

Presentation by the President of Latvia, Egils Levits, "Dietrich André Loeber and the Latvian State" at the international conference "Dietrich André Loeber - 100. Baltic German and Latvian citizen, international law expert and contemporary"

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Dear representatives of the Loeber family!

Excellencies!

Ladies and gentlemen!

Dear attendees!

I

Today, here in the Festival Hall of Riga Castle, we honour Professor Dietrich Andrew Loeber on his 100th birthday.

Latvia appreciates Professor Loeber's contribution to the good of our country and will always be grateful for the devotion to his homeland.

His life is a striking testimony to the fact that even one lawyer, scientist and academic can influence the course of history and contribute to the restoration of justice.

II

It was written in his destiny, being born in independent Latvia in the family of Senator August Loeber, five years after the founding of the country, growing up as a Latvian citizen and choosing to continue his father's work in justice, to dedicate his talents, abilities and work to his homeland.

The twentieth century was a complicated and tragic time for independent Latvia, our nation and the Baltic German community to which Professor Loeber belonged to.

The Molotov-Ribbentrop Pact defined his life: the abandonment of Latvia in the zone of influence of the USSR, forced emigration of the Baltic Germans from the USSR to Germany, loss of Latvian citizenship. All this resulted in huge change in the circle of friends and acquaintances and in life in general.

During the long years of occupation, Loeber did not lose faith that justice would prevail and that Latvia would be free and independent again, and he did everything possible to achieve this.

III

Professor Loeber's decision not to lose his shared destiny with the Latvian state and its people during the years of occupation was confirmed by his Latvian passport, issued by the Latvian embassy in London.

When the Baltic Germans left Latvia in 1939, their Latvian citizenship was revoked. This was outlined in the Latvian-German Agreement, regulating the translocation of persons of German nationality, which was concluded immediately after the Molotov-Ribbentrop Pact. The same decision on emigration had to be taken by the Loeber family.

After the war, on 6 January 1954, Dietrich Andrew Loeber submitted an application to the Latvian embassy in London to be considered a Latvian citizen and to be issued with a Latvian passport. On 13 July 1954, the Latvian embassy issued him this passport.

When checking the information provided by Loeber, the Latvian embassy found out that he had been loyal to the Latvian state and that through his work he had "shown sympathy for the idea of the Latvian state, the Latvian community in exile and everything connected with the Latvian struggle to return to their homeland". This is a quotation from Loeber's documents at the Latvian embassy in London. These documents also established that he spoke Latvian.

The envoy Kārlis Zariņš considered it possible to restore Loeber's citizenship rights and issue him a Latvian citizen's foreign passport, which would certify his citizenship and its restoration.

IV

However, it took many years after the restoration of Latvia's independence for the Latvian state to truly appreciate the legal significance of this decision and to recognise the continuity of citizens' rights. The judgment of 22 June 2018 of the Department of Administrative Cases of the Supreme Court analysed Loeber's case in detail and provided the reasoning in line with the doctrine of the continuity of the State, recognising Loeber's own citizenship (*see Supreme Court Department of Administrative Cases judgment of 22 June 2018, case No A420341714, SKA-237/2018*).

I am also very grateful to Aleksis Loeber, his son, who initiated this process. I was also involved in this process, writing an expert opinion on why the restoration of Loeber's citizenship in 1954 was consistent with the doctrine of the continuity of the Latvian state. It is astonishing that both the Office of Citizenship and Migration Affairs and the first two courts did not see this. But as a result, the Department of Administrative Cases found that Loeber had lost his citizenship in 1939, had his citizenship restored in 1954, and that his son was therefore a descendant of a Latvian citizen.

This judgment is of great importance within the framework of the doctrine of the continuity of the Latvian State. I also wrote about it in "Jurista Vārds" in 2018. I will note the same three main aspects that were mentioned in that article as to why this judgment is very important for Latvia.

First, it expands and explains the doctrine of state continuity as the cornerstone of Latvian state law. Secondly, it traces the development of the institution of Latvian citizenship from 1919, when the Citizenship Law was adopted, through its operation during the occupation period and the vicissitudes of the restoration of Latvian citizenship, to the adoption of the new Citizenship Law. This is very well developed and explained here. Thirdly, this judgment illustrates what is known in national law as the *raison*

d'etre principle. This means that all public officials at all levels must always put the common interests of the country first. And all laws must be interpreted in such a way that the interests of the state are not adversely affected. The principle of *raison d'etre* is very well explained here. It even shows that in some cases it is necessary to interpret a law *contra legem*. Because the principle of *raison d'etre* overrides this principle, where the law should not normally be interpreted *contra legem*. In this case, it was explained. Therefore, although the Latvian embassy did not formally act in accordance with the then existing Citizenship Law when issuing the passport, it is justified from the point of view of the *raison d'etre* principle. I thank once again Aleksis Loeber, who went through this process for several years to reach this very important judgment for the Latvian State. I also thank the judges who understood this principle of *raison d'etre* and its highest legal rank.

