

Current Legal Challenges in Lithuania

When looking for the major problems in a smooth and orderly implementation of justice in any country, we have to analyze the legal system in a broader sense than just a system of law. The legal system must be understood as a social formation of the legal environment which represents the unity of the legal consciousness, system of law and legal practice of any social group.¹

The results of a public opinion survey carried out in autumn of 2009 shows that less than a fifth of respondents in Lithuania (15%) trust their justice system, while in the European Union nearly every second (43%) respondent trust his country's justice system.² Looking at surveys conducted from 1998 to 2009, the Lithuanian justice system was never trusted by more than 24% of respondents.³

Apparently 20 years of independence was not yet enough to form a trustworthy and successfully functioning legal system. Why? General attitudes of trust in the justice system cannot be considered in isolation. Political and social processes have a direct impact on the functioning and changes in the legal system. Trust in a legal system may reflect broader attitudes towards government or public institutions generally, and be a reflection of the economy, historical events and changes in society, personal characteristics and life experience.⁴

The current legal system in Lithuania has been conditioned by the behavioral models which started appearing during the transition from Soviet totalitarianism to democracy and which have not conformed to the society's expectations of social justice.⁵

The understanding of the common features of socialism in post-soviet countries is a key to the understanding of the role and the special place of the law in Lithuanian society. Some of these common features are the dominating role of the state – understood as centralized conducting administration, the instrumentalization of the law and

¹ Vytautas Šlapkauskas. „Dysfunctional Legal System – A Sign Of Weak Social Politics“ Mykolas Romeris University - http://vddb.library.lt/fedora/get/LT-eLABa-0001:J.04~2006-ISSN_1648-4789.N_5_1.PG_21-29/DS.002.0.01.ARTIC;

² Standard Eurobarometer 72 / Autumn 2009 - TNS opinion & social;
http://ec.europa.eu/public_opinion/index_en.htm

³ See: Socialinių tyrimų institutas „Lietuva stojant į Europos sąjungą: Ekonominė, sociologinė ir demografinė padėties analizė: http://www.sti.lt/leid_pristat/Tekstai/europa/III_dalis.pdf and Standard Eurobarometer reports from 2004 http://ec.europa.eu/public_opinion/archives/eb_arch_en.htm;

⁴ See: Explaining attitudes towards the justice system in the UK and Europe Steven Van de Walle and John W. Raine Birmingham University Ministry of Justice Research Series 9/08 June 2008
<http://www.justice.gov.uk/publications/docs/explaining-attitudes-towards-justice-in-ukandeuropa-full-report.pdf>;

and A. Vaišvila. Etatizmas – konceptuali teisinės reformos kliūtis. // Teisės problemos. 1997. Nr.3;

⁵ Vytautas Šlapkauskas. „Dysfunctional Legal System – A Sign Of Weak Social Politics“;

its confinement to a technical means of political legitimization.⁶ “Lawfulness” was quite peculiar, subjected and inferior to the logic of the complete party-state control. That is why the very low level of trust in the legal system in most post-socialist societies can be treated as a historical heritage of this etatist profile of the legal regulation.⁷ There is widely held belief in Lithuanian society that there is a high level of corruption in the judicial and governmental systems that undermines public confidence in the legal and governmental systems and calls into question the legitimacy of the democracy.

The last decades were marked by tremendous changes in Lithuania: the single-party monopoly was abolished and replaced by a pluralist, multiparty political and parliamentary system; in 1992, Lithuania adopted the Constitution of the Republic of Lithuania and the power to govern was divided between the legislative and executive branches, with an independent judiciary; the economy passed through privatization; the new Civil Code came into effect, followed by Code of Civil Procedure, Criminal Code, Code of Criminal Procedure, Code of the Execution of Penalties, Labor Code; in 2004 the Lithuanian laws were harmonized with the *acquis communautaire* of the EU in order to become a member state. However, people don't change that fast, and ongoing changes keep confusing people, while others take advantage of the situation by decreasing the people's trust and belief in any positive outcome from constant changes.

