

<https://doi.org/10.22364/jull.12.08>

Content and Application of Duty of Care Principle in the Field of Administrative Law in Latvia

Dr. iur. Jautriete Briede

Faculty of Law, University of Latvia
Professor at the Department of Public Law
E-mail: briede@lu.lv

The article addresses the principle of duty of care, which is identified as one of the principles of the European Union's administrative process. First of all, the use of term 'duty of care' in Latvian language is analysed and shortcomings identified. The content of the duty of care principle in relation to the principle of good administration and the non-contractual liability of the state is further clarified. The article also touches upon the question of the immunity of the authorities to liability for non-compliance with the duty of care.

Keywords: principle of duty of care, duty of care to civil servants, principle of good administration, negligence or omission of public authorities, non-contractual liability of the state, immunity of public authorities.

Contents

<i>Introduction</i>	110
1. <i>Terms Used in Latvian Language</i>	111
2. <i>Duty of Care Principle and Principle of Good Administration</i>	112
3. <i>Duty of Care Principle and Non-contractual Liability of Public Authorities</i>	115
<i>Summary</i>	119
<i>Sources</i>	120
<i>Bibliography</i>	120
<i>Normative Acts</i>	120
<i>Recommendations</i>	120
<i>Case Law</i>	120
<i>Other Sources</i>	121

Introduction

The analysis of the principles pertaining to the European Union's administrative process by professors from several European countries (made by request of the Committee on Legal Affairs of the European Parliament) contains the following list of basic principles: Access to information and access to documents; Access to the file; Duty of care; Data protection; Data quality; Effective remedy; Equal treatment and non-discrimination; Fair hearing; Fairness; Good administration; Impartiality;

Legal certainty; Legality; Legitimate expectations; Participatory democracy; Proportionality; Reason giving; Rule of Law; Timeliness; Transparency.¹

If the majority of these principles have been analysed by Latvian legal scholars² and are used in judicial practice, the content of the duty of care principle (in Latvian – *rūpības pienākuma princips*, in French – *devoir de vigilance* or *obligation de diligence*³) from the point of view of administrative law has not yet been addressed.

The aim of this study is to clarify the content of the duty of care principle and to offer recommendations for its application in the area of administrative law in Latvia.

The study is based on content analysis to establish how the principle is applied and reflected in court judgments. The linguistic method has also been used to determine the words used when applying it. The comparative method is applied to reflect how the principle is used in other countries. The case study method helps to clarify the application of the principle in court practice.

The article does not address the duty of care of individuals against public administration or other private individuals.

1. Terms Used in Latvian Language

To define the content of the principle, the Latvian translation of the term ‘duty of care’ must first be provided. In the Latvian Academic Terminology Database *AkadTerm*, the term ‘duty of care’ is recommended to be translated as *rūpības pienākumu* or *gādības pienākumu*, however, the term *pienākums ņemt vērā ierēdņu intereses* [duty to have regards to the interests of civil servants] is also mentioned.⁴

However, the term *pienākums ņemt vērā ierēdņu intereses* [duty to have regards to the interests of civil servants] does not always correspond to the English ‘duty of care’. Before the author of this article raised the issue of translation, the term had also been misused in translations contained in the database of EU courts. For example, the Advocate General’s Opinion in case No. C-184/16 addresses the issue of the application of the principle of good administration in relation to a residence of a national of a member state within the territory of another member state. This case has nothing to do with the interests of civil servants, yet the phrase ‘the referring court was enquiring about the relevance of the duty of care’ literally was translated as “the referring court was enquiring about the relevance of the ‘duty to have regards to the interests of civil servants’ [*pienākums ņemt vērā ierēdņu intereses*]

¹ The General Principles of EU Administrative Procedural Law. In-depth Analysis. European Parliament. Directorate General for Internal Policies, Policy Department C: Citizens’ Rights and Constitutional Affairs. The Committee on Legal Affairs, 2015. Available: http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/519224/IPOL_IDA%282015%29519224_EN.pdf [last viewed 17.10.2018].

² See, for example, the comments on the principles in the book *Administratīvā procesa likuma komentāri. A un B daļa* [Comments upon Administrative Procedure Law. Parts A and B]. Collective of authors, scientific ed. Dr. iur. J. Briede. Rīga: Tiesu namu aģentūra, 2013.

³ The conclusion on the substitutability of these terms is made by comparing the text of the European Court of Justice in different languages. *Obligation de diligence* in English sometimes is translated as ‘duty of care’, but sometimes as ‘principle of due diligence’ or ‘duty to act diligently’.

