

## **JUSTICE AS PRINCIPLE OF LAW CREATING IN LITHUANIA**

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### **Abstract in original language**

Contradiction of justice and law is a classical problem of legal and philosophical discourse. Evidently, that all classical thinkers (from Plato till Thomas Aquinas) believed in existence of some particular idea of justice. But some periods in thinking process (i.e. rationalism, empirism) and some historical events (i.e. Jan Huss process, 2 World wars) completely changed the definition of justice and also understanding of contradiction of justice and law. The goal of this article is to show how these scientific and historical changes influenced Lithuanian legal practice and legal doctrine. One of legal example of problematic of contradiction of justice and law is the process of the restitution of nationalized private property rights in Lithuania after regaining independence in 1990. One of political example of the relativity of justice is the process of impeachment to the one member of the Parliament of the Republic of Lithuania. The analysis of those examples show what a problem exists in the moral and legal consciousness and also in the jurisprudence of Lithuania. One of sources of this problem is scientific and historical changes of XIX and XX centuries.

### **Key words in original language**

Justice; Justice and law contradiction; Valuable relativism; Legal practice; Legal discourse.

Contradiction of justice and law is a classical problem of legal and philosophical discourse. That's dogmatic that justice was the point of interest more than 2000 years in works of Hesiod (Works and days), Plato, Aristotle, stoics, Cicero, Ulpian, Augustine, Thomas Aquinas, Thomas Hobbes, John Locke, David Hume, John Rawls etc. Evidently, that all these classical thinkers believed in existence of some particular idea of justice.

But some periods in thinking process (i.e. rationalism, empirism, positivism) and some historical events (i.e. Jan Huss process, 2 world wars) completely changed the definition of justice and also understanding of justice and law contradiction.

Scientifically changes in the definition of justice was clearly pronounced in the conception of legal positivism from XIX century in works of J. Bentham, J. Austin, H. Kelsen, H.L.A. Hart etc<sup>1</sup>. Legal positivism "states

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<sup>1</sup> Rüthers B. *Das Ungerechte an der Gerechtigkeit: Defizite eines Begriffs*. Zürich, 1991, p. 7–16.

that there is no inherent or necessary connection between the validity conditions of law and ethics or morality. Therefore, in legal positivism, the law is seen as being conceptually separate (though of course not separated) from moral and ethical values, and it simply sees the law is posited by lawmakers, who are humans. It should be noted that although a positivist's view of law is that it is ultimately a matter of human custom or convention, this does not entail or presuppose that positivists endorse laws of any particular content, or the view that valid law is always to be obeyed by citizens or applied by judges. The positivist argument is solely about the nature of law as a human institution”<sup>2</sup>.

Historical changes of XX century and their impact to justice as one of great human idea was clearly pronounced by J.-F.Lyotard, who wrote about the collapse of the “Grand Narrative”: “these meta-narratives - sometimes 'grand narratives' - are grand, large-scale theories and philosophies of the world, such as the progress of history, the know ability of everything by science, and the possibility of absolute freedom. Lyotard argues that we have ceased to believe that narratives of this kind are adequate to represent and contain us all. We have become alert to difference, diversity, the incompatibility of our aspirations, beliefs and desires, and for that reason post modernity is characterized by an abundance of micro narratives”<sup>3</sup>.

It means that modern justice conception is influenced by valuable relativism (i.e. euthanasia, abortion, cloning, homosexuality, set of taxes, even the judgment of the court ).

How these scientific and historical changes influenced Lithuanian legal practice and legal doctrine is one of my scientific interests and also aim of this article.

I'd like to produce some legal and political examples.

First of them is the process of the restitution of nationalized private property rights (that the Soviet Union had abolished in 1940 and 1944) in Lithuania after regaining independence in 1990.

European foundation of restitution is Convention for the Protection of Human Rights and Fundamental Freedoms”, Article 1 of Protocol No.1 provides as follows: “Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”.

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<sup>2</sup> [http://en.wikipedia.org/wiki/Legal\\_positivism](http://en.wikipedia.org/wiki/Legal_positivism)

<sup>3</sup> [http://en.wikipedia.org/wiki/Jean-Fran%C3%A7ois\\_Lyotard#The\\_collapse\\_of\\_the\\_22Grand\\_Narrative.22](http://en.wikipedia.org/wiki/Jean-Fran%C3%A7ois_Lyotard#The_collapse_of_the_22Grand_Narrative.22)

The Parliament of the Republic of Lithuania legalized the restitution in “The Restitution of Property Act” of 1991.

