

UNIVERSITY OF LATVIA  
LAW FACULTY  
CIVIL LAW DEPARTMENT

SUMMARY  
of the doctor's Thesis

**Contradictions between Forest Ownership Rights  
and Rights to Live in a Favourable Environment**

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## Topicality of the theme

The growing importance of environmental issues nowadays and the conclusions about greatly harmful consequences of unsatisfactory environmental management were the reasons for choosing the given subject for doctoral thesis. To ensure sustainable development it is necessary to look for new solutions to achieve balance between the economic development and nature conservation. The thesis can be seen as a contribution to examining the existing situation and finding new theoretical possibilities aimed at raising the level of nature conservation in Latvia, while providing for the right of the public to enjoy favourable environment.

The topicality of the theme chosen for the Thesis is characterised by the situation in the field of environment conservation in Latvia. One should think of the ways to replace achievement of short-term goals at the expense of environment by a long-term and complex approach to the utilization of natural environment. For the development it is important that the sustainability principle is considered both by the state in setting development priorities and by private individuals, including forest owners, in managing their forests.

Only ownership rights to forest have been considered in the Thesis because in the forest sector they most obviously reveal the contradictions between the owner's rights to benefit from his/her forest and the right of general public to a favourable environment, which is related to the protection of environmental values existing in the forest and the preservation of them for the present and future generations. Two indices characterize the importance of the forest sector, first, the area of forestlands and, second, the role of the forest sector for the national economy. In Latvia, the forest area is 2 950 267.3 hectares, which account for 45% of the total territory of the country.<sup>1</sup> So, forests cover almost one half of the country's territory, and this factor is of importance for the development of the national economy. The statistical data mentioned in the Thesis prove the significance of the forest sector in the development of economy. These figure show the interest of forest owners in gaining benefit from their property because there is a high demand for forestry products on the market

Following the ownership status the forests have been divided in the following way: state forests – 1 481 715.9 hectares or 50.2%, local authorities have 80212.9 hectares or 2.7 %, other forest owners have 1 388 338.5 hectares or 47.1%.<sup>2</sup> Such a structure of forest ownership in Latvia is a result of the land reform as before regaining independence all the forests were owned by the state only. Forest owners acquired forestlands in their property by privatising them in the course of the land reform. Yet, unfortunately, the new forestland

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<sup>1</sup> *Gadskārta. Valsts meža dienests. (Annual Ring. State Forest Service) 2006.* Rīga, B.i., 2006, p. 30

<sup>2</sup> *Gadskārta. Valsts meža dienests. (Annual Ring. State Forest Service) 2006.* Rīga, B.i., 2006, p. 30

owners lacked knowledge and understanding of sustainable forest management. Consequently, there were a lot of illegalities in forests, and the forests were felled for the purpose of gaining profit.

While considering the issues on the procedure of solving the existing contradictions, the author of the Thesis has discussed both the policy formulation process and the implementation of viewpoints included in the political or legally non-binding (called also soft-law) documents in drafting the regulatory enactments. Enforcement procedures of legal provisions play a significant role in solving contradictions since at this stage it is possible to state if the sources of ecological rights achieve the aim for which they are created, therefore the instruments of environmental law have been discussed in the Thesis.

It should be mentioned that forests have a many-sided meaning in the environmental protection, especially regarding both the use of forest wood and non-wood values and the impact of forest on climate changes. However, in the given Thesis the author has not touched upon the issues of climate changes because of their specific features and the limited scope of research. It is similar when speaking about the concept of sustainable development – besides economic and ecological issues there exist also social and sometimes separately identified cultural issues that also should be taken into consideration for balancing the diverse interests. Though within this Thesis the economic development is discussed only in connection with one aspect – the implementation of forest ownership rights and balancing them with the measures of environment conservation and improvement since the economic development and the resultant wish to use forest resources unlimitedly, and the need of environment conservation are currently the dominant aspects in Latvia and also elsewhere in the world.

### **Aim and tasks of the Thesis, structure, research methods**

**Aim of the Thesis.** The author considers contradictions between the ownership rights to forest and the public right to enjoy agreeable environment. Having studied the nature of both the ownership rights and the right to enjoy agreeable environment, the author has set an aim to offer solutions how to balance the right to an enjoyable environment and the execution of ownership rights in the forest sector while moving towards sustainable development.

The aim of the thesis is not only to clarify the existing situation and the drawbacks but also to study environmental legal instruments that would be applicable for balancing the contradictory interests. In addition to the traditional and more widely used direct regulation or command and control instrument, in the Thesis a specific attention is paid also to

environmental contracts, to the instruments based on the principles of market economy and planning instruments.

**Tasks of the thesis** are to analyse the contents of the forest ownership rights and the rights to live in a favourable environment and a connection between these rights and the concept of sustainable development. Considering the differences in legal protection of the ownership rights and rights to enjoy a favourable environment one of the tasks of the thesis is to examine the contradictions between the two above-mentioned rights and propose ways how to minimize these contradictions. Environmental law instruments are analysed to find alternatives for traditional direct regulation or command and control instrument. As concluded in many scientific writings, in many cases the latter instrument is inefficient in reaching the objectives of environmental law. Another task of the thesis is to find ways how to improve the solution-finding process for these contradictions. Author has studied the procedural aspects of solution-finding for contradictions and has stressed the participation rights granted in legislation for the public in all stages of solving contradictions.

**Structure.** The Thesis consists of 18 chapters, including the introduction and conclusion.

The Thesis relatively consists of four sections. The first section is dedicated to general issues of the research such as substantiation of the choice of the theme, structure, sources and the methods used in the research. The principal issues are discussed in the second section, namely, how to understand the concept of sustainable development, what the right to an agreeable environment and ownership rights to forest mean. The nature of these principal issues or basic concepts is dealt with and the solutions for improving the existing legal situation are proposed. In the third section the nature or content of the contradictions are clarified and the legal procedure is examined, considering the drafting of both non-legally binding documents and the regulatory enactments, while emphasizing the participation interests guaranteed for the public in regulatory enactments in the two processes. The fourth section deals with the search for solutions in order to reduce the existing contradictions between the right to live in an enjoyable environment and the ownership rights to forest. In analysing different instruments, direct regulation or the command and control instrument has been considered, particularly in examining the issues regarding the competences of the public administration offices. Economic instruments, environmental contracts, planning instruments and their improvement possibilities in Latvia are considered separately.