⁴ LZA Terminoloģijas komisijas akadēmiskā terminu datubāze *AkadTerm* [Latvian Academy of Sciences academic terminology database *AkadTerm*]. Available: <http://termini.lza.lv/term.php?term=duty%20of%20care&lang=EN> [last viewed 17.10.2018].

atbilstību”.⁵ It is clear from the context of the case that it is a duty of care and not a duty of care to civil servants.

Similarly, the interests of civil servants were wrongly pointed out in Latvian translation of the Opinion of Advocate General in case No. C-684/16, paragraph 40, although the case is clearly not about civil servants but about workers on a contract of employment.⁶ The term in the electronic version of the database was changed accordingly after the author of this article addressed the issue to interpreters of the European Court of Justice.

Although there are cases, in which ‘duty to have regards to the interests of civil servants’ does not cause confusion, because the case deals with civil servants, it would be enough to mention the duty of or care without the emphasis on civil servants.⁷

Probably the aforementioned term is used because of the fact that the English term ‘duty of care’, at least within the framework of the European Union courts, initially is attributed to civil servants.⁸ Nevertheless, it has been mentioned recently in the context of good governance. It is also possible that the duty of care is rooted in the field of private law, namely, labour law. In several countries, it is recognized that the employer under the duty of care in general must take care of the welfare of its employees.⁹

In view of the above arguments, in Latvian language it would be advisable not to use the term *pienākums ņemt vērā ierēdņu intereses* [duty to have regards to the interests of civil servant], but only the term *rūpības (gādības) pienākums* [duty of care]. The term *pienācīgas rūpības princips* [principle of due diligence], found in the European Union database may also be used.¹⁰

2 Duty of Care Principle and Principle of Good Administration

As indicated in the analysis mentioned in the introduction, the duty of care includes the right of every person to have his or her affairs handled impartially, fairly and within a reasonable time. The authors of the document refer to the first paragraph, article 41 of the Charter of Fundamental Rights of the European Union, which provides that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.¹¹ The analysis explains that the principle obliges the administration to carefully establish and review all the relevant factual and legal

⁵ The Court of Justice of the European Union case No. C-184/16, opinion of Advocate-General M. Szpunar, para. 72. Available: www.curia.europa.eu [last viewed 17.10.2018].

⁶ The Court of Justice of the European Union case No. C-684/16, opinion of Advocate-General Y. Bot, para. 40. Available: www.curia.europa.eu [last viewed 17.10.2018].

⁷ See, for example, Judgment of the Court of Justice of the European Union in case No. C-220/13 P, para. 25 and 69, case No. C-496/08 P, paras. 28 and 60. Available: www.curia.europa.eu [last viewed 17.10.2018].

⁸ See database of European Union courts. Available: www.curia.europa.eu [last viewed 17.10.2018].

⁹ See, for example, Opinion of Advocate General Bot delivered on 29 May 2018 in case No. C-684/16 (para. 40) and C-619/16 (para. 42) of the European Court of Justice. Available: www.curia.europa.eu [last viewed 17.10.2018]; *Cossart, S., Chaplier, J., Beau de Loménie, T.* The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All. *Business and Human Rights Journal*, Vol. 2, Issue 2, July 2017, pp. 317–323.

¹⁰ See, for example, application to the Court of Justice of the European Union, case No. T-778/16. Available: www.curia.europa.eu [last viewed 17.10.2018].

¹¹ Charter of Fundamental Rights of the European Union. (2016/C 202/02). Available: <https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX%3A12012P%2FTXT> [last viewed 17.10.2018].

elements of a case taking into account not only the administration's interests but also all other relevant interests, prior to making decisions or taking other steps.¹² Impartiality requires the absence both of arbitrary action and of unjustified preferential treatment including personal interest.¹³

The duty of care is not always directed towards the protection of individual rights, but it can also be the opposite of an individual's interests. For example, the Court of Justice of European Union has indicated: "Member States are to make a full and timely attempt to recover the sums in question by having recourse to all available means to achieve the objective of protecting the financial interests of the European Union. Otherwise, a Member State must be considered to have breached its general obligation of diligence."¹⁴

The authors of the aforementioned analysis note: when the Court of Justice relates to a general principle of EU law, it uses very few words, and it is not always clear whether they are interchangeable. Typically, many of the rulings quoted in the Explanations to article 41 of the Charter refer to the 'principle of good administration' and to the 'duty of care' in the same sentence.¹⁵

The Court of Justice also stated that the duty of care is one of the elements of good governance. So, the Court has pointed out, it must also be borne in mind that the duty to act diligently, which is *inherent in the principle* of sound administration and applies generally to the actions of the EU administration in its relations with the public, requires that that administration act with care and caution.¹⁶

The title of article 41 of the Charter of Fundamental Rights of the European Union, to which the authors of the analysis refer, is the Right to Good Administration. The second paragraph of the article states that this right includes the right of every person to be heard, before any individual measure which would affect him or her adversely is taken, the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy, and the obligation of the administration to give reasons for its decisions.

