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Latvian Civil Procedure

Assessment of Polythene usage

Highlights

Zambian Legal Environment

Impact of the Supreme Court's Case

Discovering Thoughts, Inventing Future

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An Assessment of Polythene usage as a Packaging Product to Business Organisations in Nigeria

By Abass, Salimat. M, Ph.d

Abstract- This paper assesses the use of Polythene as a packaging product for business organisations in Nigeria. Despite the challenges of polythene usage such as its threat and dangers to the life in the water bodies and marine Eco-systems, the product is still in high demand by supermarkets, grocery stores and homes due to it durability, its easily recyclable, excellent rigidity, extremely lightweight, enhances protection and very economical for packaging in Nigeria. Data were collected via primary data and analysed. Findings revealed that polythene is the most used packaging products by business organisations in Nigeria. The study recommended that recycling and re-usage of polythene products should be encouraged, enforced, invested on and educated on by individuals, organisations and also the government of Nigeria since its demand and usage is more than other packaging products.

Keywords: *polythene, packaging and nigeria.*

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I. Introduction

Packaging as a subdivision of marketing can be described as a coordinated system of preparing goods for transport, warehousing, logistics, sale and end use, it entails protection, preservation, transportation, information and sales (Soroka, 2002). Brittany Nader, 2015 argued that packaging should be the 5th P of marketing mix. According to Philip Kotler, Packaging entails Protection, convenience and economy. However, Kain, (2020) explains that packaging entails protection, preservation and presentation. The five main types of packaging are plastic (polythene), metal, paper or cardboard, wood and bottle (Dube, 2021; Velarga 2017). This study will be focusing on Polythene.

According to Collins English Dictionary (2019) Polythene is a type of plastic made into thin sheets or bags and used specially to keep food fresh or to keep things dry. Polyethylene or polythene (abbreviated PE) is the most common plastic. As of 2017, over 100 million tonnes of polythene resins are produced annually worldwide, accounting for 34% of the total plastic market (Geyer, Jambeck & Law, 2017). It main usage has been in packaging such as plastic bags, plastics films, membranes, containers, bottles, door mat for wet feet, kids play mats, food wrapping, table covers, pallet cover, postal sacks, kites, metal drum tops, surgical gloves, grow bags, dustbin liners, hoses/tubes, insulation, plastic bottles and protective packaging (Trademark polythene, 2015).

Nigeria is a large, densely populated West African country with over 200 million people, a diverse geography with climates ranging from arid to humid equatorial. It's a country with a multi-ethnic and culturally diverse federation which consists of 36 states and the Federal Capital Territory (World bank, 2022). Business Organisation in Nigeria is an entity formed for the purpose of carrying on commercial enterprise, it can be a sole proprietorship, partnership and corporation (Investopedia, 2021) depending on the size, according to Nigerian Law it must be registered under the Corporate Affairs Commission CAC (Resolutionlawng. com, 2020).

The main objective of this paper is to assess the usage of polythene as a packaging product to business organisations in Nigeria as Polythene products carry all of the characteristics of a good packaging more than any other type of packaging product.

II. Statement of the Problem

In recent time, Polythene use and throw away culture has seriously been toxic to the human life style and a cause of pollution, as the chemicals in polythene affects the survival of flora and fauna of the aquatic system. Polythene products can be seen all over the streets, drainages, rivers, waterways and neighbour hood. Polythene is the most abused chemical compound. Most countries are trying to ban this compound, as it eventually lands up in the ecosystem, and it disrupts marine life (Chatrath, 2018).

Polythene is not biodegradable, and if dumped in the soil, it becomes harmful to the plant life, as the toxic substances of polythene gets blocked among the soil particles. Polythene threatens the life in the water bodies and the chemicals in polythene affects the survival of flora and fauna of the aquatic and marine Eco-systems (Isaac & Kandasubramanian, 2021). Also, Polythene is likely to clog drains causing problems in the water flow of the pipes, these pipe blockages would cause flooding and the free flow of water is disturbed. Polythene can also be harmful for animals if swallowed (Answers, 2019). Despite these challenges, Polythene

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film is one of the most lightweight and durable packaging mediums available which makes an important contribution to reducing food spoilage rates as it enhances protection. Polythene ducting is compatible with most fans, heaters, air conditioners and air handling units. Also, Polythene bags are produced with less energy and resources than glass, paper or any other packaging product. The transparent polythene allows recipients to view the contents such as a magazine cover, prompting them to open immediately if the item is of interest or expected (Answers, 2019).

However, we can use alternatives like jute bags, paper bags and clothe bags. Taking our own bags for shopping can help reduce half of polythene waste. Nevertheless, Shop owners keep polythene bags knowing for sure that customers will come empty handed to get free polythene bags. Several people give many irrational reasons for not using cloth bags (Perveen, 2016).

Over the years, Nigeria has had timelines to ban plastic products. The former Minister of Environment, Hadiza Mailafiya, had during the 2013 World Environment Day, said all was set for the phasing out of polythene in the country. But several years since the pronouncement, polythene still serves as major useful bags in supermarkets, stores and markets for packaging of products (Okeke & Mudashir, 2018), probably because of the relevance. Despite these challenges of polythene, it has become a product that will not go out of demand and a product with the best turnover as well as profitability (Oyesola, 2017). That simply means investing in polythene products will not be out of place. Polythene production is highly profitable and viable. The product is in high demand from supermarkets, grocery stores, homes, factories and business organisations. In fact, in Nigeria every aspect of Polythene seems to be profitable, from scavenging to recycling, to manufacturing and every step of its trading is a success. The demand for polythene product is very wide in Nigeria and worldwide on a daily basis. Millions of tons of nylon are produced worldwide and the production hardly meets the demand (Oyesola, 2017) due to its advantages over other packaging product such as protection enhancement, high adaptability, extremely lightweight, economical, durability, excellent rigidity, superior flexibility and easily recyclable. It is therefore necessary to assess the usage of polythene as a packaging product in Nigerian business organisation.

III. Research Questions

The paper sought to answer the following questions:

i. Do business organisations in Nigeria use polythene more than other packaging products like paper, metal, wood and bottles?
ii. Does Polythene as a packaging product have more advantages such as protection, economic advantage, flexibility and highly adaptablility than other packaging product to Businesses in Nigeria?
iii. Does the use of polythene as packaging improve sales or customers' satisfaction?

IV. Literature Review

Packaging is a strategic tool as well as a marketing vehicle in a business organisation (Olsmats, 2002). Polythene as a packaging product carries the largest percentage of packaging materials in the world (Eurostat, 2021). Over 70 million tons of thermoplastic per year are used in textiles mostly in clothing and carpeting. This saves land, natural resources and inputs compared to the use of wool and cotton. (bettermeetsreality.com, 2022).

It is easy to look down on the advantage of polythene products due to the idea that they are environmentally unfriendly. While they certainly have ecological pitfalls, polythene products can be beneficial to retailers, consumers and even the environment as they are cost effective (Ketcham. 2021), easy to use, convenient to store, a great marketing tool, reusable, consume less energy, enhances protection, durable and highly adaptable and recyclable (plastivision, 2019) unlike paper products.

According to a statistic by Statistica (2021), in 2015 the production volume of plastic and polythene in Nigeria reached around 411,000 tons which was expected to increase to 513,000 tons of plastic by 2020. Presently over 3000 registered company exist in Nigeria as against 50 launched in the 1960s. Much of this growth is attributed to the need of polythene products by business organisations and the surge in polythene consumption. Polythene productionis highly profitable and viable. The product is in high demand from supermarkets, grocery stores, homes, factories and business organisations. The demand for polythene product is very wide in Nigeria and worldwide on a daily basis. Millions of tons of polythene bags are produced worldwide and the production hardly meets the demand (Oyesola, 2017), due to its advantages over other packaging product such as protection enhancement, High adaptability, Extremely lightweight, Economical, durability, Excellent rigidity, Superior Flexibility and Easily Recyclable (plastivision, 2019).

This study is based on Kano theory of Attractive Quality and Packaging. Kano theory of Attractive quality and Packaging was developed by Prof Noriaki Kano in 1984, the theory explores and identifies a product based on the view that functionality is not only measure of a good product but the packaging must also portray and enhance certain level of needs.

Conclusively, the theory explains that packaging must be easy to use, the information on it must be relevant so that the consumer does not misuse the product, it has to fit into storage spaces, and the

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package has to facilitate all attributes. All these fits more with the functions and advantages of polythene as a packaging product.

V. Methodology

A well-structured questionnaire was employed for the primary data collection using a five Likert scale to examine how strongly subjects in the questionnaire agree or disagree. The questionnaire was administered to respondents selected through Area sampling. Each respondent representing their business organisation. According to Krejcie and Morgan (1970) 15% was added to the sample size of 1200 for provision of non-response making the total distributed questionnaire to be 1380.1283 number of questionnaires were returned making 93% of respondents. 1280 number of usable copies of the questionnaire for this study showed a good response rate of 92.7%. This percentage of the usable questionnaire is considered sufficient for any study (Barbie, 2007). The states selected are Kano state (north-west), Gombe state (north-east), Kwara state (north-central), Anambra state (south-east), Rivers state (South-south) and Lagos state (south-west) as each state represents a geopolitical zone in Nigeria.

VI. Conclusion

This paper revealed that polythene as a packaging product is the most used packaging product by business organisations in Nigeria, as 1184 out of the 1280 good response questionnaire confirms the use of polythene for packaging by business organisations in Nigeria. This confirms up to 92.5% of the data. Also, the percentage of the data that used other polythene product confirms they still included polythene to their packaging for finishing and protection.

Data collected confirms polythene has more advantage as a packaging product, as 1159 respondents representing 90.6% of the data collected. Most of the remaining respondent were into fresh and dry product, of which paper or cartons is the best packaging product.

Conclusively, the study reveals that polythene as a packaging product does not improve sales but customers' satisfaction can be confirmed by 72.6%. Thus, the assessment of polythene usage as packaging product by business organisations in Nigeria is positive.

VII. Recommendation

Thus, the study recommends that: The government, organisations and private individuals should invest more in scavenging and recycling of polythene product. Also, to encourage re-usage, so has to reduce waste and reduce pollution in the environment.

Furthermore, Organisations and non-profit institutions should educate and spread the word on issues related to polythene pollution and help make people aware of the problems. Finally, more support and donations should be encouraged on scientific reviews as well as general awareness on reuse and recycling of polythene products.

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Impact of the Supreme Court's Case -Law on the Realisation of Procedural and Substantive Rights in Civil Procedure; Specific Aspects in Latvian Civil Procedure

By Kristine Neimane
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Abstract- The author's article is devoted to procedural justice in civil proceedings and factors affecting it. The author conducts research in her home country, i.e., the Republic of Latvia, on the practical consequences of the norms governing civil proceedings in connection with the application of case law, which the author associates with a factor affecting procedural justice. It should be explained here that the Republic of Latvia belongs to the continental European law group, therefore, the term case law means the highest court instances, i.e., Judgments of the Senate of the Supreme Court of the Republic of Latvia, which contain explanations about the correct application of the procedural and/or material norm or the interpretation of this norm. The influence of case law on the realization of substantive and procedural rights of individuals in the Republic of Latvia has three negative factors, against which there are still no protection mechanisms, i.e.: firstly, the case law is changing and the Senate of the Supreme Court can abandon its earlier explanations or interpretations regarding the application of the norm, but the new explanations can be diametrically opposed to the so-called " old". It may refer to substantive or procedural law.

Keywords: justice, supreme court's case law, civil procedure, procedural rights.

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Kristine Neimane

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Keywords: justice, supreme court's case law, civil procedure, procedural rights.

I. The Impact of Case Law on the Exercising of Rights

Section 5 Paragraph Six of the Civil Procedure Law of the Republic of Latvia was introduced with amendments adopted on 07 April 2004, which entered into force on 01.05.2004. *Case law is in fact created by the Supreme Court and has a direct impact on the procedural as well as substantive rights of individuals*, i.e., how the court will decide the case and how procedural standards will be applied during the proceedings. In this context, it is important to consider the impact of case law within the scope of justice, especially as it is the final product of a process containing legal insights and explanations, as well as reflecting an understanding of what justice is in the eyes of the court and how it is ensured in each case. The purpose of case law is the consequent application and interpretation of legal provisions; therefore, in the author's view, a feature that is characteristic of the activity of the Senate of the Supreme Court – the change in case law – should be emphasized. From a fairness point of view, this feature can be considered particularly dangerous. Changes in case law predictably *erase (abolish)* the previous approach and replace it with a new, possibly even diametrically opposed, interpretation or view of the applicable standard. This leads to the conclusion that the cases of individuals ruled in accordance with the *previous (old)* case law are, *by their nature (at least)*, unfair, and vice versa. A change in case law can have the same impact on cases that are still in process.

According to the explanation of the term "case law" available in the EU e-Justice portal, "*(...) the term 'case law' refers to rules and principles developed in judgments and judicial opinions from courts of law. When deciding a case, the courts make interpretations of the law, which contribute to case law."*[1] *Based on the above, it should be accepted that a change of case law is, by its very nature, a change of interpretation and/or*

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[1] Retrieved: 22.11.2021. From: https://e-justice.europa.eu/content_case_law-11-lv.do

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conclusions. There are different interpretations of the term "case law", as pointed out by Dr hist. V. Blūzma: "*(...) the Latvian term "judikatūra" is traced back to the German Judikatur, which in turn comes from the Latin iudicare - to judge, to decide. (...), and* that *E. Levits' interpretation of the term "judikatūra" has been criticized by Prof. K. Torgāns, pointing out that case law only consists of published decisions (...), emphasizing the thesis that "it is generally not the decisions themselves, but rather the conclusions about the law contained therein that are of interest. (...)".* As mentioned by the author, the amendments to Section 5 of the Civil Procedure Law entered into force on 01.05.2004 in the following wording: *Upon applying legal norms, a court shall consider the case law.* Approximately one year after the implementation of the amendments to the Civil Procedure Law, J. Neimanis published an article in which he mentioned that the annotation of the draft law "Amendments to the Civil Procedure Law" (Reg. 500) and the transcripts of parliamentary sessions do not contain detailed explanations about this legal provision and that it was included in the proposal of the Minister of Justice A. Aksenoks.[2] J. Neimanis also points out that in Latvia's case law is not binding *de jure*, although courts should follow it regularly. The author also points out that only certain types of precedents are binding *de jure* in Latvia: a judgment of the Constitutional Court is binding on all courts, and the interpretation of the law given by the Senate of the Supreme Court, as expressed in the judgment, is binding on the court that reviews the case again.[3] J. Neimanis further points out that the legislator's will thought and justification for the introduction of the respective provision, i.e., Section 5 paragraph Six of the Civil Procedure Law, cannot be ascertained. Section 28^{64} of the Law on Judicial Power states that the Supreme Court shall establish a case law database and that the procedures for the selection and processing of the information to be included in the case law database shall be determined by the President of the Supreme Court after coordination with the Ministry of Justice (Paragraph Five of said Section). The law does not state that case law can be changed, nor does it prescribe how issues are dealt with if case law is changed in a process where the court is hearing a case on the merits or rendering a judgment. The author is not alone in concluding that there is no regulation regarding case law and/or its changes. For example, G. Sniedzīte points out: "*(...) Having assessed the existing regulatory framework on procedural matters in Latvia, it must be concluded that the Latvian legislation does not contain provisions that would directly promote the stability and qualitative development of case law and would provide for special consideration to change the existing rights of judges (...)".*[5] The author of this paper examines the issue from the point of view of the procedural rights of a person whose case may depend on an unforeseeable event that may arise in connection with a change in case law. Referring to the 04 February 2003 judgment by the Constitutional Court of the Republic of Latvia in case No. 2002-06-01, G. Sniedzīte points out that court rulings only adopted in line with the interpretations of legal norms given in the decisions of higher-instance courts may turn out to be unjust if the judge is not allowed to deviate from the decisions of a higher court.[6] It should be clarified here that in its judgment of 04 February 2003 in Case No. 2002-06-01[7] the Constitutional Court ruled on the [8]compliance of Section 49 Paragraph Two of the Law On Judicial Power (in the wording in force until 03 December 2002) with Article 1 and Article 83 of the Constitution of the Republic of Latvia, which was as follows: *The Plenary Session shall adopt explanations on the application of the laws that are binding to the courts*. The above judgment of the Constitutional Court is noteworthy in that the Parliament of the Republic of Latvia (the legislator) explained in its reply to the Constitutional Court that it agreed that the binding nature of the decisions by the plenary session was contrary to the principle of separation of powers.[9] Regarding the judgment of the Constitutional Court of 04 February 2003 in Case No. 2002-06-01, E. Oļševskis points out that what is really important are the findings laid down in this judgment as a basis for the Latvian national legal system, pointing out that in the judgment in Case No. 2002-06-01 the Constitutional Court recognised that "(...) *in view of the task of the court's adjudication – to reach a true and just solution to the case – the judge evaluates the circumstances of the particular case within the framework of the case being heard (...)".* Further down in this chapter, the author will present a somewhat paradoxical situation that has been developing over twenty years and has become today's reality, i.e., the *actual impact of Section 5 Paragraph Six of the Civil*

[2] Neimanis, J.(2005). Case law and its binding force. *Jurista Vārds, 08.03.2005. No. 9 (364);*

[3] Ibid.

