed more sceptically by advertising professionals, and not editors, in comparison to media representatives. Although advertising professionals evaluate advertising efficiency from a business perspective, editorial representatives tend to view social interests, that is one of the "main media performance criteria" [McQuail, 2005: 165], as less important.

One can see quite substantial difference in the views on hidden advertising if one regards the difference between Latvian and Russian media professionals. Russian-language media professionals think of hidden advertising as an ever-present and inevitable part of media performance. The difference is just in its evaluation; one part of professionals see it in a negative light, feel embarrassed that they are required by their managers to include hidden advertisingwhile others emphasize that it is a normal phenomenon.

Latvian media managers, justifying their views by a special character of Latvian media environment and a need to profit, believe that hidden advertising or content resembling it is a normal part of medium's content.

This conviction is justified by media professionals by following arguments:

1) hidden advertising must be successfully integrated into medium's content for it not to look "too advertisy" and to be less distinguishable;
2) hidden advertising is dubious, but upon advertisers influence one can find legal and indistinguishable ways to include that into content (especially radio content);
3) hidden advertising is part of normal media practise because media cannot exist in a market if they refuse hidden advertising offers.

These views produce media performance background and facilitate such practice in which the presence of hidden advertising is regarded as normal and even desirable.

From an interview with an editor at a Russian-language weekly paper:

"What attitude can there be towards something that brings money? Normal. I don't like that the notion of hidden advertising is linked to deception. We don't deceit anyone. We are just looking for a way to reduce our losses and, consider this, not at readers' expenses. Advertisers pay for that."[2]

Commercial radio advertising department's representative:

"I will always find legal way to take money from this person (advertiser – ed.). [...] There are million ways how to do it. We will think long until we think of a way how to do it legally."[3]

Media organizations and their attitude towards this way of advertising have the main role in the development of hidden advertising. Advertisers have a small, slightly different influence on the amount of hidden advertising within media. It is worth pointing out that state authorities who sometimes agree to become sponsors for particular broadcasts or sections in order to facilitate dissemination of information on some crucial topic often want to influence its content, and therefore distort legally formulated sponsor's function and finance content that is on the edge of becoming hidden advertising. State authorities are ready to pay for hidden advertising features and interviews, but usually withdraw from its wishes if the editorial staff is in them or want to clearly indicate this as paid content.

The distribution of HA in media content is facilitated also by advertisers, advertising and media agencies, as well as public relations sphere that apply HA in favour of their clients' interests. Particular media favourable attitude towards HA influences all media and the rest of the market participants, that is, hidden advertising-free media have problems avoiding the pressure that is exerted upon their staff, mentioning an argument "why don't you participate when others grant you such opportunity; if you refuse, we will be forced to go to your competitors and you will not be able to receive our advertising money". Refusing HA often leads to eventual losses because it can mean lack of crucial advertising budget.

That is why media act ambiguously. Few media organisations, if offered hidden advertising, try to find a way out of a situation by either refusing or seeking ways to integrate hidden adverts. However, the second type of media organizations themselves create special hidden advert offers which are then presented into market, encouraging advertisers to choose, informing about different possibilities and their openness for various advertising offers, including hidden advertising.

The economic crisis, when advertising costs when plummeting down, broadened this practise because media agencies could still receive commissions in hidden advertising. Offers, in which HA have different names such as, bonuses, unconventional advertising, etc., are created in collaboration with media's advertising departments and editorial staff.

Hidden advertising not only destroys audience trust in media, but also degrades the trust into journalism as a profession. All the interviewed editorial members were convinced that hidden advertising is not a desirable phenomenon and unnatural part of media content, that it can undermine audience's trust and contradict principles of journalism. Journalists describe hidden advertising as a despised duty; editors talked about it as of unpleasant and difficult task that complicates day-to-day work. Yet advertising specialists and media executives not always judge hidden advertising to be a purely negative phenomenon, although some of them realize that hidden advertising can influence the quality of their media content. Nevertheless, none of them hesitate to say that journalists are those who should be producing such content.

Journalists not only develop HA texts, features, interviews, they also previously contact the hidden advertiser to agree on precise requirements, negotiate questions, topic and feature content. Mainly, a journalist fulfils duties of an advertising specialist. With time, journalists get used to this practice as normal, they know that much of their work is induced by advertisers, and are fully controlled. This creates self-censorship, unwillingness to independently study and research reality and, at the same time, it creates a conflict between authors of the content and media management.

[2] Particular interview was conducted by Tatjana Hanova.

[3] Particular interview was conducted by Ruta Silina.

On the other hand, journalists justify their individual actions in the creation of hidden advertisement, as they are under constant pressure, working in an unstable media environment. Journalists are afraid of losing their job if they do not agree to produce paid-for news, features, interviews etc. In addition, journalists consider hidden advertising as an unusual act of loyalty, although such practice is contradictory to their contracts. Although, production of hidden advertising is commonplace, the respondents, interviewed as part of the study, admit that those are isolated incidents, and they try to "neutralise" the negative effect of hidden advertising with quality and professional work regarding the remainder of media content.

Therefore, Latvian media has made broad step apart from the principles defined by the media social responsibility theories that state that media, and especially media news content, must be faithful, precise, objective and that "the media must be free, yet have to realize self-regulation" [McQuail, 2005: 172]. Hidden advertising is one of the reasons why journalists' professional self-conscious in falling; it also partially facilitates scornful attitude of audience towards journalists, lack of trust in their work, and publicly expressed suspicions about their corruptibility. Unfortunately, this research of hidden advertising proves these suspicions to be right and shows that Latvian media environment has professionally degraded. In this situation professional ethical norms are regularly violated, and they are not able to protect members of editorials from "external influences" [McQuail, 2005: 173] and guarantee their autonomy.

Special character of hidden political advertising

Hidden advertising has much in common in all spheres; however, the pre-election campaign of 2010 was crucially influenced by these specific features:

- HA advertising is controlled by several institutions – National Electronic Media Council, as well as KNAB (corruption watchdog) that accounts for all the finances that are used for parties pre-election campaigns;
- before the recent elections, several media managers expressed an open support for a particular political force, not hiding their conviction that biased information will be part of the content;
- concrete players of Latvian media market (for example, newspaper "Diena", public broadcaster Latvian Radio and Latvian Television, news portal "Delfi" etc.) implemented clearly defined and distinguishable election campaign principals; for example, gradual introduction of all the political forces; this strategy allowed not only avoiding HA, but also made it easier to be spotted;
- some media defined their priorities; therefore, in contrast to hidden commercial advertising, particular political forces themselves chose their media in whose content hidden messages were to be incorporated.

All the Latvian media professionals rejected the presence of hidden political advertising; some admitted favourable attitude towards some political force, which, however, does not mean offering clearly biased information that is advantageous to some political party. However, all Russian media representatives admitted that their papers, radio stations and TV channels consciously include hidden advertising, yet rejected claims that they covertly advertised ideologically unacceptable political force.

A representative of a Russian-language daily newspaper: "Hidden political advertising is not a new phenomenon. Before the elections, all our content is sold out, it is impossible to include any important and normal materials."[4]

A Russian TV news programme journalist: "Before the elections I am told to interview absolutely unknown people and find out what their political views are. That is also hidden advertising. It is determined by the management. All news coverage and programmes are strictly controlled. Our channel has the largest amount of hidden advertising; we have broken all the records. I think that if in the time of pre-election all the characters in TV series should be substituted with the most popular party representatives, we would do that. That's a joke"[5].

[4] Particular interview was conducted by Tatjana Hanova.

[5] Particular interview was conducted by Tatjana Hanova.

Revealing their views on hidden political advertising, media professionals clearly demonstrate that profit is more important than editorial independence, neutral and objective journalism, diversity of opinions. Hidden political advertising especially shows how fragile is the notion of responsibilities and obligations set out in the Social Theory of the Media (McQuail, 2005: 166) that states that media should grant diversity of opinions and received information within Latvian media space.

Discussion about efficiency of hidden advertising

An important part of the debate about the reasons for hidden advertising is a question of the efficiency of this type of advertising. Media editorial professionals expressed an opinion that hidden advertising could be more effective than traditional types of advertising. Representatives of media organizations advertising departments voiced an assumption that individual advertisers are interested in hidden advertising because they highly value its efficiency. However, these evaluations are based upon the respondents' ideas and desirable efficiency, because hidden advertising has no verifiable proves.

Among advertising specialists, HA is not regarded as a valuable investment, as something that is crucial in order to achieve client's goals; more likely, it is useful "for satisfaction of some president's or director's ambitions because he or she, for their money, gain extra publicity". However, hidden advertising does not grant real benefit for a product's or service's promotion in market or increase in sales. It has not been studied, however, because such research formats are too expensive. An advertising expert that was interviewed for the purposes of this research believes that hidden advertising cannot grant considerable benefit in increasing the efficiency of a campaign; even if a large amount of it is used, still the best way to increase efficiency is by using legal forms of advertising.

The Russian-language media representative's explanation about HA efficiency is slightly different. Editors believe that it is very important for advertisers, and, especially in cases of political hidden advertising, the demand is linked to its efficiency. In several Russian-language broadcasters HA costs are higher than classic advertising costs.

An advertising professional, representative of the one of largest chain of international advertising agencies: "In most cases advertisers do not even look into all that (the practice of hidden advertising – ed.). That is the task of media agency, it places advertising for the right audience. Media and creative agencies compete and fight for the so-called added value that is received by unconventional advertising. Therefore, the force is not the advertiser, but the big agencies whose interests and demands are in these fields. Clients rarely doubt the efficiency of hidden advertising. If it has no results, then the only thing to think is – "I was the fool, I made the wrong choice"; second thing: to broaden the range of media used. If a company's representative is not satisfied with the result, it means more working yourself."

Hidden advertising can be very versatile because some parties sometimes consider inclusion of biased information as a natural matter. It can resemble editorial content, and also include information that is crucial not only for the paying party, but also for the audience. The hidden advertising that has been published during 2009–2010 is characterised by its very crafty adaptation for media editorial contents.

Only after some longer period of time or by noticing some similarities in content, one can spot HA. As told by media and advertising professionals, the most popular "disguise" of hidden advertising is one-sided paid interviews and expert opinions. Opinions and evaluations can be published separately or integrated within several other non-paid opinions. Commercial broadcasting companies' representatives admitted that a participation in debate shows can also be offered as paid advertising content. For their part, the press includes HA in its news section or feature materials, especially as profile feature articles.

Media staff members admit that hidden advertising's inclusion always goes together with difficult multi-level decision-making. The first level of decision-making: whether to agree to include hidden advertising at all; usually one must answer an important question whether there is money for the medium or not. Media try to define the allowed limits of HA, stating cases where the hidden advertising is refused or

the editorial board does not agree to the form of the advert, but offers another solution. Therefore, the next level of decision-making: what is the hidden advertising about, how will it be published? Media executives try to make it less obtrusive, which is also in favour of the client, but the client also expects the content to include clear references to the product, company's name. Sometimes the advertisers want to include their opinion (for example, in economic or financial news), but the editorial rejects that, offering the representative to be one of the sources because there is the need for diversity of opinions. Many advertising clients like that the medium reflects various events that are important to the company or its management, thus increasing their publicity. Within this research, these are the so-called "pseudo-events" because they do not contain value of the news.

A Russian TV channel news department representative: "Clients really like hidden advertising interviews. We ask the right question, we get the right answer. Evening news is especially worthy. And, of course, clients like that we reflect their tours, meeting, events."[6]

Although media professionals emphasize that each company has a unique attitude towards hidden advertising, the interviews, however, show that forms and formats of hidden advertising, its content, independent of field, are very similar. Predominantly, hidden messages are included in news, interviews, journal broadcasts. Yet hidden advertising materials reflect personalities (politicians or CEOs, specialists), events, services and products that are important to business or political organizations.

Advertising industry representatives believe that, in Latvia, there are very few media organizations where one cannot include hidden advertising on behalf of its client. Hidden political advertising cannot be included into press content that are ideologically or financially linked to some party interests, yet hidden commercial advertising can be negotiated into any medium's content. The process and management of HA publishing is lead by the unwritten rules, it is rather easy and understandable for the all participants of media business in Latvia.

Ways of appearance of hidden advertising

It is quite often that hidden advertising is included into content together with paid advertising. For example, a client is ready to invest a certain sum of money into a medium and is also asking extra advantages in connection with commercially or politically biased information to be included into the medium's content – broadcasts, programmes, news, and features. Clients are usually represented by media agency specialists. If the medium rejects such a service (an inclusion of additional information into content – ed.), the client can argue that other medium's competitors agree to this deal, or even refuse the whole collaboration. This means that part of the media, by refusing hidden advertising, lose part of advertising revenues that are vitally important to them. Therefore, media managers accept that a large advertiser includes advantageous information into its editorial content.

A publishing house CEO:

"If a certain amount of advertising is placed, we surely try to examine the client's problem, the issues of the field that is represented by him. It means that the content of our media is dependent of our largest advertisers' interests."

Trying to find an answer to the question what the facilitating factors for hidden advertising are and the driving forces in the media environment, it turned out that an offer to develop HA comes both from advertising agencies and advertising specialists that work for media enterprises. Actually, media advertising departments address producers and editors with an invitation to think of which parts of content and in what way could such information appear which could be paid by the client. Editorial staff usually expresses the most negative attitude towards HA, yet some production companies, nonetheless, offer such forms of collaboration. In very many cases, editors unsuccessfully battle against the tasks that are enforced on them to create and incorporated hidden advertising into editorial content.

[6] Particular interview was conducted by Tatjana Hanova.

An editor-in-chief for a Russian-language newspaper tells:

"Why we publish this kind of information? It is friendship, party relationships or money. In one word – a personal interest. Friendship and money are the two main factors. There are influential people whom we cannot refuse. And there are people who simply pay good money."[7]

Media representatives, editors and advertising executives emphasize that the wish to include biased information into editorial content is still on the rise. In such cases advertising specialists consult with editors and producers so that "the content needed by the advertiser looks harmonic, that it naturally fits the broadcast or the section." The advertising professionals of media organizations even demonstrated the feeling of pride that their company is able "to sell" the bigger part of rubrics of formats controlled by editorial board.

Media editors emphasize the fact that it is impossible to reject such requests by the colleagues from the advertising department, or they reject them very rarely because such a rejection can influence the staff member's further career, independently of whether the rejection is expressed by an editor, a presenter or a journalist. It means that all levels of media staff, from executives to journalists, are involved in production of hidden advertising. Media executives confirm that the inclusion of hidden advertising is strictly controlled, institutionalized, secured by contracts and pay checks; media are more likely to try to control that the advertising does not appear without formal acceptance of media executives, rather than control appearance as such of hidden advertising.

Producers of hidden advertising

All the content of hidden advertising is developed, created and finalised by journalists, editors and producers. It means that media's creative personnel fulfil tasks that are absolutely foreign to their profession, so losing the principles of independence and objectivity. As told by journalists and editors, they are not able to refuse such tasks and duties if the advertising department has made a contract with the advertiser because, in such cases, journalists are confronted by such important questions as further salary, chances of receiving salary, responsibility for the future of one's own employment. Basically, media executives force consequences upon advertising and editorial staff of their own illegal and in long-term destructive decisions.

In practise, advertising departments offer the advertiser or its representative (media agency) sections and formats into which HA could be integrated. Usually those are journal type featured programmes on radio or television, also entertainment programmes; in press, these are mostly various editorial sections. Usually journalists receive a larger payment for producing HA than their usual salary; however, in some media organizations this practise is not valued higher.

Editorial boards believe that for the production of HA materials there should be employed a special member of staff. If the editorial board already employs journalists that can create features and interviews, in that case no other employees are needed, even if there is the need for hidden advertising. Editorial management accepts that journalists create content that is beneficial for their advertisers.

Payment for hidden advertising usually takes place in two ways:

1) in most media there are no specially created costs for HA; the costs, therefore, are not reflected in documents;
2) some media offer HA formats that are registered as collaborative features, sections, unconventional advertising spaces, bonuses for the placement of traditional advertising, as well as other titles.

On the one hand, in the interviews with editors, discontent was frequently expressed about such situation; on the other hand, journalists and editors realize that they risk their employment if they refuse such tasks, even if the tasks are not included in their employment obligations and contracts.

An editor-in-chief of a large Latvian daily newspaper:

"I very rarely refuse. In such cases I immediately receive a question: whether I want to receive the salary. We have large advertisers that are never refused, it is impossible. I rather try to make sure that

[7] Particular interview was conducted by Tatjana Hanova.

the editorial reputation is not damaged, because I am embarrassed by these projects. For example, journalists are allowed not to sign news that is about some silly events that are important just for some companies."

A representative of a Russian-language newspaper adds:

"In theory, I can refuse to produce it (hidden advertising – ed.), but...no one ever wants to risk their job, especially in the time of the crisis. I am not an exception. And what if I refuse to do it? Tomorrow another person comes and does the job instead of me. At this moment, our young journalists do not bother themselves with moral principles. They follow the orders of the management with a special diligence. We have journalists on our board who are able to present hidden advertising specifically covered. It is a talent of some sort."[8]

The editorial boards do not usually hold debates about questions of hidden advertising production. Editors give journalists the task which is not further explained in detail. The production of hidden advertising has gradually become a routine job in many editorials. Although journalists realize that the production of hidden advertising degrades their profession, they rarely refuse these duties that are not on their professional list. It is a sort of silent agreement that involves the highest editorial management, advertising departments, editors, journalists. Basically, the decisions and agreements that are made by advertising specialists about the inclusion of hidden advertising are implemented by editors and journalists. Promises made by advertising professionals become a responsibility of editorial staff.

Editors' decision to accept hidden advertising is influenced by a notion of loyalty that does not allow one to disobey the pressure from a higher-standing manager (a director, a chairman of the board). Sometimes media editors justify their actions by the idea that hidden advertising is only rarely produced and cannot negatively influence the whole content. Therefore, short-term benefits overshadow editors' doubts about the possible loss of audience's trust. Nevertheless, these ways are pierced through by doubts, negative attitude towards HA, and reluctant acceptance of management's pressure. Paradoxically, yet media managers blame editors for diminishing rates of sales or broadcasting ratings, and overall amount of audience, believing that the reason for these is a poor quality of such content.

