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The Concept of Loyalty in Legal Regulation in the Republic of Latvia: Current Situation and Challenges

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This publication analyses the concept of loyalty in legal regulation of the Republic of Latvia. The requirement for loyalty is included in several regulatory acts that determine professional standards and requirements for admission to public service or employment. The aim of the paper is to analyse the concept of loyalty in legal regulation and the practice of its application, to identify possible problems, and to propose solutions. The authors have conducted a study using the methods of interpreting the rules of law adopted in legal science. Grammatical, historical, comparative, teleological method and general research methods were used, such as comparison and summarization, causal relationship detection, analysis, and synthesis. Within the framework of the paper, several conclusions are made and proposals are offered for strengthening the requirement of loyalty to the Latvian state in the regulatory framework.

Keywords: loyalty, officials with special service ranks, pedagogues, service, state, state workers, the requirement to be loyal to the state.

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Introduction

The Preamble of the Constitution of the Republic of Latvia states notes: “Loyalty to Latvia, the Latvian language as the only official language, freedom, equality, solidarity, justice, honesty, work ethic, and family are the foundations of a cohesive society”¹.

Commenting on this norm, Professor Ringolds Balodis of the University of Latvia pointed out that it contains various specific constitutional obligations of the individual, the purpose of which is to ensure the existence and functioning of the state.² As such fundamental duties are recognized, for example, (1) loyalty to the constitutional foundations of the state (includes obedience to the law), (2) willingness to protect the state, (3) maintenance of the state (includes obligations to perform public duties, including paying taxes, etc.).

The aforementioned finds its reflection in the practice of the Constitutional Court of the Republic of Latvia (Latvian: *Latvijas Republikas Satversmes tiesa*), which notes that a democratic state system must be protected from people who are ethically unqualified to become representatives of a democratic state at the political or administrative level, and who have proven by their actions that they have not been loyal to the democratic state system.³ The Department of Administrative Cases of the Supreme Court of the Republic of Latvia (Latvian: *Latvijas Republikas Augstākās tiesas Administratīvo lietu departaments*) also states in one of its judgments: In the process of democracy, the loyalty of all citizens to this country with its democracy and basic values is self-evident, because otherwise, the creation and existence of this country would not have been necessary.⁴ The nature of an independent state and a democratic state system requires that the fate of the state be decided by persons who are directly interested in the existence and development of this state.

At the same time, it should be emphasized that, when interpreted grammatically, loyalty is understood as behaviour that manifests respect for the existing power, compliance with its laws, or behaviour that manifests an honest, correct, respectful attitude (towards something or someone).⁵

The authors of the paper would like to highlight the fact that the above-mentioned findings have been established in the regulatory framework of the Republic of

¹ Latvijas Republikas Satversme [The Constitution of the Republic of Latvia] (15.02.1922). Latvijas Vēstnesis, No. 43, 01.07.1993; Grozījumi Latvijas Republikas Satversmē [Amendments to the Constitution of the Republic of Latvia] (19.06.2014). Latvijas Vēstnesis, No. 131, 08.07.2014.

² Balodis, R. (sc. ed.). Latvijas Republikas Satversmes komentāri. Ievads. I nodaļa. Vispārējie noteikumi [Commentaries on the Satversme of the Republic of Latvia. Introduction. Chapter I. General Provisions]. Collective of authors under scientific editorship by prof. R. Balodis. Riga: Latvijas Vēstnesis, 2014, p. 133. Available: https://www.saeima.lv/satversme/Ievads_Balodis.pdf [last viewed 01.03.2023].

³ Judgement of the Constitutional Court of the Republic of Latvia of 30 August 2000 in case No. 2000-03-01, para. 6, Latvijas Vēstnesis, No. 307/309, 01.09.2000.

⁴ Judgement of the Department of Administrative Cases of the Supreme Court of the Republic of Latvia of 12 February 2014 in case No. A420577912, SA-1/2014, para. 35. Available: <https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/355724.pdf> [last viewed 01.03.2023].

⁵ Latviešu literārās valodas vārdnīca [Latvian Literary Language Dictionary]. 4. sējums. J–L. Rīga: Zinātne, 1980, 738. lpp.

Latvia, court practice, and research even before the war against Ukraine started by the Russian Federation. However, it cannot be denied that the aggression of the Russian Federation against the neighbouring country has once again raised the issues concerning the loyalty of the citizens of the Republic of Latvia, especially those in public service or work, to their country.

The aim of the paper is to analyse the concept of loyalty in legal regulation and the practice of its application, to identify possible problems, and to propose solutions.

In the article, general research methods were used, such as comparison and summarization, causal relationship detection, analysis, and synthesis, as well as methods of legal norms interpretation: grammatical, systemic, historical, and teleological.

1. Understanding the concept of loyalty and the historical development of the regulatory framework

Every service or job in a state administrative institution includes the duties that are necessary to ensure the implementation of state functions. The duty of loyalty (the duty to be loyal to the state) is directly related to the principle of servitude, which is the basis of every state service (*servus* in Latin). Professor Kārlis Dišlers has recognized: “The principle of service creates a new relationship between citizens and the state and manifests itself in conscientious and willing performance of public duties towards the state”⁶.

Court practice has recognized: “Civil servants, including those in the specialized service, are a special category of persons who perform executive functions, and special social guarantees and requirements are set for these persons, including that the civil servant may not, outside the time of performance of duties, discredit himself, the institution and the state; that the civil servant should treat other members of society with sufficient respect and abide by their rights; that the civil servant should behave in such a way as to increase trust in the public administration”⁷.