**Research methods.** The complex approach has been applied in the Thesis as the environmental law cannot be completely considered as pertaining either to public or private rights. Although the essentials of public law prevail in environmental rights, such spheres of

private law as ownership rights, obligations law, indemnity and others have an essential role, too. The given thesis focus on the interrelations between the public and private law are as the enforcement of forest ownership rights and the restrictions belong to the issues of private law whereas state activities in providing for the public rights to live in an agreeable environment belong to the sphere of public law. The aspect of interaction between the public and private law becomes evident when analysing the environmental law instruments in diminishing the said contradictions.

Interdisciplinary approach is another kind of the complex approach applied in the Thesis. The issues connected with natural sciences, economics, politics and communication sciences are essential within the Thesis. By making use of the interaction between the law and natural sciences it is possible to clarify the importance of forest as a natural resource and its role in providing the right for the public to an enjoyable environment. By making use of the interaction between the economics and law it is possible to speak about economic instruments.

In the sphere of environmental law it is necessary to emphasize the role of the political science in connection with the law because it is characteristic of the environmental law that it involves a large number of procedures at the political level and legally non-binding documents adopted as a result of it. Communication science has a significant role in enforcement procedure of the right to a favourable environment because provision of information about the environment and public rights to get involved in decision taking are connected with provision of communication between the public and the decision takers.

Historical method has been also applied in the Thesis. Taking into consideration the dynamic nature of the environmental law, the historical method is important in developing understanding of such basic issues as forest ownership, sustainable development and the right to live in a favourable environment.

### **Theoretical and practical importance of the Thesis**

The theoretical importance of the thesis can be characterized by saying that there are no scientific works about improving situation about reaching sustainable development in Latvia. Nobody has studied contradictory interests and possibility to improve the use of environmental law instruments. It has to be noted, that there are few scientific works about important issues in environmental law in Latvia. In spite of the fact that right to live in a favourable environment is guaranteed in the Article 115 of the Constitution of Latvia, there is

no research done about substantial aspects of this right. There is not enough research about the importance of the concept of sustainable development in environmental law.

It is important that in analysing the environmental law instruments new amendments of these instruments on the international and EU level are examined in the light of possibilities to use these tendencies in the development process of environmental law instruments in Latvia.

In describing the importance of the research results and contribution to the environmental law, it must be pointed out that both in the Constitution of Latvia guaranteed basic rights – ownership rights and rights to favourable environment, and contradictions between these rights have been examined regarding the forest sector. The definition of the rights to favourable environment are formulated proceeding from the results of this research, suggestions are given to include this definition in Environmental Protection Law, EU Constitution and the Aarhus Convention.

As to ownership rights, it is concluded that the Forest Law too narrowly defines the state's role in ensuring sustainable forest management; according to the said law that state has the same rights and obligations in forest management and utilization as other forest owners. Several aspects of forest ownership rights are analysed in the thesis, concluding that there does not exist legal regulation for all subjects in the forest sector, for instance, the forest holders.

Analyzed are the theoretical possibilities to use legally non-binding documents like sources of law, at the same time trying to answer the question, whether legally non-binding documents are sources of law in environmental law. The author has also examined the possibilities to use environmental agreements in Latvia. Research is done about the economic instruments and planning instruments and their use and improvements to reach the environmental conservation goals; for example, it is suggested to approve territory plans by issuing an administrative act rather than a legal act. In case if territory plans are adopted by way of an administrative act there are better possibilities for the public to apply to the court of law in solving environmental issues. These research results are the most important, but there are also other less important issues analysed in the thesis .

**Practical importance of the thesis.** No matter that the thesis are theoretically oriented, the practical importance is connected with the possible legal solution of controversial issues. Particular solutions and possible innovations can be found in this thesis concerning forest management and utilization rights and the legal protection of the rights to favourable environment. Thesis can be used first of all in public management practice in environment conservation and the forest sector, paying attention to the problems identified in the thesis, for

example, public participation rights in making environmental plans, programmes, strategies. Secondly, this thesis can be used in studying issues of environmental law. Theoretical findings about the legal nature and possible application of the legally non-binding documents in environmental law could be useful either for public authorities and the courts of law.

### **Aprobation of the research results**

The results of the research are disseminated in scientific publications and discussed in international conferences, presenting research papers and discussing the research results. The list of the publications and the conferences attended are attached to this summary.

### **Characterization of the sources, literature and legal sources used in the Thesis**

As the topic researched in the Thesis requires broader approach than only consideration of the legal system of Latvia, the leading political and legal approaches in the world and the European Union have been analysed. Besides legislative acts the author of the Thesis has also researched the most essential legally non-binding documents, their content and influence on the main issue researched in the Thesis.

As regards the choice of legal resources it should be remarked that the research is mainly based upon the study of regulatory enactments. The most essential part of the analysis is based upon the study of international regulatory enactments and those enforced in the European Union and Latvia. The Thesis is mainly based upon theoretical viewpoints and then conclusions are drawn in the way of interpretation about the possible enforcement of a regulatory enactment in solution of specific problems.

Less attention has been paid to the court practice as a legal resource because the court practice is relatively small regarding the issue researched in the Thesis, though there are separate essential adjudications by the Constitutional Court of Latvia and other courts of Latvia. Court practice is an essential legal resource in the European Union Law, but the court practice has not been the main object of research in the Thesis. Court practice has been used as one of the means in proving the theses set but not as a legal resource to be researched.

The author of the Thesis has used works by Latvian authors, for example, works by J. Strautmanis, K. Meseršmits, S. Meiere, E. Ūsiņa and I. Čepāne. It should be noted that in Latvia there is a comparably narrow range of literature concerning the environmental law therefore the author has used works by foreign authors that have a significant role in the development of the environmental law. The author has studied works by such authors as L.Krämer, A. Kiss, D.Shelton, P.Sand, A.Boyle, P.Birnie and others. Altogether the author

has used 101 literature resources, 74 regulatory enactments and 61 court and other practice sources, legally non-binding documents including.