Media representatives' opinions vary whether their audiences recognize HA. Representatives of newspapers admit that hidden advertising is easily recognizable and that the audience is used to that; however, other respondents believe that masterfully created HA is not easily recognized.

Although almost all of the interviewed media professionals admit that hidden advertising makes media content one-dimensional and tendentious, at the same time, they agree that in majority of cases their audience is able to recognize hidden advertising. To justify its usage, media content managers are convinced that the audience, although informed about hidden message, views it negatively and, mainly, receives its presence indifferently. Audience does not react to HA; therefore, editorial staff, on the one hand, cares for responsibility in forming public opinion, yet accepts that this principle is not fully destroyed by temporary deviation from its compliance. Latvian media content and editorial culture show a strangely natural combination of media professional principles, defined by liberal theory [McQuail, 2005: 175], and simultaneous lapse from them.

The undefined audience's attitude does not force most of media managers (except public broadcasters) to give up HA, but create such formats that would be harder to recognize, that is, to involve in creation of such advertising the best and the most trustful professionals to masterfully hide it within media content.

Hidden advertising and the development of media culture

The history of hidden advertising in Latvia began right after regaining independence in the beginning of 1990's. All the interviewed media executives emphasized that HA techniques originated in the beginning of 1990's when media market was dominated by a chaotic understanding of professional

[8] Particular interview was conducted by Tatjana Hanova.

principles; this business was joined by people with no education, who tried to earn money in a short period of time, offering media various HA solutions (as representatives of advertisers), or offering the very advertisers possibilities of publishing beneficial information for a certain payment (as member of editorials). This marked the beginning of journalist involvement in production of advertising, paid interviews and features. This practice was typical of weak media (from a market point of view); however, due to the dishonest conduct of some media people, HA for some time appeared in other media too, including public media content. The basis for hidden advertising to exist is in their supporters' belief that beneficial messages in an editorial content, which is trusted by the audience, will seem more faithful and, therefore, more effective.

After Latvia joined the European Union in 2004, which coincided with the economic boom, the cases of HA became rarer because advertising and media market regulated itself; it became systematically controlled, making it harder to receive payments for hidden advertising. The level of education and understanding among media practitioners also improved, which created a common conclusion that HA deforms media business. Nevertheless, parallel to all this, there were still media organizations that believed in publishing of hidden material to be part of normal media existence, despising colleagues who did not support this type of business. Consequently, after 2000 hidden advertising was no more a realm of dishonest or poorly educated lower personnel (that was also a way to cheat one's employers): hidden advertising was accepted and used by all media executives. At the same time media market became more stable; the strongest players were no longer trying to please the demands of large advertisers to covertly include biased information in their editorial content. Also previously conducted studies of possibly hidden political advertising in pre-election time showed an increasing tendency for the hidden advertising to go down in amount between 2002 and 2006.

By gathering the information granted by media professionals, it is possible to define four periods of hidden advertising.

1. From 1991 until 1997, when hidden advertising mainly existed as an agreement between individual journalists, producers and editors with an advertiser that included a deal in cash that left out media management or owners. However, this was the period when paid interviews and features were also produced with an acceptance by editorial management. At the same time, tupe of hidden advertising developed that was incorporated into media content by independent production companies because their costs system encouraged not only media content production, but also look for advertisers who could cover production expenses.
2. From 1998 until 2004, information about hidden advertisement in Latvian media content and its negative impact publicly appears; time before elections sees several studies conducted on HA, which shows a large amount of hidden political advertising in media content. During the period, media executives review their attitude towards hidden advertising; some managers tried to clear their medium from hidden advertising. Advertisers also began to respect these strategies; advertising industry saw the influence of knowledge and work principles from international ad agencies, which reduced a demand for hidden advertising. At the same time, new media organization came into Latvian media market, whose managers developed hidden commercial advertising, making it a normal practice and institutionalizing it. In this period, hidden adverts were mainly realized as advertising articles and interviews; incorporation of advertiser's representative into entertainment formats, e.g., advertiser's appointed people received publicity by performing in cookery, various hobby or gardening shows. This is when hidden political advertising had widely spread; it was also facilitated by weak legal legislation that did not limit party spending before elections. These processes provoked debates about corrupt journalism and undermined society's trust in media, at the same time showing that journalists do not have unified professional principles and norms of ethics.
3. From 2004 until 2007, the proportion of hidden advertising in influential and market-wise stable media reduced. Some media organizations were restructured into business units; they began to pay all taxes, created legally grounded relationships with their partners, developed

business in other countries, and partially adopted internationally recognized business management norms. However, at the same time, there were media organizations that saw in hidden advertising almost the only way to attract advertising money.

4. From 2008 until 2010, economic recession caused the advertising market to collapse, due to which an amount of hidden advertising increased in all media. When the amount of money invested in advertising by businesses, which was the main basis for the industry, went drastically down, media organizations began to look for any ways to earn. Hidden advertising was offered as a solution. As the result, even those media that used to avoid hidden advertising began to offer such services because, in comparison to their competitors, they did not want to end up in less privileged situation when the media market was weak. In this, as well as previous periods, the reason for such advertising to develop was a connection between several media organizations and political forces, especially if these forces are linked to the owner of media organizations.

By analysing the information gathered during the interviews, one can detect several contradictory practices in connection with hidden advertising evaluation:

- One of them defends traditional editorial independence, classic principles of journalism, attempts to avoid influence on content, and legal obligations in respect to advertising; at the same time, media organizations create their own internal hidden advertising control system in order to free media content from any forms of hidden advertising (including, for example, politicians that participate in commercial clips).
- The second practice allows certain compromises that rarely can create suspicion about hidden advertising in media content; sometimes it is linked to coincidence, lack of control, dishonest conduct of particular staff members or lack of journalistic quality.
- The third practice is consciously directed towards regular and planned inclusion of hidden advertising into media content, seeking more new forms of integrating hidden advertising; an essential medium's goal is to find any ways to incorporate advertiser-biased information into media content, disregarding legality of this practice, ethics, or trying to find any legal way of doing this. Media executives who support such actions regard them as the only way to stay in market and compete.

Before it reaches the audience, presence of HA has been agreed upon by all the participants: politicians or company representatives, media editors, journalists, developers and sellers. Only the audience has not agreed to that, but by the wave of hidden advertising one can tell that it also has accepted it. Media users recognise hidden advertising, but its presence does not make them ignore the whole medium if the rest of its content is attractive. This reduces the level of media responsibility [McQuail, 2005] and quality of journalism.

Nevertheless, in most parts of media, hidden advertising, in comparison to other types of advertising, is considerably cheaper. Therefore, during the years of economic crisis (2008–2010), it becomes more attractive from a point of view of advertisers. Economic recession has changed an attitude towards hidden advertising both in the eyes of clients and advertising agencies: both parties have become more open to these services because it allows saving money.

Judging by the media professionals' attitude towards hidden advertising, one must admit that the number of media that follow honest media practice and avoid integrating hidden advertising in editorial content is only decreasing.

Therefore, the constant presence of hidden advertising in Latvian media content is influenced, on the one hand, by media profit drive and advertisers' wish to integrate their messages into editorial content, and, on the other hand, the practice of hidden advertising is not condemned by the public, therefore, there is no encouragement to give it up.

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Ethnic Minorities in the Political Elite: Myths and Reality, Past and Future of Latvia

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Abstract

The basic postulate of a democratic state administration system is power of the people, or the rights of any member of civil society to participate in the administration of the state. Under Article 64 of Satversme – the Constitution of Latvia, the people delegate legislative power to the Saeima, through the electoral process. The Saeima exerts this delegated power of collective representation and is an institutional representation of the people.

The aim of the study is to determine whether the Saeima of the Republic of Latvia (further in the text referred to as LR), during its terms from 1922–1934 and from 1993–2010 was a true all people's representative institution – were there represented all the ethnic groups within the society of Latvia, as well as how proportional the representation of these groups was.

Focusing on the exploration of ethnic minority representation in the Parliament of Latvia, it should be emphasized that this problem must be examined in two parallels – the supply (willingness of ethnic minorities to participate in the political process and to display the necessary political activity) and demand (consciousness and self-positioning, interest in supporting the minority political forces, openness of political elite and interest in recruiting ethnic spectrum proportional to the society).

Comparing the two time periods (1920–1935 / 1993–2010), it is possible to conclude that the discrepancy between the proportional representation of minorities in the society and parliament was relatively more considerable during the period following the restoration of Latvian independence.

Keywords: ethnic minorities, participation, representation, political elite, society.

Introduction

The basic postulate of a democratic state administration system is power of the people, or the rights of any member of civil society to participate in the administration of the state. In representative democracy of the modern world, the rights of public administration are exercised by elected representatives – the parliament. Under Article 64 of Satversme – the Constitution of Latvia, the people delegate legislative power to the Saeima, through the electoral process. The Saeima exerts this delegated power of collective representation and is an institutional representation of the people [Law ""Constitution of the Republic of Latvia", 1922].

Latvia is a multi-ethnic society. The Latvian nation formed over the centuries, and the communities of Baltic Germans, Russians, Jews, Poles, Estonians and Lithuanians coexisted. A multicultural environment developed in the largest cities, especially in Riga. Although economic and social differences among the nations living here existed, they never grew into ethnic conflicts [Ministry of Foreign Affairs of the Republic of Latvia, 2010].

In the 30-ties of the 20th century national minorities constituted a quarter of the population in Latvia. LR guaranteed cultural autonomy to national minorities. A number of ethnic groups were represented in the Saeima by the members of national parties. National minorities made active use of the granted opportunities to establish national schools, associations, organizations, cultural institutions, to issue the press in their native languages. Out of all European countries, only Latvia and Estonia financed national minority education in their native language by public funds [Ministry of Foreign Affairs of the Republic of Latvia, 2010].

After the World War II, 1.5 million people from different regions of the Soviet Union entered the territory of Latvia both voluntary and by compulsion as a result of the policy pursued by the Soviet Union. Approximately half of those immigrants settled in Latvia. This brought about substantial changes in the ethnic situation. In 1989, the number of Latvians dropped to 52% (compared to 1935 when Latvians constituted 77% of the population) [Ministry of Foreign Affairs of the Republic of Latvia, 2010].

Since the regaining of Latvian independence in 1991, the integration policy has been one of the leading issues of domestic as well foreign policy, particularly in relations with Russia. Fifty years of the Soviet rule have left a strong impact on the social, demographic and economic development of Latvia. With the regain of Latvian independence, the rights of people belonging to minorities were restored, and the process of the USSR time immigrants' naturalization and integration into the society of Latvia was started [Ministry of Foreign Affairs of the Republic of Latvia, 2010].

Societal integration issues were brought to the forefront of the Latvian government priorities. However, their implementation in practice had been problematic.

The aim

The aim of the study is to determine whether the Saeima of the Republic of Latvia (further in the text referred to as LR) during its terms from 1922–1934 and from 1993–2010 was a true all people's representative institution, either there were represented all the ethnic groups within the society of Latvia, as well as how proportional the representation of these groups was.

Material and methods

Focusing on the exploration of ethnic minority representation in the Parliament of Latvia, it should be emphasized that this problem must be examined in two parallels – the supply and demand dimensions [Norris, 1995]. In the context of offer, it is necessary to look at the matters related to the willingness of ethnic minorities to participate in the political process and to display the necessary political activity – to establish political parties, to vote and actively participate in the work of the parliament. By contrast, in the context of demand, two blocks of issues have to be examined: (1) the consciousness and self-positioning of a minority as a group, as well as interest in supporting the political forces which represent the group; (2) in case the representatives of ethnic minority groups do not form their own political parties or such parties do not gain the support of minority diasporas, attention should be paid to the openness of political elite and interest in recruiting ethnic spectrum proportional to the ethnic composition of the society.

Results and discussion

With the foundation of the Latvian state in 1918, national minorities took an active part in formation administrative institutions at national and regional levels. Political parties of ethnic minorities were founded, and they formed their factions in the central legislative body – the parliament as well as in local governments. During this time period, the major (average indicators) ethnic minority groups, according to the statistics, were the Russians (9.4%), the Jews (5%), Germans (3.6%), the Poles (3%), followed by Belarusians, Lithuanians and Estonians. Table 1 shows the ethnic structure of Latvian society during the period from1920 to1935.

All the major ethnic minorities had their own parties, and all of them were represented in the Parliaments. National minorities had 15 seats in the First and the Second Saeima, they won 18 seats

in the Third Saeima. In 1928, there were 32 Latvian, 15 German, nine Jewish, five Russian and one Polish active political parties in Latvia [Societies in Latvia, 1992]. However, it should be noted that during none of the parliamentary terms minority parties worked as a united block, despite several attempts to create it.

The largest minority in the period from 1920 to 1934 were Russians, but not always, this proportion had been reflected in the party system – Russian minority had never gained proportional representation (Russian party was represented by three members in the First Saeima; by five in the Second Saeima, and 6 members in the Third Saeima). There were considerable differences in social and religious views among Russian parties, as well as low levels of active citizenship.

German minority was the best organized (despite the fact that there were registered 15 German parties in 1928), it stood already for the First Saeima in a single list – the Baltic German Party, which advocated interests of various German minority groups. The votes casted for this party exceeded in number the proportion of German ethnicity in Latvia. In general, German parties were economically right-wing oriented [Mednis, Antonevics, 2001].

The Jewish minority was represented in the parliament, on average, by five parties, all of them were Latvian branches of international Jewish parties, and their programmes also reflected the specific interests of the local Jewish minority. All the Jewish parties elected to the parliament sought to operate as a single block, emphasizing the common goal – the protection of Jewish minority interests [Mednis, Antonevics, 2001].

As it can be inferred from the analysis of statistical data visually presented in Figure 1, at the given time period, the total proportion of different ethnic minorities constituted, approximately, 25% of all residents of Latvia, which suggests that there was a proportional correlation between the average percentage of minorities and their representation in the political forces – parties.

However, if we analyse the results of the elections and the number of minority representatives elected to the Parliament, as it is given in Table 2, then it is seen obviously that the above mentioned proportion is no longer observed.

Approximately 15% of all Saeima members belonged to ethnic minorities, thus a proportional representation of ethnic minorities was not provided in the parliament of Latvia. Several reasons can be distinguished for this phenomenon:

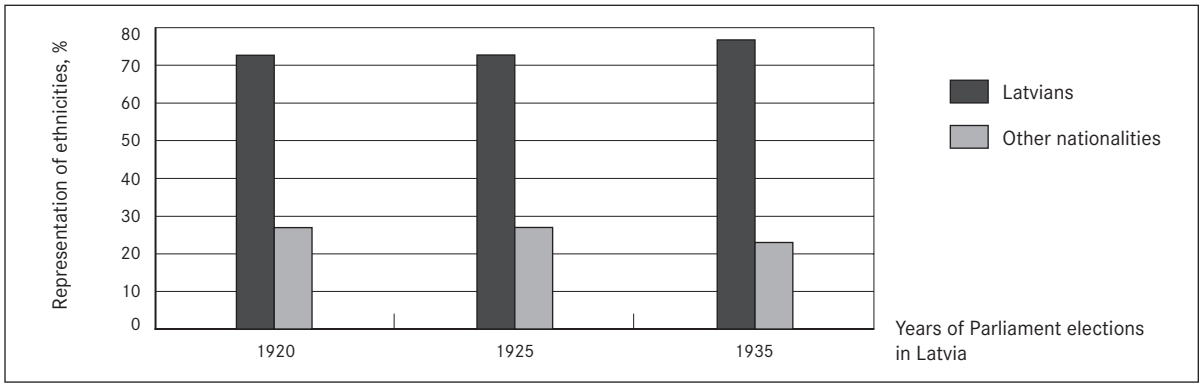
- the members of minorities were relatively less active in the electoral process, this was particularly characteristic of Russian and Belarusian minorities;
- part of minority representatives, particularly Lithuanians and Estonians, voted for Latvian parties, as well as part of Russian minority voted for the candidates of the Latvian Social Democratic Workers' Party;
- conservatively oriented Russians and Latvians voted for the Baltic German parties;
- in this context, the Jewish minority should be mentioned, as a special exception, because its members (almost all) voted for their minority parties [Dribins, 2001].

Table 1. Ethnic composition of the population (1920–1935)*

Ethnic groups	1920	1925	1930	1935
Latvians	72.8%	73.4%	73.4%	77.0%
Russians	7.8%	10.5%	10.6%	8.8%
Belorussians	4.7%	2.1%	1.9%	1.4%
Ukrainians	*No data*	*No data*	*No data*	0.1%
Poles	3.4%	2.8%	3.1%	2.6%
Lithuanians	1.6%	1.3%	1.4%	1.2%
Jews	5.0%	5.2%	5.0%	4.9%
Gipsies	*No data*	*No data*	*No data*	0.2%
Germans	3.6%	3.9%	3.7%	3.3%
Estonians	0.6%	0.4%	0.4%	0.4%
Other nationalities	0.5%	0.4%	0.5%	0.2%

* Source: Set by authors [Dribins, 2001; Office of citizenship and migration affairs, 2011]

Figure 1. Proportional representation of the basic ethnicity and ethnic minorities in the society of Latvia (1920–1935)*



* Source: Set by authors [Dribins, 2001; Office of citizenship and migration affairs, 2011]

Table 2. National composition of the Saeima (1922–1934)*

Ethnic groups	1st Saeima (1922–1925)	2nd Saeima (1925–1928)	3rd Saeima (1928–1931)	4th Saeima (1931–1934)
Latvians	84	84	80	83
Poles	2	2	2	2
Russians	4	4	7	6
Lithuanians	–	–	–	–
Jews	0	0	5	3
Germans	6	5	6	6
Karelians	–	–	–	–
Nationality not given	4	5	–	–

* Source: Set by authors [Statistic Database, 2010a]

However, despite the disproportionate support of the minority groups, the representatives of elected parties actively defended the interests of their communities, forming a constructive centrist or right-wing oriented opposition to ethnic majority – the representatives of Latvians. The fact that in 1926, the leader of Jewish Zionist party *Mizrahi* Mordechai (Markus) Nurones, and in 1927 the leader of German joint fraction Paul Shiman were nominated candidates for the position of Prime Minister is evident of not mere existence in the Saeima but successful cooperation and the ability to influence political processes. Moreover, in 1928 Baltic German Edwin Magnus became the Minister of Justice; he was subsequently succeeded by another member of Baltic German descent – Balduin Disterlo. Minority groups also had their own parliamentary representatives in the Presidium of Saeima. In many cases, the vote of ethnic minority members in the Saeima was crucial to which Latvian party or bloc would win the majority of votes. The common goal – to build and develop a democratic state and civil society – served as the basis for this cooperation. During this period, right-wing or centrist ideological orientation was characteristic of minority parties [Dribins, 2001].