It means that the Republic of Lithuania has obligated to protect the breached rights. Though, it is necessary to emphasize that it had a right not to do so as well, because The European Court of Human Rights has already pointed out the fact “that the state has no such duty as to return the nationalized property. However, if the state is able to shoulder this kind of duty, the individual has all the chances to defend his rights according to the Article 1 of Protocol No.1 from the moment of recognition of the right to nationalized property”<sup>4</sup>.

But the problem of restitution arose, because during the 50 years the nationalized houses were rented by other people who often did not know about the nationalization. So unconditional restitution would mean that these innocent people were sent out of their houses into the street. Thus, unconditional restitution would be unjust as well.

This question reached the Constitutional Court of the Republic of Lithuania and it expressed in its decree as follows:

“Upon nationalization and socialization in other unlawful manner of land, banks, heavy industry, other property, including residential houses, carried out of occupation government, the human natural rights to possess private property was denied. The property illegally disseized from did not become state property and it is to be considered disposed of by the state only in fact”<sup>5</sup>.

Nevertheless, taking into account the changed relations of legal property during these 50 years, the Constitutional Court pointed out that “the owners of nationalized property are not recognized as proprietors” though it would be followed from the earlier conclusion, that “the confiscated property did not become the state’s property.”

The Constitutional Court pointed out that:

“Justice may be implemented by ensuring the equilibrium of interests by escaping fortuity and self-will, instability of social life and conflict of interests. It is impossible to attain justice by recognizing the interests of only group or one person and by denying the interests of others at the same time. It is impossible to solve clashes of interests by making absolute the protection of rights of a person who attempts to restore the rights of

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<sup>4</sup> Švilpaitė E. Neišnaudotos galimybės: nuosavybės apsauga pagal Europos žmogaus teisių konvencijos Pirmąjį protokolą. *Justitia*, 2005 m. Nr. 1 (55), p. 44

<sup>5</sup> The ruling of the Constitutional Court of the Republic of Lithuania. 22. December 1995. [http://www.lrkt.lt/doc\\_links/main.htm](http://www.lrkt.lt/doc_links/main.htm)

ownership to residential house by getting it back in kind, and at the same time denying the right of tenants to possess a dwelling place”<sup>6</sup>.

It means that to attain justice in a case like that we have to strive for equilibrium of interests. The consequences of such solution was that restitution doesn’t make place. It means that the people who lost their property until now doesn’t have possibility to rebuilt owners rights.

As a prove, there can be given an example of one particular case, which has reached The European Court of Human Rights<sup>7</sup>. In that case it is specified that the owners of the nationalized property have handed an application for the return of the property held by state, but the judgment on their behalf was accepted only in year 2000 and only in the Supreme Court of Lithuania. Despite of the fact the institutions which were responsible for the restitution were not able to return the property and as a consequence the case reached The European Court of Human Rights in 2004. Thereby, rises a reasonable question, what is the commitment to return the nationalized property, worth? Citizens, who have already suffered from occupation authority, suffers once more for it’s own – native country, Lithuania, because they are forced to litigate with it in courts for even more than ten years<sup>8</sup>.

To understand this problem we should ask the main question:

- Can equilibrium of interests be achieved in this case without restitution?
- Also we should ask other questions:
- Does it mean that the people who’s property was nationalized are only the equal side of the interests?
- Does it mean that problem should be solved by compromise or equilibrium of interests?
- Does it mean that robbed people demand to restore their property without compromise is regarded as unjust?

To my opinion, the Constitutional Court’s mistake is the proposition that the restoration of nationalized property is only a question of equilibrium of interest. In this case to achieve justice, firstly we should talk about

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<sup>6</sup> Ibid.

<sup>7</sup> The ruling of the European Human Rights Court. Užkurėlienė v. Lithuania, no. 62988/00, ECHR 7 April 2005 <http://www.echr.coe.int/eng/Press/2005/April/Announcejudgments5-7042005.htm>

<sup>8</sup> Ibid.

restitution, i.e. eliminating consequences of legal delict, not about compromise. The compromise of interest, i.e. protection of tenants, should be discussed only on the second place.

This problem could be solved:

- By recognizing the owners as aggrieved party and restoring their rights of ownership.
- By protection the rights of tenants, i.e. provide guaranties from wanton eviction till obtaining other or their own domicile.

The more interesting situation is in our neighboring country.

In 1917, a property was nationalized in Belarus. The law of privatization was passed in 1993. A citizen whose property was nationalized in 1917, in 1993 was still living in his house as a tenant. He appealed to the government institutions, asking to restore his property. The answer by the Court was that the citizen must acquire his lodging in common order<sup>9</sup>. Thus, the Constitutional Court let the citizen to buy his home from the state, that some years ago took his home from him.