[4] The Law on Judicial Power. Adopted 15.12.1992. *Official journal of the Supreme Council and Government of the Republic of Latvia,* 1/2, 14.01.1993. Last amended 10.12.2020;

[5] Sniedzīte, G.(2013). *Tiesnešu tiesības. Jēdziens un nozīme Latvijas tiesību avotu doktrīnā.* (Judicial rights. Concept and meaning in the Latvian doctrine of sources of law.) Riga: Latvijas Vēstnesis, p. 301.

[6] Ibid, p. 294.

[7] Judgment of the Constitutional Court of the Republic of Latvia of 04 February 2003 in Case No. 2002-06-01. Retrieved: 30.12.2021. From: https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2002-06-01_Spriedums.pdf

[8] Law on Judicial Power. Adopted: 15.12.1992. *Official journal of the Supreme Council and Government of the Republic of Latvia, 1/2, 14.01.1993. Last amended 10.12.2020. Presented legacy version from: 01.01.2002-02.12.2002. Retrieved: 30.12.2021. From: https://likumi.lv/ta/id/62847-par-tiesu-varu*

[9] Judgment of the Constitutional Court of the Republic of Latvia of 04 February 2003 in Case No. 2002-06-01. Retrieved: 30.12.2021. From: https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2002-06-01_Spriedums.pdf, *see Paragraph 5 of the judgment*.

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Procedure Law on the work of courts and the administration of justice is identical to that which the Constitutional Court of the Republic of Latvia, in its judgment of 04 February 2003 in Case No. 2002-06-01, found to be inconsistent with Articles 1 and 83 of the Constitution of the Republic of Latvia. This is confirmed by the content and justification of court decisions, as well as by Supreme Court judgments, legal literature, and other sources which the author discusses later in this chapter.

II. The Nature and Predictability of Case Law in the Circumstances of Changes of Case Law

The Latvian legal system belongs to the Romano-Germanic legal family, given its historical development and location in continental Europe. J. Neimanis points out: "*(...) The Latvian legal system has historically belonged to the Romano-Germanic legal family. (...)*"[10] Scientific literature indicates that the Romano-Germanic legal system is characterised by the central and decisive role of the law. The Romano-Germanic legal system differs from others in that the legal acts are structured and arranged, while the rights themselves are based on the principles of justice and reason.[11] (*underlined by me - K. N.*) It is also pointed out that in most countries belonging to the Romano-Germanic legal system, legal precedent is considered a secondary source of law.[12] A comparison of approaches and use of legal precedent among different countries shows that, for example, in France, a court of appeal is entitled to reject a plea based solely on previous court decisions because "it has no adequate legal basis", whereas in the German legal system precedent (*prajudiz*) generally means any previous court decision that is in any way related to the case at hand.[13] Thus, the observation made more than twenty years ago in scientific papers comparing the role and participation of judges in law-making in the so-called Common Law countries and the Civil Law countries is also true, pointing out that today it would not be correct to say that a judge in the so-called Civil Law[14] countries would be merely an enforcer of the law, since the law-making function and, consequently, the adaptation to changing circumstances can be realised by means of so-called "general clauses", which give the judge a rather wide discretionary power.[15] This is reinforced by the French Code of Civil Procedure, pointing out that, according to Article 4 of the Code, a judge is guilty of refusing to hear a case if they refuse to hear it on the grounds that the law is "silent", unclear or insufficient.[16] Other authors who have addressed the nature of case law and judicial precedent mention another noteworthy aspect, namely that in the perception of many legal practitioners and judges alike, case law and judicial precedent are virtually equivalent to or even superior to the law.[17] When speaking about case law (judicial precedent) as a source of law, law scholars and professors in the Republic of Lithuania have said: "*(...) Case law/court precedent is recognised in Lithuania as a source of law in accordance with the judgment of the Constitutional Court of the Republic of Lithuania of 28 March 2006 (...).*"[18] In his paper on the modernisation of civil procedure in the Russian Federation, Dmitry Maleshin said: "(...) "Guiding explanations" of supreme courts stems from the Soviet times, when they were required to fill gaps in the legislation.", however this is not typical of today's situation. The court is independent and subject to the law, resulting in the prohibition on "guiding explanations"; however, the actual situation shows that this does not prevent courts from using the "guiding explanations" to justify their judgments.[19]

However, this does not explain what constitutes a change in case law, how it has occurred, what consequences it has for general legal certainty and fairness, what means can be used to counteract the foreseeably negative consequences for any given individual who, under certain conditions, may be affected by the respective situation. In discussions among professionals in the field on the role of case law, Dr. iur. D. Apse points out that "*(...) a deeper study of the continuity of the case law concept content development in Latvia is desirable, especially in relation to the justification of the need for case law change (...)*." The author has already mentioned that a change in case law changes the approach to the substantive meaning of a legal provision, regardless of whether it applies to a

[10] Neimanis, J. (2004). *Ievads tiesībās*. (Introduction to Rights) Riga: sworn attorney Jānis Neimanis, p. 66.
[11] Abgulaev, M.I., Komarov, S.A. (2003). Problems of the theory of state and law. Methodology issues. Society and the state. Society and law. St. Petersburg: Piter, p. 529.
[12] Lyashkov, S.V. (2014). Monograph. Significance of the decisions of the plenum of the Supreme Court of the Russian Federation in the Civil Process., Moscow: LLC ID "Biblio-Globus, p. 46.
[13] Ibid, pp. 42-43.
[14] *The Civil Law* system is also referred to as the Continental or Romano-Germanic system of law; the definition of the term is retrieved on: 30.12.2021. From: https://www.law.lsu.edu/clo/civil-law-online/what-is-the-civil-law/
[15] Yu Seon Bong (1999). The Role of the Judge in the Common Law and Civil Law systems: The Cases of the United States and European Countries. *International Area Review, Vol. 2, No. 2 Fall 1999,* p. 8. Retrieved: 30.12.2021. From: https://journals.sagepub.com/doi/pdf/10.1177/223386599900200203
[16] Ibid;
[17] Samsonov, N.V. (2019). On the place and significance of judicial practice and legal precedent in Russian civil procedural law. *Vestnik of Saint Petersburg University. Law 2: 293–310*, Retrieved: 30.12.2021. From: https://doi.org/10.21638/spbu14.2019.207
[18] Beinoravičius, D., Vainiuté, M. (2016). A brief overview of sources of law in Lithuania. *Jurista Vārds, 10.05.2016. No. 19 (922),* p. 23.
[19] Maleshin, D. (2010). Russian Civil Procedure: an exceptional mix. *"Civil Procedure Review", V.1., No. 1 Mar/Jun, 2010*, p. 110. Retrieved: 08.01.2022. From: www.academia.com database downloads

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substantive or a procedural legal provision. A possible change in case law can predictably give rise to and contribute to inequality and contradictions, and the *time of occurrence* of a change in case law cannot be predicted – it occurs instantly. The Civil Procedure Law in its current wording, i.e., at the time of writing the thesis, does not foresee any procedural instruments that person could use to request a case to be re-adjudicated if a change in the case law of the Senate of the Supreme Court would create more favourable consequences for them than the *previous (old)* case law. The author would like to highlight another important aspect, namely that neither the application of case law, even if it is in direct contradiction with the law, nor its change can be the subject of a constitutional complaint. There is no such option and thus there are no remedies.

Changeable case law does not promote justice either, as it works against the principle that "similar cases should be decided in a similar way". Furthermore, are all cases that are apparently similar also similar by substance/facticity? of course, not. {Thus, in the author's view, *similarity* can only be superficial, but not in the substance or specific details of the matter. Meanwhile in the adjudication of civil cases, it is the substance, circumstances, facts, etc., of each particular case that matter. It is questionable whether equality and/or legal certainty can be achieved with changing case law. In 2012, G. Zemrībo, expressing doubts about the amendments introduced by the legislator to the hearing of cases in the cassation instance, including the de-facto rewriting (as stated by G. Zemrībo) of Section 388[1] of the Administrative Procedure Law, additionally pointed out that the case law of the Senate is nothing permanent and the Senate itself has changed its case law several times.[20] G. Sniedzīte notes that: *"(...) Legal certainty requires that the court is obliged to justify its judgment with legal provisions and that a person should be able to anticipate the expected reasoning of the court to some extent. The aspect of predictability of a judgment is based on the principle of equality that states that similar cases should be decided in a similar way (...)"*[21] *In the context of the quotes above, the author emphasises that a person, under circumstances of changing case law, predicts the anticipated reasoning of the court, which applies not only to the application of substantive law but also, as shown by examples of case law, to the application of procedural standards.* In conditions of changeable case law, clarification of rights or their foreseeable application cannot be achieved by receiving so-called *relevant advice* either, as the Constitutional Court has indicated in its judgments in relation to the assessment of the degree of clarity and specificity of the provisions adopted by the legislator. For example, in Paragraph 16 of the judgment of 20 December 2006 in Case No. 2006-12-01[22], the Constitutional Court, with reference to Article 90 of the Constitution of the Republic of Latvia, states: *"(...) only a person who knows their rights is able to exercise them effectively and to defend them in a fair court in the case of unjustified infringement (...)".* Meanwhile in Paragraph 12 of the judgment of 30 March 2011 in case No. 2010-60-01,[23] in which the Constitutional Court referred to its judgment of 20 December 2006 in case No. 2006-12-01, the Constitutional Court stated: *"(...) In order to establish whether persons had a legitimate expectation of the preservation or exercise of particular rights, it has to be assessed whether their reliance on the contested provision is lawful, justified and reasonable and whether the legal regulation by its nature is sufficiently established and unchangeable to be relied upon (...)*." It follows from the above that only something that is "*sufficiently established and unchangeable*" can be relied upon; however, the relevant findings of the Constitutional Court have been expressed in relation to provisions issued by the legislator, whereas the relevant criteria do not apply to case law (*which is not a provision issued by the legislator*). In 2017, the Consultative Council of European Judges expressed the following opinion: *"(...) the adoption of divergent decisions, in particular in the last instance, may lead to a breach of the requirement of a fair trial, as enshrined in Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (...)."*[24] Meanwhile, the President of the Supreme Court of the Republic of Lithuania, G. Kryževičius, speaking at a conference in 2010, stated: *"(...) the Supreme Court is not only a guarantor of consistent interpretation and application of law, but also supports the legislation and its development, as well as makes a significant contribution to the development of legal culture by providing a sense of stability, certainty and predictability to the society with its discretion (...)."*[25]

[20] Zemrībo, G. (2012). Report. Cassation proceedings in civil procedural law and problems arising therefrom. *Presented on 14 December 2012 at the conference on current issues in civil procedure organised by the Ministry of Justice.* Retrieved: 03.01.2022. From: https://www.at.gov.lv/files/uploads/files/docs/2013/ATBiletens6_web.pdf; p. 14.

[21] Sniedzīte, G. (2013). *Tiesnešu tiesības. Jēdziens un nozīme Latvijas tiesību avotu doktrīnā.* (Judicial rights. Concept and meaning in the Latvian doctrine of sources of law.)Riga: Latvijas Vēstnesis, p. 266.

[22] Judgment of the Constitutional Court of the Republic of Latvia of 20 December 2006 in Case No. 2006-12-01. Retrieved: 30.12.2021. From: https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2006-12-01_Spriedums.pdf

[23] Judgment of the Constitutional Court of the Republic of Latvia of 30 March 2011 in Case No. 2010-60-01. Retrieved: Retrieved: 30.12.2021. From: https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2010-60-01_Spriedums.pdf

[24] Indrūna, Z., (2018). *Judgments Bureau of the Senate of Latvia. Findings of the Senate of Latvia on the application of the provisions of the Civil Law (1938-1940).* Riga: Courthouse Agency, p. 14.

[25] Kryževičius, G. (2010). The role of the Supreme Court in the development of Lithuanian case law. *Conference materials. "Augstākās tiesas judikatūra un tās loma tiesiskās domas attīstībā Latvijā"*

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It follows from the above that consequent interpretation and application provides stability, certainty and predictability; however, the question is whether this is possible in the conditions of changing case law. Speaking at the aforementioned conference, Prof. Dr. h. c. *Assessor E. Levits expressed a similar view, i.e.: "*[26](...) Adherence to case law also creates legal certainty and predictability for the society and strengthens public confidence in the fairness of state institutions and, in particular, the courts, which is necessary in a law-governed state (...)." *The author emphasises that at least one direct and logical conclusion follows from the above, i.e., that legal certainty or predictability cannot arise in the conditions of changing case law.* Regarding the meaning and practical application of case law, E. Levits was even more specific: "*(...) in administering justice and making case law, the judge is independent, but not free. The judge is bound by law, by legal method and by case law (...). When administering justice, the judge has only two options: either to follow the existing case law or to create new case law. (...) By contrast, when a court judges differently, regardless of whether it is right or wrong, compelling, or not, it creates new case law. (...) This means that, in case law, court rulings are mostly applications of case law, because there are relatively few instances where the court has to decide something new on the merits, where it has to legally assess a factual situation for the first time (a so-called hard case) (...)."*[27] *Based on the explanations above, in conjunction with the facts confirmed over time that are manifested in the activity of the courts, i.e., in justifying judgments, the author points out that in Latvia there is a vertical movement (top down), within which there is essentially no innovation, but rather only the application of the case law that is created* (determined) by the Supreme Court. This situation is (most likely) caused by the much-discussed right of the Senate of the Supreme Court provided for in Section 464.[1] Paragraph Two Clause 1 to not accept cassation if the judgment is in accordance with the case law, yet if the judgment is not in accordance with case law, then, by logic, cassation should be accepted, and the judgment annulled. Thus S. Osipova is correct in saying that: *"(...) a right is what the higher court instances have recognised as a right – until subsequent changes in case law (...).* "[28] This is a long-known issue, for example, as early as in the 19th century, the professor of Polish descent G. F. Shershenevich wrote on the subordination of lower-instance courts to the Senate: "*(...) the case law eagerly swallows every admonition by the cassation department, trying to align their actions with the views of the Senate... The contest before the court is not based on logic, knowledge of the Constitution and the law, nor the ability to express oneself or explain, but rather on references to the cassation rulings (...)".*[29] The matter of the compatibility of changing case law with fairness, predictability or legal certainty becomes especially relevant because it demonstrates that, in any single civil case being heard in court, changes in case law in a dispute on the application of substantive or procedural legal provisions will result in the court applying the new (changed) case law) (*the author has already mentioned that this can happen at any time and cannot be foreseen in advance*). The examples of the Supreme Court Senate analysed below will substantiate the view expressed; however, before looking at specific examples, it is worth noting the view on case law expressed by Assoc. prof. Dr. iur. *D. Rezevska in 2010:* "(...) The source of the legal system is the sovereign; thus, the sovereign determines what kind of legal system they will live in and what general principles of rights will determine the content of this legal system. *The function of the legislature is to try to write down the pre-established legal provisions of the sovereign (which objectively already exist in the legal system in unwritten form and can resolve any dispute between members of the sovereign) to make life easier for the sovereign. (...) However, the legislator is not always able to do this, it is liable to errors or fails to foresee something, and at that moment, according to the modern interpretation of the theory of separation of powers, the judiciary steps in as a reviser and corrector of the legislator's work, looking for the pre-existing legal provision in the legal system that the sovereign has already foreseen for himself but the legislator has not yet verbalised it or has verbalised it inappropriately (...)."*[30] In other words, the court performs

(Supreme Court Case Law and its Role in the Development of Legal Thought in Latvia), Supreme Court Bulletin of the Republic of Latvia No. 1/2010, November, p. 13. Retrieved: 30.12.2021. From: https://www.at.gov.lv/files/uploads/files/docs/2011/at_biletens2010_01_web.pdf

[26] Levits, E. (2010). Judikatūra – pamati, problēmas, piemērošana (Case law – foundations, problems, application). *Conference materials.* "Augstākās tiesas judikatūra un tās loma tiesiskās domas attīstībā Latvijā" (Supreme Court Case Law and its Role in the Development of Legal Thought in Latvia), Supreme Court Bulletin of the Republic of Latvia No. 1/2010, November, p. 32. Retrieved: 30.12.2021. From: https://www.at.gov.lv/files/uploads/files/docs/2011/at_biletens2010_01_web.pdf

[27] Levits, E. (2010). Judikatūra – pamati, problēmas, piemērošana (Case law – foundations, problems, application). *Conference materials.* "Augstākās tiesas judikatūra un tās loma tiesiskās domas attīstībā Latvijā" (Supreme Court Case Law and its Role in the Development of Legal Thought in Latvia), Supreme Court Bulletin of the Republic of Latvia No. 1/2010, November, pp. 32-33. Retrieved: 30.12.2021. From: https://www.at.gov.lv/files/uploads/files/docs/2011/at_biletens2010_01_web.pdf

[28] Osipova, S. (2016). Tiesiska valsts vai "tiesnešu valsts" (Law-governed state or "state of judges"). *Jurista Vārds, 05.07.2016./No. 27 (930),* pp. 12-15.