As the lawyer Didzis Šenbergs has pointed out: “The concept of loyalty in the European legal doctrine, having experienced a significant transformation since its inception, can now be defined as the obligation to be loyal to the state in the sense of trusting the values established in its basic law or the basic principles of the constitution [...]. In the Western world, there is no reason to talk about personal loyalty to the specific government, state civil servants must be loyal to the country, in our case – to the Republic of Latvia, as well as to its Constitution”⁸.

In compliance with the above, on 26 March 2015, the *Saeima* of the Republic of Latvia amended the State Civil Service Law, stating in Article 15, Part 1, Clause 2, that the civil servant’s basic duty is “to be loyal to the Republic of Latvia and its Constitution irrespective of his or her political convictions and to maintain political

⁶ Dišlers, K. Pienākuma elements tiesībās. [Element of Obligation in Law]. Tieslietu Ministrijas Vēstnesis, No. 3, 1937, p. 441.

⁷ Danovskis, E. Tiesu prakse lietās par valsts dienestu (2007–2013) [Summary of Case Law on Public Service]. Rīga: Latvijas Republikas Augstākā tiesa, 2013. Available: http://at.gov.lv/files/uploads/files/6_Judikatura/Tiesu_prakses_apkopojumi/Valsts_dienests_tiesu_prakses_apkopojums_30102013.doc [last viewed 01.03.2023].

⁸ Šenbergs, D. Lojalitāte Latvijas Republikai un tās Satversmei: jāgroza valsts dienesta likums. [Loyalty to the Republic of Latvia and its Constitution: the civil service law must be amended]. Available: <https://ir.lv/2015/03/24/lojalitate-latvijas-republikai-un-tas-satversmei-jagroza-valsts-dienesta-likums/> [last viewed 01.03.2023].

neutrality”⁹. Thus, this law strengthened the old opinion of the Constitutional Court of the Republic of Latvia that “the state must be protected from those who have proven by their actions that they have not been loyal to the democratic state system [...]. One of the basic elements characterizing an individual’s relationship with the state in public service and especially in administrative relations is political loyalty. The state must strive to ensure a democratic, legal, efficient, open, and accessible public administration. It is necessary to trust that those working in the state administration will be loyal to the state and will perform their duties in the interests of the state and society. Political loyalty is understood not as supporting the political goals of the respective government, but as loyalty to the country for which the person belonging to the public service works”¹⁰. In addition, the highest manifestation of loyalty to the country is patriotism – love of one’s homeland, nation; loyalty to one’s homeland, nation, readiness to selflessly work for them.¹¹

On 18 June 2015, the duty of loyalty was also strengthened in the Education Law, stipulating that a person “who is loyal to the Republic of Latvia and its Constitution”¹² has the right to work as a head of an educational institution and a teacher. On the other hand, on 1 January 2017, the amendments to the Education Law entered into force, which determine the steps to be taken, if it is established that a pedagogue or the head of an educational institution is not loyal to the Republic of Latvia and its Constitution, violates the prohibition of discrimination and different treatment, as well as does not fulfil the obligation to raise decent, honest, responsible human beings – patriots of Latvia.¹³

In this context, it should be noted that the fundamental values of the existence and development of the Latvian state have been established in the Constitution of the Republic of Latvia (especially those stipulated in the Introduction, Articles 1–4 and Chapter VIII of the Constitution of the Republic of Latvia), which in their essence are closely related to the state education standards and guidelines, as well as the goals and tasks set in the parenting guidelines. Their implementation in the educational institution is ensured by pedagogues who, with their activity, pedagogical approach, and attitude, motivate students to learn, acquire knowledge, skills, values, and virtues, including strengthening the understanding of the Latvian state, its system, and legal acts (rule of law) and also such values as life and health, respect and equality, freedom, family, work, culture, Latvian language, etc., forming the students’ evaluative attitude and responsibility for themselves and their actions, as well as the surrounding environment and society as a whole. Such an approach meets the interests of the learners, and, furthermore, those of the entire society and the state.

⁹ Valsts civildienesta likums [State Civil Service Law] (07.09.2000). Latvijas Vēstnesis, No. 331/333, 22.09.2000; Grozījumi Valsts civildienesta likumā [Amendments to the State Civil Service Law] (26.03.2015). Latvijas Vēstnesis, No. 68, 08.04.2015.

¹⁰ Judgement of the Constitutional Court of the Republic of Latvia of 11 April 2006 in case No. 2005-24-01. Latvijas Vēstnesis, No. 61, 18.04.2006.

¹¹ Latviešu literārās valodas vārdnīca [Latvian Literary Language Dictionary]. 6. sējums, 1. daļa. N–P. Rīga: Zinātne, 1986, 524. lpp.

¹² Izglītības likums [Education Law] (29.10.1998). Latvijas Vēstnesis, No. 343/344, 17.11.1998. See also: *Dālderis, I.* Ziņojums Saeimas Kārtības ruļļa 144. panta kārtībā par balsošanas motīviem par 2016. gada 23. novembra Saeimas ārkārtas sēdē izskatāmo likumprojekta “Grozījumi Izglītības likumā” pieņemšanu otrajā, galīgajā lasījumā. [Report in accordance with Article 144 of the Rules of Procedure of the *Saeima* on the reasons for voting on the second, final reading of the bill “Amendments to the Education Law” to be considered at the extraordinary session of the *Saeima* on 23 November 2016.] Available: https://www.saeima.lv/steno/Zinojums_par_BalsMot_20161123_12S_Dalderis.pdf [last viewed 01.03.2023].