V

The idea of the continuity of the Latvian state had already been formulated and announced before Professor Loeber - in the statements and positions of the Latvian diplomatic and consular service, and in the conceptual documents of the national resistance movement, first and foremost the Central Council of Latvia. This year, on 17 March, we will also celebrate the 80th anniversary of the founding memorandum of the Latvian Central Council.

On 13 March and 3 April 1948, Loeber's colleagues in the Latvian Senate - exiled senators Jānis Balodis, Rūdolfs Alksnis, Pēteris Stērste, Augusts Rumpeteris, Maksis Ratermanis and Mintauts Čakste - gave their opinion that Latvia continued to exist legally as an independent state and that the illegal occupation had not ended Latvia's statehood. The opinion was based directly on the doctrine of the continuity of the state.

The doctrine of the continuity of the Latvian state was in fact already established in 1940 by the US statement that it did not recognise the occupation.

However, it was two Baltic German professors who developed and justified the doctrine of continuity and non-recognition of the illegal occupation in scientific terms. The first is Boris Meissner, a Baltic German professor of Estonian origin, with whom I also worked, as I later did with Professor Loeber. In 1956, Meisner published a book entitled "The Baltic States, the Soviet Union and International Law", in which he analysed the doctrine of non-recognition of the illegal occupation and gave a justification for it that is still valid today. In fact, a new rationale was developed only later. One of the developments is in the work of Professor Ineta Ziemele, published in the early 2000s. Professor Meisner's work was continued by Professor Loeber in various articles.

The work of both professors, both legal scholars, has led to the legal and scientific basis of the doctrine of continuity. It set a precedent in international law that has a much wider meaning than just for the Baltic States.

As one of several meanings, I could mention the occupation of Western Sahara in 1975 - most countries did not recognise the illegal occupation then. Also, the case of Timor, when Indonesia occupied Timor in 1975. This case is interesting in that, as in the case of the Baltic States, this illegal occupation was brought to an end. So, the Baltics were occupied in 1940, and in 1990-1991 the occupation was ended. Timor was occupied in 1975, and in 2001 Indonesia ended its occupation, also thanks to the doctrine that states that no country, or almost no country, recognises this type of occupation. There are several other cases, but the precedent in international law was set in the Baltic States and was legally substantiated by Professor Meissner and Professor Loeber.

VI

Our Estonian colleague Professor Peter Jervelaid, who is here today, probably remembers well Professor Loeber's presentations at scientific conferences in Tallinn in 1988 and 1989, when he first spoke about the Molotov-Ribbentrop Pact and showed facsimiles from the federal archives, which was a big explosion in the Soviet Union at that time. Until then, they had been kept quiet and been considered false.

However, Professor Loeber dared and brought these documents to Estonia. This, of course, created a great resonance in the Soviet Union as a whole. Finally, in 1989, the Congress of People's Deputies of the Soviet Union also recognised that this pact existed and that it was illegal.

By the way, I was working in the German Bundestag at the time and wrote an expert opinion on whether Germany should annul the Molotov-Ribbentrop Pact after it had become a major and international event. My opinion was that it should not be annulled because it was illegal from the start.

I have to say that this episode of the Molotov-Ribbentrop Pact and Professor Loeber's role in preventing the consequences of this pact is extremely important. I thank, of course, my Estonian colleagues for having the courage to invite him and to allow him to say this.

VII

Professor Loeber was the man who linked the legal system of interwar Latvia with the legal system of modern Latvia that we are building here after the restoration of independence.

As the son of Senator Loeber, he was in close and friendly contact with the Latvian legal community in exile. In this respect, his collaboration with the last active Senator of the Latvian Senate, August Rumpeteris, who passed away on 13 March 1978, is deeply symbolic.

Senator Rumpeteris participated in the editorial polishing of the Memorandum on the Baltic States prepared by Professor Loeber, which was submitted by the World Association of Free Latvians to the member states of the Conference on Security and Cooperation in Europe in Helsinki in 1975.