Regarding the third part of the article, every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the member states.

The principle of good administration as one of the principles of state administration is mentioned also in the fifth paragraph of article 10, State Administration Structure Law¹⁷ of Latvia. It explicates that the principle includes

¹² The authors refer to cases: *AG van Gerven* in case No. C-16/90, *Eugen Nölle v. Hauptzollamt Bremen – Freihafen* [1991] ECR I-5163; case No. C-269/90 *TU München v. Hauptzollamt München Mitte* [1991] ECR I-5469, para. 14.

¹³ The General Principles of EU Administrative Procedural Law. In-depth Analysis. European Parliament. Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs. The Committee on Legal Affairs, 2015, p. 19.

¹⁴ The Court of Justice of the European Union case No. C-587/17P, opinion of Advocate-General N. Wahl, para. 94.

¹⁵ The General Principles of EU Administrative Procedural Law. In-depth Analysis. European Parliament. Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs. The Committee on Legal Affairs, 2015, p. 12.

¹⁶ The Court of Justice of the European Union judgment of 4 April 2017 in case No. C-337/15P, para. 34.

¹⁷ State Administration Structure Law is the official title of the Law. I would call it the Law on Public Administration.

openness to individuals and society, data protection, the implementation of fair procedures within a reasonable time and other provisions aimed at ensuring that public authorities respect the rights and legal interests of individuals.¹⁸ Pursuant to article 11, paragraph two of this law, if the principle is not conformed to, the private individual whose rights and lawful interests are affected is entitled to require the compliance therewith in accordance with the procedures of administrative procedure. As it appears, the framework of the principle of good governance, which legislators of the European Union and Latvia seek to explain, is very broad and includes several sub-principles.

It follows from the judgments of the Court of Justice of the European Union and from the opinions of Advocates General that the duty of diligence is most often associated with the stage of factual (objective) investigation. An example is a case where the Court answered questions referred by the Supreme Court of Latvia, the Court of Justice adverted, that in view of the obligation imposed upon the customs authorities to exercise *due care*, the authorities are required to consult all the information sources and databases available to them, it is also appropriate to allow the person concerned to provide them with any information.¹⁹ In another case, the Court has examined whether the Commission exercised due care, exhaustively investigated other potential analogue countries and took account of other publicly available statistical information to guide its choice²⁰ to establish whether the information contained in the file in the case was considered with all the care required thereof.²¹

It can be concluded that the content of the principle of duty of care thus fulfilled in essence corresponds to the principle of observance of the rights of a private person enshrined in article 5 of the Latvian Administrative Procedure Law²² (providing that the public authority and the court shall, within the framework of the applicable legal provisions, promote the protection of the rights and legal interests of the individual), and the principle of procedural fairness enshrined in article 14¹ (providing that the public authority and the court, when taking decisions, respect the impartiality and give the participants of the proceedings an adequate opportunity to express their views and submit evidence; an official whose objectivity may have reasonable doubts shall not participate in the decision). The principle of prohibition of arbitrariness is also worth mentioning. It is enshrined in article 9 of the Law, according to which a decision may be based on the facts necessary for its adoption and on objective and rational legal considerations arising therefrom.

Recommendation of Council of Europe on good administration,²³ which summarizes the basic principles of public administration of the member states of Council of Europe, implies nine principles of good administration, but the principle of duty of care or due diligence is not explicitly identified in the text. The most

¹⁸ Valsts pārvaldes iekārtas likums [State Administration Structure Law]. Adopted 06.06.2002. Available: <https://likumi.lv/doc.php?id=63545> [last viewed 20.06.2019].

¹⁹ The Court of Justice of the European Union judgment of 9 November 2017 in case No. C-46/16, para. 54–56.

²⁰ The Court of Justice of the European Union judgment of 10 September 2015 in case No. C-687/13, para. 46.

²¹ Paragraph 51 of the judgment.