Local governments also had a multi-ethnic composition; in 1922, out of 726 members of local governments 67 were Jews, 60 Germans and 22 represented other ethnic minorities [Dribins, 2001].

However, it should be noted that not at all times there was a consensus and harmony between the representatives of the basic ethnicity and the minority groups in the political elite. For example, in 1920, the block of German and Jewish political parties put forward a demand to allow the official use of the German language in local government institutions and to permit people with poor command of the Latvian language to work there. The government of Latvia rejected this demand categorically and actively implemented the strengthening of the national position of the Latvian language.

As a result, the statistical data allow to draw the conclusion that the influence of minority parties during the time period from 1918 to 1934 tended to increase. While 10.3% of all voters supported them at the Saeima Assembly elections, more than 18% of voters opted for them in the election for the 3rd Saeima [Dribins, 2001].

The involvement of each ethnic group in state administration processes contributed to the group's sense of belonging and loyalty to the state of Latvia, thus creating a united nation of the state.

The analysis of the situation demonstrates that during the time period under consideration, both the supply and demand provisions for proportional representation of ethnic minorities in the parliament of Latvia were implemented successfully. Minorities actively participated in the political processes and displayed their political activity – founded political parties, took part in elections and become involved in the work of the parliament. Group consciousness and self-positioning of the major ethnic minorities as well as interest in supporting the political forces representing the concerns of their group could be observed.

The process of integration which was begun successfully was interrupted by WW II and the occupation of Latvia, when partial destruction of ethnic minorities took place in Latvia: repatriation of Baltic Germans, physical destruction of Jews and Gypsies/Roma, disposal of ethnic minority cultural and educational basis, intensive Russification policy were the factors which affected most, ethnic minorities in particular. As it is indicated by the census results of 1989, among ethnic minorities living in Latvia, their mother tongue was spoken by only 22.5% of Jews, 27.1% of Poles, 32.2% of Belarusians, 34% of Germans, 45.9% of Ukrainians, 50.3% of Estonians and 63.9% of Lithuanians. The Latvian language skills were also partly lost [Dribins, 2001].

The main cause of such situation is a considerable influx of immigrants from other republics of the Union of Soviet Socialist Republics (further in the text – the USSR), thus significantly altering the ethnic composition of the population of Latvia. In 1990, the ethnic composition of the society in Latvia demonstrates that only 16% of members of ethnic minorities were the persons who belonged to the historical ethnic minorities, while 32% were persons who had emigrated from the territory of the USSR [Dribins, 2001].

With the restoration of the state independence, Latvia was interested in the reconstruction of historical ethnic minorities, as well as the inclusion of loyal post-war immigrants into their spheres of influence. Between 1988–1991, historic cultural societies and associations of ethnic minorities were restored, (in 1988, the Association of Latvian National Culture Societies was established with substantial input from Ita Kozakevic, Romulad Razuk, Ruta Marjash, Refat Cubarov, etc.), minority culture base was re-built anew [Dribins, 2001]. The Constitution of the Republic of Latvia has secured the basic principle that people from ethnic minorities, have the right to preserve and develop their language, ethnic and cultural identity [Law "Constitution of the Republic of Latvia", 1922]. In 1991, the Supreme Council of Latvia passed the law "On the Unrestricted Development and Right to Cultural Autonomy of Nationalities and Ethnic Groups in Latvia" which renewed and expanded the field of the rights of ethnic minorities in Latvia, extending it to all aliens [Law "On Latvian national and ethnic groups free development and rights to cultural autonomy", 1991]. The provisions of afore mentioned law stipulate that state institutions of the Republic of Latvia shall promote the creation of material conditions for education, language and cultural development of national and ethnic groups living in the territory of Latvia and provide certain funds in the state budget.

During this time period, the major (average indicators) ethnic minority groups, according to the statistics, were Russians (30%), Belarusians (4%), Ukrainians (3%), Poles (2.5%), followed by Lithuanians, Jews and Gypsies. Table 3 provides the ethnic composition of the society of Latvia between 1989–2010.

However, the biggest part of immigrants and at the same time the members of the major ethnic minorities (Russians, Belarusians, Ukrainians) – the individuals who being under the influence of Communist ideology, were not willing to join minority communities, but to create an autonomous Russian-speaking community. Several Russian-language newspapers published in Latvia became the driving force of the common idea; they called for Russian speaking part of the population to stand in opposition to Latvia as a national state and to demand foundation of a multi-national state [Dribins, 2001].

Table 3. Ethnic composition of the population (1989–2010)*

Ethnic groups	1989	2000	2010
Latvians	52.1%	57.7%	59.5%
Russians	34.0%	29.6%	27.5%
Belorussians	4.5%	4.0%	3.5%
Ukrainians	3.4%	2.7%	2.6%
Poles	2.5%	2.5%	2.3%
Lithuanians	1.3%	1.4%	1.1%
Jews	0.9%	0.4%	0.4%
Gipsies	0.3%	0.3%	0.4%
Germans	0.1%	0.1%	0.2%
Estonians	0.1%	0.1%	0.1%
Other nationalities	1.0%	1.1%	2.2%

* Source: Set by authors [Office of citizenship and migration affairs, 2011]

Nonetheless, despite the differences in political views, politically active people in Latvia who belonged to ethnic minorities did not try to found their own national political parties, giving preference to political parties and unions of national level. There were the following main reasons for the lack of activity:

- a considerable number of non-citizens among aliens – absence of citizenship prevented these people from voting, and, as a consequence, there was no necessity to found parties which would protect the interests of minority groups, as the parties could not win the support of these groups and be elected to the Parliament;
- a little number of members from ethnic minorities – aliens, new-citizens, non-citizens – had been recruited by major political parties [Mednis, Antonevics, 2001].

Looking at the parties' lists of candidates for the elections of the 10th Saeima, it is apparent that the lists of major, centrist and right-wing parties actually do not include members of ethnic minorities. For example, on the list of the association of political parties *Unity* ethnic minorities are represented by one Lebanese, one Lithuanian and one Liv; the *Greens and Farmers Union's* list includes one Pole; the list of the party association *For Good Latvia* contains eight Russians, two Poles, one Armenian and one Lithuanian; National Association of *All For Latvia and For Fatherland and Freedom / LNNK's* list comprises one Pole. A slightly wider range of minorities is included in the left-oriented party's *Concorde Centre* list – 28 Russians and one representative of Estonian, Karelian, Ukrainian and German minorities [The Central Election Commission of Latvia, 2010].

During the time period from 1993–2010, several minority parties – the *Russian Party* as well as the *Russian Citizens' Party* can be mentioned as individual examples. However, the party representatives were elected neither to the national nor local governmental institutions and these parties did not have a significant political influence. It is also possible to identify a number of parties, which did not position themselves as the advocates of minority interests, although a significant part of their members were representatives of minorities, mostly Russians, and the protection of non-citizens' and aliens' rights was brought forward as the key objective of their programmes [Mednis, Antonevics, 2001]. And here the political organization *For Human Rights In the United Latvia* which lists of candidates for the elections of the 10th Saeima, comprises 43 Russians, four Jews, three Belarusians and one representative from Polish, Ukrainian, Uzbek and Armenian minorities, can be mentioned as one of the examples [The Central Election Commission of Latvia, 2010].

Summary and analysis of the 5th–10th Saeima members' affiliation to ethnic minorities allow to draw a conclusion that in the Fifth Saeima there were eight members of ethnic minorities; 14 representatives of minorities were elected in the 7th Saeima, 16 in the 8th, 18 in the 9th, and 15 in the 10th Saeima. The proportional distribution of all ethnic minorities is reflected in Table 4.

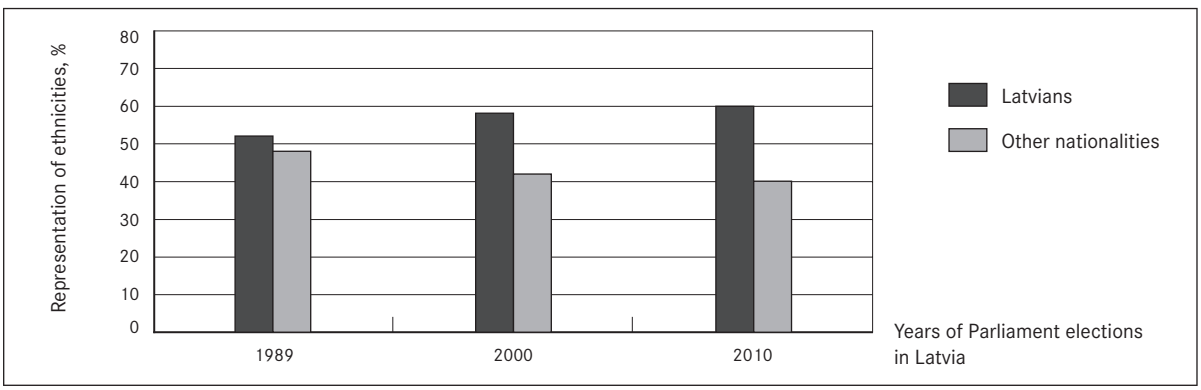
As it can be concluded from the analysis of statistical data presented in Figure 2, during the given time period, the total proportion of various minorities accounted for approximately 44% of all residents of Latvia. Whereas the analysis of the results of the elections and the number of minority representatives elected to the Saeima given in Table 4 indicate that ethnic minorities constituted, on average, 21% of all members of the Saeima, thus not providing adequately proportionate representation of the minorities constituting the society of Latvia in the Parliament.

Absolute majority of the minority candidates who were elected to the Parliament of Latvia belonged to Russian ethnic minority; Polish and German minorities had comparatively much smaller representation (which held a significant position during the period from 1920 to 1935. Belarusian, Ukrainian and Lithuanian ethnic minorities, which currently are a part of the ethnic composition of the society of Latvia, were not represented in the Saeima.

The situation during the surveyed time period (1993–2010) showed that the representation of ethnic minorities in the Parliament of Latvia was not proportionate to the ethnic composition of the society as a whole. The problems could be observed in both the supply and demand dimensions. The minority groups did not display political activity and readiness to participate in the political process – to found political parties, take part in elections and actively engage in the work of the Parliament. At the same time, lack of minority group consciousness and self-positioning and absence of interest in supporting the political forces representing their group could be observed.

The statistical data show that the discrepancy between the proportional representation of minorities in the society and parliament was relatively more considerable during the period following the restoration of the independence of Latvia. The visual representation of the dynamics of these problems is given in Figure 3.

Figure 2. Proportional representation of the basic ethnicity and the ethnic minorities in the society of Latvia*



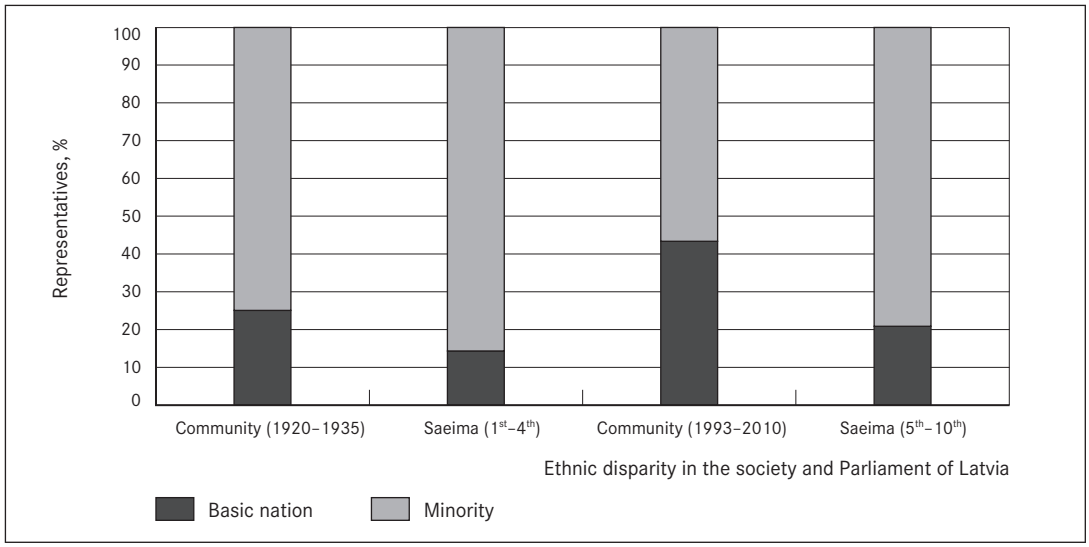
* Source: Set by authors [Office of citizenship and migration affairs, 2011]

Table 4. Ethnic composition of the Saeima (1993–2010)*

Ethnic groups	5th Saeima (1993–1998)	6th Saeima (1995–1998)	7th Saeima (1998–2002)	8th Saeima (2002–2006)	9th Saeima (2006–2010)	10th Saeima (2010–now)
Latvians	88	No data	84	79	78	76
Poles	1	No data	3	1	–	–
Russians	6	No data	10	14	15	13
Lithuanians	–	No data	1	–	–	–
Jews	–	No data	–	–	1	–
Germans	1	No data	–	–	1	1
Karelians	–	No data	–	1	1	1
Nationality not given	4	No data	2	5	4	9

* Source: Set by authors [Statistics Database. 2010a; Statistics Database. 2010b]

Figure 3. Proportional representation of the basic ethnicity and minorities in the society and parliament of the Republic of Latvia*



* Source: Set by authors [Statistics Database, 2010a; Statistics Database, 2010b]

Conclusions

Comparing the two time periods (1920–1935/1993–2010), it is possible to conclude that:

During the period from 1920–1935, the basic ethnicity – Latvians accounted for, an average, of 75% of the ethnic structure, but the main minority groups were Russians (9.4%), Jews (5%), Germans (3.6%) and Poles (3%), whereas during the period from 1993–2010, Latvians constituted, an average, of 56% of the ethnic structure, and the main minority groups were Russians (30%), Belarusians (4%), Ukrainians (3%), Poles (2.5%).

These figures are indicative of a substantial increase in Russian minority, remaining of the Polish minority in approximately similar positions, with the Jewish and German minorities being superseded by Belarusians and Ukrainians and maintaining approximately similar proportions.

During the period from 1920–1935, the political parties representing all major minority groups – Germans, Jews, Russians, Poles were active, whereas, during the period from 1993–2010, it is possible to identify only particular political parties where membership is dominated by representatives of Russian minority.

During the time period from 1920 to 1935, ethnic minorities accounted for 25% of the ethnic composition of the entire population in Latvia, and 15% of ethnic composition of the Saeima; whereas during the period from 1993 to 2010, ethnic minorities constituted 44% of ethnic composition of the entire population of Latvia, and 21% of the ethnic composition of the Saeima.

The statistical data show that the discrepancy between the proportional representation of minorities in the society and parliament was relatively more considerable during the period following the restoration of the independence of the country.

In this case, openness and interest of the political elite (the members of major political parties) in ethnic spectrum proportional to the ethnic structure of the society would serve as a tool for/of assurance of ethnic representatives in the parliament. However, as it is indicated by statistics, such trend is not observed.

Despite the fact that on December 22, 2008, the President Valdis Zatlers restored the Minorities Consulting Council with the aim to facilitate the dialogue on national minority ethnic, cultural, linguistic and religious identity issues and to provide support to the promotion of socio-political participation of ethnic minorities; up till now, significant improvement in proportional correlation values of minority representation (between the public and the parliament) has not been observed [Ministry of Foreign Affairs of the Republic of Latvia, 2010].

This situation negatively affects the societal integration – inter-ethnic understanding and cooperation within the framework of a common state, thus hindering the formation of a united, democratic civil society based on common fundamental values among which an independent and democratic state of Latvia is the most important.

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4. Mednis I., Antonevics M. Latvian political parties // Latvia in two periods: 1919–1928 and 1991–2001 / Zile L. (ed.) – Riga: Latvian History Fund, 2001. – Pp. 283–284, 302–303.
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10. Statistics Database. 2010b. Election results of the 10th Saeima (parliament) of Latvia by sex, age, ethnicity and family status [Last modified November 10th] // http://data.csb.gov.lv/Dialog/Saveshow.asp
11. The Central Election Commission of Latvia. 10th Saeima elections (02.10.2010). Candidate lists and statistics. Last modified May 21st // http://www.cvk.lv/cgi-bin/wdbcgiw/base/komisijas2010.cvkand10.sak

Genesis of Information Society Law

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Abstract

Information society is a new phase of development of the society. Information society has been defined as knowledge society. This is a key word also for lawyers, because nowadays the work of lawyers is unimaginable without use of information technologies.

According to Recommendation (92) 15 of the Council of Europe[1]: the Council encourages Member States to support the introduction and further development at university level of teaching and training programmes in the field of law and information technology.

In this article, the author highlights several issues related to the setup of legal framework of the information society doctrine, how this legal framework would be implemented into law science and included into curricula of lawyers' education.

Keywords: information society, information society doctrine, ICT, knowledge, law science.

Lawyer and technology

In modern legal literature, one out of two scientific articles starts with the words having the following meaning: "Nowadays, demand for information has considerably changed the society. These changes have led us to the information age that is no doubt influenced by globalization processes in the world, which is *inter alia* facilitated by the rapid development of information technologies."

What is information?[2] Essence of information manifests itself in reduction of incertitude.[3] A person generating information transfers it to an addressee, influences the amount of information at the disposal of the addressee by making the situation clearer and the person – more competent. This can also be called as defining of information by consequences. In fact, this is proven in the work of every lawyer. The more information a lawyer has on a particular object, the more likely it is that he or she would take the right decision.

In the context of the information society law, two major regulatory aspects regarding information have been determined. On the one hand, it is studied and regulated as a new and inexhaustible resource, value of which is considered as a value of a product and, on the other hand, it is regarded as burden of

[1] Recommendation No R (92) 15 concerning teaching, research, training in the field of law and information society // http://www.coe.int/t/dghl/standardsetting/media/doc/CM/Rec(1992)015&ExpMem_en.asp#TopOfPage (accessed on 20 December 2011).