¹³ Ibid.

It is common knowledge that the opinion and actions expressed by the pedagogue can significantly influence the students' attitude toward learning and the processes taking place in society. In addition, "for a teacher, not only his professional qualification is important, but also his personal characteristics, because in the learning process, the teacher must be an example to the students"¹⁴.

If the pedagogue is disloyal to the Republic of Latvia and its Constitution, a conflict of roles is directly formed, and double standards are developed in the educational environment, because the pedagogue must not only respect and observe the values established in the Constitution of the Republic of Latvia, but also, according to the educational standards and guidelines, the educational programme developed and licensed by the state must implement the content of education and upbringing determined by the state, promote the understanding and observance of the aforementioned values in the educational institution with their actions. Also, the pedagogue must raise Latvian patriots and strengthen belonging to the Republic of Latvia, fulfil other duties of the pedagogue specified in the Law on Education, and other regulatory acts. In the view of the State Service for the Quality of Education, "disloyalty to the Republic of Latvia and its Constitution manifests itself as deliberate action or a deliberate lack of action, expressing distrust of the Republic of Latvia and the basic values enshrined in its Constitution"¹⁵. It can be conveyed both in a lesson or a class, and in the opinions and actions expressed by the teacher outside of work duties, for example, in communication on social media, in various publications, or at public events.

In compliance with the above, it is necessary to distinguish the disloyalty of the pedagogue from other violations of the pedagogue's rights or ethics, shortcomings or errors in the pedagogue's professional activity (Article 51, part two of the Education Law stipulates that "teachers of educational institutions shall be responsible for their work, the methods, techniques, and results thereof"), and the daily work of the pedagogue must be distinguished from the pedagogue's right to engage in political activities allowed in the state, to express a critical or sceptical opinion, for example, about the activities of the government or educational administration institutions.

Article 100 of the Constitution of the Republic of Latvia states: "Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited."¹⁶ At the same time, freedom of expression is not absolute and does not mean permissiveness.¹⁷ Article 116 of the Constitution of the Republic of Latvia states that the person's rights may be restricted in certain cases indicated by law, in order

¹⁴ Mihailovs, I. J., Krūmiņa, A. A. Pedagoga atbildības problēmējautājumi Latvijā [Problems of Pedagogues Responsibility in Latvia]. Grām.: Proceedings of the International Scientific Conferences of Faculty of Social Sciences of Daugavpils University. The materials of the International Scientific Conference "Social Sciences for Regional Development 2016". Part II. Current Problems of State and Law. Prof. V. Meņšikova zin. red. Daugavpils: Daugavpils Universitātes Akadēmiskais apgāds "Saulē", 2017, pp. 103–110. Available: https://du.lv/wp-content/uploads/2022/03/SZF-krajums_II_Tiesibas_2017.pdf [last viewed 01.03.2023].

¹⁵ Izglītības kvalitātes valsts dienesta vēstule "Par pedagogu lojalitāti Latvijas Republikai un tās Satversmei" [Letter of the State Education Quality Service "On the loyalty of pedagogues to the Republic of Latvia and its Constitution"] (13.01.2017). Available: <https://www.ikvd.gov.lv/lv/media/69/download> [last viewed 01.03.2023].

¹⁶ Latvijas Republikas Satversme [The Constitution of the Republic of Latvia] (15.02.1922). Latvijas Vēstnesis, No. 43, 01.07.1993.

¹⁷ Judgement of the Constitutional Court of the Republic of Latvia of 29 October 2003 in case No. 2003-05-01. Latvijas Vēstnesis, No. 152, 30.10.2003.

to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals.

A person's loyalty and its limits should be evaluated in each case. However, in the opinion of the authors, by analogy with Article 77 of the Constitution of the Republic of Latvia, the first, second, third, fourth, sixth or seventy-seventh Article of the Constitution, is the framework that can be exceeded only by national referendum.

Likewise, the judgment of the Constitutional Court of the Republic of Latvia of 21 December 2017, in case No. 2017-03-01 recognized that a person who "holds the position of a pedagogue or head of an educational institution, performs an important function for the state – ensures the rights to quality education enshrined in the Constitution, which includes, among other things, a loyal attitude towards the Latvian state and its Constitution. In the educational process, every student's right to development is ensured by improving their talents and abilities, students are instilled with respect for the basic values of a democratic legal state, personal and national identity, belonging to civil society and other aspects essential for personality development are strengthened [...] the educator and the head of the educational institution influence the development of each student's personality and understanding of society and the country. Although democratic values and civil society have been strengthened in Latvia since the restoration of independence, nevertheless, taking into account historical experience, the state must continue to take special care of defending and strengthening democratic values in the field of education"¹⁸.

Thus, if a pedagogue expresses disloyalty to the Latvian state and its Constitution during the teaching and upbringing process, not only is an appropriate educational process not ensured, students and the quality of education, in general, are negatively affected, but also the interests of the state and society are impacted, engendering negative consequences for democracy, security, and development. The aforementioned also causes long-term consequences, especially manifested in so-called critical moments, including the impact upon the attitude towards work or service duties. In addition, due to the security and interest priorities of the state (and also the society or its groups, for example, students), it is permissible and proportionate to influence persons in the state service or at work, requiring to be loyal to the state and its basic law.