²² Administratīvā procesa likums [Administrative Procedure Law]. Available: <https://likumi.lv/ta/id/55567-administrativa-procesa-likums> [last viewed 20.06.2019].

²³ Recommendation CM/Rec(2007)7 of the Committee of Ministers to Member States on good administration. (Adopted by the Committee of Ministers on 20 June 2007 at the 999bis meeting of the Ministers' Deputies). Available: <https://rm.coe.int/16807096b9> [last viewed 14.01.2019].

appropriate of the listed principles could be the principle of impartiality, under which public authorities shall act objectively, having regard to relevant matters only. They shall not act in a biased manner and they shall ensure that their public officials carry out their duties in an impartial manner, irrespective of their personal beliefs and interests.²⁴

Considering the fact that principle of duty of care in the European Union court rulings is used as a synonym for principle of good administration or for the principles deriving therefrom, and considering that in Latvia the principles of good administration and good administrative procedure are enshrined in legislation and already applied in the practice of public authorities and administrative courts, there is no need for special emphasis on the principle of duty of care in Latvia with regard to good governance. It is also not advisable to replace the principle of good administration with the duty of care principle.

3. Duty of Care Principle and Non-contractual Liability of Public Authorities

Examining the application of the duty of care principle in the case law of the European Court of Human Rights and case law of other countries, it can be inferred that the principle is often applied in dealing with the issue of non-contractual liability of the state, namely, liability for omission or negligence of the public authority.

In this sense, the principle is used in the Anglo-Saxon legal system, where the principle of duty of care is a general principle of law, which is applied in both private and public law.²⁵ However, the application of this principle to private and public law differs. In the area of public law, this principle is applied to the obligation of public authorities to exercise its powers properly or to fulfil its obligations. The principle is applied in cases of alleged liability for failure to take preventative action in particular, the failure of public authorities to exercise their legislatively based powers to regulate or to control human activity, or to attempt to do so.²⁶ However, the common law has also recognised special factors applicable to statutory and other public authorities, which may render negative a duty of care that a private individual would owe in apparently similar circumstances, or result in the standard of care owed to a plaintiff by a statutory authority being less than that which would be owed by a private party.²⁷

The US Supreme Court stated: when statutory powers are conferred, they must be exercised with reasonable care – so that if the relevant function is performed negligently, a cause of action may arise (for example, taking measures to prevent the spread of virus from a private mollusc farm). Duty of care does not exist, *inter alia*, for the following reasons: 1) imposing a duty would result in conflicting duties owed by the state to the groups of society with opposite interests; 2) the potential indeterminacy of the class of people the state owes the alleged duty to; 3) the state

²⁴ Article 4 of the Recommendation.

²⁵ *Campbell, J., Roucek, N.* An Introduction to the Civil Liability of Public Authorities – State Legal Conference. *NSWJSchol*, 13, 2014, p. 2. Available: <http://classic.austlii.edu.au/au/journals/NSWJSchol/2014/13.pdf> [last viewed 14.01.2019].

²⁶ See, for example, *The Duty of Care of Public Authorities*. Available: https://www.researchgate.net/publication/314732215_The_Duty_of_Care_of_Public_Authorities [last viewed 20.01.2019].

²⁷ *Campbell, S., Roucek, N.* An Introduction to the Civil Liability of Public Authorities. Available: <http://classic.austlii.edu.au/au/journals/NSWJSchol/2014/13.pdf> [last viewed 08.10.2018].

did not have sufficient degree of control which justifies the imposition of a duty of care; 4) the plaintiff's claim of vulnerability is not a sufficient; 5) the potential liability of the state is disproportionate to any fault that might be attributed to it, in preferring the interests of one group over another, when deciding whether or not to exercise one of the relevant statutory powers; 6) the state's powers in question are quasi-legislative nature.²⁸

In UK, in order to show a duty of care, the claimant must satisfy a threefold test, establishing: 1) that damage to the claimant was foreseeable; 2) that the claimant was in an appropriate relationship of proximity to the defendant; 3) that it is fair, just and reasonable to impose liability on the defendant. These criteria apply to claims against private persons as well as claims against public bodies.²⁹

The UK courts, when deciding whether a duty of care has been respected, verifies whether the person in question was entitled to expect specific duties from the state. For example, there is a conclusion, if a maniac is to be caught, the police have a wide discretion to plan their tactics, but no one has the right to expect his or her special protection. There is no general duty of care owed to individual members of the public by the responsible authorities to prevent the escape of a known criminal or to recapture him. Similarly, the duty of care has not been infringed if police forces have failed to catch some criminal as soon as they might have done, with the result that he went on to commit further crimes.³⁰ In such cases, state liability does not arise and the public authorities' immunity institution is applied.