### **Short description of the research**

#### **4. Concept of Sustainable Development**

Examining contradictions between the public right to live in a favourable environment and the owner's rights to gain benefit from his property, the author has considered the connection between these contradictions and the concept of sustainable development. Sustainable development is the aim of the environmental law that any country of the world, including Latvia has to strive for. The concept of sustainable development is as a framework within which the contradictions between the forest ownership and the right to a favourable environment have been solved. Therefore the author of the Thesis has considered both the development process of the concept of sustainable development and the comprehension of the nature of sustainable development. The author has drawn conclusions that the basic idea of sustainable development is to balance economic aspects, environmental protection, social and cultural aspects. The author has also considered the issue about equal opportunities for development of the present and future generations, and she has concluded that the rights of the future generations are not legally protected.

The concept of sustainable development according to the main topic of the Thesis has been connected to the forest sector by studying sustainable forest management. Ministers' conferences on forest protection in Europe and the EU Forestry Strategy of 1998 and its implementation have a significant role in the development of sustainable forest management.

#### **5. Substantial Right to a Favourable Environment**

Studying the right to a favourable environment the author of the Thesis has considered both the substantial and procedural aspect of these rights.

In spite of the fact that the right to a favourable environment is one of the human rights, legislative provisions do not reveal the content of these rights and therefore there are different approaches to comprehending and explaining these rights. The right to a favourable environment in theory refers to all three generations of human rights: the belonging to the first-generation human rights is indicated by the fact that the implementation of other human rights including the right to life is not possible in the degraded environment. The belonging to



the second-generation human rights is indicated by the connection of the right to a favourable environment and the right to welfare and health. It should be remarked that the theorists have a dominating opinion that the right to a favourable environment belongs to the third-generation human rights because of its collective character and relatively recent emergence. There has been also a proposal to include the right to a favourable environment into the catalogue of human rights as separate human rights. The author has drawn a conclusion in the Thesis that the right to a favourable environment as a separate human right should be included into the first-generation human rights because 1) the provision of these rights is a prerequisite for the implementation of all the other human rights, the right to life including, 2) European court of Human Rights derives these rights from the right to inviolability of the private life.

It is concluded that in order to provide legal protection for the right to a favourable environment it is necessary to develop the legislative provision that would reveal the content of this right: on the international level this provision should be included in the Aarhus Convention of 1998 on access to information, involvement of the society in decision taking and access to court on environmental issues, on the level of the European Union – in the EU Constitution, in Latvia – in Law on Environmental Protection, the draft of which is at the stage of development (see the draft provision under the 2 and 3 item of the Summary).

## **6. Procedural Aspect of the Right to a Favourable Environment**

Focusing on the procedural regulation of the right to a favourable environment the Aarhus Convention states that the procedural implementation of the right to a favourable environment takes place by providing access to the environmental information for the society and the right to take part in making the following decisions connected with the environment:

- 1) In decision taking on specific activities that are listed in Appendix 1 of the Aarhus Convention or that can essentially affect environment in other ways;
- 2) In drafting plans, programmes and policies connected with the environment;
- 3) In drafting regulatory enactments and/or generally applicable legally binding regulations.

Procedural implementation of the right to a favourable environment includes also the public right to judicial remedy in connection with environmental issues. The right to judicial remedy in connection with the infringement of the right to a favourable environment includes the right to apply to the Administrative Court and also to the Constitutional Court of the Republic of Latvia. Taking into consideration that the Aarhus Convention prescribes

possibilities for dispute settlement in another independent and impartial institution besides court, it is possible that such an institution in the future Latvia could be an ombudsman.

## **7. Ownership Rights**

Forest as an object of the natural environment serves for providing the public right to a favourable environment but at the same time it is also an object of the ownership rights. The ownership rights being the first-generation human rights have been protected in international, the EU and national legislative provisions.

The author has considered both the general issues connected with the comprehension of the concept of ownership rights and forest ownership rights. The author of the Thesis has studied the explanation of the forest as the subject of ownership rights and also kinds of subjects of the forest ownership rights. Speaking about the forest ownership rights in Latvia besides forest owners there are also lawful forest possessors and actual forest possessors or holders. Legislative provisions regulating forest management and utilisation provide for the rights and responsibilities only for the forest owners and lawful forest possessors. The author indicates that neither the Forest Law nor any other legislative provisions settle the scope of the rights and responsibilities in forest management of the actual forest possessors or holders who became such as a result of the land reform. But they should have the same amount of rights and responsibilities as the forest owners and lawful forest possessors, prescribing also the opportunity to stop the lease relations if there is infringement of forest management.

The issues connected with the forest possession by private persons, state and local authorities have also been discussed in the Thesis. In the research on the state owned forests it is stated that regulatory enactments do not regulate the issue about the management of the land that is within jurisdiction of the state which is not covered by forest. In the previous years it was incorporated in the state forest land but according to the Forest Law adopted in 2000 it is not anymore considered as a forest land. The author has also offered proposals on possibilities to enlarge the area of the state owned forest land taking it under state possession as compensation for the damage done to the forest. The different role of the state as a forest owner has been emphasized because the state besides the function of a forest owner carries out also the public law functions. Focusing on the management of the forests owned by local authorities it is emphasized that no specific forest management regime is stated for this subject. But local authorities can influence the “fate” of the forest within their territory with the help of territory planning. This proves that local authorities have an essential role in balancing the forest ownership rights and the public right to a favourable environment.

The amount of rights and responsibilities in forest management is different for private persons that can be either physical entities or legal entities of private rights in comparison with the amount of rights and responsibilities of the state and local authorities. Private persons carry out only functions of private rights in management of their forests. However, also the private persons have a liability to maintain preservation and protection of forest as a part of natural environment. It should be noted that the issue of balancing between the ownership rights and the public right for a favourable environment is mainly connected with ownership rights of private persons and provision of their reasonable utilisation.

Restrictions on ownership rights have a significant role in balancing between the ownership rights and the right to a favourable environment. The author has considered general issues on understanding of the content of restrictions on ownership rights and their role in providing environmental protection. The author of the Thesis has come to the conclusion that restrictions on ownership rights set in regulatory enactments are the most essential in providing environmental protection.