[2] Researchers use several definitions of the term "information". Information is defined as knowledge, process and even a thing. Objective of the research is not to make an in-depth analysis of different information theories. It is rather to analyse those elements of definition of information that are applied in legal doctrine.

[3] Mock W. On the centrality of information law: A rational choice discussion of information law and transparency // Journal of Computer & Information law, Vol. XVII: 1072.

global responsibility[4], because in the modern process of information turnover, likelihood of global threat has unfortunately increased. Moreover, the comprehensive and global character of information constantly creates new judicial problems between the right of persons to information and that to privacy.

What is technology? Technology is the product of science and engineering. *E. Karnitis*[5] indicates that technology as such has no substantive value; it is created only if it is applied in the right manner. Therefore we ask whether technology can be related with lawyers. Technology is fast, schematic and futuristic, whilst a lawyer is regarded as prudent, verbose and old-fashioned[6]. Several former lawyers were of the viewpoint that work of a lawyer is limited "in time and space" because lawyers depend on the local transport, work of a post office and different "local" communication technologies. One can agree with the aforementioned; however, in the information society age the work of lawyers is also marked by drastic changes at the level of legal practice and structure of law.[7] Due to introduction of information technologies, changes that have occurred in the field of law cannot be identified only as one traditional legal category. Russian scientists consider, in the context of law, technologies, namely, internet as meta-model of the society containing features of legitimacy of civil formations of different levels.[8] The above mentioned approach is disputable. In the book "Informācijas un komunikāciju tiesības" (in Latvian, *Information and Communication Law*) when analysing legal aspects of Cyberspace different levels of legitimacy of virtual society are analysed.[9] Conclusion: Status of "legitimacy of formations of virtual society" depends, however, on national or international legal regulatory framework. Till now, no legal document to regulate global cyberspace has been elaborated at international level. Therefore, there is no reason to regard "internet" as a global meta-model of the society having certain elements of legitimacy. In the context of information society, it is hard to find such field of law that would not be influenced by legal facts and artefacts related with the use of electronic environment. These changes also apply to such fundamental fields of law as criminal law, civil law and even ownership.[10] IT as such cannot be used as a magic wand for solving all problems of specialists of law. However, the fact that, along with the rapid development of these technologies, attitude of lawyers towards technologies change is undeniable. Nowadays, it is clearly proven by the fact that in Latvia several law offices are specialized in dealing with problems related with e-commerce, protection of personal data of natural persons, cybercrimes, and other legal problems related with sue of e-environment.

Based on the aforesaid, it can be concluded that information technologies impact legal environment and work of a lawyer in general in the following ways:

1) by improving legal systems, elaborating qualitatively new normative acts that can be applied in relation to e-environment;
2) by means of legal practice because, if the society performs a part of legal relations in electronic form, an individual should be given guarantee that his or her legal interests would be protected before a competent court;

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[4] Информационное право. Актуальные проблеми теории и практики / Под ред. Бачило И. Л. – Москва: Юрайт, 2009. С. 55.

[5] Karnitis E. General inclusion – a strategic prerequisite for sustainable and ICT as a catalyst of the process // Collection of articles: Vit@l Society: the New Social Use of ICT. – Riga: Imanta, 2006.

[6] Oskamp A., Loddrer A. R. Introduction: Law, information technology and, artificial intelligence. Information technology and lawyers. – Springer, 2006. – P. 1.

[7] Suskind R. The future of law [Oxford, 1998]. Quoted from: Wall D. S. Legal professionalisms in the information age // The Paralegal Educator, 22(1): 50–54.

[8] Информационное право. Актуальные проблеми теории и практики / Под ред. Бачило И. Л. – Москва: Юрайт, 2.– С. 46.
Without contesting the idea as such, the author still considers that, instead of the term "internet", it would be more correct to consider "cyberspace" or "e-environment" as the backbone of such society meta-model, them being formed as a result of interaction of information technologies that are managed by persons.

[9] See: Ķinis U. Kibertiesības (eng. Cyberrights) // Informācijas un komunikāciju tiesības / U. Ķiņa redakcijā. – II sēj. 3. grāmata. – Rīga: Turība, 2002. – Pp. 52–102.

[10] Rowland D., Macdonald E., et al. Information technology law. – 3rd ed. – Routledge Cavendish, 2005. – P. 1.

3) use of information communication technologies in the process of processing of legal facts; in this respect, it is possible to mention artificial intellect expert systems, different legal data bases, electronic samples of agreements and other legal documents, etc.;
4) use of legal resources in internet sites, information selection and acquisition, etc.

Introduction into doctrine of information society

In order to understand the essence of the term "information society", let us start with the history of its development. It seems that it is easy to understand. By entering key words "information society" in Google search engine, we can find thousands of resources mentioning the phrase in different domains. However, it is unlikely that, without proper analysis, it is possible to find an answer to the question what information society is. Therefore, further research will guide you into the history of the term.

For the first time, the term "information society" was mentioned by a laureate of Nobel award professor Frith Machlup.[11] Even before the information revolution, he was able to prognosticate that possibilities ensured by technologies would influence society though the knowledge obtained by means of mass media (including books, pamphlets, periodicals, photography and phonograms, etc.). One should distinguish between information society and informed society[12] because awareness, if considered in a broader context, was a material development factor for each society starting from the Middle Ages. Simon L. Garfinkel holds that information society was born in 1963 in Michigan Technology Institute when a computer laboratory launched the MAC (multiple access computer) project. By making a computer accessible to several users simultaneously, one could start observing impact of information technologies onto economic processes.[13]

Information society as an object of researches of social science has passed through several stages of development by preserving the course of knowledge-based economy:

Post-industrial society. Symbolically, post-industrial society was born in 1945–1950[14] when the development of nuclear energy formed an important link between politics and science, such sciences as cybernetics, social physics and others emerged. In this period, the role of service field increased. As a new theory developed, the so-called modernists[15] even maintained that information would change our society into utopian one where diseases would be limited and birth rate controlled in a comprehensive manner. In a post-industrial society, the central person is a professional who provides services and delivers conveniences of different kinds.[16]

Post-modernism society. It emerged at the end of 1950s. It is related with the impact of technologic progress onto knowledge and culture. Information is considered as goods.[17] In the framework of the legal system, post-modernism society marked transition from "society of individuals" to "society of organizations" and "society of network".[18] The period of post-modernist law is characterized by the development

[11] Machlup F. The production and distribution of knowledge in the United States. – Princeton University Press, 1962.

[12] The Information age: economy, society, culture // Castells M. The Rise of the Network Society. – 2nd ed. – Blackwell Publishing, 2000. – P. 21.

[13] Garfinkel S., Abelson H. Architects of the information society: 35 years of the laboratory for computer science at MIT. – MIT Press, 1999. – Pp. 1–7.

[14] Bell D. Why will rule? Politicians and technocrats in the post- industrial society // http://ssr1.uchihago.edu/PRELIMS/Political/pormisc1.html (accessed on 20 March 2009).

[15] Masuda Y. The information society as postal industrial society. – Tokyo: Institute for information society, 1980. Quoted from: Crawford S. The origin and development of a concept: The information society, p. 380 // http:// www.pubmedcentral.nih.gov/picrender.fcgi?artid=227258&blobtype=pdf (accessed on 30 October 2010).

[16] Bell Daniel on the post- industrial society // www.newlearningonline.com (accessed d on 21 March 2009).

[17] Are we living in a postmodern society? Why/why not? // www.echeat.com/essey.php?t=28832 (accessed on 20 March 2009).

[18] Karl-Heiz Ladeur, Postmoderne Verfassungstheorie. In: Zum Begriff der Verfassung. Die ordnung des Politischen 304 (Ulrich K. Preuß (ed, 1994). Quoted from: Introduction to the special issue: the law of the network society by Ino Augsberg, Lars Viellechner & Peer Zumbansen // www.germanlawjournal.com (accessed on 10 May 2009).

of such legal branches as environmental law, human rights and protection of intellectual property because many researches consider the particular period as phenomenon of intellectual work.[19] In fact, in the period of post-modernism society, five mutually related transformations took place:

1) privatization of large scale, namely, property right under public control was transferred to the private sector;
2) restricting of provisions of economy regulatory framework and re-orientation thereof to market relations;
3) reduction of role of the State in assurance of welfare accompanied by a subsequent reform of legal structure;
4) considerably increased access by the society to court. In fact, here we speak of justice of proximity in respect to the society. Traditionally, courts function in a certain time and space, and they are integrated into a national legal system. The topic of courts is centralized and is exclusively envisaged for implementation of positive rights of the state. However, in a welfare state, judicial reforms considerably broaden the process of centralization and juridification of the particular national states. Justice of proximity in a welfare state manifests itself in three[20] dimensions. By developing alternative dispute resolution procedures, the following is assured: a) spatial proximity of institutions; b) proximity of individuals to a judicial institution, less expenses, easier access; c) balance of workload of court employees and judges, as well as reduction of costs;
5) increasing impact of supra-national legal norms onto national legal norms.[21] The last is related with the impact of globalization processes onto national law. Brendan Edgeworth explains it in the following way:
   a) by separating and merging sovereignty by means of supra-national organizations having either direct legislative power over national states or broad strategic impact on development legal norms. This is regulated by the Administrative Procedure Law;
      Pursuant to Paragraph 3 of Section 15 "Application of External Regulatory Enactments, General Principles of Law and Legal Norms of International Law" of the Administrative Procedure Law, "The legal norms of international law regardless of their source shall be applied in accordance with their place in the hierarchy of legal force of external regulatory enactments. If a conflict between a legal norm of international law and a norm of Latvian law of the same legal force is determined, the legal norm of international law shall be applied." Pursuant to Paragraph 4 of the same section of the same law, the legal norms of the European Union (Community) shall be applied in accordance with their place in the hierarchy of legal force of external regulatory enactments. In applying the legal norms of the European Union (Community), institutions and courts shall take into account the European Court of Justice case law.[22]
   b) by performing interpretation of legal norms, national courts also apply requirements of supra-national legal norms to content of national law;
   c) by implementation of non-formal common law *lex mercatoria* applied in commerce;
   d) by ensuring global citizenship.[23]

Network society. To determine the beginning of this period, it is necessary to refer to the invention of the internet. For the first time, in 1991, the term was applied by a Dutch scientist *Jan van Dijk* in his work "The Network Society". He characterized "network society" as a model of society, wherein a special role is played by electronic communication, namely, a model where oral communication of individuals is

[19] Edgeworth B. Law, Modernity, Postmodernity: Legal Change in the Contracting State. – Ashgate Publishing, LTD, 2003. – P. 48.

[20] Edgeworth B., ibid., p. 169.

[21] Edgeworth B., ibid., p. 134.

[22] Sk. Administratīvā procesa likums (eng. – Administrative Procedure act) // www.likumi.lv // http://www.likumi.lv/doc.php?id=55567 (accessed on 20.March 2011).

[23] Edgeworth B., ibid., p. 177.

replaced by the development of relations by mediation of social media networks.[24] Since the particular theory was developed in 1991, it is possible to conclude that this also is the beginning of the way towards information society. This is also admitted by Manuel Castells who characterized network not only as a new technical resource but also as the resource that at quantitative and qualitative level influences the entire society in general; therefore, this kind of society can be denoted as "network society".[25]

The above mentioned classification of society development is very conditional. However, it is of great importance in the context of the topic under consideration. In the model of post-industrial, post-modernism and "network" societies, one can single out elements characterizing information society, for instance, impact of technological process onto society development processes, turning of information into a product, the central figure of labour force – a professional, etc. However, it is hardly possible to state that characteristic features of the above mentioned periods fully cover all elements of information society.

In the initially discussed model of information society, an abstract thesis was set forth stating that the information revolution and the information age would change our working model and lifestyle. In the claim regarding transformation of work, Cristopher May includes not only a quantitative (work becomes more related with information processing), but also a qualitative criterion because work in the field of information processing considerably differs from work in industrial society.[26] No doubt, it is possible to agree with the above mentioned opinion because it coincides with the conclusion that information society cannot be measured based on the amount of processed information but mainly based on qualitative impact of the information onto processes of the society. However, by generally characterising the first stage of society development in the period from 1960–1990, it can be clearly established that all these changes were regarded as economic categories by mainly focusing on the acquisition of knowledge in the field of information technologies and emphasizing "information economy", namely, the amount of gross domestic product produced by means of IT. This is reflected in 1986 document adopted by OECD regarding information society stating that this is the "society, where more than a half of the entire gross domestic product is related with information industry and more than a half of active employees work in the field of information processing". In other words, this marked transition from industrial economy to information economy[27].

The next development stage of information society is the 90s of the 20th century when priorities slightly changed in the establishment of the aims of information society. Although the main emphasis was mainly put on economic criteria, at the political level it was admitted, however, that the development of information society should also facilitate aspects of social and political life related with the development of society. This is also reflected in works of researchers. For instance, Susan Crawford supplemented content of information society with social sphere by indicating that the development of information technologies in the future would influence the majority of the society. They would be applied as an effective political instrument and would increase role of an individual, which would finally facilitate content and structure of our culture.[28] Nowadays we are witnessing the second development stage of information society. However, it is impossible to provide an exhaustive overview on information society as a new model of society because aims of such society have not yet been fully reached. Reaching of them depends on different factors, which would not be solved even in the following five years by ensuring that 100% of Europeans would start using internet and would have comprehensive knowledge on new information technologies.

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[24] van Dijk J. The Network Society. – Sage Publications, 1999. – Pp. 220–223. Quoted from: Jan van Dijk, University of Twente // http://www.gw.utwente.nl/vandijk/research/network_society/network_society_plaatje/b_book_summary.doc\ (accessed on 5 May 2009).

[25] The Information age: economy, society, culture // Castells M. The Rise of the Network Society. – 2nd ed. – Blackwell Publishing, 2000. – P. 500.

[26] Key thinkers for the information society / May C. (ed.). – Routledge, 2003. – Pp. 2–3.

[27] Bole J. S. Software, and Spleens: Law and the Construction of the Information Society. – Harward University Press, 1996. – P. ix.

[28] Crawford S. The origin and development of a concept: the information society, p. 384 // http://www.pubmedcentral.nih.gov/picrender.fcgi?artid=227258&blobtype=pdf (accessed on 11 October 2008).

Although it is not possible to enumerate all elements of information society, the following elements can be mentioned:

1) democratic society – universality and indivisibility of human rights, the right of a person to information and the right to participate in state administration, protection of data of natural persons, etc.;
2) development of electronic communication technologies;
3) knowledge of the society on the use of technologies and that on processes of economic globalization;
4) duty of users to exercise their rights for legal purposes;
5) duty of the state to assure security of social services;
6) duty of the state to envisage appropriate liability of offences in e-environment by implementing the principle – what is prohibited in real life should also be prohibited in the e-environment.

The way of the European Union to the development of information society can be divided into three[29] stages.

The first stage is related with 1993 when the White Document of Drake H. Jaques Delors on the development, competition and unemployment was published.[30] In the above mentioned document, the following aims were listed among the rest: 1) society as an open and reliable partner of the world; 2) establishment of an effective transport and telecommunication infrastructure; 3) revolution of common information and new technologies; 4) material changes in education system; 5) striving to implement a new development mode, etc. As it can be seen, some of the aims set forth in the White Document have materialized in further eEurope programmes. At the same time, a report of Bangeman appeared.[31] However, the both above mentioned documents, in fact, supported their own information society development model. The document of Jaques Delors rather defended socialist purpose programme, whilst the report of Bangeman was aimed at liberalization of telecommunication market and role of private sector in this process. However, the EU resolved to develop the model of information society suggested by Bangeman. As it is emphasized in the strategy of Bangeman group, information society is a measure for reaching the EU aims. In this report, not only revolutionary aspect of information but also social aim of the project was accentuated, which would permit the increase of living standards of the inhabitants of Europe.[32]

On 25–26 February 1995, Ministers of the G-7 met and European Commission Conference on Information Society took place. Participants of the Conference suggested the following eight basic principles that lie in the basis of society development:

1) to facilitate dynamic competition; 2) to facilitate private and capital investments; 3) to establish applicable regulatory framework; 4) to assure free access to networks; 5) to assure universal conditions for access to services; 6) to facilitate equal possibilities to all inhabitants; 7) to facilitate diversity of content, including cultural and linguistic diversity; 8) to regard global co-operation as indispensable by paying particular attention to less developed countries.

It should be particularly emphasized that, in this document, those legal cornerstones that form the basis for information society doctrine are defined, and they are:

- privacy and protection of personal data;
- information security;
- protection of intellectual property right.

With slight improvements, the above mentioned three points are still regarded as foundation-stones of information society law. If economic factor was stressed in the first concepts of information society, then nowadays the theory that the content of information society includes economic, political and social aspects of social life is widely recognized. It can clearly be seen in scientific discussions on the content of information society.

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[29] The European policy for development of Information society: The rights path? By Jose Luis Gomez-Barroso, Claudio Feijoo and Edvins Karnitis // Journal compilation © 2008 Blackwell Publishing Ltd, pp. 789–794.

[30] Drake H. Delors J. Perspectives on a European leader. – Routledge, 2000. – Pp. 112–131.

[31] Europe and the Global Information Society. Recommendations of the high- level group on the information society to the Corfu European Council (Bangeman) group, S.2/94 © ECSC-EC-EAEC. – Brussels-Luxembourg, 1994. – P. 10.

[32] Bangeman report, p. 11.

The second stage started in December 1999 when R. Provdi's Commission launched an initiative entitled "eEurope an Information Society for all".[33] This document was prepared for the Lisbon Summit wherein the Lisbon Strategy on EU functioning tasks for the following 10 years was adopted. The Lisbon strategy accepted the slogan "information society for everyone", whilst the leading-motive for establishment of such society was the necessity to develop a knowledge-based EU development policy.[34] Based on the above mentioned programme, European Commission elaborated an action plan that was approved in 2000 by the Feira European Council and was entitled eEurope 2002. These were ambitious aims of the EU, the objective of which was to increase living standards of EU inhabitants. E. Karnitis indicates that living standard of European inhabitants is ensured by several elements, including human resources, demographic processes, justice, culture, housekeeping, environment protection, out of which three basic elements can be singled out:[35]

1. *Welfare*. Welfare includes social guarantees, property status, education, legal protection, in fact – all ways of satisfaction of lawful public interests. In the context of information society, this means the right of the society to high quality services of information society[36] that European inhabitants may receive in the public and private field by means of information and communication technologies.
2. *Security* – relatively low level of threat in a certain time period. This means that the legislator has to perform measures to protect legal interests of inhabitants in the electronic environment by implementing the principle *"what is prohibited in real life should also be prohibited in electronic environment*".[37]
3. *Sustainability* – in the general meaning it means ability to maintain a particular process in an extended period of time. Sustainability is related with maintenance, preservation and development of economic, social (including legal) system and environmental systems that ensure high quality of public life at present and in the past.[38]

To assure sustainability of information society, the EU has developed three programmes: eEurope 2000[39]; eEurope 2005[40] and the latest iEurope 2010[41].