2. Disadvantages of the systemic approach in ensuring the necessity for loyalty

The effectiveness of the law enforcer's activity depends on several factors, including the fact that the legal norms of different powers, which determine his activity, are interconnected, organized, and located in a unified system. If the aforementioned conditions are met, the law enforcer, interpreting the relevant legal provisions, shall clarify their meaning concerning other legal provisions.

Taking into account that one of the authors of this paper has extensive work experience in the interpretation of police legal norms, the article will evaluate how the systemic method of interpreting legal norms worked, explaining the concept of loyalty in relation to the actions performed by an official with a special rank who holds the position of the Ministry of the Interior (the Internal Security Bureau (Latvian:

¹⁸ Judgement of the Constitutional Court of the Republic of Latvia of 21 December 2017 in case No. 2017-03-01. *Latvijas Vēstnesis*, No. 256, 27.12.2017.

Iekšējās drošības birojs); the State Police (Latvian: *Valsts policija*); the State Border Guard (Latvian: *Valsts robežsardze*); the State Fire and Rescue Service (Latvian: *Valsts ugunsdzēsības un glābšanas dienests*), or the Prison Administration (Latvian: *Ieslodzījuma vietu pārvalde*).

On 5 February 2020, a new code of ethics of the State Police was adopted.¹⁹ This regulatory act defines seven basic principles of ethics: professionalism, honesty, objectivity, work for the benefit of society, confidentiality, responsibility, and loyalty. The regulatory framework, which determines the professional ethical norms of the State Police employee, including the basic principles of values and professional ethics, has improved in the course of historical development.²⁰ It is positive that the new regulation included two new basic ethical principles “Work for the benefit of society” and “Loyalty”, which were absent from the earlier framework. The quality of the normative act has also improved – the content of the norms has become clearer.

In the Code of Ethics of the State Police, the principle of Loyalty is included in point 11.7, and contains four subsections stating, that a State Police officer with a special rank, an employee with whom an employment contract has been concluded, and a civil servant of the state:

- while performing official (position, work) duties, always considers state interests primary in relation to personal interests (11.7.1);
- in public statements, is loyal to the state and the State Police and respects the goals and core values of the State Police (11.7.2);
- explains or expresses the opinion of the State Police in public statements related to professional activity, being aware that they shape the public’s opinion about the image of the State Police (11.7.3);
- does not participate in activities that could objectively raise doubts about actions in the interests of the state or society, interfere with the professional performance of service (position, job) duties, compromise or embarrass the State Police. The State Police respects the privacy of employees and does not restrict their private activities outside working hours, as long as it is not associated with the State Police (11.7.4).

Interestingly, the Code of Ethics of the State Police highlights the need to be loyal precisely in “public statements”. It should be noted, that judicial practice has established – the opinions expressed between two persons cannot be considered public. Furthermore, the court practice includes cases when, the court has not found a lack of loyalty in the actions of a police officer, when evaluating a case where he has inflicted insignificant bodily harm on someone outside of his official duties.²¹ At the same time, it should be noted that the basic principle of loyalty was included in the regulatory framework of the State Police only on 5 February 2020, and a judicial practice evaluating non-compliance with the aforementioned principle has not developed.

¹⁹ Valsts policijas ētikas kodekss [Code of Ethics of the State Police] (05.02.2020). Available: <https://www.vp.gov.lv/lv/media/715/download> [last viewed 01.03.2023].

²⁰ Treļš, E. Valsts policijas darbinieka profesionālās ētikas pamatprincipi [Basic Principles of the Professional Ethics of State Police Officers]. Socrates: Rīga Stradins University Faculty of Law Electronic Scientific Journal of Law, No. 3(18), 2020, p. 110. Available: <https://doi.org/10.25143/socr.18.2020.3.097-113> [last viewed 01.03.2023].

²¹ Judgement of the Administrative Court of the Republic of Latvia of 31 January 2023 in case No. A42-00726-23/3. Available: <https://manas.tiesas.lv/eTiesasMvc/eclinolemumi/ECLI:LV:ADRJRIT:2023:0131.A420260522.3.S> [last viewed 01.03.2023].

In turn, the European Court of Human Rights has recognised that a person's right to access court in cases concerning employment in public service may be restricted because of the special relationship between the State and a civil servant, which is characterised by the obligation of loyalty and duty of discretion – “special bond of trust and loyalty” between the civil servant and the State as an employer.²² While agreeing with this conclusion, the Constitutional Court of the Republic of Latvia stated the following: The provision on the relationship of special trustworthiness and loyalty towards the State is the basis for restrictions linked with the status of a public official, which per se cannot be perceived as being disproportional from the vantage point of the equality principle.²³

Unfortunately, the laws that directly determine the police activity in the country and the place of the police officer in it – the law “On Police”,²⁴ Law on the Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prison Administration,²⁵ Law on Disciplinary Liability of the Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Latvian Prison Administration²⁶ – does not include the term “loyalty”. In the opinion of the authors, such a requirement should necessarily be included in relation to the admission of an official with a special service rank to the service. Compared to the fourth part of Article 30 of the Education Law, which stipulates that a person who has an impeccable reputation, who is loyal to the Republic of Latvia and its Constitution, is entitled to work as the head of the educational institution,²⁷ Law on the Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prison Administration does not pose such a requirement for loyalty to a candidate for a police officer, although an impeccable reputation is required from him.²⁸ Likewise, the principle of loyalty is absent from the Cabinet of Ministers Recommendation of 21 November 2018 “Values of State Administration and Fundamental Principles of Ethics”²⁹.