## **8. Comprehension of the contradictions between the forest ownership rights and the right to a favourable environment and general characterisation of the diminishing process**

The fact that the forest is not only the element of natural environment but also an object of the ownership rights is the reason for existing contradictions between the interest to protect and preserve the forest environment and the interest to gain economic benefits from utilisation of the forest resources.

It is stated that the nature of these contradictions is connected with the economic benefits the owner gains from the forest and the restrictions that are set in order to preserve the forest environment. The economic benefit that the owners gain from felling forests is a significant guarantee for the economic development including the welfare of a forest owner especially in the time when the financial state takes an important role in the value scale of the society. The right to environment is expressed as the right to protection and preservation of the environment not deteriorating the state of the environment, and it is connected with the restrictions on forest ownership rights.

It is concluded that unequal legal protection of the contradicting rights is to be blamed for the existence of these contradictions and their inferior solution. This situation could be improved by having comprehension of the nature of these contradictory interests considering

the possibilities of protecting them legally and applying the corresponding instruments of the environmental rights.

When speaking about the solution of the contradictions the author has considered not only the procedural solution of the contradictions but also the specific environmental law instruments.

The procedure course has been analysed taking into consideration the research in political sciences on the following stages in the course of the development of politics: 1. Defining the problem; 2. Formulation of the politics (drafting legally non-binding documents); 3. Issuing of regulatory enactments, setting reachable aims and applicable instruments; 4. Introduction of politics (state administration activities); 5. Assessment of politics. Taking into consideration that the environmental law instruments which serve for introduction of the environmental policy are closely connected both with the development procedure of legally non-binding documents and the drafting procedure of regulatory enactments, it is not possible to consider these instruments separately. Besides the public participation rights in decision making on the issues connected with the environment refer not only to application of legislative provisions in certain cases but also to the development stages of regulatory enactments and legally non-binding documents. This proves that procedural implementation of the right to a favourable environment has been implemented during the whole course of the development of the policy and therefore the author of the Thesis has considered not only the environmental law instruments but also the drafting procedure of legally non-binding documents and regulatory enactments.

Paying attention to the environmental law instruments it has been stated that there exists a large diversity of them and there are different approaches in classification of them. The conclusion has been drawn that the environmental law instruments are at the stage of changes and development. The instruments of financial initiative and motivating instruments that are based on participation have been emphasized recently instead of traditional instruments of direct regulation called also instruments of command and control. The author has not considered the whole range of the environmental law instruments within this Thesis. The research includes separate environmental law instruments, environmental contracts, economic instruments and planning instruments.

## **9. Significance of legally non-binding documents and their drafting procedure**

Proceeding from the revelation of the content of contradictions between the forest ownership rights and the right to a favourable environment and general characterisation of the

solution of these contradictions to one of the stages in the procedure of solution of the contradictions, a separate section of the Thesis is dedicated to the significance of legally non-binding documents and their drafting.

Significant documents related to the environmental law with a strong moral power have been adopted most frequently at international level where legally non-binding documents have been drafted by reaching an agreement among countries. As one of the drawbacks in the application procedure of legally non-binding documents could be mentioned the lack of mechanism for general and efficient procedure of dispute settlement and embodiment of this procedure.

Taking into consideration the fact that many legally non-binding documents have been adopted in environmental law, the author of the Thesis has studied the issue on belonging of legally non-binding documents at international level to legal sources and the possible direct application. It has been concluded that it is possible to apply legally non-binding documents both as supplementary legal sources and independent legal sources. As the basic ideas of regulatory enactments, that are planned to be issued in the future, have already been set in legally non-binding documents, then these documents could be explained as development materials of regulatory enactments or a legal doctrine and so they could be counted as supplementary legal sources. Following the enumeration of legal sources given in the Administrative Procedure Law, legally non-binding documents can be considered as legal or specialised literature.

It has been stated that legally non-binding documents can be referred to independent legal sources, explaining them as an element of the common law or the expression of the general principles of law. The principles included in legally non-binding documents as general principles of law can be treated following the natural law doctrine because the approach of the positive law doctrine excessively restricts the dynamic nature of the environmental law. Besides general principles of law included in legally non-binding documents can be referred to formally legally non-defined principles.

It is stated in the Thesis that the development procedure of legally non-binding documents has not been regulated in the legislative provisions but the public participation rights in the development procedure of plans, programmes and policies connected with the environment are guaranteed by the Aarhus Convention. And also the state has a certain obligation to carry out relevant practical and/or other activities in order to involve the public in development of plans and programmes connected with the environment basing on the principles of publicity and reliability and providing the necessary information to the society. It has been concluded that both the Environmental Advisory Board and the Forest Advisory

Board though it is necessary to specify the amount of rights and responsibilities of both these institutions so that they could become a real instrument in getting to know the public viewpoint and in providing the public participation in decision taking also at the stage of drafting legally non-binding documents.

#### **10. Drafting procedure of regulatory enactments and public participation rights in this procedure.**

The procedure of the development of regulatory enactments has been considered because it is one of the stages in the procedure of solution the common contradictions between the ownership rights and the right to a favourable environment and also because at this stage similarly to the drafting course of legally non-binding documents the public participation rights are guaranteed in legislative provisions.

First of all the author has considered different kinds of regulatory enactments, emphasizing the most essential regulatory enactments that are related to the forestry and their drafting peculiarities on international, EU and national level. It has been stated that public participation rights are included in the drafting procedures of regulatory enactments both at EU and national level though at the EU level there does not exist the legal order providing such rights to the public. Rights to participate in the course of drafting regulatory enactments have been set in legislative provisions at national level though in practice the public participation is exercised indirectly through the work of the elected Members of the Parliament. In the draft Environmental Protection Law the public participation rights in the drafting course of regulatory enactments have been specified so that these rights have been attributed only to the drafting course of the environmental regulatory enactments. The proposal has been brought forward to delegate the coordination of the public participation in the drafting course of the regulatory enactments to the Environmental Advisory Board and the Forest Advisory Board similarly as it is with the drafting procedure of legally non-binding documents.