[29] Shershenevich G. F. (2003). Science of civil law in Russia. Moscow: Statute, p. 241.

[30] Rezevska, D. (2010). Judikatūra kā tiesību avots: izpratne un pielietošana (Case law as a source of law: understanding and application). *Conference materials.* "Augstākās tiesas judikatūra un tās loma tiesiskās domas attīstībā Latvijā" (Supreme Court Case Law and its Role in the Development of Legal Thought in Latvia), Supreme Court Bulletin of the Republic of Latvia No. 1/2010, November, p. 29.

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the tasks of the legislator when there is no law (no written law or it contains no regulation), or the law is inadequate. If there is no law or it contains no regulation, the situation is straightforward because the court must rule on the case, yet the situation is different in the case of the term "inadequate". Dr.iur. *I. Kronis has stated:* [31]"(...) If there is no law governing the contested relation, a court shall apply a law governing similar legal relations, but if no such law exists, a court shall act according to general legal principles and meaning. (Section 5 Paragraph 5 of the CPL) (...)." *It is fitting to mention the scientific research of M. Cappelletti in the early 1980s, because the scholar had analysed the risks associated with the court task declared by D. Rezevska in 2010 as early as in 1981, stating, inter alia: "(...)* If a judge is free to base its decision on unwritten and utterly vague equity precepts, its activity cannot be differentiated, substantively, from that of a boundless legislator"*, and further: "(...) If the judge is a legislator, then it undermines the fundamental democratic idea of the separation of powers (...)."*[32] The quoted author points out that this is a serious dilemma, but it will have to be understood because it is a trait of the times, and the author himself does not oppose the idea that the judge to some extent is the creator of the law, pointing out that the law is a myth and therefore requires interpretation in order to apply it in each given case, thus judicial interpretation and also the interpretation of substantive law is always case law.[33] It should also be noted that on the question of whether a judge is a creator of law, the British House of Lords judge Rt. Hon. Lord Bingham of Cornhill, has pointed out that there are four "schools", the first of which denies entirely that the judge is the creator of law; the second school acknowledges that judges do make law but urges that this should be refrained from and calls for certain caution because it is unacceptable constitutionally that there should be two independent sources of law-making at work at the same time. The third school to which most modern *common law* judges belong acknowledges that judges do make law; it is a proper function of the court within the framework of each particular case to be adjudicated. The fourth school not only acknowledges a law-making role for judges, but glorifies that role and asserts a right to pursue it wherever established law impedes the carrying out of justice in an individual case.[34] In his lectures, Rt. Hon. Lord Bingham of Cornhill has explained the traditional approach to the role of the court, namely it being based on three basic positions, i.e., the principle of separation of powers– the legislature must make such laws that will enable good governance, whereas the executive power is tasked with applying these laws in practice and the court has the task of interpreting and applying the legal provisions in cases of ambiguity, according to the law made by Parliament, but the judges have no power to change it.[35] Justice of the US Supreme Court Antonin Scalia described the common-law countries and judges as creators of justice very accurately by saying that it has to be acknowledged that judges in common-law countries do in fact "create the law" and each state has its own law (author's note: *A. Scalia's work discusses, inter alia, matters of the US legal system*). The author has mentioned the above for the purpose of comparison because scientific papers on the development and evolution of law in Europe express the view of the rapprochement and convergence of Anglo-Saxon (*common-law*) and Romano-Germanic legal systems. The President of the French Court of Cassation and Chief Justice G. Canivet is one of those who have written about it.[36] At the same time, rapprochement and convergence do not mean that there are no longer key differences. This is the point made by authors studying the European Union's common civil procedure and related issues, who emphasize *that the national procedural laws of states are part of the tradition of the national legal system, reflecting a belief (a vision) of the best solution to ensure the functioning of the judicial system, the speed of proceedings and fair judgments (...). The procedural frameworks of EU member states vary widely, and these differences can be fundamental (...)."*[37] Thus, the explanations given by D. Rezevska in 2010 are the next stages in the natural and logical development of the process that M. Cappelletti addressed in 1981. Despite the opinions of the authors analysed and quoted above, it is doubtful that the sovereign in Latvia, whom D. Rezevska has pointed to as the source of the legal system, in 2009 wanted the

Retrieved: 30.12.2021. From: https://www.at.gov.lv/files/uploads/files/docs/2011/at_biletens2010_01_web.pdf

[31] Kronis, I. (2021). Likumības princips civilprocesā: formālas lietu vešanas kārtības pamats civillietās (The principle of legality in civil procedure: the basis for a formal procedure in civil cases). *RSU electronic journal of legal scientific articles SOCRATES, 2021 No. 1 (19)*, p. 113. Retrieved: 30.12.2021. From: https://dspace.rsu.lv/jspui/bitstream/123456789/4266/1/Socrates-19_09_Kronis_110-119.pdf.

[32] Cappelletti, M. (1981). The law-making power of the judge and its limits: A comparative analysis. *Monash University Law Review, Vol 8, September, '81,* p. 8. Retrieved: 30.12.2021. From: http://classic.austlii.edu.au/au/journals/MonashULawRw/1981/8.html,

[33] Ibid, p. 41.

[34] Rt. Hon. Lord Bingham of Cornhill (1997). *The Judge as Lawmaker: An English perspective.* Retrieved: 27.12.2021. From: http://www.nzlii.org/nz/journals/NZLRFSP/1997/11.pdf

[35] Rt.Hon.Lord Bingham of Cornhill (2005). *The Judges: Active or Passive. Maccabean Lecture in Jurisprudence*. Read at Cardiff Law School 27 October 2005, Retrieved: 27.12.2021. From: https://www.thebritishacademy.ac.uk/documents/2026/pba139p055.pdf

[36] Canivet, G. (2003). The Interrelationships Between Common Law and Civil Law. *"Louisiana Law Review", Volume 63, Number 4, Summer 2003,* pp. 937-944. Retrieved: 27.12.2021. From: https://digital-commons.law.lsu.edu/cgi/viewcontent.cgi?article=5995&context=lalrv

[37] Vernadaki, Z. (2013). Civil procedure Harmonization in. the EU: Unravelling the Policy Considerations. *Journal of Contemporary European Research, Volume 9, Issue 2*, p. 303. Retrieved: 27.12.2021. From: file:///C:/Users/User/Downloads/ lis1md,+ Journal+ manager, +297+Vernadaki.pdf

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Senate of the Supreme Court to *annul* the application of Section 1 of the Civil Law in cases of the division and termination of joint ownership. Thus, with the Court's participation, a basis was established for the exercising and application of rights, which the Senate of the Supreme Court opposed ten years later, i.e., in 2019, by changing the case law.

III. The Impact of Case Law on the Exercising of Substantive Rights

As regards the impact of case law on the exercising of substantive rights of individuals, the most prominent cases are those concerning the termination/division of joint ownership and other issues pertaining to the rights/obligations of the joint owners. The consequences of the case law and its changes in joint ownership cases clearly mark the trend highlighted by the author before, namely that the actual impact of Section 5 Paragraph Six of the Civil Procedure Law on the administration of justice is identical to that which the Constitutional Court of the Republic of Latvia, in its judgment of 04 February 2003 in Case No. 2002-06-01, found to be inconsistent with Articles 1 and 83 of the Constitution of the Republic of Latvia. Inter alia, it should be noted that this is confirmed by the findings expressed by the Senate of the Supreme Court in its 17 December 2019 decision in case SKC-259/2019, which the author analyses in more detail below in this chapter. The change of case law of the Senate of the Supreme Court has repeatedly affected the rights of joint owners and the possibilities of exercising them, including limitations or adjustments. The most prominent examples are the explanations by the Senate of the Supreme Court about no applying Section 1 of the Civil Law in cases of division of joint property, as well as on the issues of exercising the pre-emption and redemption rights, where it is appropriate to bring attention to the 21 September 2011 decision of the Senate of the Supreme Court in case No. SKC-1089/2011,[38] which is a change of case law on the issue of recording the refusal to exercise the pre-emption right in the Land Register.[39] By said decision the Senate abrogated from the practice that had been applied since 2005, for example, the 09 February 2005 decision in Case No. SKC-128, which was also referred to by the Senate of the Supreme Court in its 26 May 2010 decision in Case No. SKC-838.[40] Regarding the consequences of the change of case law on the exercising of the pre-emption right, Dr. iur. I. Kudeikina has expressed the opinion that consistency of transaction conditions is important and points out that amendments to the Civil Law and the Land Register Law are needed to address issues related to joint ownership rights.[41] *Legal literature explains the substance and meaning of the right of pre-emption in joint ownership as follows: "(...) the right of pre-emption of joint owners is aimed at avoiding the "entrance" of strangers into the jointly-owned property without the consent of the other joint owners (see Rey, N 653). (...) the joint owners cannot be indifferent as to who their fellow-owner is (...)."*[42] Meanwhile, in Case No. 2011-01-01,[43] in which the Constitutional Court of the Republic of Latvia ruled on the compliance of Section 1068 Paragraph One of the Civil Law with Article 105 of the Constitution of the Republic of Latvia, it pointed out that joint ownership as a type of property is ancient, but has not lost its meaning and relevance today. It can therefore be acknowledged that in the case of joint ownership we are dealing with a complex form of property and rights, for which there should be clear procedures or a case law explanation where such procedures are lacking or where they are incomplete and unclear. However, so far neither the procedural clarity, nor a positive impact of case law can be ascertained. It should be noted here that until the change of case law in 2011, the Senate's accepted approach to the issue of recording the refusal to exercise the pre-emption right in the Land Register provided an opportunity to create some certainty by giving persons the possibility to record a refusal to exercise this right, especially given that the procedural arrangements for exercising the pre-emption right, as well as the possibilities of protecting this right directly in terms of the pre-emption right are weak, since Section 1073 of the Civil Law does not specify where and how the pre-emption right holder may assert their right. This procedure is left entirely to the good faith of the alienator, while the Land Register Law[44] does not require a person to submit, along with the request for corroboration, credible evidence that they have complied with the requirements in Section 1073 of the Civil Law or previously issued waivers of such rights by entitled persons. Thus, failure to comply with the rights of the joint owners entitled to pre-emption does not have

[38] Judgments and decisions of the Senate of the Supreme Court of the Republic of Latvia (2012). Riga: Latvijas Vēstnesis, p. C-257.

[39] Judgment of the Senate of the Supreme Court of the Republic of Latvia of 26 May 2010 in case No. SKC-838. Retrieved: 03.08.2020. From: http://www.at.gov.lv downloadlawfile download

[40] Judgment of the Senate of the Supreme Court of the Republic of Latvia of 26 May 2010 in case No. SKC-838. Retrieved: 03.08.2020. From: http://www.at.gov.lvdownloadlawfile

[41] Kudeikina, I. (2013). Kopīpašums: novitātes tiesu praksē. (Joint ownership: innovations in case law) *RSU Scientific Conference, 21 and 22 March 2013.* Retrieved: 07.01.2022. From: https://www.rsu.lv/sites/default/files/imce/Zin%C4%81tnes%20departaments/VIII%20sekcija/kopipasums.pdf

[42] Grūtups, A., Kalniņš, E. (2002). *Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums.* (Commentaries on the Civil Law. Part Three. Rights in rem. Property.)Riga: Courthouse Agency, pp. 270-271.

[43] Judgment of the Constitutional Court of the Republic of Latvia of 25 October 2011 in Case No. 2011-01-01. Retrieved: 19.02.2018. From: https://www.satv.tiesa.gov.lv/ cases/?search%5 Bnumber%5D =2011-01-01

[44] Land Register Law. Adopted on 22.12.1937. *Journal* 16/17, 29.04.1993. Last amended on 16.11.2021.

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negative consequences for the alienator, but the procedures for exercising the pre-emption right, as also explained by the Senate of the Supreme Court, establish a completely different, i.e., more complex procedure, which displays contradictions between the substantive and procedural provisions of the law. The decision of the Senate of the Supreme Court of 21 September 2011 in case No. SKC-1089/2011 recognised the pre-emption right existing on the basis of the law as obligation rights, and the Senate's explanations on the recording of the existence of this right in the land register entries are based on the decision of 21 September 2011, while the 2018 summary on the application of the Land Register Law prepared by the Supreme Court of the Republic of Latvia states: *"(...) Obligation rights shall only be registered in the Land Register in such exceptional cases where it is provided by law (e.g., Sections 2057, 2063, 2126 of the Civil Law) (...)"*[45] For comparison, it is worth noting that in the Czech Republic, the legislator has amended the Civil Code of the Czech Republic[46] in matters of joint ownership and exercise of pre-emption rights; in particular, it has been established that the pre-emption right of joint owners of immovable property shall be entered in the Land Register, giving this right an in rem *character*, increasing the certainty of the rights of joint owners.[47] Whereas Section 4.79 Paragraph Two of the Civil Code[48] of the Republic of Lithuania provides that in the event of alienation of immovable property held in joint ownership, the notice of alienation shall be sent to the joint owner through a notary, while in the event that the person entitled to pre-emption has not applied within the time limit[49] or refused, the joint owner who offered the pre-emption right shall be entitled to alienate their share to any third party. *Another key difference is that the Lithuanian Civil Code provides for the right of a person to bring an action for granting pre-emption rights*. Section 4.79 Paragraph Three of the Lithuanian Civil Code provides that if the procedure established by law for offering the right of pre-emption to a joint owner is not observed, the joint owner whose rights have been infringed, within three months, has the right to bring an action in court and request the transfer of the right to buy from the buyer to the joint owner. Thus, the substantive legal provision provides a way in which a joint owner may defend and claim the exercise of the right of pre-emption before a court. It should also be noted that Section 4.79 Paragraph Four of the Civil Code of the Republic of Lithuania establishes joint responsibility for compliance with the statutory right of pre-emption for both the joint owner who alienates their share and the purchaser who wishes to purchase it. These examples from other countries demonstrate that the mechanisms for exercising and defending pre-emption rights are at least twofold. In her thesis dedicated to matters of joint ownership, Dr. iur. I. Kudeikina has stated: "(...) At present, the law does not provide for special legal proceedings in cases arising out of the legal relations of joint ownership. *In joint owners' disputes, more emphasis should be placed on the prejudicial settlement of disputes (...).*"[50] It follows that finding more effective solutions, for example, to ensure the exercise of pre-emption rights could reduce (for example) the number of redemption actions brought to court, especially given that the inconsistencies and loopholes in the existing legal framework could not be considered as an equivalent means of protection of the rights of the joint owner. The Senate of the Supreme Court has provided clarifications on the issue of the exercise of the right of redemption, and this approach is well established. Referring to the provisions of Section 337 Paragraph Two Clause 3 of the Civil Procedure Law, the Senate of the Supreme Court has stated in the judgment of 16 April 2008 in case No. SKC-159/2008[51] (refer to Paragraph 6.4) the prerequisites for the recognition that the right of redemption is being exercised. Regarding the preconditions for the exercise of the right of redemption, K. Loboda, referring to the above-mentioned judgment, states: *(...) As evident, the Senate of the Supreme Court acknowledges the procedure established by law for the exercise of the right of redemption, and deviations from this procedure are not permissible (...).*"[52] However, the fact that case law in this matter remains unchanged for the time being does not exclude the existence of a problem in the procedural and substantive legal provisions, nor does it solve it. Section 1384 of the Civil Law provides that the pre-emptor must pay the acquirer all amounts referred

[45] Supreme Court of the Republic of Latvia. Tiesu prakse par zemesgrāmatu likuma piemērošanu. (Case law on the application of the Lan download, p. 16

[46] Czech Rep d Register Law) (2006-2018). Retrieved: 07.01.2022. From: https://www.at.gov.lv/lv/tiesu-prakse/tiesu-prakses-apkopojumi/civiltiesibasublic: Law 89/2012, the Civil Code of the Czech Republic [Czech Republic], Published on: 03.02.2012. Retrieved: 07.01.2022. From: https://www.refworld.org/docid/5da57dd04.html

[47] Janku, M.(2014). Statutory Pre-Emption Right as Changed by the New Civil Code. *Enterprise and the Competitive Environment 2014 conference, ECE2014, 6-7 March 2014, Brno, Czech Republic,* p. 264. Retrieved: 07.01.2022. From: https://www.sciencedirect.com download. DOI: 10.1016/S2212-5671(14)00343-8.