The third stage started in 2005 when iEurope 2010 was published. The programme sets forth the following tasks:

1. *Establishment of a common information space.* When establishing a common information space, it is important to initially deal with the four digital convergence tasks: 1) *speed* – a faster broadband service network in Europe in order to ensure a high content quality, for instance, transfer of HD videos; 2) *enriched content* – increased legal and economic security with a view to facilitate the establishment of new services and new online content; 3) *mutual compatibility* – increase

[33] Initiative eEurope an Information Society for all // http://ec.europa.eu/information_society/eeurope/2002/index_en.htm (accessed on 14 February 2008).

[34] Lisbon European Council 23–24. March 2000: Presidency Conclusions // http://www.europarl.europa.eu/summits/lis1_en.htm# (accessed on 14 February 2009).

[35] Karnitis E. General inclusion – a strategic prerequisite for sustainable and ICT as a catalyst of the process. Collection of articles: Vit@l Society: the New Social Use of ICT. – Riga: Imanta, 2006.

[36] Informācijas sabiedrības pakalpojumu likums (eng. – Information Society Services Law) // http://www.likumi.lv/doc.php?id=96619 (accessed on 1 November 2008).

[37] Green paper on the protection of minors and human dignity in audio-visual and information services including a Proposal for a Recommendation // http://ec.europa.eu/avpolicy/docs/reg/minors/comlv-en.htm#(21) (accessed on 1 November 2008).

[38] What is sustainability, anyway? // http://sustainablemeasures.com/Sustainability/index.html (accessed on 1 November 2008).

[39] eEurope 2002 action plan // http://ec.europa.eu/information_society/eeurope/2002/index_en.htm. i2010 strategy key documents // http://ec.europa.eu/information_society/eeurope/i2010/key_documents/index_en.htm#i2010_Communication (accessed on 1 November 2008).

[40] eEurope 2005 action plan // http://ec.europa.eu/information_society/eeurope/2005/index_en.htm (accessed on 1 November 2008).

[41] i2010 – A European Information Society for growth and employment // http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0229:FIN:LV:DOC (accessed on 1 November 2008).

of number of "mutually communicating platforms and devices, as well as that of services that could be moved from one platform to another; 4) *security* – increase of security of internet network against fraudsters, materials of harmful content and technological errors to increase trust of investors and consumers.

2. *Reliable and safe information and communication technology (ICT)* is very important for a broad use of converging digital services. During 2006, the Commission initiated the strategy of safe information society with a view to unite and update existent measures, including facilitation of awareness on necessity for self-protection, vigilance, threat control, fast and effective reaction to attacks and system errors. It has planned to provide support to purposeful researches in order to create "projected" security and introduce examination measures in respect to such important issues as monitoring identity check. In case of necessity, the regulation would be revised, for instance, by approving EU endeavours to protect privacy, electronic signature or by eliminating illegal or harmful content.
3. Assurance of uniform structure of internal market in respect to information society and mass media service by means of the following: 1) modernization of legal structure by introducing audio-visual services, starting with the Commission suggestion of 2005 to revise the Directive "Television without Frontiers"; 2) analysis of Community acquis and introduction of necessary changes in respect to information society and mass media services (2007); 3) the revised acquis that is applicable to information society and mass media services, active facilitation of fast and effective introduction thereof; 4) development and introduction of the European Strategy for the Secure Information Society (2006).

It can be concluded from the aforesaid that information strategy is not a strictly defined term; however, it can be admitted that, in actions referred to in strategic documents on information society establish framework, within which the on-going processes are denoted by means of the term "information society".

From computer law to information society law

The first theoretic articles on legal issues related with the use of computer technologies in the world emerged in 1960s.[42] However, information technologies became a stable object of researches in Law in about 1970 when serious discussions on protection of personal data of natural persons within these systems emerged. These discussions resulted in the first normative act adopted on 30 September 1970 in Germany, in Hansen State, namely, the Personal Data Protection Law.[43] At about this time, in the Western Europe and in the Soviet Union, the first books on legal aspects of the use of computer technologies were published.[44]

Legal literature does not agree on common title of rights, the objective of which is to regulate legal relations granted in relation to the use of information and communication technologies. Some authors call the above mentioned domain of law as computer law. For the first time in the history of law this term was used by Colin Tapper. Chris Reed defined computer law as a field of law regulating technological aspects of information, in other words – this law regulates information processing.[45] The USSR scientists, however, gave grounds for the development of a new inter-field discipline – *legal informatics*. This field of science later split into information law (field of science on information turnover processes in legal environment, and legal informatics – field of science studying application of information and technologies in the field of law.

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[42] Freed R. A. Lawyer's Guide through the Computer Maze // The Practical Lawyer, November, 1960.

[43] Changing patterns-Supplementary Approaches to Improving Data Protection: a European Perspective. Presentation at CIAJ 2005 Annual Conference on Technology, Privacy and Justice. Toronto, Ontario, September 29–30, 2005 by Herbert Burkert // www.coll.mpg.de/pdf_dat/burkert.pdf (accessed on 21 September 2008).

[44] See: Tapper C. Computer and law. – London: Weidenfeld& Nicolson,1973; Рассолов М. М. Правовая информатика.– М., 1972; Правовая кибернетика. – М., 1973.

[45] Computer law. The Law and Regulation of Information Technology. – 6th ed. / Reed C., Angel A. (eds). – Oxford University Press, 2007. – P. 1.

Other researchers[46], however, have named it as "cyberlaw"[47]. Mark Grossman holds that cyberlaw is everything that is integrated into economy and law by means of computer and internet.[48] Integration into economy and law means everything that may create economic relations on legal basis (in the form of laws of legal acts).

One may think that the term "cyberlaw" has derived from the Greek word "cyber – cybernetics + law". In such case this field could be defined as studies of legal regulatory framework on cybernetic processes. However, this is not the case. Cybernetics is a field of science studying live, inanimate, artificially formed system administration. Cybernetics can be regarded as applied informatics on administration of automated data processing systems of different complexity level.[49] A Soviet academic *A. Berg* defined the term "legal cybernetics" (in Russian: *правовая кибернетика*) as a field of law studying basic administration and regulatory features in the field of state and law by means of mathematic, logic and modelling methods. Objects that are studied in this field of law are: 1) legal aspects of the terms "administration" and "regulation"; 2) effectiveness and optimisation of legal regulatory framework; 3) stability of regulatory systems; 4) adaptation of administrations systems in the field of law; 5) systemic analysis and mathematic modelling; 6) situation-based administration.[50] Consequently, it can be seen that the objects of legal cybernetics are not directly related with dealing with legal problems referred to during usage of information and communication technologies, cyberspace included.

The term cyberlaw has derived from the word "cyberspace". This word was used by V. Gibson in his science-fiction *Neiromancer* in 1984 when describing the environment between computers as a result of their interaction. One of the most prominent defender of cyberlaw theory Lawrence Lessig holds that cyberspace is not just a common space; it is formed by several spaces. These spaces have no common character. These various spaces form network architecture.[51]

Network architecture contains: 1) personal autentification that ensures proof of identity of a contacted person; 2) authorization that assures that the autentified person has the right to perform certain functions; 3) secrecy that ensures that others cannot see what kind of exchange is going one; 4) integrity that assures compliance of information sent with the original; 5) non-denial of information that ensures that a sender cannot deny the fact that it is him or her having sent a letter.[52]

Thus, cyberspace can be defined as the process of information processing resulting from connection of computer system to any (public or private) electronic data transfer network. The term become very popular among lawyers because already in the 90s of the previous century it gained its place at the international level. In established Cyberlaw research institutes, the first scientific researches were made, first scientific discussions were organized, and theories on different cyberspace administration models were developed.[53] A true international recognition of the term "cyberspace" was assured by the 2001 Council of Europe Cybercrime Convention. This term has been mentioned in contents of several EU and UNO legal documents and national legal acts of many states.

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[46] Lessig L. Code version 2.0. – New York: Basic Books, 2006; Orien Kerr. A brief history of cyberlaw // http://balkin.blogspot.com/2005/08/brief-history-of-cyberlaw.html (accessed on 21 July 2008).

[47] In January 2008, anecdotic information was published saying that a USA lawyer E. Meinhard had confirmed the word "cyberlaw" as a trademark because his law office provided services in the field of cyberlaw. See more details: Cyberlaw and cyberlawgks by C.McSherry // http://www.eff.org/deeplinks/2008/01/cyberlaw-and-cyberlawgs // http://cyber.law.harvard.edu/node/3429 (accessed on 20 August 2008).

[48] What Is Cyber Law? By Mark Grossman // http://www.dci.com/news/1998/jul/16law.htm (accessed on 20 August 2007).

[49] Информатика математика для юристов / Под ред. Казанцева С. Я., Дубининой Н. М. – Второе издание. – Москва: Юнити, 2006. – С. 35.

[50] Гаврилов О. А. Курс правовой информатики. – Москва: Норма, 2000. – С. 112.

[51] Lessig L. Code and other laws of cyberspace. – Basic Books, 1999. – P. 82.

[52] Ibid., p. 40.

[53] See: Ķinis U. Kibertiesības. (eng. – Cyberrights) Informācijas un komunikācijas tiesības. – II sējums, 3. grāmata. – Rīga: Turība, 2001. – Pp. 52–101.

In the 90s of the previous century, this law acquired the third title, i.e. "Information technology law"[54] It is related with the fact that researches of law faced new problems caused by devices that cannot always be called a computer. Chriss Reed[55] also used a term "Internet law", which, in fact, is a variation of information and communication law because, according to the author, the object of the research deals with the impact of global, fundamentally legal issues onto internet as an international communication mechanism.

When we developed the first publication of the Information and communication law, it was planned to give the book with the following title "Information and Technology Law" or "Internet Law". After discussions we agreed that the law cannot be technologies or internet. The USA Information and Technology Association (ITAA) defines information technologies as a field that includes knowledge and construction, development and support administration of any computerized information system.[56] IT includes everything that is related with data administration, networking, computer engineering, equipment, development of computer software, elaboration and administration of data bases and system administration in the frameworks of information technologies. Consequently, the term "information technologies" include all aspects wherein computer technologies are applied in order to assure information turnover process. Consequently, it can be concluded that IT is any device and software that assures electronic data processing at any stage thereof. In a broader sense, IT includes also administration of the entire process, including measures for protection of legal interests in e-environment. However, technology, including internet, is only means assuring the possibility of communication at the global level. As such, it cannot be good or bad, and it cannot cause any legal consequences. IT functioning is always determined by an intentional action of an individual. Actions performed by a person by using digital technologies also permit classifying them into lawful or unlawful. Therefore, authors of the book agreed on the following title of the book – "Information and Communication Law".

When considering this issue, the author came across an article of a Spanish scientist Andress Guadamuz Gonzalez[57] where he suggested that taking into account the fact that the aim of the UNO and the EU is the establishment of information society, then the field of law that studies information technologies could be named "Information society law" (hereinafter – ISL) or e-law. It should be mentioned that the idea on information society law is very attractive because this would permit us placing the entire content of e-law into one field of science, which previously was fragmentized into different fields of law.

There is no doubt that any object of e-law is related also with traditional fields of law. Therefore, not all researches of law support formation of such new field of law since they hold that many cases occurring in e-environment can be solved by applying traditional law. For instance, a professor of Chicago University Frank H. Easterbrook compares, in an anecdotic manner, cyberlaw with "horse law" and he is glad that his subject had not been included into his curriculum of the Chicago University during his studies. According to him, "horse law" could be established as an amateurish training course because horses are involved in different fields of law, they must be ensured with food for them to able to participate in horse race, they need special licences, veterinary control, there exist provisions regarding horse carriages etc. Frank H. Easterbrook holds that formation in law should include only those subjects that are covered by the entire spectrum of law.

Therefore, at the Chicago University, "horse law" was replaced by a training course "Law and Economy", "Law and Literature". Frank H. Easterbrook is not the only one who thinks that cyberlaw or information and communication law should not be developed. Sommer Jozeph[58] is of the same point of view; moreover, he indicates that the majority of legal doctrines are flexible. Under the influence of different factors, doctrines may change. According to him, although laws are conservative as to their essence, new technologies can and do adapt to the new social reality and gaps therein.

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[54] Napier, B. W. The Future of Information Technology Law, 51 (1) // Cambridge Law Journal, 1992; 46.

[55] Reed C. Internet law. Text and materials. – 2nd ed. – Cambridge University Press, 2004. – P. 1.

[56] Definition of Information Technology // http://ezinarticles.com/?Definition-of-Information technology &id=1109986 (accessed on 29 September 2008).

[57] Gonzalez A. Guadamuz Attack of the killer acronyms: The end of IT law // http://www.bileta.ac.uk/Document%20Library/1/Attack%20of%20the%20killer%20acronyms-The%20End%20of%20IT%20Law.doc (accessed on 20 September 2008).

[58] Sommer J. Against cyberlaw // www.law.berkeley.edu/journals/btlj/articles/vol15/sommer.pdf (accessed on 28 August 2008).

However, such judgements are rather superficial because, at present, in the e-environment people create different legal relations. Frank H. Easterbrook says: if it is as easy as it is, then the EU Commission would not have to establish in its report[59] that the development of information society is hampered by the lack of trust of inhabitants into the networks, increasing number of cybercrimes, the latter becoming more and more sophisticated and requiring elaboration of new definitions. Differences in national legal regulatory frameworks and other factors are also regarded as hampering ones. Use of information technologies causes new legal facts and artefacts[60], to which legal regulatory framework of traditional fields of law cannot be applied. It seems that this must not be proved separately. Modern approach to the development of law is also characterized by the fact that new fields of law are devised and developed out of traditional ones. The field of legal relations regulated by the ISL is related with the establishment and processing of information, as well as communication in e-environment. In Volume I of the book "Information and Communication Law", its authors gave an answer to the question "whether ICL complies with scientific criteria (a separate subject of law regulation and a range of objects) that are indispensable to recognize the particular field in the field of law as an independent field of law, or to grant certain independence for development of the respective field at the level of national education in law."

Pursuant to the data of the Latvian Internet Association (in Latvian: *Latvijas Interneta asociācija*), in 2011, the index of internet users constitutes 62.3% of the total number of the inhabitants.[61]

Experts studying spectrum of legal relations in e-environment hold that, in general, the society starts feeling the impact of information and communications in case the proportion of users of e-environment exceeds 33% of the entire number of inhabitants of a particular state. Consequently, it can be concluded, that the number of internet users in the state exceeds the above mentioned boundary of 33%. It would be difficult to make a list of problems related with the use of e-environment, though it is easier to name those kinds of relations that are not influenced by e-environment.

Role of law in information society

Whether in the digital age, when many famous philosophers foresaw reduction of functional role of the state, there would still be the place for law. Maybe technologies would indeed form sort of utopian meta-models of society governed by its own rules and where participants of virtual communities would be punished, for non-observance of the rules, by means of moral measures accepted in the virtual society. However, the opinion that rights in the digital age would lose its role of social regulatory mechanism regulating the society is as utopian as theories of informatics researchers of the post-industrial society regarding birth and disease control.

A professor Pamela Samuelson[62] has defined five principles for establishing legal policy in the Global information society:

1) whether, for regulation of internet functioning, the society can apply existent legal norms, or regulation of its content requires introduction of new legal norms;
2) how to formulate an acceptable answer in case it is necessary to adopt a new regulatory framework;
3) how to successfully elaborate legal normative acts that would be flexible enough and applicable under rapidly changing conditions, which can be caused by the rapid development of technologies;

[59] See: Digital Programme for Europe. COM (2010) 26.8.2010 // http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0245(01):EN:NOT (accessed on 29 October 2010).

[60] Artefact (Latin: *artefactum* – "artificially made"), erroneously called as artefact, is a phenomenon or an objects, occurrence of which cannot be explained by applying natural processes. Artefacts are things or aspects of material culture that differ from cultural values and norms. Stanford Encyclopaedia of Philosophy // http://plato.stanford.edu/entries/artifact/ (accessed on 29 October 2010).

[61] See: http://www.lia.lv/statistika/ (accessed on 14 December 2011).

[62] Samuelson P. Five challenges for regulating the Global Information Society // http://people.ischool.berkeley.edu/~pam/papers.html (accessed on 14 February 2009).

4) how to preserve fundamental values of civilization that come into contact with economic or technological progress and guide them towards incertitude;
5) how to perform global international co-ordination by developing internet law and policy with a view to ensure co-ordinated legal space.

In the final wording of the Commission report "Getting Prepared for Digital Future of Europe, Overview of i2010 Term Middle Stage", the following has been indicated:

The legal framework governing the information society and the sometimes fragmented implementation in the Member States can make it difficult to exploit the potential of ICTs on a European scale, risking increasing barriers to cross-border online trade. It is necessary to address overlapping requirements, gaps or inconsistencies in implementation and to keep pace with technological change (see the Figure 1 in the next page).

It is emphasized in the Commission report that the legal framework governing the information society and the sometimes fragmented implementation in the Member States can make it difficult to exploit the potential of ICTs on a European scale, risking increasing barriers to cross-border online trade.

Figure 1 clearly shows relations formed by legal regulatory framework in respect to technological progress.

Along with the invention of the internet, up to 1995 in the European Union, almost no legal regulatory framework on internet environment has been elaborated. As the first document, sources mention the EU Data protection directive[63], which on 20 May 1997 was followed by the Directive on the protection of consumers in respect of distance contracts.[64] Adoption of the above mentioned directive is related with the period when many online service providers started furnishing their services online, which surely caused problems in relation to the protection of consumer rights in respect of quality of services offered. In 1999, the e-signature directive[65] was adopted. From 2000 to 2005, the EU adopted the E-commerce directive[66], the copyright directive[67], the e-money directive[68], the e-payment directive[69]; the directive concerning the processing of personal data and the protection of privacy in the electronic communications sector[70], directive on the enforcement of intellectual property rights[71], and along with the development of social networks, data retention directive[72] was adopted. The above mentioned directives are not an exhaustive enumeration of directives and framework decisions related with the development of the Digital Europe Project; however, the above mentioned documents form the legal backbone of the information society strategy.

