

## PROBLEMS OF IDENTIFICATION OF PUBLIC INTEREST IN LITHUANIAN LAW: CRITERIA AND PRIORITIES

### SUMMARY

The monograph is founded on an assumption, that a more definite (more precise and comprehensive) determination of the public interest in Lithuanian law is both needed and possible. This determination may be reached by formulating guidelines of identification of the public interest. For the determination thereof the researches intend to analyse the topic of public interest in two directions: direction of criteria (elements, features, making it possible to identify public interest) and direction of priorities (arguments, determining the submission of priority to the public interest).

Such option of directions was conditioned by the fact that Lithuanian researches limit themselves in the statement that the identification criteria of the public interest contain value nature, are insufficient to determine a public interest in a particular case involving new circumstances therefore these criteria are not further analysed. As well, case law of Lithuanian courts fails to analyse in consistence the arguments determining the submission of priority to public interest. Thus the main attention of the monograph is paid to the analysis of the case law of Lithuanian courts in the considered field, besides the research literature, legal regulation and review of best practices of other countries. Moreover, seeking to clear out the public attitudes towards the public interest a sociological survey is intended to be carried out and also a survey of judges and prosecutors.

Since the public interest is not only a legal category, the case law is analysed in an interdisciplinary way, using legal, economic, political, sociological sciences' perspectives.

First of all, it is important to note that researchers have analysed Lithuanian case law, using different approaches to the identification of public interest, examining the extent of certainty of public interest conception. Specifically, authors have chosen to analyse Lithuanian case law examining five different areas of public interest manifestation in Lithuanian law (i. e. sphere of the restoration of the rights of ownership to the existing real property, sphere of immovable cultural heritage, sphere of environmental protection, sphere of territorial planning and construction and sphere of

consumer protection), on the basis of Lithuanian and foreign scientific doctrine and legal regulation.

The searches for the guidelines for the identification of public interest were based on the larger bidirectional grouping of theories (quantitative – utilitarian and qualitative theories) explaining different conceptions of public interest.

The conception of public interest as category which is orientated to the domain of values is supported in the monograph. This conception of public interest is also supported in scientific discussions on public interest regulation, as well as, it is found in the argumentation used in the decisions of courts.

In the context of political science, generally assessing the argumentation used in the decisions of courts of general jurisdiction and courts of special jurisdiction, related to the conception of public interest, its object and content, it is seen that the public interest is perceived as an objective phenomena, i.e. it is orientated to the values expressed in the Constitution of the Republic of Lithuania. The function of courts assessing the public interest is clear in the particular legal dispute. In case of collision between different interests, the courts evaluate which interest is weightier and support their position with arguments which are relative solving the concrete case, also using the coordination of different interests by gradually considering the importance of content of the public interest.

The case law has showed that in certain cases argumentation addressed to public interest may be based on economic arguments. The utilitarian criterion of benefit is used in order to determine the balance between public interest and private interests. The decision also may be supplemented with other type of arguments, assessing all of them as a whole. It is necessary to empirically evaluate the needs of society and to take into account utilitarian calculations. However, it is important to have in mind that the utilitarian method of calculation of supposed benefits can not be identified as the only suitable criterion for public interest identification. That is because utilitarian method has disadvantages determined by its limited application which are comprehensively examined in theoretical part of the monograph.

The value-oriented conception of public interest which is established in the Constitution of the Republic of Lithuania, and which is also supported in Lithuanian case law, is very similar to the civil conception of public interest presented by M. Feintuck as the main alternative to economical interpretation of public interest.

The analysis of case law and the survey of legal practitioners have showed that the results of these surveys do not differ because public interest is understood as expressing what is important for the whole society or for the majority of it and as having ideological basis of utilitarian theories but still taking into concern the interest of minorities. The opinion expressed in the surveys should not be treated as corresponding to the particular conception of public interest: the so called conceptions of accumulation and preponderance, common interest and unitary interest. Also, the expressed opinions do not signify the will of majority, but are similar to the ideas developed in the sociology.

Furthermore, the results of the surveys, which embody the formal and content-oriented dimension of public interest, are also reflected in legal argumentation of Lithuanian courts dealing with public interest issues. In legal argumentation the shell of public interest conception presented by the Constitutional Court of the Republic of Lithuania become apparent. The public interest (interest of a person or a group of persons) reflects and expresses the fundamental values of society which are established and protected by the Constitution. The grounds of legal order which are based on the above mentioned system of values are the regulatory principles of the relations of organized community. These principles outline the directions of development of this order. The content of the concept of public interest is adjusted in case law by removing the values which, although are protected and defended by the Constitution, however are not objectively relevant, necessary or valuable to the society or to the part of it in the concrete case.

In addition, it should be noted that the above mentioned shell of values is concerned as a ground solving the question, to what extent the normative model of public interest could be defined in Lithuanian law. As well as, this shell could be described as historically determined and relating to the contemporary approach to the state.

Concerning the argumentation used in decisions of courts related to the particular spheres of public interest analysed during the project seeking to distinguish criteria of the public interest identification, several elements were excluded which are more or less frequently repeated in decisions of courts: the object, nature, and content of the public interest. It was found that several of these elements are quite often indicated in the same court decision, as well as, the number of related persons is described, which shows the support for the "flexible" conception of public interest.

The systemized case law, which was analysed in the monograph, shows that there are no specific arguments for the justification of solutions of

collisions between collisions between public interest and private interest or collisions between two public interests, because in decisions of courts, when such situations of various collisions are analysed and when such arguments are presented, usually several arguments are indicated and they are formulated very similarly.

The analysed case law reveals that there are at least several proofs that the argumentation used in decisions of courts related to different spheres of public interest is alike: 1) the priority to the public interest is given by emphasizing the special importance and significance of the object, the protection of which is identified as public interest. 2) Concerning the collision with the legal stability, neither legal stability neither constitutional imperative on the exclusive state property, in the case law are treated as absolute, the court in concrete situation evaluates it separately. 3) Decisions of courts in several spheres of public interest analysed in the monograph have shown that, given the collision of interests, the courts link to assess, assure or establish the balance between different interests, seek for the balance between different interests. However, the concept of balance between different interest and means to identify this balance are still unclear and left unexplained. Also, uncertainty remains answering the question if the applied measures are proportionate. Therefore, the use and more explicit justification of application of category of proportionality which connects categories of balance between values, their harmonization, and is related to the discretion of judges, is more encouraged. 4) The feature related to the identification of public interest violation. Although, the insight regarding the situation that there is no clear conception of public interest violation in the sphere of immovable cultural heritage was laid out, it also can be concluded that in this and other spheres of public interest manifestation it is widely recognized that deviations of any kind from requirements of legal act does not mean the violation of public interest, i.e. public interest is not identified only with legal compliance. Analysing cases of defence of public interest it is important not only to formally state the violation of legal acts but as well as to evaluate the impact of these violations to the rights and duties of individuals, group of persons or of the whole society. The courts uses the analysis whether the violation meets these requirements very rarely, and only in exceptional cases briefly explains how the violation of legal acts is harmful for the protected object or for the concrete values. Therefore, this kind of argumentation is highly recommended.