

IMPROVEMENT OF THE SECURING A CLAIM IN LATVIAN LEGAL POLICY PLANNING DOCUMENTS

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Abstract. *In the framework of his scientific work, the author makes a research on the problematic aspects of the procedure of the securing a claim, including in legal policy planning documents, which play an important role in the development of the procedure of the securing a claim. Topicality and novelty of the research are reflected in the fact that until now in the legal doctrine weren't made depth and extensive researches of the role of legal policy planning documents in solving problems of the securing a claim. The aim of the research was to analyze legal policy documents regarding to the procedure of the securing a claim in order to identify plans of the public administration to improve the procedure of the securing a claim and civil procedure in general. In the present research, using the analytical, descriptive and deduction / induction method, was analyzed the normative acts and legal policy planning documents of the public administration. Results: Analyzing the legal policy planning documents related to the procedure of the securing a claim, it has been established that public administration has not planned to carry out reforms of the provision of the securing a claim, except for the planned regulation on the possibilities of the securing claim in the non-material nature claims, which, unfortunately, is still not fulfilled. Conclusions: The public administration should clearly define in legal policy documents the objectives and tools for making modern and effective civil procedure in general and the procedure of the securing a claim in particular.*

Keywords: *civil procedure law, government, legal policy planning documents, Ministry of Justice, public administration, securing a claim.*

Introduction

In the framework of his scientific work, the author makes a research on the problematic aspects of the procedure of the securing a claim, including in legal policy planning documents, which play an important role in the development of the procedure of the securing a claim in particular and civil procedure in general. The research may be used as teaching aid for the students studying academic disciplines of economics, law and public administration.

Aim, Materials and Methods

The purpose of the research is to analyze legal policy documents regarding to the procedure of the securing a claim in order to identify plans of the public

administration to improve the procedure of the securing a claim and civil procedure in general. Using analytical, descriptive and deduction/induction method, in the present research were analysed the normative acts, legal policy planning documents, Latvian Civil Procedure Law (Civilprocesa likums, 1998), etc.

Legal Policy Documents in the Field of Securing a Claim

The state manages the legal development processes, using the legal policy, in order to improve the efficiency of the activity of the state's legal system. The main task of the legal policy of the state is to address current issues in order to protect the rights and legitimate interests of the subjects, the progressive, legal development of the state and improvement of its legal framework, including, in order to achieve the goals specified in the constitution and to ensure the constitutional values, including the human rights, public welfare, culture development etc.

The website of the Cabinet of Ministers of the Republic of Latvia states that the policy planning consists of proposals and measures, developed under a certain procedure at the level of executive power, for addressing social and economic problems, for achievement of the goals and development priorities specified in political guidelines and assessment of their impact, which are included in the policy planning documents in a structured manner. The policy planning purpose is to collect information on the situation and problems in a particular sphere in a clear, structured and understandable manner, and to determine the future development of the particular sphere or solution of the identified problems. The policy planning process is a set of goal and outcome oriented measures, which determines the activities required for the implementation and supervision of the policy in Saeima, Cabinet of Ministers and all public administration institutions. The policy is developed in one or several fields, sectors or sub-sectors of politics. The policy planning and analysis process usually includes the following stages:

- 1) situation analysis;
- 2) identifying problems and potential solutions;
- 3) initial assessment of the impact;
- 4) coordination and approval of the policy planning document;
- 5) making the decision on allocation of financial resources;
- 6) policy implementation and supervision;
- 7) assessment of the impact of the results achieved by the policy.

The policy planning process takes place before the legal framework development process. When developing drafts of the legal enactments, the goals and approved solutions included in the policy planning documents shall be taken into account as well (Politikas plānošana, 2021).

Therefore, the legal policy is a set of ideas, measures, tasks, goals, programs, methods and approaches, which is implemented for the purpose of development of the legal norms and the law system. Using the legal policy, the state identifies the problem, determines the potential solutions of the problem, allocates resources for the implementation of the solutions to the identified problems, develops the legal enactment and directs it for approval in accordance with the procedure specified in the law. By such activity the state supports the progressive forms of the rights, counteracting the outdated, conservative forms and manifestations, which hinder development of the individuals and the society.