[48] Civil code of the Republic of Lithuania. Adopted on: 18.07.2000. Law No. VIII-1864. Last amended on 12 April 2011, No. XI-1312. Retrieved: 11.02.2018. From: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.245495

[49] *Author's note* – The time limit for immovable property in the Civil Code of the Republic of Lithuania is one month.

[50] Kudeikina, I. (2015). *Kopīpašuma institūta problemātika darījumos ar nekustamo īpašumu.* (Problems of joint ownership in immovable property transactions)Doctoral thesis. p. 131. Retrieved: 18.12.2021. From: https://www.rsu.lv/sites/default/files/dissertations/Kudeikina_disertacija_DRUKAI.pdf

[51] Judgments and decisions of the Civil Cases Department of the Senate of the Supreme Court of the Republic of Latvia, 2008 (2009). Riga: Courthouse Agency. p. 118.

[52] Loboda, K. (2017). Izpirkuma tiesību izmantošana. (Exercising of pre-emption rights) *Jurista Vārds, 18.08.2017. No. 32 (884),* p. 31.

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to in Section 1388 of the Civil Law, but it is not possible to ascertain all amounts in advance, as is also demonstrated by the provisions of Chapter 45 of the Civil Procedure Law, i.e., Section 338. Similarly, the acquirer does not know where to pay the amounts when claiming its right (i.e., in the prejudicial stage), as the Civil Law does not state this. Section 1384 of the Civil Law provides that amounts *are to be paid into court if the buyer has refused to accept them.* It should be noted that, when referring to the payment of all amounts, Section 1384 of the Civil Law refers to Article 1388 of the Civil Law, which means that all amounts due immediately include those provided for in Article 1388 of the Civil Law. As already pointed out by the author, some of the amounts specified in Section 1388 of the Civil Law cannot be ascertained by the pre-emptor. The Civil Procedure Law contains Chapter 45 "Pre-emption of Immovable Property", which is a special adjudication procedure, *yet Section 337 of the Civil Procedure Law does not require the pre-emptor to provide evidence as to whether the purchaser has refused to accept the payment of the amount*. Grammatical interpretation of Section 1384 of the Civil Law implies that, to go to court, a person must have proof that the acquirer has refused to accept the amount, while the legal literature explains that the right of redemption must be exercised immediately through court, referring to Chapter 45 of the Civil Procedure Law[53]. This is not confirmed by the Civil Law, as it does not provide that the right of redemption should be claimed in accordance with the procedure laid down in Chapter 45 of the Civil Procedure Law, and it contradicts the studies of Prof. K. Torgāns on the application of Chapter 45 of the Civil Procedure Law in practice. For example, Prof. K. Torgāns points out: "*(...) when studying the application of the provisions of this chapter in practice, it should be noted that there is not a single case concerning the redemption of immovable property that has been heard on its merits under the special adjudication procedure. By contrast, there are relatively many cases that have been dealt with by way of recourse procedure. (...)".*[54] Similarly, Prof. K. Torgāns notes: *"(...) in practice, hearing a case according to Chapter 45 of the Civil Procedure Law usually means longer and more complex legal proceedings, rather than a shorter and simplified procedure for the redemption of immovable property. (...) To avoid such situations, in practice the recognition of the right of redemption is sought from the outset through recourse procedure. (...)*[55] This reveals the multi-layered nature of the problem, where the influence of case law is one of the aspects; however, it does not lead to the absolute impossibility of exercising the rights or vulnerability, although it does create problems of certain types and nature for those entitled to pre-emption and redemption.

A more serious problem in matters of joint ownership arises with the case law already mentioned, i.e., the application of Section 1 of the Civil Law and the reversing of the opinion of the Senate of the Supreme Court on the termination of joint ownership. With its judgment of 14 January 2004 in Case No. SKC-5/2004, the Senate of the Supreme Court emphasised the importance and applicability of Section 1 of the Civil Law in deciding matters of the division of jointly owned property, stating as follows: *"(...) The circumstances found in the dismissal of the action are consistent with the content of Section 1 of the Civil Law that rights shall be exercised and duties performed in good faith, which applies to civil law in general, i.e., the principle of good faith, "since the Senate must each time examine the legal question of whether the court has correctly determined the limits of a particular right in good faith and correctly determined the content of the rights" (M. Krons. Section 1 of the Civil Law // Journal of the Ministry of Justice, 1937, No. 2). The principle of good faith means that everyone must exercise their subjective rights and fulfil their subjective obligations while observing the legitimate interests of others. Thus Section 1 of the Civil Law requires that the parties to a civil legal relation must have regard for each other and for the interests of the other party. This helps prevent civil law subjects from exercising their rights or performing their obligations in an unjustified manner or for unjustifiable purposes, following the letter of the law or a legal transaction, but contrary to their true objectives. Thus, in accordance with the principle of good faith, a person may be denied the exercising of subjective rights or the execution of subjective duties if it turns out that the contrary interests of the other party are to be recognized as more important in accordance with the purpose of law and circumstances of the particular case (...)."*[56] A completely opposite position was introduced by the Senate of the Supreme Court in 2009. In its judgment of 25 February 2009 in case No. SKC-54, the Senate of the Supreme Court, referring to the legal doctrine, declared: *"(...) The forms of division of jointly-owned property are regulated by Section 1075 of the Civil Law, which states: "If, in the case of division as set out in Section 1074, the joint owners are not able to agree regarding the form thereof, then a court, considering the characteristics of the subject-matter to be divided and the circumstances regarding the property, (...)." [10.3] According to Section 1075 of the Civil Law, the defendant A. G. specified the form of division of the jointly-owned*

[53] Grūtups, A., Kalniņš, E. (2002). *Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums.* (Commentaries on the Civil Law. Part Three. Rights in rem. Property.)Riga: Courthouse Agency, p. 273.

[54] Torgāns, K. & group of authors (2012). *Civilprocesa likuma komentāri.* (Commentary on the Civil Procedure Law) *Part II (Chapters 29-60¹).* Riga: Courthouse Agency, p. 352.

[55] Ibid, p. 353.

[56] Judgment of the Senate of the Supreme Court of the Republic of Latvia of 14 January 2004 in case No. 5/2004. Retrieved: 03.08.2020. From: https://m.juristavards.lv/doc.php?id=84942&show=true;

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property – to transfer the entire property to her with an obligation to pay J.P. his share in the money. Dismissing the counterclaim, the appeal instance court acknowledged that the defendant's claim did not comply with Section 1074 of the Civil Law because, contrary to the principle of good faith contained in Section 1 of the Civil Law, the defendant sought to exclude the plaintiff from the jointly owned property and, in accordance with that principle, the exercising of the defendant's subjective rights was to be restricted. The Senate considers that the appeal instance court had misinterpreted Section 1074 of the Civil Law, which is inconsistent with the hypothesis of the legal provision that each joint owner may request division at any time. Moreover, this substantive claim has no statute of limitation (see A. Grūtups, E. Kalniņš, Commentary on the Civil Law, Courthouse Agency, 2002, p. 275). Section 1 of the Civil Law, as applied by the court, provides that rights and duties are to be performed in good faith. The Senate considers that the court has wrongly applied Section 1 of the Civil Law, because the defendant's conduct in counterclaiming for the division of the jointly owned property according to one of the forms of division provided for in Section 1075 of the Civil Law cannot be contrary to good faith. The court has failed to consider the fact that the solutions to the conflict set out in Sections 1074 and 1075 of the Civil Law are not abstract. The principle of good faith cannot be regarded as a power given to the court to adopt the solution of each legal situation to general considerations of justice, freely modifying the legal consequences arising from the law or legal transaction(...)." [57]

The author emphasizes that an extensive quote from the reasoning part of the judgment is deliberately given, where the Senate motivates why the application of Section 1 of the Civil Law to the adjudication of joint ownership cases is inapplicable and even incorrect. The author emphasizes that the reasoning for the Senate's judgment only changes in terms of the references to the conclusions or opinions expressed in legal doctrine, which, as a matter of fact, maybe diametrically opposed for different authors, thus leading to a completely different result. Comparison of the reasoning of the Senate in its judgment of 14 January 2004 in Case No. SKC-5[58] with the reasoning in its judgment of 25 February 2009 *presents the conclusion that the 2009 judgment does not contain a single argument that would refute the generally binding and applicable power of Section 1 of the Civil Law on civil rights in general. The Senate also fails to explain at which moment the general legal principle of not using one's rights in an unjustifiable manner and for unjustifiable aims became no longer binding or was cancelled, as well as the inadmissibility of acting according to the letter of the law, but contrary to its spirit and meaning. In 2009, the Senate of the Supreme Court did not consider that in adjudicating joint ownership disputes between individuals the court should take into account Section 1 of the Civil Law, nor that the categories of value and valuation contained in that Section are a tool for the fair adjudication of a case by preventing persons whose actions are contrary to good faith from achieving a formal result without taking the legitimate rights and interests of other persons into account. It should be noted that this approach is completely contrary to the definitions of justice and the substantive meaning of justice, which the author has discussed in detail in the previous chapters of her work.*

Given that the Civil Law was adopted in 1937 and has not undergone any significant changes in the section concerning the legal regulation of joint ownership, and that the content of Section 1 of the Civil Law has not been amended, the author considers the findings expressed at the time of the creation and adoption of the law on the specific meaning and substantive content of Section 1 of the Civil Law worth mentioning, namely: "*(...) The Latvian Civil Law of 1937 is now claimed to offer the Latvian people "People's Justice" for which it has longed and which was "glowing under the icy blanket of unjust law" for such a long time – even if this injustice is universal and not only a Latvian problem, because there have always been different forms of justice, and justice has always been applied in different ways. This path to a new national justice is allegedly best reflected in Section 1 of the Civil Law, as already discussed. This generally applicable basic principle, this categorical requirement, according to the Minister of Justice Apsītis, "resonates and encourages" through the entire Latvian Civil Law (...)".*[59] During the development of the author's doctoral thesis, on 17 December 2019 the Senate of the Supreme Court made a judgment in case SKC-259/2019,[60] in which it deviated from the interpretation established in the judgment of 25 February 2009 in case No. SKC-54/2009, stating that "*(...) it is a misconception that one of the most important principles of civil law is not to be observed in cases of dividing jointly-owned property (...).*[61] Although ten years later the Senate of the Supreme Court was able to see the consequences of the previous, i.e., *old* case law, this does not answer the question of who will remedy the negative consequences

[57] Judgment of the Senate of the Supreme Court of the Republic of Latvia of 25 February 2009 in case No. SKC-54. Retrieved: 03.08.2020. From: http://www.at.gov.lv downloadlawfile download

[58] Judgments and decisions of the Civil Cases Department of the Senate of the Supreme Court of the Republic of Latvia. 2004. (2005). Riga: Latvian Judicial Training Centre, pp. 115-199.

[59] Švarcs, F. (2011). *Latvijas 1937.gada 28.janvāra Civillikums un tā rašanās vēsture*. (The Civil Law of Latvia of 28 January 1937 and its history) Riga: Courthouse Agency, p. 268.

[60] Judgment of the Senate of the Supreme Court of the Republic of Latvia of 17 December 2019 in case No. SKC-259/2019. Retrieved: 30.12.2021. From: https://www.at.gov.lv downloadlawfile download

[61] Judgment of the Senate of the Supreme Court of the Republic of Latvia of 17 December 2019 in case No. SKC-259/2019. Refer to Paragraph 7.4 of the judgment.

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in numerous cases decided by the courts during these ten years, in which the factual circumstances were identical or largely similar, when and how. This question still stands. *All of the above shows that in the specific case of Latvia, the lower instance courts blindly apply the case law of the Senate of the Supreme Court and are ready to abandon even the principles of law and civil law, if doing so is consistent with case law*. In its judgment of 17 December 2019 in case SKC-259/2019, the Senate of the Supreme Court concludes that the appeal instance court had, in the course of the proceedings, accepted as credible the real reasons for the plaintiff's actions presented by the defendants, but, referring to the fact that the principle contained in Section 1 of the Civil Law is not applicable at all in cases of division of jointly-owned property, had upheld the claim for the dissolution of jointly-owned property, while the court of the first instance referred to the judgment of the Senate of the Supreme Court of 25 February 2009 in case No. SKC-54/2009 to support its judgment. The author's own practical experience is identical. For example, on 03 May 2017, Riga City Vidzeme Suburb Court made a judgment in case No. C04271614 where the author represented one of the defendants. Section 1 of the Civil Law was also referenced in Case No. C04271614, pointing out that the claimant wished to terminate the joint ownership which it had entered voluntarily and only a short time ago. Referring to the judgment of the Senate of the Supreme Court of 2009 in case SKC-54/2009, the court decided to uphold the claim and the case proceeded identically in the appeal instance; however, on 19 June 2018, the Senate of the Supreme Court refused to initiate cassation proceedings. In the author's view, it is important to note that the court referred in its judgment to Section 5 of the Civil Law, stating that the court, when choosing the form of division, must judge according to a sense of justice and general principles of law. The author mentions this example because, in addition to the already mentioned case SKC-259/2019 and the findings therein, it demonstrates that there is a *blind* application of case law in the lower instance courts. Thus, it can be concluded that, through case law, the Senate of the Supreme Court may *exclude* the application of a section, or a paragraph of a section of a regulatory enactment and the lower instance courts will comply with it. If the above was an isolated example, it could be regarded as an exception; however, the *activity of the Senate of the Supreme Court also covers interpretations of the application of procedural standards*, thus the practical application of the provisions of the Civil Procedure Law depends on whether the Senate of the Supreme Court has adopted explanatory rulings on any provisions of the Civil Procedure Law.

The ten-year period without Section 1 of the Civil Law in cases of the division of jointly owned property had certain consequences, as evidenced, for example, by M. Pančenko's extended article in the national specialized law and research journal "JuristaVārds"[62]. In it, the author sharply criticizes the judgment of the Senate of the Supreme Court in case SKC-259/2019 and the subsequent ones, declaring (*author's note - the overall content of the article suggests that the 1937 Civil Law, in particular, Section 1 thereof, is not legitimate*) that the 1937 Civil Law was adopted during the authoritarian dictatorship of K. Ulmanis', which is inconsistent with the Constitution of the Republic of Latvia, which was declaratively suspended on 15 May 1934, whereas the power of Section 1 of the Civil Law was restored by the law of 07 July 1992 adopted by the Supreme Council of the Republic of Latvia, i.e., before 06 July 1993, when the 5th Parliament of the Republic of Latvia convened for its first session[63]. The author's view on the above-mentioned matter is that *the force* of the Supreme Court Senate's case law has not only positive but also negative consequences, but there is currently no solution to prevent the negative consequences. In this case, the thoughts of M. Pančenko quoted above, on the one hand, confirm that Section 1 of the Civil Law plays a very important role in the regulation of civil legal relations and in ensuring justice, but, on the other hand, it shows the results of the case law of the Senate of the Supreme Court.

IV. The Impact of Case Law on the Exercising of Procedural Rights

As already pointed out by the author, the decisions of the Senate of the Supreme Court affect not only the possibilities of implementation of substantive legal norms, but also the implementation of procedural rights. As regards the impact of the rulings of the Senate of the Supreme Court on procedural rights and their implementation, it should be noted that for a long time the Senate of the Supreme Court adhered to a somewhat drastic approach, stating that payment of a security deposit into the wrong account can be considered grounds for not accepting a complaint, which is directly stated on the website of the Supreme Court[64], with references to the assignment sitting decisions in cases SKC-1132/2016, SKC-1741/2016, SKC-537/2019 and SKC-1059/2019. The legislator (rather than the Senate of the Supreme Court) remedied

[62] *Author's note – the journal "JuristaVārds" is the national specialized law and research journal in Republic of Latvia; accessible on-line: https://juristavards.lv/zurnals/*

[63] Pančenko, M. (2021). Civillikuma 1.panta vājums un spēks. (The strength and weakness of Section 1 of the Civil Law) *Jurista Vārds, Domnīca/Brīvais mikrofons, 21.01.2021*. Retrieved: 03.01.2022. From: https://juristavards.lv/mikrofons/161-civillikuma-1-panta-vajums-un-speks/

[64] Retrieved: 22.01.2022. From: https://www.at.gov.lv/lv/jaunumi/par-notikumiem/nepareiza-konta-ieskaitita-drosibas-nauda-ir-pamats-blakus-sudzibas-nepienemsanai-9967?year=2020&month=03

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this situation with the amendments to the Civil Procedure Law of 25 March 2021, which entered into force on 20 April 2021, introducing Section 43.[3] Into the Civil Procedure Law, but until then the need to ensure procedural speed was also used to justify the denial of rights in accidental situations (for example, an error in the account number). *Like the case of the (non) application of Section 1 of the Civil Law, the Senate of the Supreme Court resolves the question of stamp duties payable in joint ownership disputes by the decision of the general assembly of 28 January 2020;*[65] however, no changes have yet been made to the Civil Procedure Law. Although the decision of the general assembly of the Senate of the Supreme Court of 28 January 2020 does have a positive impact, the author observes a strong resemblance to the decision of the plenary session. The payment of the stamp duty is a basic item that affects the access of persons to the court (Section 129, Paragraph Two Clause 1 of the Civil Procedure Law). The provisions on the payment of stamp duty should be clear, comprehensible, and known in advance, and should not depend on when and whether the Senate of the Supreme Court issues clarifications or rulings.