Application of environmental law instruments is the next stage in solution of the contradictions between the forest ownership rights and the right to a favourable environment.

#### **11. The role of the state in application of legislative provisions**

Application of regulatory enactments and other legal sources at the level of public management is executed through the administrative procedure that regulates legal relations

between the state on one hand and a private person on the other hand. First of all in section 11 of the Thesis the author has studied the system of public administration, namely the author has considered those institutions that carry out different functions in the forest sector. The author has taken the enumeration of state functions in the Forest Policy of Latvia as the basis for the review of public administration institutions, including standard, supervisory and supportive functions as the state public functions and the ownership function that the state executes as the subject of private law.

Ministry of Agriculture mainly executes the state standard function in the forest sector and this function is connected with formulation of the forest policy and development of legislative acts in order to implement it by providing information and possible participation by all the groups interested in this procedure. Supervisory function includes enforcement of the application of regulatory enactments and the control over the forest management and utilisation and compliance with regulatory enactments in all the state forests. It has been concluded that the State Forest Service executes this function but quite often the competence of this institution is not strictly separated from the competence of the State Environmental Service. It has been concluded that in order to improve the system of public administration one should consider the possibility of committing the State Forest Service and the State Environmental Service to the care of one ministry, the most suitable could be the Ministry of Environment or to merge both these institutions.

Supportive function includes the activities that the state with its institutions and/or its finances execute to create the conditions for stabilisation of forest long-term functions and to promote the development of the private sector. The implementation of this function is partly executed by the State Forest Service. One should particularly emphasize the scientific forest management and development of the consultation system.

After research of the structure of public administration and the problematic aspects the author has considered the diversity of application of legislative provisions in the environmental law. It has been stated that the method of direct regulation or the command and control method has been practically applied in Latvia on issuing administrative acts. It has been concluded that the dominating role of the state in these legal relations cannot be considered as appropriate to the balancing of the contradictory interests because the balancing of different interests requires application of more democratic administration methods that are connected with representation of all the interests.

The situation, in which environmental contracts have been used to reach the environmental aims, is oriented towards cooperation between the state and a private person. In such a situation a private person should transform from an obeying passive person into a

thinking person who in cooperation with the state seeks for the solutions corresponding to the aims of the environmental protection that satisfy the both parties.

Implementation of the administrative procedure in connection with the forest sector has been considered in detail in a separate section where the author has studied peculiarities of the administrative acts and the transformation procedure of the forest land as an example of a problematic case which is connected with the process of territorial planning. It has been stated that there is insufficient cooperation between the society, local authorities and the State Forest Service. The author has briefly considered also such kind of administrative procedure implementation as the actual action.

The author has mentioned the administrative contract as one of the kinds of implementation the administrative procedure that is one of the kinds of the public law contracts which a public administration office signs with a private person on behalf of the state.

Further in the Thesis the author has researched in greater detail the application of the contractual relations in creating legal effect in the environmental law.

## **12. The significance of contract relations in the environmental law**

Irrespective of the fact that the agreement element is characteristic for the development of the private law relations it is also used in public law. The significance of contractual relations in creating legal effects has been more and more often emphasised in the environmental law. The increasing significance of environmental contracts can be explained by the comprehensive role of sustainable development in environmental law, because the agreement element that is at the basis of an environmental contract completely corresponds to the necessity to find the balance between the diverse interests in providing sustainable development.

It should be noted that environmental contracts can be concluded at two levels: the European Union and the national level. Conclusion of environmental contracts at the European Union level is connected with the implementation of the environmental aims set in the first part of the Article 174 of the EC Treaty. These agreements are concluded between the European Commission and the representatives of the industrial sector. In the Thesis the author has considered self-regulation and co-regulation environmental contracts concluded at the European Union level. What refers to the conclusion of environmental contracts at national level the countries can act as they regard to be the best. However also at this level one should follow general viewpoints on concluding environmental contracts in the European Union, for



example, Regulation 96/733/EC of the European Commission recommendation. In the Thesis the author has considered regulation of environmental contracts in the European Union environmental law. Environmental contracts are predominantly regulated by legally non-binding documents adopted in the European Union.

The author has considered the conclusion of environmental contracts in several European Union member states, namely in Germany, Denmark and France, researching only legal basis for the conclusion of environmental contracts. German practice, where the basis for conclusion of environmental contracts is Article 54 of the German Administrative Procedure and environmental contracts have been concluded in the format of administrative contracts, has been posed as the most suitable example for implementation in Latvia. Having researched legal regulation of the administrative agreement in Latvia, a conclusion has been drawn that environmental contracts should be concluded in the format of administrative agreements.

### **13. Environmental contracts in Latvia and legal basis for signing them**

Based on the research on the legal regulation of the administrative agreements in Latvia, conclusions are made about the need to make the environmental agreements in the form of administrative agreements. Author has analysed several problems connected with administrative agreements; there are problematic issues connected with the belonging of the administrative agreements to the public or private law, and insufficient legal regulation of these agreements so as to apply them for reaching the objectives of environmental law.

### **14. Application of environmental contracts in the forest sector**

In the thesis the author has also considered the cases of the possible conclusion of co-regulation environmental contracts in the forest sector. The author has discussed two kinds of environmental contracts:

- 1) Environmental contracts restricting the land usage rights;
- 2) Environmental contracts defining responsibilities of positive management and renewal.

Environmental contracts, the aim of which is to establish and to manage specially protected nature areas and micro-reserves, belong to the first group of environmental contracts. Environmental contracts that belong to the second group would be used for forest regeneration. It is concluded that there is no state institution that would have been delegated

to conclude such environmental contracts and also the regulatory enactments do not set either the environmental protection aims to be reached with the help of environmental contracts or the content to be included in these contracts. Therefore changes should be introduced in regulatory enactments in order to start concluding environmental contracts. It has been concluded that support for using environmental contracts for preservation of biological diversity could be found also in the legislative acts at the European Union level, namely in Article 6 of Directive 92/43/EEK (Habitat Directive).