English judges only recognize a breach of duty of care if a person was in an appropriate relationship of proximity likely to expose him or her to a special risk of damage from the criminal acts of others, greater than the general risk, which ordinary members of the public must endure with phlegmatic fortitude. An example is a case where the plaintiff had passed on information in confidence to the police about the identity of a person implicated in the killing of a police officer, expressing her concern that she did not want the source of the information to be traced back to her. The information was recorded, naming the plaintiff, in a document subsequently left in an unattended police vehicle, which was broken into, and the document was stolen, coming into possession of the person implicated, and the plaintiff was threatened with violence and arson, and suffered psychiatric damage. When deciding on the state's liability, the court found that the police had a duty of care towards the plaintiff, since disclosure of the information could create and, in that particular case, created a special risk (hazard) for her. Moreover, the fight against crime is daily dependent upon information fed to the police by members of the public, often at real risk of villainous retribution from the criminals

²⁸ Revisiting the imposition of a duty of care on public authorities: Regent Holdings. Available: <http://www.nortonrosefulbright.com/knowledge/publications/116719/revisiting-the-imposition-of-a-duty-of-care-on-public-authorities-regent-holdings> [last viewed 08.10.2018].

²⁹ See Judgement of the European Court of Human Rights judgment of 10 May 2001 in case *T. P. and K. M. v. the United Kingdom*, No. 28945/95, para. 46. Available: <https://hudoc.echr.coe.int> [last viewed 14.01.2019].

³⁰ *Hill v. Chief Constable of West Yorkshire* ([1989] Appeal cases at p. 53). Quoted by the judgments the European Court of Human Rights delivered on 28 October 1998 in case *Osman v. United Kingdom* (Application No. 23452/94). See para. 90–91. Available: <https://hudoc.echr.coe.int> [last viewed 14.01.2019].

and their associates.³¹ In another case, the court found liability in negligence where the police had taken a man into custody, knew he was a suicide risk but did not communicate that information to the prison authorities. The man, diagnosed as suffering from clinical depression had committed suicide in remand prison. The police, which had assumed responsibility for the man, had owed a duty of care, which they had breached with the result that his death had ensued.³²

Similarly, in Australia infringement of the duty of care principle is associated with responsibility for negligence of public institutions. The legal institution of immunity of public authorities is applied in Australia and the United Kingdom alike. This is particularly the case for police actions and omissions, but also for other institutions. For example, child protection authorities owe no duty to parents suspected of child abuse, parole board is held to owe no duty of care to someone injured by parolee.

For liability for breach of duty of care, 6 criteria must be met: 1) Reasonable foreseeability (Would a reasonable public authority reasonably foresee that its act or omission, including a failure to exercise its statutory powers, might result in injury to the plaintiff or his or her interests?); 2) Control (Was the authority in a position of control and did it have the power to control the situation that brought about the harm to the injured person?); 3) Vulnerability (Was the injured person or his or her interests vulnerable in the sense that the injured person could not reasonably be expected to adequately safeguard himself or herself or those interests from harm?); 4) Risk to specific class, not public generally (Did the public authority know, or ought it to have known, of an existing risk of harm to the plaintiff or, in some cases, to a specific class of persons who included the plaintiff (rather than a risk to the general public?); 5) Not legislative or quasi-legislative (Would the imposition of the duty of care impose liability with respect to the defendant's exercise of 'core policy-making' or 'quasi-legislative' functions?); 6) No overriding policy (Was there any supervening policy reason that denies the existence of a duty of care?). A public authority is under no duty of care in relation to decisions involving or dictated by financial, economic, social or political factors or constraints.³³

The European Court of Human Rights has also applied the principle of duty of care in its rulings when deciding on the state's responsibility for human rights violations. For example, in the case *Jasinskis v. Latvia* (the applicant's son, who had been deaf and mute since birth, had died after being taken into police custody), the Court pointed out that persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Where the authorities decide to place and maintain in detention a person with disabilities, they should demonstrate special care in guaranteeing such conditions as correspond to his special needs resulting from his disability.³⁴

³¹ *Swinney and another v. the Chief Constable of Northumbria* ([1997] Queen's Bench Reports at p. 464). Quoted by the judgments the European Court of Human Rights delivered on 28 October 1998 in case *Osman v. United Kingdom* (Application No. 23452/94). See para. 93–94. Available: <https://hudoc.echr.coe.int> [last viewed 14.01.2019].