Staying on the subject of the influence of the case law of the Senate of the Supreme Court on the application of the procedural standards, it is especially worth mentioning the decision of 29 April 2020 in Case No. SKC-97/2020,[66] by which the Senate of the Supreme Court effectively *excluded* from further application Section 203 Paragraphs One and Two of the Civil Procedure Law, expanded the possibilities of appeal and introduced new time limits *(30 days and 15 days pursuant to Section 423 Paragraph One and Section 424 Paragraph Three of the Civil Procedure Law)*, declaring that a person has the possibility to file a counter-appeal claim against a judgment of a first instance court even if they have not appealed against such according to the appeal procedure. Among other things, the Senate of the Supreme Court in fact stated that Section 415 of the Civil Procedure Law, with the procedural deadline (20 days) set therein, should also be disregarded because the person would not suffer the negative consequences as provided for in Section 415 Paragraph Three of the Civil Procedure Law, meaning that an appeal filed after the expiry of the deadline will not be accepted and will be returned to the appellant. This decision of 29 April 2020 does not specify where and when the Senate of the Supreme Court has published case law on the interpretation of Section 203 Paragraph One and/or Two or Section 415, or Section 424 of the Civil Procedure Law, whereas the magazine "JuristaVārds" published this information in the "News" section on 12 May 2020.[67] *The decision states that the case law was already established in 2010, so relevant references to the case law should appear in practice, including in the explanatory literature widely used by the courts – "Commentary on the Civil Procedure Law", Part II (Chapters 29-60[1])*[68] *by Prof. K. Torgāns, published in 2012.* As seen from the list of authors of the "Commentary on the Civil Procedure Law. Part II (Chapters 29-60[1])", comments and explanations on Chapter 52 of the Civil Procedure Law "Submission of a Notice of Appeal" and on Chapters 53 and 54 were provided by the Deputy Chairman of the Supreme Court of the Republic of Latvia, Chairman of the Civil Matters Panel[69], whereas Section 424 of the Civil Procedure Law contains no reference to the case law or explanation identical to the one provided in the decision of the Senate of the Supreme Court of 29 April 2020. It can be concluded that in 2012 the existence of such case law in the application of Section 424 of the Civil Procedure Law was not known, otherwise it would have been reflected in the commentary on the respective section. Meanwhile, the commentary on Section 203 of the Civil Procedure Law in the 2016 edition of "Commentary on the Civil Procedure Law. Part I (Chapters 1-28). Second expanded edition" published under scientific review by Prof. K. Torgāns contains no indication that Section 203 Paragraph Two of the Civil Procedure Law should be interpreted so that the judgment in the non-appealed part would only enter into force if the other party does not file a counter-appeal claim *(there should have already been two decisions by the Senate of the Supreme Court on this matter in 2016 – resulting from the decision of 29 April 2020 in case SKC-97/2020)*. The commentaries to the relevant articles of the chapter have been drafted by Prof. Dr. habil. Iur. K. Torgāns and Prof. Dr. Iur. J. Rozenbergs.[70] It follows from the above that the relevant case law of the Senate of the Supreme Court on the application of Section 203 Paragraph Two of the Civil Procedure Law was not known in 2016 either. It is especially worth mentioning that, in their commentary on Section 203 of the Civil Procedure Law, these authors emphasise: "(...) *In Latvia, a court judgment is not a source of law, it has no governing*

[65] Retrieved: 17.01.2022. From: https://www. at.gov.lv/files/uploads/ files/ 6_Judikatura/ Tiesnesu_kopsapulcu_lemumi/ CLD_28_01_2020_ kopsapulces%20lemums.pdf

[66] Judgment of the Senate of the Supreme Court of the Republic of Latvia of 29 April 2020 in case No. SKC-97/2020. Retrieved: 27.12.2021. From: https://www.at.gov.lv/lv/jaunumi/par-tiesu-lietam/ar-pretapelacijas-sudzibu-var-parsudzet-spriedumu-ari-dala-kura-nav-parsudzeta-ar-apelacijas-sudzibu-10056?

[67] Retrieved: 27.12.2021. From: https://juristavards.lv/zinas/276599-ar-pretapelacijas-sudzibu-var-parsudzet-spriedumu-ari-dala-kura-nav-parsudzeta-ar-apelacijas-sudzibu/

[68] Inoriginal: "*Civilprocesa likuma komentāri*"

[69] Torgāns, K. & group of authors (2012). *Civilprocesa likuma komentāri. (Commentary on the Civil Procedure Law) Part II (Chapters 29-60.[1]).* Riga: Courthouse Agency, pp. 697-730.

[70] Torgāns, K. &groupofauthors (2012). *Civilprocesa likuma komentāri. (CommentaryontheCivilProcedureLaw) Part II (Chapters 29-60.[1]).* Riga: Courthouse Agency, pp. 545-549.

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force of law (normative). (...) case law, including the case law of the Supreme Court, is only one of the auxiliary sources of law (...)."[71] Meanwhile the lecture notes of the associate professor of the Faculty of Law K. Čakste in the period from 1937 to 1940 show that the institution of counter-appeal was explained as follows: "(...) *if the party giving the explanations is interested in altering a part of the judgment, then within 1 month from receiving a copy of the notice of appeal it has the right to submit its counter-appeal (independent counter-claims) along with an explanation to the Judicial Panel.*[72] The lecture notes of Associate Professor K. Čakste also contain the following explanation regarding the examination (review) of an appeal by a court of second instance: "*(...) the second instance must confine itself to examining and re-adjudicating the appealed parts of the judgment (...) the appellant's position must not be made worse if the absolute fundamental conditions of the procedure have not been infringed (...).*"[73] From these quotes, it can be concluded that the explanation of the nature of the counter-appeal as explained by Associate Professor K. Čakste does not correspond to the one presented by the Senate of the Supreme Court in its decision of 29 April 2020 in case SKC-97/2020.

In its decision of 29 April 2020 in case SKC-97/2020, the Senate of the Supreme Court mentions the following formula of justice: "*(...) It would be unjust to allow one person to appeal against a judgment concerning the part that they are not satisfied with, but not to allow another person who has not appealed against the judgment within the time limit to do so merely because they would be satisfied with the judgment if the other party did not appeal against it either.*"[74] The next step is to analyse whether the fairness formula *actually works* as quoted. *First, the court cannot allow or prohibit anything regarding the procedural rights of the parties, which are established by law and exercised within the time limits and procedures established by law* (in this case – the Civil Procedure Law). It is the law that allows or forbids something. *The court can only record procedural situations, i.e., whether the parties have exercised their procedural rights, whether they exercised them within the time limits and in accordance with the requirements of the law.* This happens, for example, pursuant to Section 415 of the Civil Procedure Law, in conjunction with Section 46 Paragraph One of the Civil Procedure Law, while the consequences of the expiration of procedural time limits are also set out in Section 49 of the Civil Procedure Law. Secondly, the procedural time limit for filing an appeal "runs out" equally for all parties to the proceedings (the author does not discuss exceptional cases here), thus a party to the proceedings cannot know in advance whether the other party to the proceedings will or will not file an appeal, especially in cases where the court has ruled on both the claim and the counterclaim, as well as where the court has partially upheld the claim and/or the counterclaim. *Thus, the procedural situation stated by the Senate of the Supreme Court in the motivation of its decision of 29.04.2020 in case SKC-97/2020, i.e., "to be satisfied with the judgment if the other party does not appeal against it", essentially cannot and did not arise because the failure to perform the procedural actions means only one thing – the party, who does not exercise the procedural right to appeal against the judgment in the part with which it is not satisfied, loses this right.* The law defines it explicitly and there can be no discussion on the lack of regulation or loopholes. Thirdly, the adversarial principle and the principle of disposition apply in civil procedure, thus the exercise of procedural rights is decided by the litigants according to the procedural time limits established by law, *and the court cannot change the time limits established by law. This follows from Section 46 Paragraph One of the Civil Procedure Law*. Fourthly, the Senate of the Supreme Court cannot change the time limits or procedural procedures laid down by law through case law, nor can it *cancel* the effectiveness of the law, expand, or narrow it, or make it more specific. If such situations exist, they contradict Article 90 of the Constitution of the Republic of Latvia,[75] because in such circumstances persons have no knowledge of their rights and this contradicts the explanations given by the Constitutional Court of the Republic of Latvia on the essence of Article 90 of the Constitution. Like the case of application of Section 1 of the Civil Procedure Law discussed above, practice in this case also shows that the Senate of the Supreme Court can adjust the application and practical functioning of the provisions of the Civil Procedure Law by means of case law. The author has included a relevant practical example (in Civil Case No. *C29404716, which is in the first instance court at the time of preparation of the thesis and the first instance court has made judgment)* as an annex to the thesis. It is important to note that the decision of the Senate of the Supreme Court of 29 April 2020 in Case No. SKC-97/2020 refers to the Judgment of the Constitutional Court of the Republic of Latvia of 02 June 2008 in Case No. 2007-22-01,[76] which is used to substantiate the correctness of the explanations expressed in the

[71] Ibid, p. 546.
[72] Čakste, K. (2016). *Civilprocess. 1937.-1940.gada lekcijas.* (Civil Procedure. 1937-1940 lectures)Riga*:* H. Neverževskis, SIA "Grāmata", p. 115.
[73] Ibid, p. 116.
[74] Refer to paragraph [7.3] of the decision of the Senate of the Supreme Court of 29 April 2020 in case SKC-97/2020.
[75] Constitution of the Republic of Latvia. Adopted 15.02.1922. Published: Latvijas Vēstnesis, 01.07.1993. No. 43, Last amended 04.10.2018.
[76] Judgment of the Constitutional Court of the Republic of Latvia of 02 June 2008 in Case No. 2007-22-01.Retrieved: 30.12.2021. From: https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2007-22-01_Spriedums.pdf, refer Paragraph 16.2.

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decision of the Senate; however, having familiarised with the judgment of the Constitutional Court and the explanations given therein, it could be said that the decision of the Senate of the Supreme Court of 29 April 2020 indirectly contradicts what the Constitutional Court had explained in its judgment of 02 June 2008 in Case No. 2007-22-01, stating: "*(...) Civil procedure constitutes a unified system of public-legal relations. To ensure the exercise of the right to a fair trial, the Civil Procedure Law must not contain any internal contradictions that would render the right to a fair trial ineffective (...).*" [77]

In conclusion, it is essential to mention that the decision of the Senate of the Supreme Court of 29 April 2020 in Case No. 97/2020 is not unanimous and is accompanied by the separate opinions of three Senators of the Supreme Court stating, inter alia, that "*(...) We, the senators who remained in the minority in the vote, consider that in this case the Senate, when considering the case in expanded composition, has misinterpreted Section 203 Paragraph Two, Section 413 Paragraph One and Section 414 Paragraph One, as well as Section 423 Paragraph One and Section 424 of the Civil Procedure Law.* The Senators of the Supreme Court provide detailed explanations about which laws were adopted during the inter-war period and after the restoration of independence of the Republic of Latvia and at which time, emphasising that: "*(...) after the restoration of independence of the Republic of Latvia, the Civil Procedure Law of 1938, Section 876 of which contained the right to appeal a judicial decision in the part that has not been appealed by means of a counter-appeal, was not reinstated. Similarly, the adoption of the Law "Amendments to the Latvian Code of Civil Procedure" on 13 September 1995 and the Law on Civil Procedure on 14 October 1998 took place without taking over the regulation on filing of a counter-appeal contained in the 1938 Civil Procedure Law. (...) For the above reason, the inter-war case law and the Senate's explanation of the nature of counter-appeal, as well as the opinions expressed in the legal literature of the time (...), are not applicable today.*"[78] *It should also be mentioned that Section 424 of the Civil Procedure Law was included in the law at the time of its adoption, i.e., in the version of the law that entered into force on 1 March 1999, and the article has not been substantially amended*, except for a minor editorial amendment in 2009, which is irrelevant in this case. However, for more than twenty years, the Senate of the Supreme Court has not approached the legislator (*as, for example, in the judgment of 17 December 2019 in case SKC-259/2019*) and has not pointed out the inconsistencies in the Civil Procedure Law related to this matter, the need for amendments and/or the lack of clarity of the regulation.

In summary, the author concludes that the authority of the Senate of the Supreme Court should provide opportunities to enhance justice, while the existing structure raises a number of important issues that should be explored in more detail. The authority of the Senate of the Supreme Court is demonstrated by the influence of the case law on the judgments of lower courts in the application of substantive and/or procedural provisions. This influence is identical in content and consequences to that which the Constitutional Court recognized as incompatible with Article 1 and Article 83 of the Constitution in its judgment of 04 February 2003 in Case No. 2002-06-01. Currently, there is no legal framework (procedural instruments) to prevent the adverse consequences on the ability of individuals to exercise their procedural and/or substantive rights which may be triggered by a change in the Supreme Court's case law on the application of substantive and/or procedural rights during proceedings. It is also impossible to predict the timing and trends of changes in case law, so there is no certainty or predictability in this respect. The author concludes that the problems that have been identified require further research as they extend beyond the scope of this paper.

[77] Judgment of the Constitutional Court of the Republic of Latvia of 02 June 2008 in Case No. 2007-22-01. Retrieved: 30.12.2021. From : https://www.satv.tiesa.gov.lv/wp-content/uploads/2016/02/2007-22-01_Spriedums.pdf, refer to Paragraph 16.2.

[78] Separate opinions of Senators A. Keišs, I. Lauka and M. Senkāne of the Supreme Court, 14 May 2020. Retrieved: 30.12.2021. From: https://www.at.gov.lv/lv/tiesu-prakse/judikaturas-nolemumu-arhivs/civillietu-departaments/hronologiska-seciba?year=2020, refer to Paragraph 6.10.

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Does the Zambian Legal Environment Support Informal Enterprises` Transition into the Formal Economy?

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Abstract- This article provides findings from a study which examined ways in which the Zambian legal environment supports informal enterprises` transition into the formal economy. This qualitative study adopted a phenomenological research design. Data was collected via structured interviews from 11 respondents who were purposively selected. Thematic and content analysis of the data were used to come up with the findings of the study. The findings established that a few laws and policies support and facilitate transitioning from informal to the formal Zambian economy. Further, the findings indicated that enterprises were critical to the economy because of the contribution they made through employment creation and poverty reduction activities, against the desired outcome by government? to have a smaller informal economy in relation to the formal economy. The study also established reasons why some informal enterprises are non-compliant to government compliance requirements. Based on the finding of the study, it was recommended that regulatory institutions be lenient and flexible to allow noncompliant enterprises to smoothly transition to formal economy. It is further recommended that more investment in the change management and education of the informal enterprises is made for owners to value formalisation.

Keywords: *formalisation, enterprises, transition, informal, formal, zambia.*

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I. Background

This article presents findings from a study which sought to established ways in which the Zambian legal environment supports informal enterprises to transition into the formal economy. Measuring informality is not an easy undertaking because of the complexities surrounding it. Some informalities are so visible, some of which include enterprises that are not registered with respective authorities and do not have bank accounts and consequently do not pay taxes. Informalities are not easy to spot as they may be found in enterprises that may be registered with authorities but do not hire their employees formally and as such do not pay for their social securities and often times even hide some of their sales in order to pay reduced taxes. In this study,informal enterprises are defined as enterprises that were operating without licenses from Zambia Revenue Authority (ZRA), Patents and Companies Registration Agency (PACRA), and National Pensions Scheme Authority (NAPSA).

The level of informality in Zambia is reflected by employment rate which according to the Zambia Statistics Agency (2022) stood at 73.2 per cent compared to 26.8 per cent for the formal employment. The high informal employment rate entails a high number of business enterprises that are not registered with tax or licensing authority and often characterised by lack of accounting, low productivity, low investment, small number of employees, and high chances of failing (Chijikwa and Mulenga, 2023). Much as the desired outcome is to have the formal economy which is bigger than the informal economy, the importance of the informal economy in a developing country like Zambia should not be under stated. This is because the informal economy also contributes to the national revenue through taxes that are paid in form of levies usually at the municipal council level and employment for majority of people who cannot find employment in the formal economy.