In addition, the country has not developed a procedure for obtaining information about a person's loyalty and impeccable reputation, as well as a methodology for

²² The decision of the European Court of Human Rights of 18 November 2014 in *Spūlis and Vaškevičs v. Latvia*, applications No. 2631/10 and 12253/10, para. 41. Available: <https://hudoc.echr.coe.int/eng?i=001-148877> [last viewed 01.03.2023].

²³ Judgement of the Constitutional Court of the Republic of Latvia of 23 November 2015 in case No. 2015-10-01, para. 17.2. *Latvijas Vēstnesis*, No. 231, 25.11.2015.

²⁴ *Par policiju* [On Police] (04.06.1991). *Ziņotājs*, No. 31/32, 15.08.1991.

²⁵ *Iekšlietu ministrijas sistēmas iestāžu un Ieslodzījuma vietu pārvaldes amatpersonu ar speciālajām dienesta pakāpēm dienesta gaitas likums* [Law on the Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prison Administration] (15.06.2006). *Latvijas Vēstnesis*, No. 101, 30.06.2006.

²⁶ *Iekšlietu ministrijas sistēmas iestāžu un Ieslodzījuma vietu pārvaldes amatpersonu ar speciālajām dienesta pakāpēm disciplinārbildības likums* [Law on Disciplinary Liability of the Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Latvian Prison Administration] (15.06.2006). *Latvijas Vēstnesis*, No. 101, 30.06.2006.

²⁷ *Izglītības likums* [Education Law] (29.10.1998). *Latvijas Vēstnesis*, No. 343/344, 17.11.1998.

²⁸ *Iekšlietu ministrijas sistēmas iestāžu un Ieslodzījuma vietu pārvaldes amatpersonu ar speciālajām dienesta pakāpēm dienesta gaitas likums* [Law on the Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prison Administration] (15.06.2006), Section 7 (1) para. 3¹, *Latvijas Vēstnesis*, No. 101, 30.06.2006.

²⁹ *Valsts pārvaldes vērtības un ētikas pamatprincipi* [Values of State Administration and Fundamental Principles of Ethics]. Cabinet of Ministers Recommendation No. 1 of 21.11.2018. *Latvijas Vēstnesis*, No. 235, 29.11.2018.

evaluating loyalty or impeccable reputation. This has raised several important issues that have not been regulated in the regulatory enactments, for example, the following: who and how verifies the loyalty and reputation of persons.

Meanwhile, the colleagues from Estonia have already found the answer to this question. Paragraph 42 “Collection of information for deciding on employment in service of person” of the law “Police and Border Guard Act” (Estonian: *Politsei ja piirivalve seadus*) of the Republic of Estonia provides: “(1) A person applying for employment in the police service shall submit a personal data form to the Police and Border Guard Board or the Estonian Internal Security Service. The personal data form requires data that enables the assessment of the person’s suitability for service. In addition, data concerning relatives and relatives by marriage (parents, sister, brother, children, spouse, former spouse), and also the given name and surname, personal identification code (in the absence of a personal identification code, date and place of birth) and contact information of a partner in a relationship resembling marriage may be required.

(2) The format of the personal data form of a person applying for employment in the police service and the period of retention of the data requested in the personal data form shall be established by the minister responsible for the field by a regulation.

(3) For the verification of the data presented in the personal data form, the Director General of the Estonian Internal Security Service, the rector of the Estonian Academy of Security Sciences or the Director General of the Police and Border Guard Board, or an official authorised by him or her shall have the right to:

- 1) address state authorities and local government authorities, and also natural and legal persons with an inquiry concerning the personal data of a person applying for employment in service;
- 2) talk to the person specified in the personal data form, and also to his or her employer and representatives of his or her educational institution and other persons in order to determine the applicant’s moral character and other personal characteristics and if necessary and with the consent of the person being questioned, take his or her statement in writing;
- 3) verify whether the person specified in the personal data form has been punished for an intentionally committed criminal offence, whether the person has been sentenced to imprisonment, or whether he or she is a suspect or accused in criminal proceedings;
- 4) verify personal data from the database of the state, local government or another legal person in public law or legal person in private law;
- 5) process personal data addressed to the general public and available from public sources.

(4) The authority or person who has received an inquiry specified in subsection (3) above shall reply to the inquiry immediately but within ten working days at the latest as of the receipt of the inquiry.

(4¹) A fact established during the collection of data for the decision to hire a person may be the basis for a refusal to hire.

(4²) The reason for refusal and the fact underlying the refusal specified in Clause 4.1 of this paragraph shall not be disclosed to the extent that it may be unavoidably necessary to ensure:

- 1) national security;
- 2) national protection;
- 3) public order;

- 4) prevention, detection, prosecution, or execution of criminal offences;
- 5) the protection of the data subject or the protection of the rights and freedoms of other persons.

(4.³) The Police and Border Guard Board or the Defence Police Board may check a police officer's eligibility for police service even during service if there is reasonable suspicion that there is a circumstance that would prevent him from being called up to the police.

(5) The provisions of this section shall extend also to a person who is applying for acceptance to vocational education studies or professional higher education studies in the specialty of the police or border guard, or for the position of a police officer in an institution of professional higher education for public defence. Personal data for deciding on the suitability for police service of the said person shall be collected by the Police and Border Guard Board³⁰.

The authors propose to the Latvian legislature to follow the good practice of Estonia and to adopt this country's regulation with non-essential clarifications and reservations regarding the collection of information for deciding on employment in service of the person and to amend Law on the Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prison Administration.