It was a legally perfect document, in which the opinion of the occupied Baltic States was once again strongly and reasonably expressed in the international arena. This was pointed out by several delegations in their political statements, in particular by the US delegation.

I shall quote the concluding paragraph of this memorandum: "National independence derives from the right of all nations to self-determination and must also apply to the three Baltic States - Estonia, Latvia and Lithuania. Since these countries were deprived of their political independence, this Conference must decide that their right to independence and freedom must be restored."

Ten years later, in 1985, Professor Loeber drafted the indictment document of the World Association of Free Latvians before the International Baltic Tribunal in Copenhagen.

VIII

After Senator Rumpeteris passed away, Professor Loeber continued and developed the work he had begun to identify and promote the heritage of the Latvian Senate.

I think that for almost every lawyer present, the first introduction to the case law of the Latvian Senate were the lengthy collections of Senate judgments prepared by Professor Loeber, with abundantly detailed indexes, which made it easier to find one's way around them.

He was also convinced that these pre-war Senate judgments were not only of historical value. When he started talking that after the restoration of independence the Latvian courts, and especially the Supreme Court, could refer to the judgments of the pre-war Senate, many found this impossible or implausible. However, today we can find references to the case law of the pre-war Senate quite frequently in the judgments of the Constitutional Court and the modern Senate. This means that Latvian legal scholarship has its historical depth.

My colleague Māris Vainovskis once did a good study on this issue, giving specific examples of when a reference to pre-war Senate case-law would be useful today. It demonstrates and reinforces the continuity of our legal system.

As the son of Senator Loeber, he brought the legacy and values of the Latvian Senate back to the country that regained its independence. I am very pleased that this selfless contribution of his was welcomed and supported by the Supreme Court, and that good cooperation developed between Professor Loeber and the then President of the Supreme Court, Andris Guljāns.

Our Supreme Court, the Senate, continues the traditions and values of the inter-war Latvian Senate, and Professor Loeber's played a big role in that.

IX

Professor Loeber contributed not only to the adoption of Senate case law, but also to the renewal of the law. One of his greatest achievements was the return of the great codification of the inter-war period, the Civil Code, to Latvia and its legal community. Professor Vēbers from the University of Latvia also played a major role there.

However, I have to say that this was first discussed at the 1990 World Congress of Latvian Lawyers, where almost all the participants were sceptical about the proposal to restore the Civil Code.

Here we see that Professor Loeber also had a major influence on the transformation of the Latvian legal system from the Soviet legal system to the Western legal system, to the continental European legal system, pointing out that we have always been in this system - we just had to be aware of it.

X

Professor Loeber's contribution extends beyond legal history to several other legal aspects.

First, I would like to mention that Professor Loeber introduced the concept of "shaky continuity" after the restoration of independence of the Baltic States. That is, continuity in principle, but unfortunately not always consistently respected by the state. Especially in the 1990s, there were a number of cases where this doctrine of continuity was not consistently respected. It was only with the Constitutional Court's judgment of May 2010, and also with this judgment, that the Supreme Court ensured that the doctrine of continuity is indeed not only a formal but also a de facto cornerstone of Latvian state law. That is why he spoke at the time of "shaky continuity", which means - yes, in principle, but sometimes we do things differently. I would say that this is also against the Constitution, and he also pointed this out.

Secondly, Professor Loeber was the first to read a European law course at the University of Latvia and contribute to the translation of the founding treaties of the European Community into Latvian. If I am not mistaken, my colleague Lauris Liepa, as a student, was one of the translators of these treaties. He was a supporter of the idea of European integration and saw a place for the Baltic States in a united European Union.

Thirdly, he was a consistent supporter of the Constitution and the parliamentary democracy it enshrines. He believed that parliamentary democracy was part of the continuity of the national legal system and contributed to the development of an appropriate legal culture. When I, as Minister of Justice, initiated the preparation and publication of the Commentary on the Constitution, he prepared a commentary on the chapter he had been entrusted with - on Cabinet of Ministers Regulations in the Constitution - and it was published at that time. It was the first Commentary on the Constitution ever to be issued after the adoption of the Constitution.

XI

Professor Loeber also spoke and wrote about the particularly complex chapters of Latvian history, about issues that still need further evaluation. Here we will have to return to Professor Loeber's thoughts and recommendations in many places.

Firstly, the loss of the Baltic Germans community as a result of the Molotov-Ribbentrop Pact.

In this regard, I would like to thank the Menzendorf House and the Latvian-Baltic Germans association and cultural centre 'Domus Rigensis' for maintaining the Latvian Baltic Germans community.