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[63] EU Directive 95/46 EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data // http://eur-lex.europa.eu/LexUriServ/LexUriServ.do%3Furi%3DCELEX:31995L0046:en:HTML (accessed on 29 October 2010).

[64] EU Directive 97/7 EC on the protection of consumers in respect of distance contracts // http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31997L0007:LV:NOT (accessed on 29 October 2010).

[65] Directive 1999/93 EC on a Community framework for electronic signatures // http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31999L0093:en:HTML (accessed on 29 October 2010).

[66] Directive 2000/31 EC of 8 June 2000. Directive on electronic commerce // http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0031:en:NOT (accessed on 29 October 2010).

[67] Directive 2001/29 EC On the harmonization of certain aspects of copyright and related rights in the information society, adopted on 21 May 2001 // http://www.akka-laa.lv/lat/autortiesibas/normativa_baze/ (accessed on 29 October 2010).

[68] Directive 2000/46 EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions. 18 September 2000 // http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0046:EN:HTML (accessed on 18 September 2010).

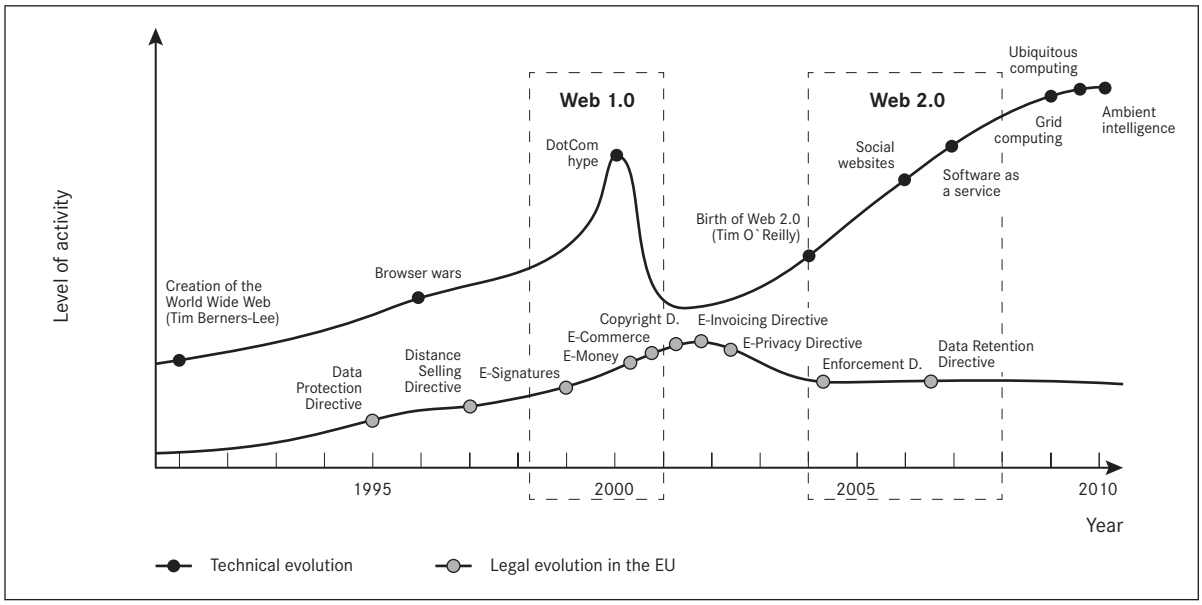
[69] Directive 2001/115 EC e-invoicing directive. With a view to simplifying, modernising and harmonising the conditions laid down for invoicing in respect of value added tax. 21 December 2001 // http://ec.europa.eu/internal_market/payments/einvoicing/index_en.htm (accessed on 29 October 2010).

[70] Directive 2002/58 on Privacy and Electronic Communications. 12 July 2002 // http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0058:EN:HTML (accessed on 29 October 2010).

[71] Directive 2004/48 on the enforcement of intellectual property rights. 29 April 2003 //

[72] Directive 2006/24 EC on the retention of data generated. 15 March 2006. O.J.L 105,13/04/2006. Pp. 0054–0063.

Figure 1. Evolution of the legal and technical landscape



In the modern dynamic development process of the digital European, the following legal tasks acting as social regulators should be singled out:

1) to preserve legal *status quo* by adopting effective legal regulatory frameworks to new circumstances, by ensuring that relations in the e-environment do not deteriorate legal status of an individual;
2) when reacting to new challenges caused by application of digital technologies, to improve normative acts by observing principles of technological neutrality and legal succession;
3) to elaborate normative acts to establish, in the EU, a common legal space by thus implementing the principle "what is prohibited in real life should also be prohibited in the e-environment;
4) to elaborate new international legal co-operation instruments, especially taking into account the trend that differences between the Common and the Continental legal system.

All these trends are included into the information society law. And these are:

1) basis of IS doctrine and role of the law in information society;
2) legal informatics, Subject, methodology. Application of expert systems of artificial intellect to law;
3) e-government law, which includes such object as document, electronic document, electronic signature, electronic archiving, service of information society, national information systems, critical information infrastructure, security of information systems, etc.;
4) human rights that include human rights guaranteed in the Satversme [Constitution], including the right to information circulation, the right to participation in state administration, extermination of any kind of discrimination in the e-environment, protection of personal data of natural persons, e-medicine, etc.;
5) e-commerce law – liabilities in the e-environment, taxes in the e-environment, advertisement in the e-environment, electronic communication law, consumer rights protection, etc.;
6) intellectual property law in the e-environment – copyright and related rights, patent right in the e-environment, legal status of a domain name, legal regulatory framework on data bases, etc.;
7) electronic communication and mass medial law;
8) threats in the e-environment, e-offence, e-breach, functioning principles of the e-environment, classification of threats, e-jurisdiction, restrictions regarding dissemination of information content established by the State, classification of harmful and unlawful information, international co-operation in investigation and adjudication of cybercrimes, etc.

Information society law – an integral part of science of law

What is the Law (as science)? The word "science" comes from the Latin word "*scentia*" that means knowledge. However, Webster's dictionary defines science as knowledge obtained as a result of studies and practice.[73] Consequently, we can conclude that a definition of any science, the Law included, consists of four basic elements:

1) obtained knowledge;
2) training process, during which knowledge is obtained;
3) approbation of knowledge obtained in practice;
4) relation of knowledge obtained with the real world, namely, their (factual usefulness for the society)[74].

In the Western philosophy, when analysing content of the term "science", the greatest emphasis is usually put on the analysis of the term "knowledge". Its understanding is based on Platon's thesis saying that knowledge is only that what is constantly correct; all "knowledge", correctness of which is terminated, he calls "an opinion". This difference forms the core of Western understanding of the term "knowledge" that does not regard its disciplines as sciences, including the Law, results which cannot be proven by applying empirical methods or by fully applying scientific methods.[75]

In a simple and brilliant way, the issues of the Law in the 18th century were dealt with by a USA professor David Hoffman. In the content of the term "Law", he included not also rights but also philosophy of Law, economy and literature.[76] This gave him the possibility to elaborate a comprehensive training programme in the Law for USA students. Hoffman's approach gave a multiple character to the Law that still plays an important role nowadays.

Also professor S. Ulen emphasizes that, in the last two decades, such inter-disciplinary elements as economy and Law, Law and sociology, Law and technology appear as part of the Law. J. Vranken[77] also agrees with him by indicating that Law would develop in the direction of inter-disciplinary research that several researches, like U. Mikelsons, relate with an integrated establishment of the Law. This makes researches of the Law turn to application of empirical methods.[78]

Therefore, the development of the information society law as the science of law is an important issue. The author of the research sees such development though the possibility to integrate these conclusions of science in curricula of higher education institutions.

Finally, it can be clearly concluded that the Law consists of different systems. Namely, it is an integrated-complex science. Its development should be based on the social necessity to develop legal doctrine for protection of rights and legal interests of any person irrespective of the environment, wherein the person creates, amends or terminates legal facts, rather than on an administrative regulatory framework. Therefore, the conclusion that the content of the Law should include everything that is included into accredited curricula of higher education institutions of the Law, including the information society law.

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[73] The definition of science. What is science? // www.sciencemadesimple.com/science-definition,html (accessed on 4 September 2008).

[74] Mikelsons U. Poligrāfa pārbaudes tiesību iestāžu darbā (eng. – Polygraph testing at law enforcement agencies). // Promocijas darbs juridiskās zinātnēs kriminālistikas un operatīvās darbības teorijas apakšnozarē. The theses have been defended before the Latvian Police Academy Council on 15 December 2007, pp. 17–19.

[75] What is science? A. Baseline definition // www.wsu.edu/~dee/Science/Baseline.htm (Consulted on 4 September 2008).

[76] A Course of legal study respectfully addressed to students of law of the United States by David Hoffman, professor of law in the University of Maryland, published by Coale and Maxwell, 1817 // http://www.law.umaryland.edu/marshall/hoffman/legalstudy.html (accessed on 20 September 2008).

[77] Ibid. J. Vranken, P. 97.

[78] Introduction to the Symposium on empirical and experimental methods of law by Richard H. McAdams& Thomas S. Ulen // http://papers.ssrn.com/sol3/papers.cfm?abstract_id=419980 (accessed on 14 September 2008).

Effectiveness of Police in Crime Prevention: Latvia's Experience

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Abstract

Legal acts in force (Police Act) determine police preventive actions, prevention of crime and other infractions as one of the major functions of police activities. The corresponding top-performing indices of police activities in the annual briefs and reports are not depicted. The actual police activities on crime prevention are not provided, police officers are not always motivated to implement the essential measures, and their activities are not supported by relevant resources.

In the near future it is required to work out the governing gudelines on providing the task-oriented and effective police activities on crime prevention. It is necessary to take into account that the police institutions are not the only and dominating ones resposible for crime prevention.

Keywords: crime prevention, effectivity of police activity, indicators, law, police.

Introduction

In the article the attention is paid to single aspects which deal with the identification of the effectivity of police in the field of crime prevention. The material included draws attention to the approach to the before-mentioned problem identification and in its further exploration.

Analyzing the problem of the efficacy of police work, it is important to understand the content of the terminology used. The term "police" can be also interpreted diversely. Thus, by this term we understand:

1) activity which tends towards the provision of a set of rules of public power;
2) an adequate set of officials, established on the basis of permanent staff of public authorities for the realization of strictly predertermined activity;
3) administrative system of public authorities, which consists of officials to implement the provision of the set of rules of public power [1].

The interpretation of the before-mentioned term "police" proves that it can be understood either as police activities, the officials of the police departaments, or the police institutions as a whole. Meanwhile, the latter terms include the aims of the police activities, content, methods of action, signs by which one can classify the officials and the institutions which perform the fiunctions of police. In literature the term "police" is most commonly explained in relation to its tasks which are performed by the respective public institution [2, *37*].

A specialist of the German police law R. Rupprecht defines that police "is the institutionalized national executive branch in departments and associations whose task is to maintain public safety and order and monopoly of state power" [3, *307*]. The British scientist L. Curzon defines the state civil service to be the police which is responsible for the maintenance of public order [4, *319*]. In Poland the legislator

has defined police as a uniformed and armed body whose main aim is to render services and to protect people, and to ensure public order and safety [5, *277*].

In the law "On Police" [6] adopted in the period of restoration of independence of Latvia, the first attempt was made to give an official understanding on the notion "police". In the preamble to the law it was said that "... the law determines the concept of police... and its place in the system of public administration and local government system", but in Article 1 "Police of the Republic of Latvia" the definition of police is given: "The police of the Republic of Latvia is an armed militarized state organization, which functions in the structure of the Ministry of the Interior of LR, and whose duty is to protect people's lives, health, rights and freedoms, property, public and state interests against criminal and other unlawful threats".

The law "On Police" says that "the police of the Republic of Latvia" is going to be stablished as state police in the country, which will find its place in the structure of the Ministry of the Interior; moreover, municipal police may be established alongside with it. The law allows for the establishment of other order enforcement institutions in the state under the auspices of the Council of Ministers. Considering the real legal status of Latvia of that time, the law envisaged that state police is under the auspices of the executive power of the state of Latvia, but the municipal police – under the auspices of the respective local government, and they function as independent institutions (following the form of cooperation).

The state police was established as an armed and militarized state institution, awarding its staff with special ranks, and within their competence would represent the state power. At that time, armed and militarized police was necessary for the state of Latvia for its protection.

Municipal police was not developed as a militarized and armed institution. Municipal police officers had to do their service duties in uniforms, they were not awarded any special ranks, but distinguishing marks of a position were introduced. Municipal police was defined as the authority for maintaining order in the respective local government, which acted in compliance with the law "On Police", within the framework of model regulations and regulation norms approved of the respective local government.

In general, one can admit that the police is the state executive armed and militarized institution under the municipal system, the duty of which is to protect people's lives health, rights and freedoms, property, public and state interests against criminal and other unlawful threats.

In the law "On Police" four different institutions have been defined as police institutions:

- Financial police;
- State police;
- Security police;
- Municipal police.

It is still worth mentioning that within the framework of the State Revenue Service, ***financial police*** functions effectively. The legislator recognizes it as a police institution, although the activity of the financial police is not regulated by the law "On Police". The aims of the financial police of the State Revenue Service are determined by Article 14 of the law "On the Sate Revenue Service", and all these aims correspond to the content of the police activities. The financial police performs the administrative, criminal procedural and operational activity of the police and can use coercive methods and means.

Thus, we can admit that "... countries have to protect their citizens in primary stages of threat development, not considering the statistics and "antihumanism" in relation to the so-called insignificant criminals" [7, *66*]. Countries with an appropriate institution, including support of police departaments, have to make all the necessary measures in prevention of criminal offences and in prevention of socially unfavourable consequences.

Effectivity of police activity in crime prevention – theoretical aspects

One of the spheres of activities as stated in the rules and regulations is the performance of various characteristic measures in crime prevention and prophylaxis of criminal offences. *One of the elements for the society and mass media to assess the police activities is to see the activities in prevention of crimes*, how to prevent a criminally-tended person, including a previously convicted one and the offenders' possibilities to

commit crimes, to warn on socially dangerous acts resulting in essential and serious damage to the society, separate social groups, as well as single individuals For the realization of the respective socially legal function respective legal acts have been written(see the law "On Police", Article 3). As a result, the assessment of the effectivity of the whole police work is connected with the resultative indices of the mentioned institution in the field of crime prevention.

In the law "On Police" *among the police tasks the following have been mentioned: prevention of criminal offenses and other offenses*; within its capacity police are to detect causes of crimes and administrative offenses and their contributing factors and to take measures for their prevention; to participate in persons' legal education (The Reporter of the Supreme Council and Government of Latvia, 1991; 31/32; Latvijas Republikas Augstākās Padomes un Valdības ziņotājs, 1991, Nr. 31/32). As a result, we can conclude that *crime prevention is one of the basic functions of police institutions*.

Marking the theoretically methodological approach of the study of the mentioned problem, we can admit that in the judicial and special literature we come accross various *operational notions*, which deal with crime prevention and which are used for recognizing the police work and its study on working out the events and realization in the context of improvement of the police work. Among the notions mentioned, we most commonly come accross the following ones: crime prevention, warning of crimes, prevention of crimes and criminal offenses, prophylaxis of crimes and criminal offenses, prevention of criminal factors, prevention of crime risk factors, limiting factors of crime prevention, etc.In many cases the terms mentioned, as well as other terms, can be perceived and used as synonyms; however, in this study the content of the notions used may be different as to their essence and their respective meaning.

Such a term as "prevention" has a grounded use in legal literature, which in translation from Latin (*preventus* – something which prevents), protects (The dictionary of legal terms, 1998) might determine: taking of measures, preventing criminal offenses, preventing and protecting physical and legal persons from crimes.

No doubt, that one of the most commonly used terms is *crime prevention*. By this term we mainly understand a set of social, economic, political, legal, administratively organizational and other measures, which are directed at the decrease of crimes and prevention of crimes. The fact is indisputable that crime is determined by a set of various factors, the prevention of which cannot be police's competence alone (the decrease of inflation and unemployment level, the increase of population knowledge in legislation and legal culture level, limitation of Access to alcohol consumption, etc.). Consequently, *police cannot be the only one and also the priority subject in the field of crime prevention*. Each institution, however, in correspondence to its socially essential functions and its competence has its role in the sphere of crime prevention. *Police cannot be responsible for the increase of crime, especially severe crimes, the increase of crime coefficient, or structural changes in criminality in general*.

When investigating the effectivity of police activities in the field of crime prevention, it is undoubtedly important to reveal the content and the idea of *the term "effectivity"* (here it is in relation to the object of activity – crime prevention). Effectiveness of the institution is depicted in the achievement of aims written in regulations by means of at least lesser resources used. What are the evaluation criteria of effectivity of police activities in crime prevention and its resultative indicators? Are these criteria and indicators designed in the overall evaluation matrix of police activities? Are they paid sufficient attention to? Are they important when evaluating the overall police work, or are they only secondary? When studying police activities in the field of crime prevention, it is essential to set the criteria which would allow to state the effectivity level of the mentioned activity (the total sum of measures to be made). We have to admit, that *setting of the criteria* and fixation of respective indicators is quite a complex procedure. The indicators should be diagnosed quantitatively, and consequently, the possibilities to observe the effectivity of police in crime prevention would be provided at certain (comparable) periods of time.

The effectivity criteria of the police activities in crime prevention could be as follows:

- criminal proceedings on preparation for commiting criminal offences initiated in police institutions;
- interrupted crimes by police officers (prevention to commit a crime up to planned and expected result);

- level of detected crimes, admitting that the persons identified, especially those for whom the security measure is to be in custody, are not able to commit a crime any more (they have limited possibilities to continue criminal activities);
- the total sum of measures taken by the police institutions (structural units) and the staff, their intensity and quality;
- the population's satisfaction with police activities in general and in the field of crime prevention.