## **15. The significance of economic instruments and application of them in Latvia**

Besides environmental contracts the author has considered also the following economic instruments: taxes and duties; deposit – recovery system; subsidies. It has been stated that the following taxes are connected with the forest ownership rights and the right to a favourable environment: real estate tax, natural resources tax and personal income tax. Besides according to the existing regulatory enactments in Latvia natural resources tax does not have to be paid for using of forest resources, and physical entities are released from paying the personal income tax for income gained from tree felling in their private forests till December 31 2006. Studying the issues connected with the real estate tax it has been concluded that the tax relief has been applied for the forest owners on forest stands the State Forest Service has acknowledged as reinstated – up to 40 years for conifer stands and hard deciduous stands, up to 20 years for soft deciduous stands and up to 10 years for grey alder stands. Taking into consideration that a forest owner has the duty not only to regenerate the forest stand but also take care of it, it is suggested to differentiate the real estate tax relief depending not only on the fact that the forest stand has been regenerated but also if it has been attended on after the renewal.

In the Thesis it has been stated that the subsidies can be used to promote some activities favourable for the environment. Several cases have been considered where legislative provisions envisage the possibility to get subsidies. Though at the same time it has been stated that introduction of subsidies threatens both honest competition and the principle of “the polluter has to pay”. Studying the deposit-recovery system it has been stated that such a system does not exist in the forest sector at this moment in Latvia but it had existed in connection with provision of forest regeneration by 2000. It has been suggested to renew this system by applying substitute settlement mentioned in the Administrative Procedure law.

## **16. Planning instruments**

Planning instruments are also connected with provision of sustainable forest usage. The author of the Thesis has considered territorial planning and forest management planning. Many imperfections and violations are stated in territorial planning procedure at local government level. It has been stated that local governments are not aware of the significance of territorial planning in provision of sustainable development. Besides it has been stated that the territorial planning at the local government level is approved by the legal act and not by the administrative act, and that restricts the public rights to an access to court on issues connected with the territorial planning. It has been concluded that the territorial planning at the local government level in its terms should have been confirmed by an administrative enactment thus providing an access to the Administrative Court for the public. Considering the forest management planning it has been stated that regulatory enactments do not regulate the content to be included in these plans and the adoption procedure of these documents but it is necessary to do because the forest management plan serves as one of the prerequisites for getting the European Union and state financing or co-financing.

## **17. Other environmental law instruments and their significance in the forest sector in Latvia**

Considering the other Environmental law instruments environmental information is mentioned as one of the most essential instruments with the help of which it is possible to express warnings and encouragement for providing implementation of environmentally friendly activities. The author has mentioned forest certification which had not been researched in detail because this process is at its beginning. The author has mentioned also the compensation system. Legal basis has partly been created for it but no appropriate finances have been allocated for it in the state budget.

## **18. Summary**

As a result of the research the author puts forward for presentation such conclusions and proposals:

### **On the right to a favourable environment:**

1. Sustainable development determines equality between the rights of the present generation and the future generations. Though at the same time it should be recognised that the rights of the future generations are not legally protected within human rights because the future

generations do not exist as a subject to law. Therefore one cannot speak about the equality between the rights of the present generation that are legally protected and the rights of the future generations that only exist as moral or ethical liability of the present generation. Regulatory enactments should include basic principles on how the future generation right to a favourable environment is protected. It would be possible to guarantee the rights for the future generations by revealing the content of the right to a favourable environment in the Environmental Protection law (*see item 2 in the Summary*) thus providing equality in legislative provisions between the rights of the present and future generations to sustainable development.

2. No financial legal regulation has been drafted for the right to a favourable environment connected with sustainable development either in international, the European Union or national legislative provisions. As a result of the research it is clarified that the right to a favourable environment is the right to environmental protection and improvement in the interests of the present and future generations. As the right to a favourable environment is guaranteed by Article 115 of the Constitution of the Republic of Latvia, a legislative provision determining the content of the right to a favourable environment should be introduced in the Environmental Protection Law in the following wording:

*“The right to a favourable environment include the right to living conditions that are safe to life and health and that are provided preserving the environment at its present state and improving it. While providing economic development the state and local governments have a liability to supervise that environmentally friendly technologies that are based on scientific revelations are used in business activities and to restrict business activities hazardous to environment. A private entity has a liability both individually and in co-operation with other people to protect and to improve the environment for the sake of the present and the future generations. Implementation of the right to a favourable environment takes place by adjusting the most suitable environmental law instruments to every situation.*

*The state provides the right to a favourable environment to each individual who belongs to the present or future generations. The action of the present generation who takes into consideration regulatory enactments and principles of the environmental protectionism considered as appropriate to the interests of the future generations.*

*Protection of the right to a favourable environment can be implemented by exercising procedural rights set in regulatory enactments: rights to the environmental information, rights to participation in decision making and rights to access to court institutions on the issues connected with the environment.”*

3. On the European Union level regulation on the right to a favourable environment should be included in the EU Constitution specifying the wording of the Article II-97. On international level financial legislative provision included in the preamble of the Aarhus Convention should be changed as a separate article of this Convention or a separate part of the Article 2 in the following wording:

*„Rights to the environment include:*

*1) state liability to preserve and to improve the state of the environment and to implement sustainable and considerate development, providing for each person the right to live in an environment corresponding to the state of health and welfare of this person;*

*2) Besides the rights mentioned in the item 1 a person has also the responsibility both individually and in co-operation with others to protect and to improve the environment for the sake of the present and the future generations.”*

4 The fact that there does not exist the legal regime on the content of the right to a favourable environment, creates a situation where there are different viewpoints concerning the belonging of the right to human rights of a certain generation. Though the viewpoint about the belonging of the right to a favourable environment to the third generation human rights prevails, the right to a favourable environment should be singled out as separate first generation human rights because: 1) the existence of a favourable environment is a basis for the implementation of other human rights, including the rights for providing life; 2) European Human Rights derive the right to a favourable environment from the human rights to the inviolability of the private life;