The negativity and obscurity of the current legal environment have become the main factors of the social disorganization in Lithuania. An aggressive implementation of new models has brought Lithuanian society to a moral crisis. The analysis of this process shows that government elites have been consistently making use of legal nihilism and the breaches in the system of law. The power of the non-transparent agreements between political and business groups has become a significant phenomenon in shaping a negative legal environment.⁸ Party-political elite in all Eastern European countries have a serious problem with its true social representation. Politicians very often represent the group interests which cannot be openly manifested, and those which are manifested usually are not their real interests. Thus, there is no transparency of the political representation and the real interest of this representation in the existence of efficient legislative regulations. The economic elite which emerged are founded mainly on the basis of distribution and redistribution of the state property in the economy, which often is done on the edge (or even

⁶ Hristov, Ivo Angelov. "The Deficit of Trust in Law Institution: Between Problem and Dessionion (The Post Communist Transition to Democracy)" Paper presented at the annual meeting of the The Law and Society Association, TBA, Berlin, Germany, Jul 25, 2007 <Not Available>. 2010-06-04 http://www.allacademic.com/meta/p175671_index.html;

⁷ A. Vaišvila. “Etatizmas – konceptuali teisinės reformos kliūtis” (Teisės problemos. 1997. Nr.3);

⁸ Vytautas Šlapkauskas. „Dysfunctional Legal System – A Sign Of Weak Social Politics“;

beyond the edge) of the law. While this process is unfolding, the elite members, who actually have power to act, have no interest in a really functioning, stable and foreseeable legal system.⁹

As following, the law proceeding and protecting state authorities – the prosecution, the judiciary, the police etc. – were constructed in an entirely different social media: of centralized state control and state interference in all spheres of social life. Placed in the new conditions, they are objectively unable to regulate the ever growing and developing civil and commercial transactions, and novel criminal activities (e.g. terrorism, racketeering, tax and banking fraud, etc.) The majority of them lack sufficient resources, training, education, and are not participating in the formulation and adoption of substantial executive and legislative models nor monitoring their implementation.¹⁰

The majority of judgments against Lithuania in the European Court of Humans Rights are because of violations of the right to a fair trial and the length of proceedings.¹¹ According to Lithuania's Human Rights Monitoring Institute Executive Director Henrikas Mickevicius, these violations occur because of the Soviet mentality of members of Lithuanian parliament, judges and prosecutors, and a lack of education.¹²

As a result of the above, the following problematic situation can be outlined: the legislation and the implementation of the legal acts in Lithuania is a patchwork of true fundamental social interests and the interests of the ruling political elite, which seek their realization through parliamentary representation. The ruling elite have no interest in a stable and foreseeable as constantly developing legal system, but keep on implementing new laws without looking at the greater picture and leave gaps. State authorities are left with numerous new ambiguous and unclear laws and have no motivation, resources or training for a smooth implementation of justice. This, in turn, logically leads to the lack of empathy of the addressees of the legal acts to the legislation, and from there to its practical inefficiency as a social regulator.

Over all, looking at the history of twenty years of statehood after fifty years of intensive Soviet propaganda , today's situation could be evaluated as a phase of a developing system. By joining the European Union, Lithuania took an obligation to comply with EU regulations, was brought under control of European Court of Humans Rights and

⁹ Hristov, Ivo Angelov. "The Deficit of Trust in Law Institution: Between Problem and Dessionion (The Post Communist Transition to Democracy)";

¹⁰ Ibid;

¹¹ European Court of Human Rights -Country Statistics <http://www.echr.coe.int/NR/rdonlyres/B21D260B-3559-4FB2-A629-881C66DC3B2F/0/CountryStatistics01012009.pdf>

¹² Tillenius Jurgita „Europos teisme Lietuva dažniausiai pralošia dėl teisės į teisingą teismą“ 2010-12-27 <http://myep.delfi.lt/news/europos-teisme-lietuva-dazniausiai-pralosisia-del-teises-i-teisinga-teisma.d?id=40107781>

became subject to EU politics. Obligatory EU directives and regulations are helping to fill lacunas in national laws. Open borders and student academical labour exchange programs give a chance for new generations to live in states with a longer history of democratic legal systems, and forms negative attitudes towards corruption, encourages willfulness and competence to be active in creating and implementing laws that represent real social interest and as an outcome increases trust in national legal system. I believe that the Lithuanian legal system is still in a transitional stage and active educational support from more states with a long history of statehood will help to redeem dysfunctions in judicial activity and balance the obligations of the work of the courts with the obligation to provide quality justice for its users.

Similarly, local government entities should become more active in reviewing draft legal acts, with the intent to avoid laws that are ambiguous or not clear, and a comprehensive approach to rulemaking must be adopted to alleviate the current chaotic, disconnected, and sporadic approach.