Law experts A. Garonskis and A. Matvejevs, when analyzing the experience of police activities in the field of prevention in Europe and Estonia, agree quite groundedly that the effectivity indicators are as follow:

- the number of official warnings handed out on the unacceptability of further immoral action;
- the number of applications sent to court on determining special surveillance for persons who have previously breached the law;
- the number of persons detected who have unlawfully kept weapons;
- the number of confiscated unlawfully kept weapons, narcotics and explosives;
- the number of handed out and cancelled permissions;
- lectures on prevention, discussions and other presentations with the aim to inform the population on safety measures of personal property, ensurance of personal and public safety measures, etc." [8, *16–18*].

Separate before-mentioned police measures in prevention of crimes have to be estimated as an interruption and fight of single crimes (confiscation of global weapons, narcotics and explosives), termination of offenses (warning on the unacceptability of immoral action, annulled permissions). No doubt police officers prevent commitment of more severe crimes. Among the preventive measures undertaken by police, according to A. Goronski and A. Matvejevs, there are also the so-called measures of general prophylaxis. We have to admit that the preventive activity in general can be wide and markedly extensive.

Preventive activity undertaken by police includes the following directions:

1) total (general) prevention directed at the fixation of factors contributing to crime, reduction or prevention of their influence;
2) special preventive activity directed towards prevention of criminal offenses from single social group representatives (minors, migrants, previously convicted, etc.);
3) individual preventive activity, dealing with taking prophylactic measures with certain persons.

In the context of crime prevention, we will mainly turn our attention to the total preventive activity. Special literature, in relation to the preventive police activities in crime prevention, points to the realization of the following measures:

1) presence of police officers dressed in uniforms in public places (patrolling, policemen's beat, communication with the society);
2) establishing the factors contributing to crimes, their collection, reduction and prevention of their influence;
3) control of safety measures in enterprises, organizations and companies;
4) informative work in educational establishments;
5) informative-educative work with the society [9].

Approaches in evaluation of the effectivity of police work

The effectivity of police institutions and their structural units in total and in relation to crime prevention is one of the elements of management strategies. Yet, we have to admit that in practice it is not always realized sufficiently and with a high degree of responsibility. In new management technologies abroad the evaluation of police activities is an indispensable part of their strategic management.

It includes setting of certain aims and objectives (including those which are determined by regulations), as well as acquiring the information and analysis on the achievement of these aims and objectives. In the new management technologies the most commonly raised questions are as follow:

- What has a police institution achieved in a certain period of time?
- How effectively has this institution worked by realizing its functions and achieving the objectives, performing specific tasks?
- To what extent have police activities solved or reached the population priorities – preserving their safety? [10, *18–19*]

The evaluation of the effectivity of police activity in crime prevention can be achieved only in the context of total strategic management, analyzing also the fulfillment of other functions.

Currently in the USA, on the basis of strategy of the new public management, the effectivity of police institution activity, crime prevention including, comprises in itself successively depicted set of elements:

1) determination of the mission of the police institution which is related to the corresponding structure activity and justification of excellent functioning;
2) setting aims and objectives which deal with crime prevention, thus, stabilizing crimes and reaction of the society addressing police activities;
3) determining and programming the types and forms of activities, targeted at crime prevention by involvement of police institutions.
4) determination and description of the aims of activities set by police institutions; determination and description of forms of activities and expected results of causal relationship; measured indicator of definite preventive activities, which would determine the possibilities to achieve the aims set and use the obtained data (in many cases these indicators are connected with doing public surveys and interviews of experts);
5) external factors in crime prevention which would affect the determination of the realization of the mentioned functions in the police activities, the need for the establishment of instruments in diagnosing this influence;
6) working out a feedback mechanism and its application (getting the information on to what extent the measures taken by the police in crime prevention reach the aims and objectives planned, correction of the activities of police institutions, considering the data acquired [11, *69*].

In the USA the working out of the above-mentioned strategic management model and its implementation is obligatory and has been realized since 1993. In correspondance with the effectivity and resultativity acts of Federal institutions, each Federal institution has to hand in a respective strategic plan to the Congress by September 30 every year.

Along with the plan mentioned, the institutions develop also the so-called effectivity plan. In this plan the measurable indicators of direct results are included, as well as the expected impact of each individual aim. In the effectivity plan one should point to the information sources, which would allow to make sure that the planned result has been achieved (partially, or not completed).

The system of the eveluation of the the institution's work effectivity includes a comparative analysis of three indicators: a) "input" information on the provided and used resources in the achievement of the aims in crime prevention; b) indicators which demonstrate the result achieved (prevented crimes; people's satisfaction with police activities, etc.); c) total effect of police work.

It is characteristic that in order for the evaluation to be objective, all the above-mentioned group indicators must be precisely stated. Thus, the indices of resources of the police institutions ("input") are determined by the use of total means, the price of one activity unit (service). So, for instance, the programme "Children safety" is envisaged for 5 men hours per week, which, in total, requires 3000 USD per month. Costs of one man hour are 137.50 USD. In an analogous way the costs of one man hour of patrolling, admission hours of population, examination of the applications, etc. are calculated [12].

The system of calculation is complex when determining the results achieved. They depict specific activities performed, using a corresponding consumption of resources. It is interesting that in the case

mentioned, for example, the necessary crime prevention measure is calculated – by patrolling 5 hours in the streets in a car, and by patrolling the streets on foot for 10 hours in a month per one town inhabitant. In Riga the corresponding indices would approximately be 160–170 working hours per one police officer, patrolling in a car and approximately 350 hours patrolling on foot.

The achieved results are calculated on the basis of the qualitative parameters of services rendered. Thus, the proportion of calls to the police is calculated, where the answer is given within 30 seconds. Of course, it is true that one cannot know the content of the call, nor the caller's satisfaction with it. Control of the result achieved is the basis of the management of the strategy.

Indicators of the achieved results of a police institution can be depicted also in a different way: the number of interrupted or prevented crimes; the proportion of the crimes detected; the number of cases which have come to the court and the number of sentences. At the same time the resultative indices of the achieved results by the police are directed at the inhabitants who are rendered specific services, satisfaction with the attitude and work of the police. One ancient Greek manuscript, referring to the state service, witness the following: "... the applicant wishes to have greater attention to his words rather than their implementation he had come for" [13, *129*].

Police do a very important mission in protection of people and provision for their safety. Just for this reason alone the communication with the applicants and their satisfaction for the communication with the police is an essential indicator of the result of police work.

The total indicator of effectivity of police activity in crime prevention is one of the most essential which approves the implementation of the respective mission of the institution mentioned. In fact, it is the result of specific police activities and consequences of quality of measures taken. With the help of the total indicator of the effect one can recognize its impact that the police makes on the society.

These measures directly point to the fact, why and for whom they are necessary. The total indicator of the effect can be best calculated in relation to definite target groups. For example, to decrease the proportion of the minors in the total number of the crimes committed; to decrease the repeated crimes of teenagers; to stabilize the number of crimes which deal with narcotics and psychoactive substances, violations committed in the condition of alcohol intoxication, etc. Analogous target groups could be persons who have been previously convicted, and the effect of measures taken, not permitting the cases to commit a repeated crime.

To exemplify, Australian analogous police strategic plans in crime prevention can be discussed.

Tasmania police in 2020 set the following strategic activity aims in crime prevention:

- 98% people have to feel safe in their homes;
- 85% people have to feel safe by taking public transport;
- the crime level has to be decreased by 50%;
- family violence has to be decreased by 1/3 [14].

Indicators of results of police activities in crime prevention are targeted at getting measurable results in a definite region (country, town, region, etc.). In developing such indicators of results (in crime prevention), one can identify certain stages:

1. Setting of goals for a certain action. For example, the increase of total safety of the people against crimes.
2. Identifying the result to be achieved, which could include the following indicators:
   - the expected effect (to decrease crime, to increase the percentage of detections, etc.);
   - target group (population, schoolchildren);
   - situation of target group parameters (safety conditions, feeling of fright, number of persons of criminal liability);
   - quantitative parameters of fixed situation (by 20% in the evening and at night, etc.);
   - time period to be measured (a year, five years, etc.).
3. Obtaining the sources of information which give a possibility to fix the achieved result and to measure the effectivity of work [15].

In the period of investigating definite cases it is necessary to define the above-mentioned quantitative indicators of the criteria, to learn about their changes in a certain period of time (in the last five years, or since 1991). In order to get people's opinion on the effectivity of police activities in crime prevention, it is important to do a certain criminological study. The quantitative indicators of the criteria mentioned can give a rather incomplete picture of the police effectivity in the field under analysis.

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Trends and Prospects in the Development of the Regulation for Arbitration Courts in Latvia

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Abstract

The present article focuses on several problem issues concerning the regulation of arbitration courts in Latvia. It should be mentioned that the article was written during the period when significant changes were planned in the legal regulation of arbitration courts – the drafting of the new Law on Arbitration Court was in the process and the institute of the arbitration court was the focus of an extensive public debate. The author maintains that the possibility for businessmen to settle disputes in an arbitration court should be looked upon as a mechanism of self-regulation, which ensures the efficient existence of the system of commercial activities. The author has reviewed also several fundamentals of the legal regulation, as well as issues already discussed as well as individual categories, their development trends and perspectives of the institute of the arbitration court in Latvia.

Keywords: arbitration courts, Alternative dispute resolution, ADR, mediation, civil procedure, litigation, conciliation.

A strong and independent judicial power is the foundation of any law-based state. At the same time seeking judicial protection is necessary in disputes that arise in the area of civil relations. Parties in civil relations are granted the opportunity to resolve the dispute themselves or to use other legal procedures.

Currently an out-of-court dispute resolution is recognized and widely applied. It appeared as an alternative to the civil litigation, which, irrespective of its significance in the society, is a formal, lengthy and complicated process.

The problem of an efficient and speedy dispute resolution exists to date and it is constantly discussed in the systems of law in various countries of the world. In this respect Francis Bacon (*Francis Bacon*), a legal philosopher, has said the following: "*In most part it is better to reach an agreement orally than in writing and with the help of a third party – a mediator – than to do it oneself.*"[1] Thus a third party is necessary to help find a solution to a dispute.

Currently dispute resolution through arbitration on the whole is regulated in Latvia. The Civil Procedure Law[2] regulates all the main issues of the operation of arbitration courts as well as issues concerning the execution of awards made by them. However, the validity of the above legal act does

[1] Roney, John H. B. Alternative Dispute Resolution: A change in perception // International Company and Commercial Law Review, 1999;10 (11): 329.

[2] Civilprocesa likums: LR likums [eng. – Civil Procedure Law: State Law of Latvia] // Latvijas Vēstnesis, 03.11.1998, Nr. 326/330, ar grozījumiem līdz 01.04.2012.

not exclude all those problems that are, in actual fact, encountered today upon resolving disputes at arbitration courts in Latvia.

Many requirements contained in legal acts require **theoretical understanding** (*the author's emphasis*), that can be achieved with the help of the case law of arbitration courts as well as the case law of courts, which at present, it must be acknowledged, is considerable[3]. It is no coincidence that many lawyers have voiced concern that during the discussion of the new draft Law on Arbitration Courts negative views are expressed on the significance of dispute resolution through arbitration and its prospects in contemporary Latvia as well as the ambiguity of case law which is the reason why not infrequently there is a critical perception of awards made by arbitration courts.[4]

The most important task of legal acts regulating courts and arbitration courts is the harmonization of national legal acts in line with international standards. Inga Kacevska has recognized[5] that the annotation to the draft Law contains references to international legal acts and conventions; however, many articles of the draft Law are contrary to international commitments assumed by the Republic of Latvia. It must be noted that a significant prerequisite for a successful development of arbitration is also the existence of national legal acts providing the framework and ensuring the operation of international arbitration. Certainly, the content of a legal act of the kind as well as the practice of its application should be harmonized with standards that exist in the world[6].

The actions of the legislator to include the arbitration court in the form of a separate chapter but not as a supplement to the Civil Procedure Law or in the form of a separate law, was determined by the historic aspect as in the Civil Procedure Law of 1938 the regulation of the arbitration court was included in a subchapter to the separate chapter on the procedure of conciliation.[7] Upon the enactment of the new Civil Procedure Law in 1998, this tradition was retained and the institute of the arbitration court is regulated by Part D of the Civil Procedure Law and in Part F in issues on the recognition and execution of foreign arbitration awards.

Like in Latvia, in Austria as well a necessity arose to improve their regulation in line with contemporary requirements and as a result the new regulation for arbitration courts in the Civil Procedure Code of Austria became effective as of 1 July 2006.[8] Likewise, in Latvia it is necessary to improve the regulation for arbitration courts; however, already at the very basis; difference of opinion has been expressed, e.g., there is an opinion that there should be a separate law.[9]

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[3] Tiesu prakse lietās par izpildu rakstu izsniegšanu šķīrējtiesas nolēmuma piespiedu izpildei [eng. – Judicial practice in cases of issuance of the writ of execution on arbitration enforcement] // Latvijas Republikas Augstākā tiesa, 2008. Pieejams: http://www.at.gov.lv/lv/info/summary/2008/ [accessed June 18, 2012].

[4] Šķīrējtiesa – neizmantota iespēja Latvijā [eng. – Arbitration – a missed opportunity in Latvia] // Jurista Vārds, 07.02.2012., 6 (705); See more: Juristu biedrība diskutē par jauno Šķīrējtiesu likumu [eng. – Law Society discusses the new Arbitration Law] // Jurista Vārds, 16.09.2008., Nr. 35 (540), 15. lpp.

[5] See in more detail: Juristu biedrība diskutē par jauno Šķīrējtiesu likumu [eng. – Law Society discusses the new Arbitration Law] // Jurista Vārds, 16.09.2008., Nr. 35 (540), 15. lpp.

[6] A considerable problem is the formulation included in the draft Law that provides the right for both parties to agree only on an arbitration court that has been registered with the Enterprise Register of the Republic of Latvia. It would mean that there would be no possibility of reaching an agreement, e.g., concerning the Stockholm Arbitration Court or any other international arbitration court situated outside the territory of the Republic of Latvia. See in more detail: Juristu biedrība diskutē par jauno Šķīrējtiesu likumu [eng. – Law Society discusses the new Arbitration Law] // Jurista Vārds, 16.09.2008., Nr. 35 (540), 15. lpp.

[7] Civilprocesa likums ar paskaidrojumiem (eng. – Civil Procedure Law with explanations) / Sastādījis F. Konradi un T. Zvejnieks. – Rīga: Valsts tipogrāfijas izdevums, 1939. – 436.–443. lpp.; See more: Bukovskis V. Civīlprocesa mācības grāmata [eng. – Textbook of Civil Procedure Law]. – R., 1933. 568–579. lpp.

[8] Хегер С. Комментарий к новому австрийскому арбитражному законодательству. – Москва: Волтерс Клувер, 2006, с. viii-xiii. See: Sections 577–599, Chapter 4, Austrian Code of Civil Procedure (*Zivilprozeßordnung; ZPO*), as last amended by law of December 6, 2005 (in effect 1 July, 2006); an English translation is available at http://arbitration-austria.at/dokumente/CivilProceduralCode.pdf [accessed June 18, 2012].

[9] See: LR Tieslietu ministrijas 08.11.2011. informatīvais ziņojums "Par tiesu praksi attiecībā uz termiņiem, kādos tiek izskatītas lietas" [eng. – Report by LR Ministry of Justice "On Case Law relating to the times in which cases are heard"], 8. lpp. // http://polsis.mk.gov.lv/LoadAtt/file17904.doc [accessed June 7, 2012].

Why should there be a new law, what traditions do we have?[10] The annotation to the new draft Law[11] states that "*until now practice has proved and the often expressed criticism confirms that the mechanism for the establishment and control of the operation of arbitration courts, that is effective at present, is not sufficiently effective*". In her turn, in 2005 Solvita Aboliņa, the Minister of Justice at the time, said: "*At present the society does not have a clear understanding about arbitration courts and it is used for dishonest purposes. The new law must define clearly what the arbitration court is, how it operates and what consequences dispute resolution by an arbitration court has*".[12] However, this is not legal argumentation; therefore, a separate law is required. Still, since that the working paper[13] states the necessity for separate law without argumentation.[14]

Many problems of the operation of arbitration courts do not have a legal character; they are rooted in the social-economic and psychological aspect. Unfortunately, in Latvia the tradition is that the word of the legislator is not decisive to ensure that a social or legal institute takes root. That is why a skeptical attitude towards arbitration courts as an alternative to public courts is characteristic for the population in Latvia.[15] At present the practical staff dealing with the review of cases in the arbitration court as well as theorists of law express doubt concerning this legal type of dispute resolution.

It must be noted that at present conciliation procedures are not a perspective of near future for us, because parties do not have particular trust in awards that they themselves make, and in the end they want to receive a writ of execution issued by a public court. Moreover, a paradoxical situation is encountered at public courts when parties submit a claim to the court; however they are not at all concerned about the outcome of the review – what is important for them is the judgment as such. Certainly, it can be explained by the fact that litigation at Latvian courts is not expensive and quite a long period of time passes when finally a judgment is received that has already become effective. As to debtors, aware that courts are overburdened; they appeal court judgments for any reason as litigation may last three or more years. They have absolutely no interest whether the claim will be satisfied or rejected. The dispute is reviewed in a situation when the party has absolutely no interest in the outcome. The author of the Paper would add that not only the above facts but also the general background, against which the legal and social economic weakness of the arbitration court is demonstrated, discredit the operation of arbitration courts.

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[10] Inga Kacevska emphasizes that the historic element has been disregarded in drafting the given version, namely, the arbitration law has developed in Law. She mentioned also the fact that already earlier there had been a draft law on arbitration courts in Latvia that had been commented on by internationally renowned specialists on arbitration, whose conclusions could have been used in the drafting of the new draft law. *See in more detail:* Juristu biedrība diskutē par jauno Šķīrējtiesu likumu [eng. – Law Society discusses the new Arbitration Law] // Jurista Vārds, 16.09.2008., Nr. 35 (540), 15. lpp.

[11] Šķīrējtiesu likums: likumprojekts [eng. – Arbitration Law: Bill] // http://www.mk.gov.lv/lv/mk/tap/?dateFrom=2007-10-17&dateTo=2008-10-31&text=%C5%A1%C4%B7%C4%ABr%C4%93jtiesu&org=0&area=0&type=0 [accessed June 15, 2012]; Šķīrējtiesu likums: likumprojekta anotācija [eng. – Arbitration Law: abstract of the Bill] // http://www.mk.gov.lv/lv/mk/tap/?dateFrom=2007-10-17&dateTo=2008-10-31&text=%C5%A1%C4%B7%C4%ABr%C4%93jtiesu&org=0&area=0&type=0 [accessed June 15, 2012].