³² *Kirkham v. the Chief Constable of Manchester*. Quoted by the judgments the European Court of Human Rights delivered on 28 October 1998 in case *Osman v. United Kingdom* (Application No. 23452/94). See para. 95. Available: <https://hudoc.echr.coe.int> [last viewed 14.01.2019].

³³ *Lunz, H.* The Duty of Care of Public Authorities. Presentation. January 2006. Available: https://www.researchgate.net/publication/314732215_The_Duty_of_Care_of_Public_Authorities [last viewed 14.01.2019].

³⁴ The European Court of Human Rights judgment of 21 December 2010 in case *Jasinskis v. Latvia*, para. 59. *Latvijas Vēstnesis*, No. 196(4594), 14.12.2011.

The European Court of Human Rights has also stated, that bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. In the opinion of the Court, where an allegation exists that the authorities have violated their positive obligation to protect the right to life in the context of their aforementioned duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party, and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.³⁵

The Latvian legal norms, in essence, provide for the liability of the state administration for the violation of the duty of care. Namely, regarding the first paragraph of the article 4 of the Law on Compensation for Damage Caused by Public Administration³⁶ public authority may also cause the loss through inaction, if the authority had a duty to act, but it did not act unlawfully. Article 10 of the law also provides for the co-responsibility of the victim, that is, the amount of the compensation decreases, or it cannot be received at all if the victim has not tried to eliminate the loss or has contributed to the loss.

Although the Latvian administrative courts, when deciding on compensation for failure or improper performance of the obligations of public authorities, have not indicated a duty of care directly in the text, in several judgments the courts have actually analysed this duty. In particular, this applies to cases in which the applicants are persons in custody (prisoners). For example, in the case where the applicant complained about the prison administration about the fact that he has not been granted a personal care product (toilet paper and toothpaste) for a long time, the court pointed out that the prisoner is vulnerable, he or she is under the absolute control and hence under protection of the state, that is why the state must provide conditions that respect human dignity.³⁷ In essence, the court found that the public authority was obliged to take care of the prisoner but it did not fulfil that duty.

The administrative courts also dealt with the issue of the liability of the national medical authorities that failed to inform the person that hepatitis C virus had been detected in his blood. The court rejected the authority's argument that the absence of a diagnosis of the disease is a reason not to inform the person. The court pointed out that, in the event of infection, the obligation to provide information should be fulfilled as early as possible.³⁸ In this judgment too, the court actually found that

³⁵ The European Court of Human Rights judgment of 28 October 1998 in case *Osman v. United Kingdom* (No. (87/1997/871/1083), para. 116. Available: <https://hudoc.echr.coe.int> [last viewed 14.01.2019].

³⁶ Valsts pārvaldes iestāžu nodarīto zaudējumu atlīdzināšanas likums [Law on Compensation for Losses Caused by State Administration]. Available: <https://likumi.lv/ta/id/110746-valsts-parvaldes-iestazu-nodarito-zaudejumu-atlidzinasanas-likums> [last viewed 20.06.2019].

³⁷ Republic of Latvia Supreme Court judgment of 20 April 2012 in case No. SKA-372/12, para. 13. Available: www.at.gov.lv [last viewed 14.01.2019].

³⁸ Republic of Latvia Supreme Court judgment of 26 June 2008 in case No. SKA-155/08, para. 30. Available: www.at.gov.lv [last viewed 14.01.2019].

there was a duty of care – the authorities had an obligation to inform the person about the detected virus.

Admittedly, the fact that the term ‘duty of care’ is not used in rulings of Latvian courts has no effect on the quality of judicial decisions. However, it could, in principle, be applied to create a separate category of cases with specific test criteria.

In the cases of such categories, the legal institution of institutional immunity discussed above should also be introduced (possibly finding a more appropriate Latvian term³⁹). It should be noted that the findings that a public authority cannot take responsibility if it takes action within the framework of the duty of care could be found in the decisions of the Latvian courts. For example, there is a case in which the court rejected the claim against the Orphan’s and Custody Court for interference in the applicant’s private life, stating that the Orphan’s and Custody Court is obliged to objectively and completely establish the circumstances of the parent’s ability to take care of the child.⁴⁰

The legal institution of immunity can also be found in legal norms of Latvia. For example, the article 22 of the law “On Police”⁴¹ provides that a police officer shall not be liable for economic and physical harm done, within the scope of authority of the service, to a person violating the law who does not submit or resists at the moment of arrest. It should be mentioned here that in such a case, the immunity of the state (a police) should only exist if the police obviously do not violate the principle of proportionality.