In addition, this regulation can become the basis for developing a loyalty assessment methodology, which can be used in other industries or professional fields, especially in the context of current events.

3. Contemporary challenges and future development opportunities

The invasion of Ukraine by the Russian Federation and the hostilities in its territory contributed to the activities of persons disloyal to the Republic of Latvia, including the dissemination of hostile content both in the internet environment and in public places during unauthorised events.³¹ In a contrast to these activities, the highest degree of loyalty – the examples of proof of the expression of patriotism – became topical in Latvian society.

As part of a study commissioned by the Ministry of Defence, it was found that 41% of Latvian residents say that the war in Ukraine has made them evaluate their role in strengthening national defence.³² Within two months, from 24 February to 22 April 2022, 2,516 applications for the National Guard of the Republic of Latvia (Latvian: *Latvijas Republikas Zemessardze*) were received.

To prevent the activities of persons disloyal to Latvia, the legislator was forced to act quickly, improving the regulatory framework according to the development of events. On 31 March 2022, amendments were made to Law on Administrative Penalties

³⁰ Politsei ja piirivalve seadus [Police and Border Guard Act] (06.05.2009). Available: <https://estlex.ee/estlex/?id=76&aktid=115458&fd=1&leht=1> [last viewed 01.03.2023].

³¹ Trejs, Ē. Normatīvā regulējuma problēmjaudājumi lietās par naida izraisīšanu [Problems of the legal framework in cases of incitement to hatred]. *Jurista Vārds*, No 25/26 (1239/1240), 21.07.2022, p. 20. Available: <https://juristavards.lv/doc/281551-normativa-regulejuma-problemjautajumi-lietas-par-naida-izraisisanu/> [last viewed 01.03.2023].

³² Aizsardzības ministrija: 41% Latvijas iedzīvotāju karš Ukrainā ir licis izvērtēt savu lomu valsts aizsardzības stiprināšanā [Ministry of Defence: 41% of Latvian residents have made the war in Ukraine evaluate their role in strengthening national defence] (25.04.2022). Available: <https://www.mod.gov.lv/lv/zinas/aizsardzibas-ministrija-41-latvijas-iedzivotaju-kars-ukraina-ir-licis-izvertet-savu-lomu> [last viewed 01.03.2023].

for Offences in the Field of Administration, Public Order, and Use of the Official Language of the Republic of Latvia, supplementing Chapter III “Administrative Offences in the Field of Public Order” with Section 13¹ “Use of symbols glorifying military aggression and war crimes in a public place” in the following wording: “For the use of symbols glorifying military aggression and war crimes in a public place, except in cases where there is no purpose to justify or glorify these crimes, a warning or a fine of up to seventy units is applied to a natural person, and a legal entity – up to five hundred and eighty units”³³.

One of the authors of the current article had previously indicated that the disposition of the newly created article may create problematic issues for those applying the law.³⁴ Section 5(3) of the Law on Administrative Liability provides: “administrative liability for the offences specified in a law or binding regulations of local governments shall arise unless criminal liability is imposed for such offences”³⁵, whereas Section 74¹ of the Criminal Law states that “for a person who commits public glorification of genocide, crime against humanity, crime against peace or war crime or who commits public glorification, denial, acquittal or gross trivialisation of committed genocide, crime against humanity, crime against peace or war crime, including genocide, crime against humanity, crime against peace or war crime against the Republic of Latvia and its inhabitants committed by the U.S.S.R. or Nazi Germany”³⁶. Analysing Section 13¹ of the Law of the Republic of Latvia Law on Administrative Penalties for Offences in the Field of Administration, Public Order, and Use of the Official Language and Section 74¹ of the Criminal Law, it should be established that the law practitioner, in order to distinguish these articles, clarifies the purpose of the relevant offense.

Section 5(1) of the Law on Administrative Liability provides: “an administrative offence is an unlawful culpable action (an act or failure to act) of a person for which administrative liability is provided for in a law or binding regulations of local governments”³⁷.

Legal scientist Edvīns Danovskis points out that, if in the law of administrative violations one can theoretically talk about the subjective side, then in any case with a different content than in criminal law, where the subjective side is formed by the mental attitude of a natural person towards the offense. Considering the very simple structure of an administrative offense and the concept of an administrative offense included in the Law on Administrative Liability applying the elements of

³³ Administratīvo sodu likums par pārkāpumiem pārvaldes, sabiedriskās kārtības un valsts valodas lietošanas jomā [Law of the Republic of Latvia Law on Administrative Penalties for Offences in the Field of Administration, Public Order, and Use of the Official Language] (07.05.2020). Latvijas Vēstnesis, No. 96, 20.05.2020; Grozījumi Administratīvo sodu likumā par pārkāpumiem pārvaldes, sabiedriskās kārtības un valsts valodas lietošanas jomā [Amendments to the Law of the Republic of Latvia Law on Administrative Penalties for Offences in the Field of Administration, Public Order, and Use of the Official Language] (31.03.2022). Latvijas Vēstnesis, No. 75A, 19.04.2022.

³⁴ Treļs, E. Normatīvā regulējuma problēmjautājumi lietās par nauda izraisīšanu [Problems of the legal framework in cases of incitement to hatred]. Jurista Vārds, No. 25/26 (1239/1240), 21.07.2022, p. 24. Available: <https://juristavards.lv/doc/281551-normativa-regulejuma-problemjautajumi-lietas-par-nauda-izraisisanu/> [last viewed 01.03.2023].