[12] Tieslietu ministre: nepieciešams atsevišķs likums par šķīrējtiesām [eng. – the Minister of Justice: There is the need for separate law on Arbitration] // http://www.tm.gov.lv/lv/jaunumi/tm_info.html?news_id=72 [accessed June 18, 2012].

[13] Šķīrējtiesu likums: likumprojekts [eng. – Arbitration Law: Bill] // http://www.mk.gov.lv/lv/mk/tap/?dateFrom=2007-10-17&dateTo=2008-10-31&text=%C5%A1%C4%B7%C4%ABr%C4%93jtiesu&org=0&area=0&type=0 [accessed June 15, 2015].

[14] Juristu biedrība diskutē par jauno Šķīrējtiesu likumu [eng. – Law Society discusses the new Arbitration Law] // Jurista Vārds, 16.09.2008., Nr. 35 (540), 15. lpp.

[15] Paiders J., Skagale G. Šķīrējtiesām Balvos uzrodas dubultnieki [eng. – Arbitration in Balvi gets a twin] // *Neatkarīgā Rīta Avīze*, 08.12.2004.; Krastiņš J. Šķīrējtiesas Latvijā bauda teju neierobežotu brīvību [eng. – Arbitrations in Latvia enjoy almost unlimited freedom] // *Diena*, 03.12.2002.; Rozenbergs J. Latvijas uzņēmēji baidās strīdu risināšanai izmantot šķīrējtiesu [eng. – Latvian entrepreneurs are afraid to use arbitration to settle disputes] // Dienas Bizness, 19.07.1996, 3. lpp.; Āboliņa A. Taisnības apšaubāmā kvalitāte [eng. – Questionable quality of justice] // Latvijas Avīze, 04.01.2005., 13. lpp.

Currently in Latvia control over arbitration courts is concentrated in the stage of issuing the writ of execution. Therefore, the arbitration award is not the subject to appeal; however, to have it executed in a compulsory manner, a writ of execution is required, that is issued on the basis of the decision taken by a judge of the district (city) court.

In the author's opinion, it is not possible to effectively control the operation of arbitration courts of this kind on these issues by reviews organized by public courts[16]. In the given case priority should be accorded to forms of public control which help to ensure the authority of specific arbitration courts. Public control serves as a mechanism of self-regulation that ensures the stability of the overall system. Among forms of such public control priority is given to voluntary associations of merchants that are objectively interested in using arbitration courts as a self-regulatory mechanism of commercial cooperation.

Another form of public control over the "purity" of the arbitration court is the self-organization of arbitration courts within the frame of a uniform association. Certain conditions have not been created in this field.

One of the key directions for the development of the system of arbitration courts is the consolidation of the basis for the resolution of commercial disputes in an arbitration court. The review of commercial disputes in arbitration courts has always been the dominant of arbitration courts. Certainly, this is no coincidence. Merchants is the most dynamic and active part of the society whose activities are based on speedy and efficient decision-making. Such speedy decisions are to be taken also in the event of addressing commercial disputes. Due to various objective reasons competent public agencies do not always have the possibility to adapt to the dynamics of the commercial environment. Arbitration courts which take the role of "flesh of flesh", friendly for merchants are better adapted to a speedy and efficient resolution of commercial disputes. The more developed dispute resolution will be at arbitration courts as an element of the self-regulation of commercial activity, the more independent and powerful the Latvian business will be.

One of the most significant areas for the development of the legal regulation for arbitration proceedings is the improvement of norms. It would be necessary to clarify categories of disputes that are submitted to review by arbitration courts, e.g., a more explicit regulation is required for the options of dispute resolution concerning issues of consumer rights and ceded claims.

The possibility for merchants to resolve disputes in arbitration courts should be viewed as a self-regulation mechanism that ensures the effectiveness of the existence of the system of commercial activity. Being the economic core of the society, commercial activity is at the same time also the most dynamic element of this system. Commercial activity like no other social phenomenon needs effective and rational self-regulation mechanisms.

The Constitutional Court has recognized that situations when it is simply not possible to do without arbitration courts, arise not only in the area of commercial activities, namely, *"The right to freely dispose one's property, for example, by entering into civil contracts, ensues from the right to property guaranteed by the Constitution. This principle of civil liberty would be infringed if it were not possible for contracting parties to reach an agreement on the appropriate content of the agreement, providing, inter alias, for the purpose of dispute resolution by arbitration to use the advantages of this particular solution."*[17]

One of the key requirements set for the procedure of dispute resolution in the area of commercial activity is the requirement for high professionalism. Narrow specialization in a specific area serves as the warranty of the quality of dispute resolution. The tempo of dispute resolution should be combined with the qualification level of persons who make the award concerning a legal dispute. Therefore, specialists

[16] In the event of the existence of the basis provided by Article 536 of the Civil Procedure Law, e.g., arbitration proceedings have not been held in compliance with provisions contained in the arbitration agreement or Part D of the Civil Procedure Law, the judge refuses to issue the writ of execution.

[17] Latvijas Republikas Satversmes tiesas 2005. gada 17. janvāra sprieduma lietā Nr. 2004-10-01 "Par Civilprocesa likuma 132. panta pirmās daļas 3. punkta un 223. panta 6. punkta atbilstību Latvijas Republikas Satversmes 92. pantam" / secinājumu daļas 8.1. tēze // Latvijas Vēstnesis, 18.01.2005., Nr. 9 (3167).

with the highest authority in the area of law, specializing in certain problems of law, e.g., scholars of law, practicing attorneys as well as specialists of the sector that the dispute to be resolved pertains to (economists, bankers, specialists on maritime affairs, real estate, intellectual property etc) are invited to participate in arbitration courts.

At the same time, irrespective of the fact that arbitration court should be instrument for the self-regulation of commercial cooperation, this particular institute of jurisdiction will inevitably encounter obstacles difficult to overcome without the support of arbitration courts by the state. The said support may manifest itself in diverse ways and may provide a diversity of measures. First and foremost, these would be the measures for providing the legislative regulation for the operation of arbitration courts.

Another direction of support for arbitration courts is activities focused on the consolidation of cooperation between arbitration courts and competent public courts (general jurisdiction courts). Educational workshops are required, e.g., at the Judicial Training Centre of Latvia where judges would be involved to acquire an understanding of the essence of the arbitration proceedings, their relevance in the economic and legal life of the country. The practice when public courts apply legal norms about arbitration (including norms concerning international arbitration) gives a diverse experience; moreover, court judgments about one and the same issue can be quite different. The development of case law on the application of arbitration norms is a difficult task, which, in fact, is the necessity to ensure a very careful attitude to this particular institute of jurisdiction, bearing in mind that this or that direction that will develop, may have a significant impact on the interest of the business community in Latvia and their foreign partners in using the possibilities of international arbitration to resolve disputes that arise from international relations on the territory of Latvia.

Another important area for strengthening arbitration courts is the strengthening links between courts and arbitration courts. A consistent and regular addressing of issues pertaining to the cooperation of the institutes of public courts and arbitration courts should become the next stage in the development of legal acts regulating arbitration courts as well as the practice of application. Practice shows that similar links are established not only during proceedings when competent public courts undertake measures to secure claims that are submitted to arbitration courts but also promote the compulsory execution of awards within the frame prescribed by law and exercise control over the process of executing awards of arbitration courts.

It applies in an equal measure to the development of general jurisdiction case law by using norms concerning *national* arbitration courts. This particular task may be even more topical than the task of developing the practice in applying international arbitration norms. Moreover, it must be noted that the current regulation tends to regulate issues concerning dispute resolution within a country, while less attention is paid to ensuring that Latvia may become the centre for international dispute resolution.

It is not possible to do without sociological research in the assessment of the socio economic effectiveness of arbitration courts. Inter alias, this research is far from being developed in the area of research on arbitration courts. The fact that there are no sociological research studies on the functioning of arbitration courts does not allow developing a comprehensive understanding of their social relevance. However, it is not clear where such phrases as "*The fact that the current control mechanism is not sufficiently effective, is confirmed also by the comparatively low reputation of arbitration courts and the distrust of the society in the operation and awards of arbitration courts*", found in the annotation to the new draft Law, come from.

According to the data of the Enterprise Register, in June of 2012 there were 210 arbitration courts in Latvia.[18] However, the number of persons acting as arbitrators in Latvia is not known. It is presumable that the development of sociological research on arbitration courts should become one of the main areas that will serve as the basis for the research on dispute resolution through arbitration. At the same time sociological research on the operation of arbitration courts is required not only for itself, but for the purposes of satisfying scientific curiosity. A complete picture of the institute of arbitration courts in Latvia will allow establishing their importance in the socio economic and legal life of this country.

[18] Latvijas Republikas Uzņēmumu reģistra dati par šķīrējtiesām [eng. – Data on arbitrators by the Register of Enterprises in the republic of Latvia] // http://www.ur.gov.lv/skirejtiesas.html [accessed June 18, 2012].

Another area of the development of arbitration courts would be the implementation of the so-called **arbitration courts of conscience (fairness)** in the legal reality of Latvia. Arbitration courts of conscience have long standing traditions in the legal system of Latvia as well as legal systems of foreign countries. As of 1940 there traditions were lost in Latvia. However, it seems that one of the key indicators of the maturity of a developed legal system is that it encomprises arbitration courts that make awards on legal issues, first and foremost proceeding from the principle of fairness. Courts of conscience could become more widespread in the area of commercial activities resolving a dispute as a conciliator (*amiable compositeur*)[19] or according to the principle of *ex aequo et bono*[20] or following *lex mercatoria*.[21] It is determined by factors of an objective character – the stability of commercial activity is based on the principle of good faith, fairness and justice. It, in its turn, is an incentive for the development of courts that resolve inevitable legal collisions proceeding solely from the principle of justice. Certainly, it is not to contrast the principle of justice with the principle of legality as the leading ideas which are at the basis of the court of conscience. Undoubtedly, the resolution of this particular task requires the maturity of the economic, political and social life of the society. One of the most significant factors obstructing the implementation of the arbitration courts of *conscience* is corruption in the country that degrades the society. It cannot be excluded that corruption may penetrate into arbitration courts as well destroying trust in this institute of jurisdiction.

The criminalization of arbitration courts and mediators is indicated also by other lawyers, among them specialists on criminal law and criminology.[22] However, it is justly emphasized that *mediators* and *arbitration courts* of this kind destabilize the business environment, stimulate the growth of tension in business relations, impede the influx of investments and the integration of Latvian companies into the civilized market,[23] and discredit the very idea of mediation.

Still the negative trends in the area of shadow justice, which affects also arbitration courts, must not become an insurmountable obstacle in the development of an alternative dispute resolution system. It concerns also the necessity to study and introduce into the legal system arbitration courts that operate on the basis of justice.

Certainly, the operation of arbitration courts of *conscience* will be essentially different from the operation of *legal* arbitration courts. It applies, first and foremost, to the principles of operation. If the operation of arbitration courts of *conscience*, as it ensues from the name of these courts, will proceed under the domination of the principle of fairness (conscience), then the operation of *legal* arbitration courts is subject to the regime of legitimacy and is based on the application of the positive law. Significant differences exist also in the grounds for challenging awards made by arbitration court of *conscience* and *legal* arbitration courts.

One of the most relevant components of the institute of arbitration courts is activity directed towards the development of knowledge about this particular phenomenon of law. In this respect the main task is to develop study courses in the curricula of higher educational institutions on dispute resolution by alternative methods in general and in arbitration courts in particular. It is no secret that even students of law schools do not receive the required information on what arbitration courts are, what their legal

[19] In Latin – the arbitrators are authorized to disregard legal technicalities and strict constructions.

[20] Latin for "according to the right and good" or "from equity and conscience".

[21] Latin for "merchant law".

[22] The annotation to the draft Law on Arbitration Court says: *"At the same time a discussion would be necessary on the amplification of normative acts by prescribing the criminal liability of arbitrators for their participation in the review of a case in the event of the existence of a conflict of interest that the arbitrator knew about or should have known about in view of the existing circumstances as the prescription of criminal liability would enhance the responsibility of arbitrators for the performance of their duties as well as promote the trust of the general public in the operation of arbitration courts and fair dispute resolution in the arbitration court."*

[23] Liepiņš I. Ventspils tranzītbiznesa karš. Ar Ventspili saistītas noziedzības šķērsgriezums [eng. – Ventspils transit war. Ventspils related crime section]. – Rīga: Žurnālistisko pētījumu organizācija Sabiedriskās izmeklēšanas birojs, 2008. – 87.–97. lpp.

nature is, peculiarities of operation, their role on the system of national jurisdiction. As a consequence, there prevails a nihilistic attitude on the part of lawyers, which is rooted in the lack of elementary knowledge about this institute of law.

It must be noted that some higher educational institutions are quite active in introducing study modules on arbitration courts in their curricula. Thus, the Riga Graduate School of Law and the Faculty of Law at the University of Latvia have introduced special courses providing knowledge about arbitration courts and alternative dispute resolution methods. As concerns other educational institutions, the inclusion of respective courses in their curricula to provide knowledge about arbitration courts and alternative dispute resolution methods depends, not infrequently, on efforts of individual specialists.

Another area of development is the implementation of mediation[24] in arbitration proceedings as well. In this respect a concept *Implementation of mediation in Latvia*[25] has been formulated. The given concept notes that if mediation is not implemented in Latvia and developed as an independent form of resolving controversies, no incentive will be provided for the application of a more efficient way of addressing differences of opinion that would better satisfy the involved parties, and thus court proceedings will still be considered to be the most appropriate solution for resolving any disagreements. Therefore, an opportunity must be provided to use mediation as well prior to seeking dispute resolution through arbitration.

Thus, a comprehensive, flexible and efficient legal system should be develop that would react appropriately to the interests and needs of subjects of civil legal relations. The author holds the opinion[26], the right to choose a specific type of dispute resolution should be given to subjects of civil legal relations themselves; however, provision must be made that disputes of some categories are resolved only in court as well.

Conclusions

As a result of the research carried out, the following conclusions and recommendations have been made:

1. The maturity of civic society, on the one hand, is the prerequisite for the development of arbitration courts, while, on the other hand, alternative dispute resolution ways are provided, which include also arbitration. In this aspect the development of arbitration courts reflects the objective trends in the development of civic society and its institutes.
2. Currently, in general, dispute resolution in arbitration courts in Latvia has been regulated. The CPL regulates all the main issues pertaining to the operation of arbitration courts as well as issues on the execution of awards made. However, the existence of the above legal act does not preclude all problems which are now encountered in reality upon dispute resolution through arbitration courts in Latvia. Many requirements of legal acts require theoretical understanding that can be achieved with the help of the practice as well as case law of arbitration courts, which at present, it must be recognised, is quite considerable; nevertheless, until now not summarised.
3. Experience shows that the current regulation on arbitration courts does not ensure an up-to-date and well functioning legal structure not only for national but also for international arbitration proceedings. Likewise, it must be pointed out that the Latvian legislative, judicial and arbitration institutions have not been in the foreground of the formulation of an up-to-date regulation for the arbitration court, conditions and practice. Part D of the CPL is not well visible and in some cases it is not easily understandable as some issues that are essential for the appliers

[24] LZA Terminoloģijas komisijas sēdes protokols Nr. 4 (1069) no 06.06.2006. par vārdu mediators un mediācija latviskajiem ekvivalentiem // http://termini.lza.lv/article.php?id=196 [accessed June 15, 2012].

[25] Koncepcija "Mediācijas ieviešana Latvijā" [eng. – Conception "Mediation introduction in Latvia"] // http://polsis.mk.gov.lv/LoadAtt/file65116.doc [accessed June 15, 2012].

[26] Kronis I. Civiltiesisko strīdu alternatīvs risinājums [eng. – Alternative solutions of civil disputes]. – Rīga: Latvijas Vēstnesis, 2007.

of the regulation for arbitration courts have not been explicitly regulated but only considered in the case law or legal doctrine. Upon the development of the new regulation for arbitration courts, note should be taken of changes that have influenced this regulation in the course of the last 10–15 years.

4. One of the most crucial areas for developing the legal regulation of arbitration proceedings is the improvement of norms. Although one of the purposes of types of alternative dispute resolution is to relieve the overload of general jurisdiction courts, the legislator narrows the competence of arbitration courts in addressing civil disputes, prescribing increasingly more categories of disputes which are not the subject to arbitration. It would be necessary to clarify categories of disputes that are referred to arbitration courts for review, for example, there is a necessity for a more explicit regulation of possibilities of dispute resolution in respect of issues of consumer rights and ceded claims.
5. Another area of development is the implementation of mediation in arbitration proceedings as well. It is noted, that if mediation is not implemented in Latvia and developed as an independent form of resolving controversies, court and arbitration proceedings will still be considered to be the most appropriate solution for resolving any disagreements. Therefore, the opportunity should be provided to use also mediation prior to dispute resolution in the arbitration court. The author suggests to supplement Article 487 (3) of the CPL as follows: *"The arbitration court shall refuse to accept the claim if the parties have, in accordance with procedures set out by law, agreed to transfer of the dispute for it to be the subject – matter of an agreement on mediation procedure, if the parties have failed to have recourse to the mediation procedure within the time – limit specified in the agreement on mediation procedure and the time – limit has not expired yet or, where the agreement on mediation procedure has not set any time – limit to end the mediation procedure, if the time period of one month after one party's suggestion to the other to have the dispute resolved by mediation procedure has not expired.".*
6. The modern trend of arbitration regulation is to expand rather than limit the jurisdiction of arbitration in dispute resolution, therefore:
   - it would be necessary to clarify categories of disputes that are referred to arbitration courts for review; the complete prohibition of consumer claims and claims regarding the eviction of a person from living quarters, should not be supported.
   - it is recommendable to expand the public activity in guaranteeing (ensuring) legality in the operation of arbitration courts, allowing to challenge arbitration awards. The challenge is a procedure under which the arbitration award is assessed according to such criteria as pertain to issues of the legality of the establishment of the arbitral tribunal, the correspondence of the dispute to the competence, the ability of parties to express their arguments etc.

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