5. Procedural rights to a favourable environment that cover the rights to the environmental information and the right to the involvement in decision taking connected with the environment and the right to judicial remedy in connection with the infringement of environmental rights, have been legally regulated by legal provisions on international, the European Union and national level. But that is not enough, financial legal provisions are necessary. Speaking about the implementation of the procedural provisions it is necessary to provide practical application of these provisions guaranteeing for the society the rights to the environmental information, the right to the involvement in decision taking connected with the environment, also in the drafting procedures of the legally non-binding documents and regulatory enactments, the right to turn to the court institutions and to the alternative dispute adjudication institutions, for example, an ombudsman and to achieve fast and efficient result;

**On further development of the state administration:**

6. The role of the Environmental Advisory Board and the Forest Advisory Board and their activities in informing of public and listening to the viewpoints in drafting procedures of legally non-binding documents and regulatory enactments is doubtful in Latvia. To use the advisory boards as an efficient participant in balancing procedure of different interests it is necessary to define beforehand the competences of the advisory boards in informing public and involving it in decision taking procedure. It is necessary also to provide cooperation between the Environment Advisory Board and the Forest Advisory Board, promoting the integrated approach for provision of sustainable development;
7. It has been proved in the Thesis that the competences of the State Forest Service and the State Environmental Service are not strictly separated and they overlap on several issues. Therefore it would be useful either to transfer the State Forest Service under the Ministry of Environment thus improving cooperation between the both services and reducing contradictions between the regulatory enactments of the forest sector and the environment protection, or to merge the State Environment Service and the State Forest Service which also would be a step towards preventing of bureaucracy and that would promote good administration;

**On forest ownership rights:**

8. Interpretation of the ownership rights as an ancient institution regulated in the legislative provisions in connection with the increase of the significance of environmental protection should change: exclusiveness characteristic of the ownership rights in use of forest as a property should be restricted for the sake of the public right to live in a favourable environment. It is proved in the Thesis that the rational balance should be provided between restrictions on the right to use property and the protection of the ownership right if the property includes natural resources, forest including. Critically evaluating the existing approach to balancing of the environmental protection rights and the ownership rights, it is concluded that those environmental instruments should be applied that are more oriented towards search of the common solutions but not on the pressure on the owner to fulfil the requirements defined by the state. (*See item 14 of the Summary*).
9. Subjects of the forest ownership rights are a forest owner, a lawful forest possessor and a factual forest possessor or a holder. The greatest uncertainty exists concerning the amount of rights and liabilities of a factual forest possessor or a holder in forest management and utilisation. As this person is not a subject of the Forest law it would be necessary to supplement the Forest Law with a separate chapter that would regulate the rights and responsibilities of this person (the previous regular user who has become a leaseholder) in

the same amount as for a forest owner or a lawful possessor. It should be anticipated in the Forest Law that the land lessor – state or local government, should follow the legality of the action of the factual forest possessor and the right to terminate unilaterally the lease relations, if there had been infringement of regulatory enactments.

10. The state forest property is managed by the state stock company “Latvia’s State Forests” under tenancy of which the forest land possessed or cognizable to the state is transferred in accordance with the Forest Law. But the issue has not been regulated on the course of action in connection with non-forest land that has become under tenancy of the state stock company “Latvia’s State Forests” since 2000 as the land within the state forest fund. Thus the respective regulation should be introduced in the Forest Law on action with non-forest land possessed and cognisable to the state that at this moment is under factual possession of the state stock company “Latvia’s State Forests”. Non-forest land also should be transferred under tenancy of the state stock company “Latvia’s State Forests” and the same legal order should be stated for it as for the forest land. At the same time one should supplement the fourth part of the Article 8 of the law “On the state and local government land ownership rights and on their consolidation in the Land Register” stating that the non-forest land cognisable to the state also should be registered in the Land Register in the name of the state in the person of the Ministry of Agriculture.
11. Evaluating the role of the state and its liability for implementation of the public ecological and social interests it is stated in the thesis that the state authority should be stated both in relation to forest property management (as it is now) and to provision of the observance of other public rights. Therefore it is necessary to supplement the first part of Article 2 of the Forest Law or to draft a new part of this article including such regulation:

*„Besides the forest owner’s function in provision of sustainable forest management the state also carries on the public rights function that includes drafting of the forest policy, the programme, strategies and regulatory enactments, enforcement of the legislative provisions and cooperation with the society in provision of the implementation of the right to a favourable environment.”*

12. In cases when a private person committing infringement to a regulatory enactment regulating the forest management and utilisation has created losses to forest that are larger than the total sum of five minimum monthly wages has to implement the enlargement of the total area of the state forest land in accordance with the aims set in the Forest Policy and it has to take over private persons’ forest lands under tenancy of the state stock company “Latvia’s State Forests”. Such legal order should be introduced in the Forest law supplementing this regulatory enactment by Article 51 in the following wording:

*„If as a result of infringement to regulatory enactments regulating the forest management and utilisation the amount of damages inflicted on the forest is larger than the total sum of five minimum monthly wages set at that time in the Republic of Latvia then the recovery of damages is set towards the forest land that is in the possession or legal possession of the infringer, handing over all the land or part of it to the state. The principle of commensurability should be observed in the procedure of the state take over of the forest land paying for the damages to the forest.*

*An independent expert states the value of the forest land according to the market value in the respective region. If an infringer or the state stock company “Latvia’s State Forests” do not agree to the value of the forest land set, then it is stated by the court.”*

**On the environmental law instruments:**

13. The author has researched in the Thesis the application of environmental law instruments in Latvia. The author concludes that in the improving procedure of these instruments one should orientate towards the direct regulation or combining or substitution of command and control instruments by the voluntary agreement instruments and the economic instruments. Certain opportunities for application of these instruments in the forest sector have been researched in the Thesis;
14. Environmental contracts in the forest sector can be used for developing specially protected nature territories or micro reserves and for setting the compensation amount for restriction on economic activities in these territories and applying it, and for implementation the responsibility of regenerating the forest stand. These contracts are signed at the time when acknowledgement for tree felling is being received;
15. Administrative contracts as a new law institution have not been widely applied in practice in Latvia yet. Legal order of these contracts can be estimated as general that does not promote its application in the environmental law. To start concluding environmental contracts of joint regulation in the form of administrative contracts, legal order of environmental contracts should be included in the Environmental Protection Law, first, defining the environmental protection aims to be reached with the help of the environmental contracts, second, determining the institution(s) which would be authorised: to assess the adequacy of the environmental contract to solving each specific situation, to conclude the environmental contract in the name of the state or to allocate the task for doing it to another institution. Taking into consideration the content and the aim of the environmental contracts regulation No 247 of the Cabinet of Ministers of 25 July 2000 “The procedure of entering into contracts for providing protection of specially protected nature territory” should be changed or there should be drafted new regulations



of the Cabinet of Ministers based on the provisions of the Environmental Protection Law. These regulations of the Cabinet of Ministers should regulate in the main the content included in environmental contracts: subject, rights and liabilities of the parties, time limits, issues of legal liability and monitoring;

