

The temporal effect of legal norms and the case law of the Constitutional Court of the Republic of Latvia

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1. The temporal effect of the legal norms is to be established during the third stage of the process of application of legal norms – lower critique – where the question whether the legal norm is in force (valid) or has lost its validity arises. At the same time it has to be noted that validity of the legal norm is not the same as applicability which means that a formally valid legal norm may not be applicable and *vice versa* an invalid legal norm may be applicable. This in turn is the question of the intertemporality of the written legal norms which arises in the situations when the legislator has decided to adopt a new legal norm which regulates the same legal relations as the old legal norm. The temporal effect of a legal norm (force of a legal norm) can be manifested in time as: 1) future force, 2) immediate force, and 3) retroactive force. In turn legal facts can be: 1) past facts, 2) pending facts, and 3) further facts. The legislator is always free to determine further temporal effect for the legal norm which then will be applicable to the future facts. It is when the legislator decides to determine the immediate or even – retroactive – temporal effect to the new legal norm the issue of the compliance of this decision with the principle of protection of legitimate expectations arises. This question then could be challenged before the Constitutional Court.

2. According to the general principles of intertemporality retroactive temporal effect of the legal norm always is an exception either in public or private law while immediate effect is rather an exception in private law. What does it imply from the perspective of the principle of good legislation and protection of the legitimate expectations? It means that the burden of arguments produced by the legislator during the legislation process is directly connected with the decision to determine the immediate or retroactive temporal effect to the new legal norm. Thus the exceptional character of the retroactive effect of the new legal norm doesn't mean that legislator will never be able to set this effect for the legal norm, but it means that the legislator is obliged to state reasonable and well-grounded arguments to justify such a decision from the perspective of the protection of the legitimate expectations and essential public interest which has to be protected in this way; the assessment includes as well as the existence of envisaged compensatory mechanism. The same applies regarding the immediate temporal effect for the legal norm with only difference in the amount of necessary justification which largely is connected with the assessment of principle of proportionality. The ultimate issue though is the complexity of the identifying of retroactive effect of a legal norm which in legal doctrine is widely recognised as one of the most complex legal methods. Retroactive effect can be identified by: 1) the doctrine of the retroactive effect of legal consequences, 2) the doctrine of finished legal relations, and 3) the doctrine of acquired rights.

3. In a recent year the Constitutional Court of the Republic of Latvia (the Court) has faced the problem of the temporal effect of the legal norm in deciding on its constitutionality at least in three of the Court's judgments. For the purposes of this presentation the example will be given the case no. 2020-30-01 where the applicant contested the constitutionality of the legal norm included in the transitional provisions of the law on Compensation for Damage Caused in Criminal and Administrative Violations Proceedings. The norm stated that a person who is entitled to compensation for damage caused to him by an unlawful or unreasonable action of an institution before the entry into force of the law has the right to submit an application for compensation for damage within six months from the moment of occurrence of the legal basis for compensation for damage. The applicant argued that according to the old norm he had the right to claim compensation for non-pecuniary damage within the 10-year limitation period while now the term in his case is reduced to around of four month thus having a retroactive effect. The Court started its assessment by determining the type of temporal effect of the contested norm and stated that the legislator has the right to adopt amendments that have immediate temporal effect. However, it is essential that in such a case the legislator provides for a lenient transition period or appropriate compensation. The Court further concluded that the applicant had a legitimate expectations according to the old norm and that it does not follow from the legislative materials that the legislator would have assessed, in relation to non-pecuniary damage, how long a reasonable transition period should be for a person to reschedule his actions from a 10-year period to a much shorter period. Thus, the Court concluded that the legislator, when determining the period for the transition to the new legal regulation, has not comprehensively and fully ascertained the impact of the contested norm on the pending legal relations. This part of the Court's conclusions is largely connected with the significance of the principle of good legislation in assessment of the constitutionality of the temporal effect of the contested legal norm. The Court further stated that the principle of protection of legitimate expectations was violated and that the situation that a person's legal position is deteriorated without appropriate justification or assessment does not ensure a reasonable transition to the new legal regulation. Such a situation is not justified by the public interest in ensuring legal stability.