In this research, preference is given to the analysis of the legal planning documents, which concern the development of the regulations on the institution of the securing a claim, except for the judgements of the Constitutional Court, case law and collections of judicial practice, namely, the following is being analysed:

- Operational strategy of the Ministry of Justice 2018-2020 (Tieslietu ministrijas darbības stratēģija 2018-2020.gadiem, 2018).
- Guidelines for the development of insolvency policy 2016-2020. (Par Maksātnespējas politikas attīstības pamatnostādņēm 2016.–2020.gadam un to īstenošanas plānu, 2016).

When analysing the legal policy planning documents, it is possible to determine, whether the state correctly identifies the current problems of legal nature and whether it has a plan for solving of problems and whether this plan is feasible.

Results of the Research

Operational strategy of the Ministry of Justice for 2018-2020 contains the following main findings related to the subject of the study:

- As the leading authority in the field of legal policy, the Ministry develops and implements the state policy in the sphere of constitutional law, administrative law, civil law, commercial law, criminal law and religious law, as well as the procedural law.
- Purpose of the civil law policy: comprehensive and stable protection of the rights and interests of the subjects of private legal relations.
- Duration of adjudication of civil matters in the courts is one of the indicators, frequently used both in national and international level reviews, since many categories of the matters allow evaluating the trends of development of court availability at a very broad spectrum – both in perception of businessmen and individuals. For this purpose, the Ministry has established a permanent working group on the Civil Procedure Law, which considers all necessary amendments to the Civil

Procedure Law on regular basis and prepares drafts for “Amendments to the Civil Procedure Law” in order to evaluate the achieved indicators of the adjudication of matters and to decide on necessity of further development directions.

- It has been established among the working group on the Civil Procedure Law and the persons applying it that in non-material claims the Civil Procedure Law lacks a comprehensive regulation of temporary protection, similar as the institute of the securing a claim in material claims. Also, in non-material claims, temporary protection may be required before or during the proceedings, therefore such regulation should be introduced to the Civil Procedure Law during implementation of the strategy.
- One of the main tasks to be performed by the Ministry of Justice, among others, is to offer new solutions for making the civil proceedings at court more efficient (Tieslietu ministrijas darbības stratēģija 2018-2020.gadiem, 2018).

When analysing the operational strategy of the Ministry of Justice 2018-2020, the authors of the work believe that the suggestion should be supported that a protection mechanism, similar to that of the securing a claim, is also needed in non-material claims in order to pre-settle disputed legal relations, prevent serious damage or arbitrary actions

It should be noted that the amendments of the law, planned by the Ministry by 2020 regarding the possibility of the securing a claim of non-material nature still have not been developed.

Guidelines on the development of insolvency policy 2016 -2020 state that:

- the following principles specified in the Insolvency Law shall be preserved and reinforced for the purpose of implementation and application of goals:
 - 1) the principle of preservation of rights - the rights of creditors acquired before the proceedings shall be considered in the process. The limitation of the creditor's rights set out in the proceedings may not exceed what is necessary to achieve the purpose of the proceedings;
 - 2) the principle of equality of creditors – creditors shall be given equal opportunities to participate in the proceedings and receive satisfaction of their claims in accordance with the obligations they have established with the debtor before the commencement of the proceedings;
- the amendments of the Insolvency law, which have entered in effect on March 1, 2015, several problems identified in the practice have been

prevented, as well as the potential for misuse of the regulations. Namely, these amendments have introduced the following changes:

- it has been determined that a court judgment, declaring the insolvency proceedings of a legal entity, shall serve as grounds for suspension of legal proceedings in material claims (regarding debt obligations), initiated against the debtor, and also shall serve as grounds for revoking claim security in accordance with the procedure stipulated by the Civil Procedure Law. In order to exclude cases when the administrator has admitted the claim of the creditor, but at the same time there are current legal proceedings regarding recovery of this debt, these changes give the right to the court to stop the proceedings, upon commencement of the insolvency proceedings, and to resume the proceedings, upon establishing a dispute over the rights;
- the issue regarding revocation of the claim security during insolvency proceedings has been solved (Par Maksātne spējas politikas attīstības pamatnostādņēm 2016.–2020. gadam un to īstenošanas plānu, 2016).