According to ILO (2014), the growth in the informal economy can be traced back to the ineffective and inappropriate macroeconomic and social policies that were implemented in the absence of institutional and legal frameworks, good governance practices, and transparency in administrative and institutional procedures developed without a consultative process among different stakeholders. ILO (2014) is also of the view that macroeconomic policies such as economic restructuring and privatization policies were not focused on creating employment in the formal economy but simply led to many people losing their jobs in the formal economy and ended up on the streets in the informal economy for their survival and livelihoods.

ILO`s view is supported by Kabaso and Phiri (2012) who observed that the growth of Zambia`s informality was on the increase from 1973 to 2000 but was at its peak during the privatization period which was characterised by massive job losses. Kabaso and Phiri (2012) also observe that population growth is one of the factors that contribute to the growth of the informal economy because the population grows at a faster rate than the formal economy, thus making the formal economy fail to absorb labour force population. Kabaso and Phiri (2012) further observed that between

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1973 to 2000, the average growth rate for both the formal and informal economies was similar which suggests linkages and synergies between the two economies.

In as much as economic structural and privatisation contributed to the growth of the informal economy, there were other factors at play which led to the growth of the informal economy. One of these factors, was the transition of the rural agriculture into more informal trade in cities and towns which was deemed more profitable (Resnick and Thurlow, 2014). This transition made many more people who did not have skills and education required for employment in the formal economy migrate to cities where they started trading on the streets and contributed to the rise of informality.

La Porta and Shleifer (2014) argue that informal enterprises are characterised by low productivity, high inefficiencies, low wages, small number of employees when they are compared to formal enterprises. It has been established that owners of informal enterprises are willing to close their enterprises and work as employees when job opportunities come by. While this assertion by La Porta and Shleifer may be true and formality is the desired outcome, it should be noted that informality in some instances acts as a breeding ground for some enterprises that start up as informal and end up as successful formal enterprises that are compliant with respective authorities.

According to Gary (2020), the disparities in the number of people in both the informal and formal economy is not attributed to wages or productivity but simply free choice which workers exerciseby choosing to either work in the formal or informal enterprises. Reasons that make people chooseworking for either the formal or informal include different prefferences for independence at work, the desire to avoid taxes that come with the payroll and other regulations. While the argument by Gary (2020) as indicated above may be the case in other countries, evidence suggests this is not the case in Zambia. The informal sector in Zambia has the highest employment rate because the formal economy does not have the capacity to absorb the available labour force (Zambia Statistics Agency, 2022). Most of the people therefore, find themselves in informal employment as the last resort for their survival and livelihoods.

The desire to have a bigger formal economy relative to the informal economy is based on the factthat informal economy is usually dominantly occupied by vulnerable low skilled women, young people and migrants who earn low incomes and most of whom do not have social and legal protection as well as bargaining power and representation for better conditions of service (Nguyen et al, 2014). In expanding what Nguyen et al is asserting, it suffices to state that the informal sectoris no longer full of lowly skilled individuals anymore because now it also has a good number of fairly educated individuals who cannot be cannot be absorbed by the formal economy. Further, the informal economy, is characterised by enterprises which on top of low productivity, have no access to mainstream finance due to lack of collateral (Nguyen et al, 2014).

Having discussed the contributions that the informal economy makes such as providing employment to people who cannot get employed in the formal economy and revenue contributions, it is still desirable to have a smaller informal economy in comparison to the formal economy due to characteristics of the informal economy such as enterprises with low productivity, lowly educated people, enterprises that are not registered with authorities and without bank accounts, enterprises without capacity to access mainstream finances, employees without social security and pension contributions and proper contracts and with low incomes.

II. Literature Review

a) *Informal Economy in Zambia*

The informal economy in Zambia, as in other countries in Africa is a result of several factors including insignificant growth of the formal economy relative to the growth rate of labour force fueled with the advent of private universities which release thousands of graduates every year in the labour market. Further, high employing sectors of the economy such as the agriculture, tourism, mining, construction etc are not absorbing so much labour force. In the past three years, this situation has been exacerbated by the covid- 19 pandemic which made the informal economy the alternative or last resort for people`s livelihoods and survival.

Chileshe and Olusegun (2017) argue that some formal firms contribute to the rise in informality because while it is a known fact that there is low productivity in the informal economy, some companies prefer using informal cheap labour for production of products and services so as to avoid or lower costs which would ordinarily be expensive if they used formal labour. This explains Casualisation of workers in Zambia by a number of companies because it is cheaper for them to have part time workers whose social security for instance they do not have to pay for. This never reduces the size of the informal economy.

Chijikwa and Mulenga (2023) in their study on the investigation of factors which hinder SMEs` formalization in Chilenge Market of Lusaka District found that most of the people who owned informal enterprises did not have college education and lacked understanding of the importance of formalising their enterprises. Considering a well known fact that the informal economy in Zambiais dominantly characterised by people with low levels of education, the findings by

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Chijikwa and Mulenga warrant a conclusion that this could be the case even in other parts of the country which could partly explain the high levels of informality Zambia is still grappling with.

Chijikwa and Mulenga (2023) also found that, some enterprise owners preffered running informal enterprises because they did not have confidence that taxes paid by formal enterprises are put to good use.

Palmer (2017) opines that the presence of skills mismatch contributes to the growth of the informalsector. Skills mismatch occurs when there is no match between available skills in the labour marketand skills that are on demand in the labour market. According to Palmer (2017), people who cannotget employment in the formal economy due to skills mismatch join the informal economy. This article acknowledges that skills mismatch also exists in Zambia but the extent to which it contributes to informal economy is beyond its scope. Additionally, the lowly educated people who cannot find jobs in the formal economy resort to running informal enterprises with no intentions of formalising them because they do not have requisite skills that are required for running formal businesses (Palmer, 2017 and Chijikwa & Mulenga, 2023).

b) Legal Framework for Formalisation

According to ILO (2007), there is need to review policies, incentives, education by the general public which can be facilitated by the use of information dissemination through advocacy campaigns and debates in order to promote formalisation of informal enterprises. In the quest to promote enterprise development, the Zambian Government under the ruling United Party for National Development (UPND) is using the Citizens Economic Empowerment Commission Act No. 9 of 2006 to provide empowerment funds to the small Zambian businesses. However, empowerment funds are only accessed by people with registered businesses with ZRA and PACRA and this is and has been forcing informal businesses to formalise in the bid to access funds. The question that begs to be answered however, is whether such businesses will continue being compliant after accessing the funds as if their only motivation for formalisation is accessing empowerment funds.

Formal enterprises are generally more productive than informal ones and this is what gives the reason for concern with the presence of high numbers of informal enterprises by policy makers given the implications on the government policies, welfare of people therein, and limited tax base which is the main financier for public goods such as infrastructure. One of the strategies that many governments across the globe use to promote formalisation of informal enterprises is by developing policies that make registration of businesses much easier with the hope that more formal businesses will lead to improved efficiency in production due to competition and eventuallyresult into better living standards of the people (Gajigo and Hallward-Driemeie, 2012).

Gajigo and Hallward-Driemeie (2012) argue that benefits that come with formalisation have made a number of countries initiate reforms in order to restructure their bureaucratic processes citing Rwanda whose investment climate ranking rose up due to reforms that were undertaken. Another country that Gajigo and Hallward-Driemeie (2012) cite is Mali which restructured its tax payment system and resulted in increased efficiency. The Zambian government has also made reforms with its two agencies (PACRA and ZRA) responsible for business registration. The reforms have resulted into quick online business registrations and tax remitance which have enhanced enterprise formalisation in Zambia.

In Malawi, transparency around provision of information to support business firms with registration was successful. According to the field experiment undertaken by Campos (2018) in which firms were provided with assistance for businesss registration, more than 70% of the firms had their businesses registered out of which about 10% also registred for tax remittance. It should however, be noted that registration of business alone does not lead to profit making and this should be taken into consideration when strategies and policies are developed to facilitate formalisation of enterprises. Enterprise owners need to be given some form of training on how to run businesses which should help them remain formal after registration so that their businesses are profitable enough to enable them to remit tax prevent them from going back to the informal economy on account that being formal is too expensive for them.

c) Benefits of Formalisation

The formal sector is preferred over the informal sector because of its benefits including contributing more to the national revenue collection, decent and stable jobs and higher incomes because formal enterprises are more productive and make more profits. Amadou (2018) in his study on the Short- and medium-term effects of formalisation in Vietnam among five informal small and medium enterprises (SMEs) surveys undertaken from 2005 – 2013 found that enterprises that switched from informal to formal had an increase of 11.0 per cent and 8.9 per cent in profit and value respectively compared to their counterparts that never switched. In addition, it was found that there were short-term formalisation benefits which continued over the longer-term of three years or more in form of widened clientele base, advertising, membership in business associations, and better equipment. However, the study did not find any evidence of better access to credit (Amadou, 2018). The absence of evidence with regard to access to credit for enterprises that formalised could be attributed to the

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fact that most financial institutions still demand collateral from enterprises irrespective of whether they are formalised which is a common challenge among both informal and formal enterprises.

Moyo (2022) argues that the informal sector provides the poor with social safety net and a development and training base for entrepreneurs and springboard for the formal economy. Aryeteey, (2009) supports the above view with his argument that the informal sector is meant to provide relief and act as a coping mechanism against poverty during the economic hardships and should disappear when the economy grows. The argument being advanced here is that the informal sector is supposed to offer economic stabilization when during economic downturn and shrinking during economic upswing. However, in practical terms, the transition of the informal economy between economic downturn and upswing has not being proven to be true as evidence suggests that the informal sector does not vanish or reduce significantly despite economic growth that takes place (Kabaso and Phiri, 2012; Aryeteey, 2009; & Moyo, 2022).

Aryeteey (2009) argues that formalisation is more beneficial despite the cushion that the informal sector provides to the economy. He states that formalisation enables informal enterprise escape exploitational relationships they enter into with formal firms and enjoy government services, access to credit and capital, legal protection, and intellectual proerty rights. Benefits such as access to credit discussed above do not come automatically a business switches from informal to formal but chances of accessinf credit are more enhanced with formalisation.

Formalisation of the informal sector does not always bring intended benefits but also brings negative effects on the business environment. Williams (2014) is of the view that formalisation ofthe informal sector rids of entrepreneurs an opportunity to test-trade their business ideas before formally starting up because the informal sector provides incubatory role to new business enterprises. The second negative effect of formalisation is that the target market for informal sectoris forced to pay the market prices for them to have access to goods and services which they ordinarily access at cheaper prices from the informal sector. The third and last negative effect of formalisation is that it is not feasible to have all the enterprises shift to the formal sector as even the most of developed nations still have some levels of informality in their economies (Williams, 2014). However, it is very important to understand both the positive and negative impacts of the formalisation process so as to inform formulation of effective policies and programmes to facilitatetransition of enterprises to formality.

III. Methodology

The study adopted a phenomenological research design and was based on 11 in-depth accounts of the importance of formalisation of the informal sector from 10 experts from government agencies and 1 expert from a United Nations (UN) agency. The 11 agencies were purposively selected because of their mandate and expertise in informal and formal sectors and the absence of sample framework for the experts. Phenomenological research design was used and data was collected through the use of structured interviews after which it was analysed by use of themes and contentsin which similar items or themes were grouped together from many voluminous words.

a) *Research Questions*

The following research questions were used for this article:

1. What are the reasons for the large informal economy in Zambia?
2. How does the legal framework in Zambia support transition to formal economy?
3. What are the benefits of transitioning informal enterprises to the formal economy?

IV. Findings

a) *The Role of Informal Enterprises in the Economy*

All the respondents that were interviewed acknowledged the importance of role that the informal enterprises play in the economy like Zambia despite the desired outcome of having them transition to the formal economy. Below are the views presented by one expert:

> "Most of them create jobs, the 2020 labour force survey indicates that over 60 per cent of the Zambian population operates in the informal economy as workers. They are also a breeding ground for innovation because if am just starting a small business, I don`t know how this business is going to grow, so it's from thisbusiness that am going to upscale and it is also from this same business that others will be able to identify that what am doing is something that can become big".

Informal enterprises were described as an important sector of the economy due to their contribution to employment especially for people who are usually left out by the formal sector. However, it was experts` view that formalisation was still desired for the informal sector. Two experts comment:

> "Informal by the word itself gives us an idea that we have people who are operating informally but government`s policy is to encourage businesses to formalise. Informal enterprises contribute to job creationbut do not contribute to the tax base. We have few people contributing to the tax base and if we had more enterprises in the formal sector, the tax base would be broadened".

> "Like any enterprises in the economy, they play key role and they employ people who are left out of the formal sector. So they help to reduce poverty levels. Zambia Development Agency for instance only employs people with specific skill set while SMEs employ even people who have not been to school".

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b) Why Most of the Enterprises Still Operate from the Informal Economy

The respondents` response revealed that the reasons behind a number of enterprises` operations in the informal sector include lack of information on formalisation benefits among owners of informal SMEs and high levels of illiteracy as elaborated:

> "I think the largest indicators are the growth enterprises (like PACRA registrations) vs the compliance of the same with statutory bodies such as NAPSA, ZRA, Workers compensation. The other reason people are still stuck in informal sector is illiteracy and lack of sensitization on the benefits that business enterprises can get when they are formalised."

The other respondent was of the view that the absence of incentives for formalisation contributes to the current state of high levels of informality. He further opined that poor business management skills and poor infrastructure especially in rural areas are also attributed to high levels of informality as shown below:

> "Most enterprises are still operating in the informal sector, mainly from our perspective is that there is lack of incentives to formalise, for example, the informal sector will see regulations to register and pay taxes as a burden. If for instance am contributing taxes or employing a number of people, what incentives are there forme to formalise or is it just a burden for me without any benefits…. The other one is poor business management skills that business owners have, at times they don`t even know the difference between capital and profits…. The other one is to do with infrastructure like roads especially those SMEs located in remote rural areas that are 100 kilometers away from government offices, it becomes difficult for such enterprises to formalise."

It was revealed that the high informality levels are a result of the misinformation peddled on the process of formalising businesses and the perceived high cost of taxation paid immediately upon formalisation by people whose enterprises operate in the informal sector. Two experts comment as follows:

> "The biggest cause of most enterprises` failure to formalise is the issue of misinformation, a number of them think that once they formalise, it means that immediately they will now have to start paying a lot of taxes, they will start losing money and there is also the use of third parties in formalisation which create an impression that formalisation is expensive."

> "Maybe it`s because they don`t know the importance of formalising businesses and they only think that they will just be paying taxes without any benefit from their end. But there is more to benefit if they registered their businesses. I think ZRA and PACRA need to do more sensitization why it is important and how it benefits businesses."

c) Laws that Support Informal Enterprises to Transition to the Formal Economy

Respondents were aware of some legal frameworks that support transition from informal to the formal economy and elaborated by one respondent as follows:

> "In terms of laws am thinking of the Zambia Development Agency Act that provided for the creation of ZDA and CEEC Act, and in terms of policy guidance, the SME Policy that Government is trying to work on and Government is trying to work on the new Youth Policy. I think these are some of the laws and policies that support formalisation of businesses. However, I think these pieces of laws and policies need to be updated to incorporate current trends."

The other respondent had a similar view on the available laws that support and facilitate transitioning to the formal economy and said the following:

> "Some of the current laws that speak to that for example is the Zambia Development Agency Act which emphasizes the aspect of supporting Small and Medium Enterprises in their operations and doing business. Secondly, is the CEEC Act which also looks at providing incentives and also supporting SMEs through financing. As we speak the Ministry of Small and Medium Enterprises is currently working on what will be referred to as SMEs bill, this one is specifically going to look at what will be created for Small and Medium Enterprises in terms of their existence and their operations country wide."

d) Is the Government is doing enough to Support Enterprises` Transition to the Formal Economy

It was revealed that the government`s efforts to facilitate and support formalisation of informal enterprises were not seen and known by most of the people due to the absence of a communication strategy that one expert pointed at below:

> "The information is not out there and the government may need to develop a strategy around communication on how government through various ministries and institutions that are mandated to provide support to SMEs are reaching out. We have ZDA, CEEC, Ministry of SMEs itself, Ministry of Youth and Sports, we also have Constituency Development Funds now which has a component to support SMEs. So people need to know about these opportunities for them to benefit from them."

The other expert who was interviewed had the following to say:

> "The issue is that as it stands, we have not done enough, but I must be quick to mention that we are working on a number of initiative that are aimed at addressing this particular situation and this is being done through the creation of various institutions and am sure one such is the formation of Ministry of Small and Medium Enterprises, issues to do with setting up of preferential certification by CEEC and also when you look at certain incentives that are earmarked to be implemented where SMEs will be exempted from certain taxes."