16. Amending the law “On Real Estate Tax”, real estate tax allowance, which at present is determined on the possessed forest stands to a certain age, should be diversified depending on the situation if the forest owner or legal possessor has performed only forest regeneration or has also attended on it. If only forest regeneration has been performed the 50 % real estate tax allowance should be applied. If after regeneration also improvement of the forest stand has been provided the tax allowance should be increased up to 100% but if the forest stand that had been acknowledged as improved, perished the tax allowance should be cancelled. In the case of extinction of a forest stand, the tax allowance received before should not be recovered from its receiver to the state’s advantage because it is not possible to identify the precise time when the forest stand had perished and therefore it is not possible to define the precise sum of money to be recovered;
17. Deposit –recovery system that had been applied in Latvia for implementation of forest regeneration by 2000 should be renewed, enforcing substitute execution regulated but the Administrative Procedure Law as a mechanism for ensuring forest regeneration;
18. The author has stated in the Thesis that local government can influence forest management and utilisation in its territory through mediation of territorial planning. It has been researched that the territorial planning at the level of a local government is adopted as a regulatory enactment – a binding regulation for a local government, which complies with the administrative act according to its nature. Proclaiming the territorial planning as an administrative act its binding nature would not be diminished but the public right to turn to the court if in the procedure of the territorial planning the public right to a favourable environment was infringed, would increase;
19. Planning of forest management belongs to the planning instruments. For the purpose of improvement of the legal order regulation No 169 of the Cabinet of Ministers of 15 April 2003 “Provisions for information circulation of the National Forest Register” should be supplemented by a separate chapter, defining criteria and order for development of a forest management plan, because the forest management plan serves as one of the prerequisites for receiving state and European Union financing or co-financing for development of forestry. It should be emphasised in the legal order that besides tree felling forest management include also other kinds of forest use, more adequate to

environmental protection. It is essential to define the procedural order of adopting the forest management plan, anticipating that officials of the State Forest Service check the adequacy of this document to the situation in nature and take the decision on coming into force of this document or the necessity to improve it.

### Public information about the research results

Results and main guidelines of the Thesis can be found in the following publications:

1. Līga Menģele – Stillere **Vides līgumi Eiropas Savienībā un Latvijā**. (Environmental Law Agreements in EU and Latvia) *Likums un Tiesības*, 8.sējums, nr.4 (80), aprīlis, 2006;
2. Līga Menģele **Forest Ownership in Latvia**. *Proceedings of the Third International Symposium „Experiences with New Forest and Environmental Laws in European Countries with Economies in Transition*, Jundola, Bulgaria, June 2001; Jointly Organized by the IUFRO<sup>3</sup> Research Group 6.1300 and the USDA Forest Service, Zurich, 2002, 86. – 94.lpp.;
1. Līga Menģele **Major Restrictions Imposed by Law on Forest Management and Utilization**. *Proceedings of the 4<sup>th</sup> International Symposium “Experiences with New Forest and Environmental Laws in European Countries with Economies in Transition*, Jaunmokas, Latvia, August 2002; Organized by the IUFRO Research Group 6.13.00, Zurich, 2003, 72. – 76.lpp.;
2. Līga Menģele **Contradictions Between the Public and Private Interests in Nature Protection and Compensations in Latvia**. *Proceedings of 5<sup>th</sup> International Symposium “Legal aspects of European Forest Sustainable Development”*, Židlochovice, Czech Republic; Organized by the IUFRO Research Group 6.13.00, Jilovište – Strnady, Forestry and Game Management Research Institute, 2004, 116.-120.lpp.
3. Līga Menģele **Tiesību jaunrade meža nozarē**. (Law making in the forest sector) *Starptautiskās zinātniskās konferences „Personība. Laiks. Komunikācija. Tiesības, Vēsture un Kultūrvēsture” materiāli*. Rēzekne, 27. – 28. 02. 2003., Rēzekne 2003, 38. – 43.lpp.;
4. Līga Menģele **Valsts meža zemes atsavināšanas tiesiskās problēmas**. (Legal problems of the state forest land alienation) *Latvijas Universitātes Raksti. Sociālās zinātnes*.665.sējums. Doktorantu raksti, 2003, 240. – 253.lpp.

The author had presentations about the research results in the following international scientific events:

1. International Scientific conference “Personality. Time. Communication.” In Latvia, Rēzekne, 27.02.-28.02.2003., paper presented “**Tiesību jaunrade meža nozarē**” (Law making in the forest sector);
2. *5<sup>th</sup> International Symposium “Legal aspects of European Forest Sustainable Development”*, Židlochovice, Czech Republic; Organized by the IUFRO Research Group 6.13.00, 29.05. – 01.06.2003., paper presented “**Contradictions Between the Public and Private Interests in Nature Protection and Compensations in Latvia**”;
3. XII World Forestry Congress, Canada, Quebec City, 21.09.- 28.09.2003., paper presented “**Land tenure, rights and use**”;

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<sup>3</sup> IUFRO - International Union of Forestry Research Organizations (Starptautiskā mežzinātņu organizāciju apvienība)

4. *7 th International Symposium “Legal aspects of European Forest Sustainable Development”*, Zlatibor, Serbia; Organized by the IUFRO Research Group 6.13.00, 11.05. – 15.05.2005., paper presented “**The Role of Administrative procedure in the forest sector**”;
5. XXII IUFRO World Congress, Australia, Brisbane, 08.08.-13.08.2005., poster presentation “**Contradictions between two human rights in the forest sector: ownership rights and rights to environment**”.