Summary

1. It would be advisable in Latvian language not to use the term *pienākums ņemt vērā ierēdņu intereses* [duty to have regards to the interests of civil servant], but only the term *rūpības (gādības) pienākums* [duty of care]. The term *pienācīgas rūpības princips* [principle of due diligence] which is found in the European Union database may also be used.
2. Considering that the duty of care principle in the European Union court rulings is used as a synonym for the principle of good administration or for the principles deriving therefrom, and considering that in Latvia principles of good administration and good administrative procedure are enshrined in legislation and are already applied in the practice of public authorities and administrative courts, with regard to good governance there is no need for special emphasis on the duty of care principle in Latvia. It is also not advisable to replace the principle of good administration with the duty of care principle.
3. When deciding on the state’s liability for omission or negligence, the duty of care principle, which is widely used in the Anglo-Saxon legal system, is also applied in Latvia in substance. The use of the term ‘duty of care’ in cases of

³⁹ In principle, the term ‘immunity’ is used in the legal language, see, for example likums “Par Līgumu par Protokola par Eiropas Kopienu privilēģijām un imunitātēm izpildīšanu Latvijas Republikā” [Republic of Latvia law “Agreement Implementing the Protocol on the Privileges and Immunities of the European Communities in the Republic of Latvia]. Available: <https://likumi.lv/ta/id/88809-par-ligumu-par-protokola-par-eiropas-kopienu-privilegijam-un-imunitatem-izpildisanu-latvijas-republika> [last viewed 20.06.2019].

⁴⁰ Administrative case No. A420697010. Unpublished.

⁴¹ Likums “Par policiju” [Republic of Latvia law “On Police”]. Available: <https://likumi.lv/ta/id/67957-par-policiju> [last viewed 20.06.2019].

this category would facilitate the establishment of specific test criteria for such cases.

4. For cases on the state's liability for omission or negligence, the legal institute of institutional immunity should be established.

Sources

Bibliography

1. Administratīvā procesa likuma komentāri. A un B daļa [Comments upon Administrative Procedure Law. Parts A and B]. Collective of authors, scientific ed. Dr. iur. *J. Briede*. Rīga: Tiesu namu aģentūra, 2013.
2. All Answers Ltd, 'Development of the principles of tort law'. January 2019. Available: <https://www.lawteacher.net/free-law-essays/contract-law/development-of-the-principles-of-tort-law-contract-law-essay.php?vref=1> [last viewed 19.01.2019].
3. *Campbell, J., Roucek, N.* An Introduction to the Civil Liability of Public Authorities – State Legal Conference. *NSWJSchol*, 13, 2014. Available: <http://classic.austlii.edu.au/au/journals/NSWJSchol/2014/13.pdf> [last viewed 14.01.2019].
4. *Cossart, S., Chaplier, J., Beau de Loménie, T.* The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All. *Business and Human Rights Journal*, Vol. 2, Issue 2, July 2017, pp. 317–323.
5. The Duty of Care of Public Authorities. Available: https://www.researchgate.net/publication/314732215_The_Duty_of_Care_of_Public_Authorities [last viewed 20.01.2019].
6. The General Principles of EU Administrative Procedural Law. In-depth Analysis. European Parliament. Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs. The Committee on Legal Affairs, 2015. Available: http://www.europarl.europa.eu/RegData/etudes/IDAN/2015/519224/IPOL_IDA%282015%29519224_EN.pdf [last viewed 17.10.2018].
7. *Lunz, H.* The Duty of Care of Public Authorities. Presentation. January 2006. Available: https://www.researchgate.net/publication/314732215_The_Duty_of_Care_of_Public_Authorities [last viewed 14.01.2019].