³⁵ Administratīvās atbildības likums [Administrative Liability Law: Law of the Republic of Latvia] (25.10.2018). Latvijas Vēstnesis, No. 225, 14.11.2018.

³⁶ Krimināllikums [Criminal Law] (17.06.1998). Latvijas Vēstnesis, No. 199/200, 08.07.1998.

³⁷ Administratīvās atbildības likums [Administrative Liability Law: Law of the Republic of Latvia] (25.10.2018). Latvijas Vēstnesis, No. 225, 14.11.2018.

a criminal offense to administrative offenses is not justified from a theoretical point of view.³⁸

It should be noted that the legislator, supplementing Law on Administrative Penalties for Offences in the Field of Administration, Public Order, and Use of the Official Language of the Republic of Latvia with Article 13¹ has deviated from the new scientific position by including the need to establish the purpose in the provision of the article. To establish the composition of the relevant criminal offense, the law enforcement officer must prove the motive and purpose.

University of Latvia professor Uldis Krastiņš points out that the motive and purpose are independent subjective features of a criminal offense, which, like the form of guilt, must be proven if they are included in the provisions of the Special Part of the Criminal Law.³⁹ He also notes – if the motive and purpose are not included in the number of features of the composition of a criminal offense, then they do not affect the qualification of a criminal offense, although no offense committed with direct intent is realized without a motive and purpose. Motive is defined as an internal incentive, drive, inclination that directs the will of the perpetrator to commit a criminal offense. On the other hand, the goal is the intended result that a person wants to achieve when committing a criminal offense.

The above-mentioned opinions should be taken into account by the person applying the rights when establishing whether the symbols glorifying military aggression and war crimes have been used in a public place, as the goals of the person who used these symbols should be clarified. This means that in all cases where the law enforcer will not be able to prove that the mentioned symbols were used to justify or glorify war crimes, administrative responsibility will arise.

In the opinion of the authors, in all cases where a person has been prosecuted for the aforementioned offenses and the criminal offenses included in Chapter X “Crimes against the State” of the Criminal Law, there is a reason to question the loyalty of this person to the Latvian state and its Constitution.

At the moment, representatives of society are also involved in activities related to the initiative to prevent persons disloyal to the Latvian state, the so-called “*pro-Kremlin*-minded persons”, from running in the state, local government and European Parliament elections, as well as holding civil service positions and positions in state and local government institutions and their structural units.⁴⁰ In the opinion of the authors of the initiative, the above will be of multiple benefits to society, including a reason to remind about the priority of state and public interests, safety, and also protection – that the state administration, security structures, supervisory institutions will be denied the opportunity to be disloyal or harmful to the state.

During the development of the article, the mentioned initiative, signed by 13,504 persons, reached the *Saeima* of the Republic of Latvia. On 19 January 2023,

³⁸ Danovskis, E. Administratīvās atbildības likuma pamatnoteikumu svarīgākās nostādnes [Important Notions of Basic Provisions of Administrative Liability Law]. Grām.: Protecting values enshrined in Constitution: perspectives of different fields of law. Collection of research papers of the 77th International Scientific Conference of the University of Latvia. Riga: University of Latvia Press, 2019, pp. 462–463. Available: <https://doi.org/10.22364/juzk.77.49> [last viewed 01.03.2023].

³⁹ Krastiņš, U. Tiesā nodoma tvērums krimināltiesībās [Direct Intent in Criminal Law]. Riga: Tiesu namu aģentūra, 2017, p. 32.

⁴⁰ Aizliegt ieņemt amatus valsts un pašvaldību institūcijās prokremliski noskaņotām personām [Prohibit pro-Kremlin persons from holding positions in state and local government institutions] (18.05.2022). Available: <https://manabalss.lv/aizliegt-ienemt-amatus-valsts-un-pasvaldibu-institucijas-prokrieviski-noskanotam-personam/show> [last viewed 01.03.2023].

the opinions of the *Saeima* factions⁴¹ were heard and the deputies who spoke in the *Saeima* debates expressed their support for a thorough but quick evaluation of this initiative in the *Saeima* commissions. In the opinion of the authors of the article, this initiative should not be limited only to “*pro-Kremlin-minded persons*”. Instead, this issue should be viewed more broadly, applying this restriction to all persons disloyal to the Latvian state, accordingly developing and strengthening the methodology for assessing disloyalty. Persons disloyal to Latvia have committed several administrative violations and criminal offenses. On 21 October 2022, the Latvian State Security Service (Latvian: *Valsts drošības dienests*, VDD) reported that since the beginning of Russia’s armed forces’ invasion of Ukraine, Latvian State Security Service has initiated 27 criminal proceedings, while four proceedings had been taken over from the State Police concerning hate speech and activities in support of Russia’s aggression and interests.⁴² Criminal proceedings have been initiated on the basis of suspicion for various criminal offences: for activities directed towards triggering national hatred or enmity against Latvians and Ukrainians (Section 78 of Criminal Law), public glorifying and acquittal of Russia’s war crimes (Section 74¹ of Criminal Law), activities aimed at triggering national hatred or enmity against Latvians and Ukrainians (Section 78 of Criminal Law), providing support in collecting financial resources and other goods for Russian soldiers involved in warfare in Ukraine (Section 77² of Criminal Law), an action directed against Latvia (Section 80 of Criminal Law) and assistance to a foreign State in activities directed against Latvia (Section 81¹ of Criminal Law). In eight of these criminal proceedings, the Latvian State Security Service concluded the pre-trial investigation and referred the materials of the criminal proceedings to the Prosecutor’s Office to initiate criminal prosecution against the suspects. Within the other criminal proceedings, the pre-trial investigation continues, so far, 15 persons have been recognized as suspects, while seven others – as persons against whom criminal proceedings have been enacted. This information allows the authors to predict that issue of the activities of disloyal subjects will not lose its relevance in the years to come.