I would also like to thank the Baltic Germans Association of the Federal Republic of Germany, which united the Baltic Germans expelled from Latvia and Estonia after the Second World War and continues to preserve and promote the cultural heritage of the Baltic Germans.

Secondly, I would like to mention Professor Loeber's thoughts on the coup of 15 May 1934. He was very blunt and direct about it. He believed that it was unconstitutional and that we need to give a legal assessment of this unconstitutional coup.

Thirdly, he was also quite sceptical about the role and influence of the personality of Kārlis Ulmanis on the loss of independence in 1939-1940.

We can see that Professor Loeber's thoughts and works do not belong only to the past. They contain ideas and encouragement for all of us that are relevant today. Over time, what he said then has been confirmed.

XII

At this point, I will cut down on the legal part and move on to some personal remarks.

First of all, I would like to say that I had the honour and the opportunity to work with Professor Loeber - I was his research fellow from 1984 to 1986 at the Institute for the Study of Law, Politics and Society of the Socialist Countries at the Faculty of Law, University of Kiel.

This institute was founded by the other professor I mentioned, Professor Meissner, in 1960. Later, when Professor Meisner founded another institute, Professor Loeber took over the management of this institute at University of Kiel.

When I worked there with Professor Loeber, we organised international conferences, which were unusually large for that time. Especially with the participation of US and other non-European scientists.

I can mention two such conferences. One is 'Ruling Communist Parties Under Law', which resulted in a publication. And the other was on regionalism in the Soviet Union, where certain, minimal cracks in the Soviet monolithic system, which appeared as early as 1984 were discussed. Especially on regionalism in the Baltic area.

During this time, Professor Loeber also served as the Dean of the Faculty of Law. And I published the monthly magazine of the Faculty of Law, in which we described everything that was going on in the Faculty, both from the scientific and the everyday point of view.

I must say again that the collaboration between Professor Meisner and Professor Loeber was very fruitful. One could say that they were both the ones who shaped German political and legal thought on the Soviet Union and the socialist system at that time.

Later, I worked for Professor Meissner in Gottingen at the Research Centre for Eastern European Studies, where I also dealt with German unification issues.

A few more notes.

He was my boss and we got along very well. Professor Loeber had a quality that I hope I have inherited. Namely, to save time, not to talk unnecessarily. For example, when we met in the morning, we each came with a note with eight questions. Then we promptly resolved these issues.

The principle of efficiency was a hallmark of his character. It also appeared in his last letter to me, in which he wrote about a month before his death: "I have this diagnosis. I will live another month. You please do this, this and this!" He gave me about 10 tasks that I had to do.

Another interesting fact is that Professor Loeber was often in Latvia, also during the Soviet period, when he followed all its developments. In 1990, 1991, Professor Loeber's tracking documents were ones of the few that were fully preserved in Latvia. He examined them, evaluated them and published his findings about these tracking acts in the magazine "Latvijas arhīvi" in 1995. He told me this: "Basically everyone has written reports - the ones I thought they would and the ones I didn't think they would." And these reports were different. There were those where you can clearly see that they are formal - so that the report was written, but without the possibility to draw any conclusions. Such reports were written by his academic colleagues. But there were

also those who tried to imagine him as a Western spy and an agent of German and American intelligence.

Another point is his views on the Baltic Germans community. He had a clear position that Latvians should be a political nation, which also includes the Baltic Germans community, which retains its identity, but which, of course, also speaks Latvian and lives together with the entire Latvian nation. Such a view was not generally shared either in the Baltic Germans or Latvian community. He was one of the first for such a setup. At one time, this idea was also initiated by the head of the Baltic Germans community Pauls Šimans, who was removed from the community leadership in 1937.

This idea is quite relevant now. This also explains why Professor Loeber advocated recognition of P. Šimans' heritage.

Finally, I would like to mention another personal memory - in 1975, in his house in Hamburg, I was admitted to the Latvian corporation "Fraternitas Lataviensis", where Professor Loeber was an honorary philistine. Along with the professional and personal bond, this corporate bond remained between us all the time. Then, when I said that we talked, we very clearly separated the professional issues of the institute from others. Then we moved on to perhaps some personal matters and, finally, to corporate affairs.

We introduced a very strict tradition of literary evenings in the corporation. Namely, those who wanted to be accepted into the corporation had to develop a serious scientific paper. At that time, many dropped out with reports of insufficiently high quality. It took several times until we were satisfied that the appropriate level had been reached. This was Professor Loeber's contribution to promoting the quality of Latvia's young scientists.

Thank you very much!



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