Normative Acts

1. Administratīvā procesa likums [Administrative Procedure Law]. Available: <https://likumi.lv/ta/id/55567-administrativa-procesa-likums> [last viewed 20.06.2019].
2. Valsts pārvaldes iestāžu nodarīto zaudējumu atlīdzināšanas likums [Law on Compensation for Losses Caused by State Administration]. Available: <https://likumi.lv/ta/id/110746-valsts-parvaldes-iestazu-nodarito-zaudejumu-atlīdzinasanas-likums> [last viewed 20.06.2019].
3. Valsts pārvaldes iekārtas likums [State Administration Structure Law]. Adopted 06.06.2002. Available: <https://likumi.lv/doc.php?id=63545> [last viewed 20.06.2019].
4. Likums "Par policiju" [Republic of Latvia law "On Police"]. Available: <https://likumi.lv/ta/id/67957-par-policiju> [last viewed 20.06.2019].
5. Charter of Fundamental Rights of the European Union. (2016/C 202/02). Available: <https://eur-lex.europa.eu/legal-content/LV/TXT/?uri=CELEX%3A12012P%2FTXT> [last viewed 17.10.2018].
6. Likums "Par Līgumu par Protokola par Eiropas Kopienu privilēģijām un imunitātēm izpildīšanu Latvijas Republikā" [Republic of Latvia law "Agreement Implementing the Protocol on the Privileges and Immunities of the European Communities in the Republic of Latvia"]. Available: <https://likumi.lv/ta/id/88809-par-ligumu-par-protokola-par-eiropas-kopienu-privilegijam-un-imunitatem-izpildisanu-latvijas-republika> [last viewed 20.06.2019].

Recommendations

1. Recommendation CM/Rec(2007)7 of the Committee of Ministers to member states on good administration. (Adopted by the Committee of Ministers on 20 June 2007 at the 999bis meeting of the Ministers' Deputies). Available: <https://rm.coe.int/16807096b9> [last viewed 14.01.2019].

Case Law

1. Republic of Latvia Supreme Court judgment of 26 June 2008 in case No. SKA-155/08, para. 30. Available: www.at.gov.lv [last viewed 14.01.2019].

2. Republic of Latvia Supreme Court judgment of 20 April 2012 in case No. SKA-372/12, para. 13. Available: www.at.gov.lv [last viewed 14.01.2019].
3. Administrative case No. A420697010. Unpublished.
4. Judgement of 10 May 2001 of the European Court of Human Rights in case *T. P. and K. M v. the United Kingdom*, No. 28945/95, para. 46. Available: <https://hudoc.echr.coe.int> [last viewed 14.01.2019].
5. Judgement of 28 October 1998 of the European Court of Human Rights in case *Osman v. United Kingdom*, No. 23452/94. Available: <https://hudoc.echr.coe.int> [last viewed 14.01.2019].
6. Judgement of 21 December 2010 by the European Court of Human Rights in case *Jasinskis v. Latvia. Latvijas Vēstnesis*, No. 196(4594), 14.12.2011.
7. Judgment of the Court of Justice of the European Union in case No. C-220/13 P, para. 25 and 69, case No. C-496/08 P, paras. 28 and 60. Available: www.curia.europa.eu [last viewed 17.10.2018].
8. The Court of Justice of the European Union judgment of 4 April 2017 in case No. C-337/15P, para. 34. Available: www.curia.europa.eu [last viewed 17.10.2018].
9. The Court of Justice of the European Union judgment of 9 November 2017 in case No. C-46/16, para. 54–56. Available: www.curia.europa.eu [last viewed 17.10.2018].
10. The Court of Justice of the European Union judgment of 10 September 2015 in case No. C-687/13, para. 46. Available: www.curia.europa.eu [last viewed 17.10.2018].
11. The Court of Justice of the European Union case No. C-184/16, opinion of Advocate-General M. Szpunar, para. 72. Available: www.curia.europa.eu [last viewed 17.10.2018].
12. The Court of Justice of the European Union case No. C-684/16, opinion of Advocate-General Y. Bot, para. 40. Available: www.curia.europa.eu [last viewed 17.10.2018].
13. Application to the Court of Justice of the European Union, case No. T-778/16. Available: www.curia.europa.eu [last viewed 17.10.2018].
14. The Court of Justice of the European Union case No. C-587/17P, opinion of Advocate-General N. Wahl, para. 94.
15. Judgment of 7 November 2013 of the US Supreme Court.
16. Opinion of Advocate General Bot delivered on 29 May 2018 in case No. C-684/16 (para. 40) and C-619/16 (para. 42) of the European Court of Justice. Available: www.curia.europa.eu [last viewed 17.10.2018].

Other Sources

1. LZA Terminoloģijas komisijas akadēmiskā terminu datubāze *AkadTerm* [Latvian Academy of Sciences academic terminology database *AkadTerm*]. Available: <http://termini.lza.lv/term.php?term=duty%20of%20care&lang=EN> [last viewed 17.10.2018].
2. The General Principles of EU Administrative Procedural Law. In-depth Analysis. European Parliament. Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs. The Committee on Legal Affairs, 2015, p. 12.