Thus, a clear regulatory framework, setting the requirement for a person in public service or work to be loyal to the Latvian state and its Constitution, and strengthening the loyalty assessment methodology in regulatory acts would allow to avoid several problematic issues and solve problem situations accordingly, ensuring the priority and protection of state and public interests, as well as confirming concern for the existence and development of the country in the wider scope. Likewise, discussions on the principle of “loyalty” are to be continued, constituting the subject of further studies.

Summary

The requirement for those employed in the public sector to be loyal to the state and its basic law is proportionate and appropriate to the nature of modern state service or work. It is related to the priority of development and interests of the state and society. Therefore, the duty of loyalty, as mentioned before, is advanced in the interests of the state and society, because loyalty to the state, for which those employed in public

⁴¹ Frakciju viedokļi 2023. gada 19. janvārī [Opinions of the factions on 19 January 2023] (20.01.2023). Available: <https://www.saeima.lv/lv/aktualitates/14-saeimas-frakciju-viedokli/31838-frakciju-viedokli-2023-gada-19-janvari> [last viewed 01.03.2023].

⁴² The Latvian State Security Service. VDD detains an aggressive supporter of Russia’s war (21.10.2022). Available: <https://vdd.gov.lv/en/news/press-releases/vdd-detains-aggressive-supporter-of-russias-war> [last viewed 01.03.2023].

service work, is a prerequisite for democracy, security, and justice, the existence and development of the state, and at the same time – for everyone, who lives in this state or receives state services, allowing to trust that persons who ensure the implementation of state functions are loyal to the state, and act in the interests of the state.

It is necessary to distinguish a person's right to express an opinion, to criticize the government or other administrative institutions, and to be sceptical of a person's trust or loyalty to the state and its basic law. It is possible to separate disloyalty as a deliberate manifestation of action from shortcomings and mistakes in professional activity, and other violations, which appropriately raises the issue of loyalty assessment methodology, which should be encompassed in regulatory acts.

In the authors' opinion, it would be appropriate to amend the Law on the Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prison Administration and supplement Section 7(1) "Requirements for Acceptance into Service" with the following new paragraph 3²: "who is loyal to the Republic of Latvia and its Constitution".

It would also be appropriate to amend the Law on the Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prison Administration, and supplement the following new Section 7¹ "Collection of information for deciding on employment in service of person":

"(1) A person applying for employment in the service shall submit a personal data form. The personal data form requires data that enables the assessment of the person's suitability for service. In addition, data concerning relatives and relatives by marriage (parents, sister, brother, children, spouse, former spouse), and also the given name and surname, personal identification code (in the absence of a personal identification code, date and place of birth) and contact information of a partner in a relationship resembling marriage may be required.

(2) For the verification of the data presented in the personal data form, the authorized officers shall have the right to:

- 1) address state authorities and local government authorities, and also natural and legal persons with an inquiry concerning the personal data of a person applying for employment in service;
- 2) talk to the person specified in the personal data form, and also to his or her employer and representatives of his or her educational institution and other persons in order to determine the applicant's moral character, loyalty, and other personal characteristics and, if necessary and with the consent of the person being questioned, take his or her statement in writing;
- 3) verify whether the person specified in the personal data form has been punished for an intentionally committed criminal offence, whether the person has been sentenced to imprisonment, or whether he or she is a suspect or accused in criminal proceedings;
- 4) verify personal data from the database of the state, local government or another legal person in public law or legal person in private law;
- 5) process personal data addressed to the general public and available from public sources.

(3) The authority or person who has received an inquiry specified in subsection (2) of this section shall reply to the inquiry immediately but within ten working days at the latest as of the receipt of the inquiry.

(4) A fact established during the collection of data for the decision to hire a person may be the basis for a refusal to hire.

(5) Subsection (4) of this section indicates the reason for the refusal and the fact underlying the refusal shall not be disclosed to the extent that it may be unavoidably necessary to ensure:

- 1) national security;
- 2) national defence;
- 3) public order;
- 4) prevention, detection, prosecution, or execution of criminal offences;
- 5) the protection of the data subject or the protection of the rights and freedoms of other persons.

(6) The official's suitability for service can also be checked during service if there are reasonable suspicions that there are any conditions that would prevent him from being in service.

(7) The format of the personal data form of a person applying for employment in the police service, the period of retention of the data requested in the personal data form, and the procedures for the conduct of a background check shall be determined by the Cabinet."

In addition to the above, it would be appropriate to amend the Recommendation of the Cabinet of Ministers No. 1 of 21 November 2018 "Values of State Administration and Fundamental Principles of Ethics", and by supplementing paragraph 4 "The employee shall act according to the following values of State administration" with the following subparagraph 4.8: "loyalty", and subparagraph 5.8 that clearly explains, how this happens.

The authors predict that the issue of the activities of disloyal subjects will not lose its relevance in the years to come. At the same time, the issue of loyalty should also be brought up in other areas or sectors, for example, in connection with mandatory military service or work in municipalities and their institutions, as well as in other areas of national importance.

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