Another expert indicated that the government was already working on programmes that are aimed at facilitating formalisation of the informal economy and said:

> "So those are programmes which we are currently working on to ensure that we implement but most importantly is one of the programmes that we are beginning to work on and we have actually started and already has the approval of the Secretary to the Cabinet is the sensitization of SMEs for

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them to participate in the procurement of contracts through Constituency Development Fund. All these programmes will help a number of SMEs to be forced to formalise their businesses for them to have access to some of these jobs."

e) Importance of Transitioning to the Formal Economy

The significance of transitioning to the formal economy by enterprises was echoed by experts because of the benefits it brings which include being able to have access to credit and capital, trainings, and government support. One expert comments:

"The informal sector is a huge revenue leakage for the country as most of them don't either pay any taxes ordo not pay the right amount of taxes. Currently most of Zambia`s revenue comes from taxation of few businesses and employees, so if these guys formalised their businesses, it means they will grow and employ more people which will broaden the tax base for the government."

The other expert made the following remarks:

"It is important for enterprises to graduate into the formal sector for them to access services like credit from government or private institutions. So such institutions can only work with enterprises which are formalised and have documentations, they are traceable, they are organized and can give them business development services, trainings, financing, link them to other systems, networks and markets and be able to contribute tonational development."

Formalisation leads to protection of both employees and owners of businesses as it makes business owners register their employees with institutions such as Worker`s Compensation and pension scheme authority which provide finances and lift the burden off individual employees in case of accidents at work. One expert comments as follows:

"when you are in the informal sector, it means you are not identified, you are not registered with schemes that register businesses, or you may be registered with PACRA but not registered with schemes which guarantee social protection which have to do with issues of pension and compensation. So if you are not registered with these institutions it makes you vulnerable because as you run your business, you can get injured, run a loss or you can even die. So informal enterprises failure to formalise means that people working there cannot also have decent jobs."

It was further observed that formalisation of informal enterprises leads to growth of businesses because would be investors and institutions that provide finances and business support only workwith formalised businesses as indicated below:

"If you are informal, it becomes difficult to access financial services because you cannot be traced, financialinstitutions would rather lend finances to businesses that are registered with PACRA. So it is important to have business enterprises formalise."

"It is important for them to formalise their businesses because when they formalise their business, they are able to access finance and other incentives provided by the government which ordinarily cannot be accessed by businesses that are not registered. Formalising businesses leads to growth of businesses, when they come to Zambia Development Agency we help to link businesses with investors and no serious investor would want to work with unregistered business."

V. Discussion of Findings

With respect to the role of the informal economy, the researcher reports that it is being perceived as critical to the economy as it contributes to poverty reduction by providing employment and incomes to people who are left out by the formal economy. Further, the informal economy provides cushion when the economy is performing badly and provides breeding zone for innovation of business ideas which later flourish in the formal economy and contribute to the national development. Although, the desired outcome for policy makers is to have bigger formal economy than the informal one, the informal economy is still deemed important as it also provides entrepreneurial motivation to people in the economy like Zambia where jobs in the formal sector are hard to come by (see Aryeetey, 2009; and Williams, 2014).

In terms of the reasons behind bigger informal sector in the Zambian economy, the perception of low levels of education among people who own and operate informal enterprises as contributing to high levels of informality because they do not understand the benefits they can get when their enterprises are formalised. In addition, low levels of education among informal enterprises owners imply lack of business management skills such as accounting which are very critical to managing formalised businesses (see Chileshe and Olusegun, 2017; and Chijikwa and Mulenga, 2023).

The other issue that is reported to be attributed to high informality is poor state of infrastructure which affects people from rural areas the most who often do not have access to internet mostly because they do not know how to use it and have to walk long distances to get to administrative offices where they can be helped with formalisation processes. This is a propabable explaination behind high levels of rural informality in Zambia compared to urban informality as can be seen in 2021 Zambia Labour Force Survey (Zambia Statistics Agency, 2022).

Inadequate dissemination of information around formalisation is perceived to have led to misinformation about formalisation as some members of the public think that they will be paying a lot of money in taxes immediately they formalise and this makes them perfer staying and runningtheir businesses informally foregoing would be benefits of formalising. This view is similar to Chijikwa and Mulenga (2023) study findings which revealed that some informal enterprises` owners decided to operate informally because they thought their businesses were too small to be paying taxes. This misconception of formalisation cost has made many businesses remain informal and small because they

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cannot access services such as business support, financial support and investors because such services are usually accessed by formalised businesses.

In respect to formalisation incentives put in place by the government of Zambia to support formalisation of informal enterprises, it was discovered that there were laws like Zambia Development Agency (ZDA) Act of Paliament and CEEC Act of Parliament which provides for preferential certification which exempts SMEs from paying certain taxes. There are also policies such as Small and Medium Enterprise Policy and Youth Policy which provided incentives, support and facilitation for formalisation of the informal sector, although they need to be reviewed and updated to current trends and dissseminated to the general populace so that people are aware of available opportunities through advocacy and campaigns as advised by ILO (2007).

The importance of formalisation was rechoed that it reduces revenue leakage which is characterised by the informal sector where in some instances, taxes are not even paid at all and in instances where they are paid, they are not rightly paid. The tax burden is therefore carried by few formalised businesses. Formalisation of informal businesses would therefore, lead to broaden tax base and wider scale provison of public goods and services and improved living standards of people as indicated and argued by Gajigo and Hallward-Driemeie (2012).

Formalisation leads to growth of businesses because with formalisation, comes opportunities for accessing credit, trainings, business development services, being linked to networks and markets that informal enterprises do not have access to. In addition, formalisation leads to decent jobs for workers as it demands their registration with agencies such as insurance schemes, pension scheme authorities, labour department, and workers` compensation that enable employees to go on leave and get compensated in the event of accidents at work (see Campos, 2018; Chijikwa, 2023; & Gary, 2020).

Formalisation is also believed to lead to improved productivity and profits among firms that switch from informal to formal and this view is supported by a study by Amadou (2018) which revealed that enterprises that switched from informal to formal had an increased profit of 11.0 per cent and 8.9 per cent increase of value compared to their informal counterparts.

VI. Conclusion and Recommendations

The article concludes that informal enterprises contribute to the economy although it is desired to have a bigger chunk of them formalised so as to increase productivity and reduce challenges of accessing credit, trainings, business support and linkage to market which are characterised by informal enterprises. Further, the article revealed that there a number of laws and policies that support and facilitate transitioning from informal to the formal Zambian economy.

The article recommends for the amendment of relevant regulatory laws that govern quasi-government institutions to be more flexible and friendlier to the enterprises that are not compliant. Finally, the article recommends more investment in the change management and education of the informal enterprises` owners so that they see the value of transitioning to the formal economy.

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Objectivity and Independence of Internal Audit

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Abstract- An internal audit is an important tool for companies to ensure their operations run smoothly and efficiently. It is also an important way to ensure that the company's policies and procedures are being followed. Internal audit processes should be objective and independent. We will explore the concept of objectivity and independence of internal audit, and how this affects the quality of the audit conducted by auditors. It will be discussed how companies can use internal audit findings to identify areas of improvement in their operations and how they can ensure that their internal auditors remain objective and independent while performing their duties.

The main aim of this research is to examine the findings on how internal auditors can sustain objectivity and independence in order to provide an efficient service. The paper will explore the various ways in which internal auditors can remain independent from management interference and other external influences. Additionally, this research paper will discuss how technology can help improve the objectivity and independence of internal audits. Finally.

Keywords: objectivity and independence, internal audit and credibility; reliability, assurance, and principles.

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Rusudan Sreseli

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I. Introduction

The internal audit profession is based on the principles of objectivity and independence. This means that internal auditors must not be influenced by any external factors, such as the interests of a company or its management. As such, they must remain independent when conducting their audits. Objectivity and independence are essential for an internal auditor to be able to perform their duties effectively and accurately. They ensure that the audit results are reliable and accurate, as well as provide assurance to stakeholders that the audit was conducted in accordance with professional standards. In order to maintain objectivity and independence, internal auditors should always refer to relevant professional standards such as those set out by *the Institute of Internal Auditors (IIA).* Such standards provide guidance on how an auditor should conduct their work in an ethical manner while ensuring they remain independent from any external influences.

The Internal audit is an independent and objective assurance and consulting activity designed to add value and improve a company's operations. It helps a company accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes. Internal auditors are responsible for ensuring that the company complies with applicable laws, regulations, policies, procedures, contracts, and agreements. They must be independent from the activities they audit in order to provide unbiased opinions on the company's performance. By referencing external standards such as *the International Professional Practices Framework (IPPF),* internal auditors can ensure their objectivity and independence.

The concept of objectivity and independence has been discussed by many authors, such as Robert F. White, who argued that "internal auditors should be independent and objective in order to provide a reliable assurance on the effectiveness of internal control systems" (White, 1984). Similarly, *Michael J. Jones (1999)* pointed out that "internal auditors must maintain an independent attitude in order to ensure objectivity in their work". These references clearly demonstrate how important it is for internal auditors to remain impartial when conducting audits.

According to the *Institute of Internal Auditors (IIA),* objectivity is defined as "the state or quality of being impartial, unprejudiced, and unbiased". On the other hand, independence is defined as "*the state or quality of being free from influence, control, or determination by another person or thing".* This means that internal auditors must be independent of the company's management and maintain an unbiased view when assessing the financial statements and operations of a company.

II. Steps for Developing an Effective Internal Audit Process with Objectivity & Independence

To ensure that the internal audit process is conducted objectively and independently, companies must take certain steps to ensure that the auditors have no conflict of interest or bias in performing their duties. Internal audit is an important function for any company. It is responsible for providing assurance that the company's processes and procedures are compliant with applicable laws and regulations, as well as being efficient. This article will discuss the key steps for developing an effective internal audit process with objectivity and independence. It will cover topics such as establishing a clear scope for the audit, selecting qualified personnel, designing a risk-based approach to auditing, and ensuring proper communication between stakeholders. Additionally, it will highlight the importance

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of training employees on best practices for conducting audits with objectivity and independence.

Internal audit is an important part of any company's governance structure. It is the process of assessing the efficiency of internal controls and procedures to ensure that the company meets its objectives. To be effective, an internal auditor must maintain objectivity and independence in order to guarantee its credibility. This article will discuss steps for developing an effective internal audit process with objectivity and independence. An effective internal audit process is essential for any company to ensure that it is operating in compliance with laws and regulations. It is also important for the company to maintain objectivity and independence in its internal audit operations. This article will discuss the steps that can be taken to ensure that an internal audit process remains objective and independent. It will explore the various measures that can be implemented to ensure that the internal audit process is conducted with utmost integrity and fairness. Finally.

III. Audit Planning Process

The audit planning process must be conducted with objectivity and independence in mind. This means that internal auditors should be unbiased when assessing the risks associated with any given process or system. To ensure this, they must have access to all relevant information about the audit subject matter as well as references from external sources such as industry experts or regulatory bodies. Furthermore, they must also be free from any conflicts of interest so that their assessment is not influenced by any vested interests. Internal audit is a key component of any company's internal control system. It is responsible for providing objective and independent assurance that the company's policies, procedures, and processes are operating as intended. To ensure the objectivity and independence of internal auditors, companies must have an effective audit planning process in place. This process should include references to relevant laws, regulations, standards, guidelines, and other applicable documents. Through this process, internal auditors can identify risks and design appropriate audit procedures to address them. This will help ensure that the company's financial statements are free from material misstatements due to fraud or error.

IV. Risk Assessment Process

The internal audit team must assess the adequacy of the risk assessment process in order to identify areas where improvements are needed. This includes evaluating the accuracy and completeness of identified risks, as well as assessing whether appropriate strategies and controls are in place to manage them. The internal audit team should also assess whether management is adequately monitoring these risks on an ongoing basis. They should also be able to provide a comprehensive view of the company's risk management process, as well as provide insights into potential areas of improvement. Additionally, they should be able to identify any areas where further investigation or action may be necessary in order to mitigate risks.

V. Performance Evaluation Process

Internal audit is an important part of any company's performance evaluation process. It helps to ensure that the company's operations are conducted in accordance with its stated objectives and goals. It also helps to provide assurance that the company's financial information is accurate and reliable.

However, for an internal audit to be effective, it must be conducted objectively and independently. This means that the auditor must be free from any influence or bias when conducting the audit. To ensure this, companies should follow certain guidelines outlined by leading authors such as *COSO* and *IIA* in order to guarantee objectivity and independence of their internal audit process.

It is important that internal audit teams have the necessary resources, skills, and knowledge to carry out their duties in a timely and effective manner. In order to ensure that all stakeholders involved in the performance evaluation process are treated fairly and impartially, internal auditors must remain objective and independent. This involves assessing any potential conflicts of interest, ensuring that all relevant information is taken into consideration when making decisions and adhering to professional standards set by authors such as *COSO* or *IIA.*

Objectivity in internal audit is a concept that has been discussed by many famous authors, such as *Peter Drucker*, *Warren Buffett, and David Maister*. They all agree that objectivity is essential for an internal auditor to carry out their job effectively. For example, Drucker stated that "A good internal auditor must be able to think independently and objectively" while Buffett said "The only way to ensure absolute objectivity is for the auditor to remain free from any influence or pressure from outside sources". *Maister* also noted that "An independent internal audit should be based on facts, not opinions".

Other authors such as *Robert Kiyosaki, Peter Drucker*, and *Arthur Andersen* have stressed the importance of objectivity in order to ensure that an audit is conducted in a fair and impartial manner. Objectivity implies that the auditor should not be influenced by any external factors such as personal relationships or business interests when conducting an audit. Furthermore, they should be able to remain independent

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from any internal influences such as management or other stakeholders.

Objectivity also helps to prevent conflicts of interest from arising during an audit process, which could lead to inaccurate results or even fraud.

Threats to objectivity can occur due to various factors such as financial pressures from senior management or a lack of independence from other departments. These threats can lead to biased opinions or decisions which can have serious consequences for the company. It is therefore essential for internal auditors to be aware of such threats and take steps to mitigate them by maintaining their independence and objectivity while conducting their audits.

One of the objectives of an internal audit is to provide assurance to stakeholders that the company is performing its duties in a professional and ethical manner.

Unfortunately, there are various threats that can compromise this independence and objectivity in this area. These include self-review, familiarity with management, familiarity with staff, intimidation by management, and financial incentives from management. It is important for internal auditors to recognize these threats and take steps to mitigate them in order to maintain their objectivity and independence.

In order to mitigate the threats, it is important for auditors to have a clear understanding of their roles and responsibilities and to adhere strictly to professional standards. Additionally, they should establish policies and procedures that ensure independence from external influences. By doing so, they can ensure that their audits are conducted objectively and impartially. Internal audit plays a vital role in ensuring the accuracy and objectivity of financial statements. As such, it is important to ensure that threats to objectivity are mitigated. This can be done by implementing proper policies and procedures, as well as by having effective communication between the internal auditor and other stakeholders. References should also be taken into account when assessing the independence of internal audit, in order to ensure that it remains unbiased and objective.

Best practices for maintaining objectivity include avoiding conflicts of interest, separating audit tasks from operational duties, documenting decisions and actions taken, and ensuring that there is sufficient evidence to support conclusions drawn. By following these best practices, internal auditors can ensure that their work remains objective and independent.

VI. Independence in Internal Audit

It is essential for internal auditors to be independent in order to provide an unbiased opinion on the financial statements. This independence should be maintained at all times so that there are no conflicts of interest between the auditor and the company they are auditing. The independence of internal audit can be ensured by following certain guidelines set forth by companies such as The *Institute of Internal Auditors (IIA)*. These guidelines include maintaining a separation between internal audit staff and management, avoiding any activities that could create a conflict of interest, and ensuring that internal audit reports are based on reliable information gathered from external sources. By following these guidelines, companies can ensure that their internal audits remain independent and objective.

Independence also ensures that the auditor can provide accurate information and make sound recommendations without fear of reprisal or bias from management. Several websites, such *as Investopedia, Balance*, and *Auditnet*, provide detailed information on how to maintain independence in an internal audit process. There are several potential threats to independence which can undermine an auditor's ability to provide objective assurance The threats to independence can come from external sources, such as political pressure or financial incentives, or from within the company itself. These threats include self-review threats, familiarity threats, advocacy threats, intimidation threats, and financial interest threats. It is important for companies and auditors to understand these threats in order to ensure that their internal audit process remains objective and independent.

It is essential to ensure that threats to independence are identified and managed. This can be done by taking steps such as separating audit duties from other duties, avoiding conflicts of interest, maintaining confidentiality, and ensuring that auditors have sufficient expertise. With these measures in place, internal audit teams can remain independent and objective when conducting their work. Furthermore, companies should also consult external references such as websites or publications to ensure that their audit teams are properly trained and well-informed about the latest developments in internal auditing.

The best practice to ensure that internal auditors are not involved in any operations or activities that may create a conflict of interest, such as reviewing their own work or making decisions that could benefit themselves. Additionally, companies must maintain clear policies and procedures regarding the selection and appointment of internal auditors, as well as how they will be evaluated and compensated for their services. By following these best practices for maintaining independence, companies can ensure that their internal audits provide accurate information about their operations and performance.