While analysing the findings of the the Insolvency Policy Development Guidelines for 2016-2020, the study author concluded that it is unreasonably believed that the issue of the revocation of the claim security during insolvency proceedings has been solved, since the current regulation does not correspond to the principle of preservation of rights specified in the Insolvency Law – the rights of the creditors acquired before the proceedings are considered during the proceedings. For example, the legal nature and duration of the notation recorded in the Land Book is determined by the Land Register Law (Zemesgrāmatu likums, 1937), and not the Civil Procedure Law. Pursuant to regulations of Section 46 of the Land Register Law, the note of the claim security is not an obstacle to further compulsory corroboration, including after the insolvency administrator has sold the property at auction. But, when acquiring such real estate at auction, the buyer shall be aware that the real estate might be adjudicated to another person, therefore, the currently applicable legal framework developed by the Ministry of Justice – to cancel all claim securities in case of the insolvency proceedings may turn out to be unlawful in some cases. At the same time the means of securing the claim, specified in the Civil Procedure Law, as recording pledge notation in the Land Book, is outdated, as it does not protect the claimant from the encumbrance or impossibility of enforcement of the judgement in case of insolvency of the debtor, declared by the court, when all previously adopted means of securing the claim have been cancelled, due to which such means of securing the claim should be excluded from the Civil Procedure Law of Latvia and replaced by court hypothec, which gives the claimant better rights towards the debtor and really protects the debtor also in the insolvency proceedings.

Therefore, the goals of the main guidelines of insolvency policy have not been achieved, although the Ministry of Justice has declared them as achieved.

Conclusions

Notwithstanding the fact that this article studies only part of the legal policy planning documents and through the perspective of the institute of the securing of the claim, conclusion may be drawn that the state activity, related to the planning of the more direct policy in regard to civil proceedings in general and to modernization of the securing a claim institute in particular, is not efficient, since the goal – to reduce the duration of the legal proceedings, still has not been achieved, and there is no comprehensive plan for improvement of the legal framework of the civil proceedings.

So, for a long time no attention has been paid to the fact that the means of securing the claim, specified in the Civil Procedure Law – recording pledge notation in the Land Book – is outdated and should be excluded from the Civil Procedure Law of Latvia and replaced by court hypothec, which gives the claimant better rights towards the debtor and really protects the debtor also in the insolvency proceedings.

No attention has been paid to the fact that the current regulation, where the insolvency proceedings serve as grounds for revocation of any claim security, contradicts the principle of equality of creditors and the principle of preservation of rights, as well as the case law, namely, that the means of securing the claim, which ensure the property claim, has been referred to in Paragraph 3 of Section 138 of the Civil Procedure Law as prohibition notation (Civilprocesa likums, 1998), fails to gain the legal nature of a personal (legal obligation) corroboration, which shall be cancelled when selling the property at public auction and, when acquiring such real estate property at auction, the buyer has to be aware that the real estate property could be adjudicated to another person (Lēmums lietā Nr. SPC-27/2017, 2017).

The legal planning documents fail to pay attention to the fact that procedural deadlines in the civil proceedings are not commensurate and the duration of adjudication of the civil matters is not significantly reduced due to procedural deadlines, as it was planned by the Ministry of Justice. For example, pursuant to Paragraph 1 of Section 131 of the Civil Procedure Law of Latvia, upon receipt of a statement of claim in a court, a judge shall, within ten days take a decision to initiate proceedings or to refuse to accept the statement of claim, or to leave the statement of claim not proceeded with (Civil Procedure Law, 1998). This means that the Latvian court may adjudicate the application of the claim security even on eleventh day after receiving thereof. Such procedural deadline for adjudication

of the application of the claim security at the court is not commensurate and does not correspond to the purpose of claim security.

Notwithstanding the commitment of the Ministry of Justice to regulate the possibility of securing non-material claims in legal planning documents, this has not yet been done, leaving non-material claims without a procedural remedy to prevent possible harm or arbitrary actions during court proceedings pending a final decision.

Thus, the legal policy planning documents, which relate to civil proceedings in general and the institute of claim security separately, do not correctly identify all of the current problems of civil proceedings, the solution of which would achieve the goal - to reduce the duration of civil proceedings.

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