One more legal example - the case V.Landsbergis vs. UAB „Ūkininko patarėjas“<sup>10</sup>.

Claimant V.Landsbergis has made a requirement that the announcement of the local newspaper „Ūkininko patarėjas“ which has accused him of stealing from Lithuania and „Mažeikių nafta“ and reselling to the Russia, should be recognized unfaithful and humiliating his as a human's honour and dignity. Claimant motivated his demand, by explaining that he certainly did not steal from Lithuania and „Mažeikių nafta“ and did not resell anything to Russia as well, and calling him a „theft“ was qualified by the claimant as an insult of his honour and dignity<sup>11</sup>.

It is essential to stress that the claimant motivated his requirement by the decision No.1 made by the judges of the Supreme Court of Lithuania, which provides applying norms of the Civil Code, by defending human's honour and dignity civil cases, where is stated: “whether the broadcasted information are humiliating or not, should be proved by the claimant. Characteristics of the broadcasted information is not being determined, when the used words, are without a doubt humiliating. Definitions “theft”,

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<sup>9</sup> Bulletin of the Constitutional Court of the Republic of Belarus. Minsk, 2005'4

<sup>10</sup> The ruling of the Supreme Court of the Republic of Lithuania.  
[http://www.lat.lt/4\\_tpiuleteniai/senos/nutartis.aspx?id=27663](http://www.lat.lt/4_tpiuleteniai/senos/nutartis.aspx?id=27663)

<sup>11</sup> Ibid.

“cheater”, “drunkard” etc., in society are usually interpreted homologous and spreading them to sensible and moral individuals certainly creates a negative opinion of the person”<sup>12</sup>.

However, when this case was heard in the courts of Lithuania , it was clarified that all those affirmations which are understood in society homologous, and impacts the sensible and moral individuals in a negative way , do not always understood homologous in the courts. The court of first instance claimant’s accusation of being a “theft“ found unfaithful and his - V.Landsbergis, dignity and honour humiliating information. Court has explained his arguments by the practice of The Supreme Court. But the court of Appeal Court overruled the judgment made by the court of the First instance. Such a reasoning for determined judgment are completely complicated and uncertain<sup>13</sup>. That was also admitted by the Court of Cassation, which overruled the decision of the Appeal Court and stated, that the judgment of the court of the first instance is lawful and there can not be any disagreements<sup>14</sup>.

This case proves, that even visible expressions in the jurisprudence of Lithuania Courts sometimes can be recognized relatively.

Some more political examples.

The member of the Lithuanian Republic Parliament A. Butkevičius was sentenced to commit a crime for corruption. But when the Court decision came into force, the Parliament did not take away the deputy’s mandate because while voting there were not enough votes. So being in prison, he further was left the representative of nation. While being in prison! By the way, he was my representative, because he was selected in my electoral district.

A puppet government was established when the Red Army occupied Lithuania in the 1940s. Its leader J. Paleckis signed the treaty and proclaimed “The Declaration of signing up the Union of the Soviet Republics”<sup>15</sup>.

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<sup>12</sup> The ruling of the Supreme Court of the Republic of Lithuania.  
[http://www.lat.lt/4\\_tpciuletieniai/senos/nutartis.aspx?id=26782](http://www.lat.lt/4_tpciuletieniai/senos/nutartis.aspx?id=26782)

<sup>13</sup> The ruling of the Supreme Court of the Republic of Lithuania.  
[http://www.lat.lt/4\\_tpciuletieniai/senos/nutartis.aspx?id=27663](http://www.lat.lt/4_tpciuletieniai/senos/nutartis.aspx?id=27663)

<sup>14</sup> Ibid.

<sup>15</sup> Lietuvos įstojimo į Sovietų Socialistinių Respublikų Sąjungos sąstatą deklaracija. *Vyriausybės žinios*. 1940, Nr. 719-5744

In the 1990s, when Lithuania restored its independence, the Parliament of the Republic of Lithuania passed the law that this “declaration” was acknowledged as unlawful.

However, the author’s son of this Declaration of the Puppet Government in 2004, when the Lithuania Republic became the member of the European Union, was elected as Lithuania representative member of European Parliament. So he holds one of the highest posts in foreign policy. In second time he was elected in 2009.

These and many other legal, political, economic etc. examples bring such conclusions:

1. The philosophic, moral, political etc. problem of definition of justice takes part in the law creation and judgment of Lithuania.
2. The conceptual problem of valuable relativity determines that the concrete problems and concrete legal cases becomes unresolved.
3. Therefore, many people in Lithuania do not trust in Justice.

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