VII. Objectivity and Independence: Interplay and Relationship

Objectivity means that internal audit should be free from any bias or influence that could affect its

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judgment; while independence requires that internal audit should not be subject to interference from other departments or stakeholders.

We outline below the interplay between objectivity and independence in the context of internal auditing, considering how these two concepts relate to each other and how they can work together in order to ensure an effective risk management system. Objectivity and independence are interdependent concepts that must be carefully balanced to ensure the integrity of a company's financial statements. Objectivity refers to the auditor's ability to remain impartial when conducting an audit, while independence refers to the auditor's ability to remain free from influence or bias from other parties. The two concepts are closely intertwined, as an auditor must maintain both objectivity and independence in order for their work to be effective.

The importance of objectivity and independence in internal audit cannot be overstated, as they are essential components for providing accurate information about a company's financial status. Without these two concepts, the accuracy of financial statements would be compromised, leading to potential mismanagement or fraud.

The complementary nature of objectivity and independence helps to ensure that the auditor is able to carry out their duties without any bias or influence from management.

VIII. Professional Guidelines and Standards

The internal audit process is an important part of corporate governance and requires a certain level of objectivity and independence. This is why professional guidelines and standards need to be established in order to ensure that the internal audit process is conducted in a fair, impartial, and accurate manner. Professional guidelines and standards provide the necessary framework for internal auditors to work within. They ensure that internal auditors are able to remain objective throughout the audit process and that their independence is maintained. Professional guidelines also help to ensure that audits are conducted in accordance with applicable laws, regulations, and industry best practices. The objective of an internal audit is to provide an independent assurance that the company's processes, policies and controls are operating effectively. To ensure this, it is important for the internal audit to be both objective and independent. This means that the internal audit should be conducted in accordance with professional guidelines and standards, which are designed to ensure that all audits are conducted in a consistent manner. Professional guidelines and standards also provide a framework for evaluating the effectiveness of internal controls and ensuring compliance with applicable laws and regulations.

IX. Conclusion

In conclusion, this research paper has explored the crucial concepts of objectivity and independence in the context of internal audit. Objectivity refers to the unbiased mindset and impartiality exhibited by internal auditors in carrying out their responsibilities, while independence emphasizes the need for internal auditors to be free from any undue influence or conflicts of interest that may compromise the integrity of their work. Throughout the paper, we have highlighted the significance of objectivity and independence in ensuring the effectiveness and credibility of internal audit functions within companies. The findings indicate that when internal auditors maintain objectivity, they are better equipped to assess risks, identify control weaknesses, and provide reliable and unbiased recommendations to improve governance and control processes. Furthermore, independence serves as a critical pillar of internal audit, allowing auditors to operate without any constraints that might hinder their ability to objectively evaluate companies' activities. By maintaining independence, internal auditors can effectively challenge management decisions and practices, ensuring the transparency and accountability of the company. The research has also highlighted some challenges to objectivity and independence in internal audit, such as company pressures, conflicts of interest, and inadequate governance structures. These challenges underscore the need for robust frameworks and policies that promote and safeguard objectivity and independence within internal audit functions. It is evident that companies must prioritize and foster a culture that values objectivity and independence in internal audit. This can be achieved through the establishment of clear policies, appropriate training, and the provision of necessary resources to support the internal audit function. Additionally, regular monitoring and evaluation processes should be implemented to assess the effectiveness of internal audit activities and address any potential threats to objectivity and independence. Furthermore, internal auditors should adhere to a code of ethics that outlines the standards of conduct expected from them. This code typically includes principles such as integrity, objectivity, confidentiality, and professional competence. Compliance with the code of ethics helps ensure that auditors maintain their independence and objectivity in practice.

In conclusion, objectivity and independence are indispensable principles that underpin the credibility, effectiveness, and value of internal audit. By upholding these principles, companies can strengthen their internal control systems, enhance risk management practices,

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and ultimately improve overall governance and decision-making processes.

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17. Never copy others' work: Never copy others' work and give it your name because if the evaluator has seen it anywhere, you will be in trouble. Take proper rest and food: No matter how many hours you spend on your research activity, if you are not taking care of your health, then all your efforts will have been in vain. For quality research, take proper rest and food.

18. Go to seminars: Attend seminars if the topic is relevant to your research area. Utilize all your resources.

19. Refresh your mind after intervals: Try to give your mind a rest by listening to soft music or sleeping in intervals. This will also improve your memory. Acquire colleagues: Always try to acquire colleagues. No matter how sharp you are, if you acquire colleagues, they can give you ideas which will be helpful to your research.

20. Think technically: Always think technically. If anything happens, search for its reasons, benefits, and demerits. Think and then print: When you go to print your paper, check that tables are not split, headings are not detached from their descriptions, and page sequence is maintained.

21. Adding unnecessary information: Do not add unnecessary information like "I have used MS Excel to draw graphs." Irrelevant and inappropriate material is superfluous. Foreign terminology and phrases are not apropos. One should never take a broad view. Analogy is like feathers on a snake. Use words properly, regardless of how others use them. Remove quotations. Puns are for kids, not grunt readers. Never oversimplify: When adding material to your research paper, never go for oversimplification; this will definitely irritate the evaluator. Be specific. Never use rhythmic redundancies. Contractions shouldn't be used in a research paper. Comparisons are as terrible as clichés. Give up ampersands, abbreviations, and so on. Remove commas that are not necessary. Parenthetical words should be between brackets or commas. Understatement is always the best way to put forward earth-shaking thoughts. Give a detailed literary review.

22. Report concluded results: Use concluded results. From raw data, filter the results, and then conclude your studies based on measurements and observations taken. An appropriate number of decimal places should be used. Parenthetical remarks are prohibited here. Proofread carefully at the final stage. At the end, give an outline to your arguments. Spot perspectives of further study of the subject. Justify your conclusion at the bottom sufficiently, which will probably include examples.

23. Upon conclusion: Once you have concluded your research, the next most important step is to present your findings. Presentation is extremely important as it is the definite medium though which your research is going to be in print for the rest of the crowd. Care should be taken to categorize your thoughts well and present them in a logical and neat manner. A good quality research paper format is essential because it serves to highlight your research paper and bring to light all necessary aspects of your research.

Informal Guidelines of Research Paper Writing

Key points to remember:

- Submit all work in its final form.
- Write your paper in the form which is presented in the guidelines using the template.
- Please note the criteria peer reviewers will use for grading the final paper.

Final points:

One purpose of organizing a research paper is to let people interpret your efforts selectively. The journal requires the following sections, submitted in the order listed, with each section starting on a new page:

The introduction: This will be compiled from reference matter and reflect the design processes or outline of basis that directed you to make a study. As you carry out the process of study, the method and process section will be constructed like that. The results segment will show related statistics in nearly sequential order and direct reviewers to similar intellectual paths throughout the data that you gathered to carry out your study.

The discussion section:

This will provide understanding of the data and projections as to the implications of the results. The use of good quality references throughout the paper will give the effort trustworthiness by representing an alertness to prior workings.

Writing a research paper is not an easy job, no matter how trouble-free the actual research or concept. Practice, excellent preparation, and controlled record-keeping are the only means to make straightforward progression.

General style:

Specific editorial column necessities for compliance of a manuscript will always take over from directions in these general guidelines.

To make a paper clear: Adhere to recommended page limits.

Mistakes to avoid:

- Insertion of a title at the foot of a page with subsequent text on the next page.
- Separating a table, chart, or figure—confine each to a single page.
- Submitting a manuscript with pages out of sequence.
- In every section of your document, use standard writing style, including articles ("a" and "the").
- Keep paying attention to the topic of the paper.



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- Use paragraphs to split each significant point (excluding the abstract).
- Align the primary line of each section.
- Present your points in sound order.
- Use present tense to report well-accepted matters.
- Use past tense to describe specific results.
- Do not use familiar wording; don't address the reviewer directly. Don't use slang or superlatives.
- Avoid use of extra pictures—include only those figures essential to presenting results.

Title page:

Choose a revealing title. It should be short and include the name(s) and address(es) of all authors. It should not have acronyms or abbreviations or exceed two printed lines.

Abstract: This summary should be two hundred words or less. It should clearly and briefly explain the key findings reported in the manuscript and must have precise statistics. It should not have acronyms or abbreviations. It should be logical in itself. Do not cite references at this point.

An abstract is a brief, distinct paragraph summary of finished work or work in development. In a minute or less, a reviewer can be taught the foundation behind the study, common approaches to the problem, relevant results, and significant conclusions or new questions.

Write your summary when your paper is completed because how can you write the summary of anything which is not yet written? Wealth of terminology is very essential in abstract. Use comprehensive sentences, and do not sacrifice readability for brevity; you can maintain it succinctly by phrasing sentences so that they provide more than a lone rationale. The author can at this moment go straight to shortening the outcome. Sum up the study with the subsequent elements in any summary. Try to limit the initial two items to no more than one line each.

Reason for writing the article—theory, overall issue, purpose.

- Fundamental goal.
- To-the-point depiction of the research.
- Consequences, including definite statistics—if the consequences are quantitative in nature, account for this; results of any numerical analysis should be reported. Significant conclusions or questions that emerge from the research.

Approach:

- Single section and succinct.
- An outline of the job done is always written in past tense.
- Concentrate on shortening results—limit background information to a verdict or two.
- Exact spelling, clarity of sentences and phrases, and appropriate reporting of quantities (proper units, important statistics) are just as significant in an abstract as they are anywhere else.

Introduction:

The introduction should "introduce" the manuscript. The reviewer should be presented with sufficient background information to be capable of comprehending and calculating the purpose of your study without having to refer to other works. The basis for the study should be offered. Give the most important references, but avoid making a comprehensive appraisal of the topic. Describe the problem visibly. If the problem is not acknowledged in a logical, reasonable way, the reviewer will give no attention to your results. Speak in common terms about techniques used to explain the problem, if needed, but do not present any particulars about the protocols here.

The following approach can create a valuable beginning:

- Explain the value (significance) of the study.
- Defend the model—why did you employ this particular system or method? What is its compensation? Remark upon its appropriateness from an abstract point of view as well as pointing out sensible reasons for using it.
- Present a justification. State your particular theory(-ies) or aim(s), and describe the logic that led you to choose them.
- Briefly explain the study's tentative purpose and how it meets the declared objectives.

Approach:

Use past tense except for when referring to recognized facts. After all, the manuscript will be submitted after the entire job is done. Sort out your thoughts; manufacture one key point for every section. If you make the four points listed above, you will need at least four paragraphs. Present surrounding information only when it is necessary to support a situation. The reviewer does not desire to read everything you know about a topic. Shape the theory specifically—do not take a broad view.

As always, give awareness to spelling, simplicity, and correctness of sentences and phrases.

Procedures (methods and materials):

This part is supposed to be the easiest to carve if you have good skills. A soundly written procedures segment allows a capable scientist to replicate your results. Present precise information about your supplies. The suppliers and clarity of reagents can be helpful bits of information. Present methods in sequential order, but linked methodologies can be grouped as a segment. Be concise when relating the protocols. Attempt to give the least amount of information that would permit another capable scientist to replicate your outcome, but be cautious that vital information is integrated. The use of subheadings is suggested and ought to be synchronized with the results section.

When a technique is used that has been well-described in another section, mention the specific item describing the way, but draw the basic principle while stating the situation. The purpose is to show all particular resources and broad procedures so that another person may use some or all of the methods in one more study or referee the scientific value of your work. It is not to be a step-by-step report of the whole thing you did, nor is a methods section a set of orders.

Materials:

Materials may be reported in part of a section or else they may be recognized along with your measures.

Methods:

- Report the method and not the particulars of each process that engaged the same methodology.
- Describe the method entirely.
- To be succinct, present methods under headings dedicated to specific dealings or groups of measures.
- Simplify—detail how procedures were completed, not how they were performed on a particular day.
- If well-known procedures were used, account for the procedure by name, possibly with a reference, and that's all.

Approach:

It is embarrassing to use vigorous voice when documenting methods without using first person, which would focus the reviewer's interest on the researcher rather than the job. As a result, when writing up the methods, most authors use third person passive voice.

Use standard style in this and every other part of the paper—avoid familiar lists, and use full sentences.

What to keep away from:

- Resources and methods are not a set of information.
- Skip all descriptive information and surroundings—save it for the argument.
- Leave out information that is immaterial to a third party.

Results:

The principle of a results segment is to present and demonstrate your conclusion. Create this part as entirely objective details of the outcome, and save all understanding for the discussion.

The page length of this segment is set by the sum and types of data to be reported. Use statistics and tables, if suitable, to present consequences most efficiently.

You must clearly differentiate material which would usually be incorporated in a study editorial from any unprocessed data or additional appendix matter that would not be available. In fact, such matters should not be submitted at all except if requested by the instructor.



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Content:

- Sum up your conclusions in text and demonstrate them, if suitable, with figures and tables.
- In the manuscript, explain each of your consequences, and point the reader to remarks that are most appropriate.
- Present a background, such as by describing the question that was addressed by creation of an exacting study.
- Explain results of control experiments and give remarks that are not accessible in a prescribed figure or table, if appropriate.
- Examine your data, then prepare the analyzed (transformed) data in the form of a figure (graph), table, or manuscript.

What to stay away from:

- Do not discuss or infer your outcome, report surrounding information, or try to explain anything.
- Do not include raw data or intermediate calculations in a research manuscript.
- Do not present similar data more than once.
- A manuscript should complement any figures or tables, not duplicate information.
- Never confuse figures with tables—there is a difference.

Approach:

As always, use past tense when you submit your results, and put the whole thing in a reasonable order.

Put figures and tables, appropriately numbered, in order at the end of the report.

If you desire, you may place your figures and tables properly within the text of your results section.

Figures and tables:

If you put figures and tables at the end of some details, make certain that they are visibly distinguished from any attached appendix materials, such as raw facts. Whatever the position, each table must be titled, numbered one after the other, and include a heading. All figures and tables must be divided from the text.

Discussion:

The discussion is expected to be the trickiest segment to write. A lot of papers submitted to the journal are discarded based on problems with the discussion. There is no rule for how long an argument should be.

Position your understanding of the outcome visibly to lead the reviewer through your conclusions, and then finish the paper with a summing up of the implications of the study. The purpose here is to offer an understanding of your results and support all of your conclusions, using facts from your research and generally accepted information, if suitable. The implication of results should be fully described.

Infer your data in the conversation in suitable depth. This means that when you clarify an observable fact, you must explain mechanisms that may account for the observation. If your results vary from your prospect, make clear why that may have happened. If your results agree, then explain the theory that the proof supported. It is never suitable to just state that the data approved the prospect, and let it drop at that. Make a decision as to whether each premise is supported or discarded or if you cannot make a conclusion with assurance. Do not just dismiss a study or part of a study as "uncertain."

Research papers are not acknowledged if the work is imperfect. Draw what conclusions you can based upon the results that you have, and take care of the study as a finished work.

- You may propose future guidelines, such as how an experiment might be personalized to accomplish a new idea.
- Give details of all of your remarks as much as possible, focusing on mechanisms.
- Make a decision as to whether the tentative design sufficiently addressed the theory and whether or not it was correctly restricted. Try to present substitute explanations if they are sensible alternatives.
- One piece of research will not counter an overall question, so maintain the large picture in mind. Where do you go next? The best studies unlock new avenues of study. What questions remain?
- Recommendations for detailed papers will offer supplementary suggestions.

Approach:

When you refer to information, differentiate data generated by your own studies from other available information. Present work done by specific persons (including you) in past tense.

Describe generally acknowledged facts and main beliefs in present tense.

The Administration Rules

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Topics	Grades		
	A-B	**C-D**	**E-F**
Abstract	Clear and concise with appropriate content, Correct format. 200 words or below	Unclear summary and no specific data, Incorrect form Above 200 words	No specific data with ambiguous information Above 250 words
Introduction	Containing all background details with clear goal and appropriate details, flow specification, no grammar and spelling mistake, well organized sentence and paragraph, reference cited	Unclear and confusing data, appropriate format, grammar and spelling errors with unorganized matter	Out of place depth and content, hazy format
Methods and Procedures	Clear and to the point with well arranged paragraph, precision and accuracy of facts and figures, well organized subheads	Difficult to comprehend with embarrassed text, too much explanation but completed	Incorrect and unorganized structure with hazy meaning
Result	Well organized, Clear and specific, Correct units with precision, correct data, well structuring of paragraph, no grammar and spelling mistake	Complete and embarrassed text, difficult to comprehend	Irregular format with wrong facts and figures
Discussion	Well organized, meaningful specification, sound conclusion, logical and concise explanation, highly structured paragraph reference cited	Wordy, unclear conclusion, spurious	Conclusion is not cited, unorganized, difficult to comprehend
References	Complete and correct format, well organized	Beside the point, Incomplete	Wrong format and structuring

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