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## **TOWARDS SUSTAINABLE BUSINESS RELATIONSHIPS: RATIFICATION DOCTRINE IN THE CASE OF UNAUTHORISED AGENCY**

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**Abstract.** Each contemporary economic system is based on the principle of work sharing in creation and distribution of goods and services, the legal reflection of which is the institution of agency. In business, unauthorised agency, i.e. cases when an agent acts without having authority or exceeding it, is particularly often. Though the principal usually is not legally bound by actions of such an unauthorised agent, but in fact legal acts of each country provide for exceptions from this rule. One of them is the ratification doctrine, which means that the principal can ratify the agent's unauthorised actions. This article analyses, by applying the comparative method, in what cases and under what procedure the ratification rule can be applied and what legal consequences it creates. A conclusion is made that the ratification doctrine is an efficient means of implementation of interests and defence of infringed rights not only of the principal, but also of other persons involved in the agency relationship, which should not be subject to any form requirements, especially in business relationships.

**Keywords:** ratification doctrine, unauthorised agency, apparent authority, agent, falsus procurator, sustainable business

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**Additional disciplines:** law

### **1. Introduction**

If we follow the studies monitoring the acceptance and integration of sustainability by big companies, there is a strong consensus emerging that sustainability is having and will continue to have a significant material impact on company strategies and operations (Dyllick, Muff 2016; Rajnoha, Lesníková, 2016). In the past decade, research on sustainable innovations has expanded rapidly to increase our understanding of the ways in which new technologies and social practices enable societies to become more sustainable (Boons, Lüdeke-Freund 2013).

A possibility to participate in civil circulation through an agent is a guarantee of exercise of a person's right to the freedom and initiative of economic activities, therefore in essence no country can do without legal regulation of this relationship (Smits 2007). Without questioning the significance of the institution of agency, it is important to

pay attention to problems faced by parties to this legal relationship. Probably most problems arise when transactions are conducted or other actions of legal significance are performed on behalf of the principal by a person who exceeds the authority given to him or who does not have any authority at all. Such cases are to be qualified as *unauthorised agency*.

Sustainable business models incorporate a triple bottom line approach and consider a wide range of stakeholder interests, including environment and society and are important in driving and implementing corporate innovation for sustainability, can help embed sustainability into business purpose and processes, and serve as a key driver of competitive advantage (Bocken et al. 2014; Čirjevskis 2017; Monni et al. 2017; Hilkevics, Hilkevics 2017; Teletov et al., 2017). Sukhdev (2012) introduces “Corporation 2020” as a new model of business and a kind of corporate agent that society would need to forge a sustainable economy. Financial capital accretion is one key objective for Corporation 2020, but there are other objectives as well. Important goals for the corporation are not only defined by its shareholders but also by its stakeholders - those who are impacted by the corporation.

Actions by an unauthorised agent are unavoidable and occur for different reasons. In some cases persons fraudulently act as agents, clearly understanding that they do not have any right to conduct transactions or perform any other actions of legal significance on behalf of another person. Besides, unauthorised agency is often identified when agency services are the agent’s professional activity and remuneration for them depends on specific results – transactions entered into. The agent, especially in the situation of economic downturn, seeking to get the agreed percentage of the transaction amount (the commission fee) can ignore limits of authority granted to him, expecting that later the principal will ratify the transactions that he did not have the right to enter into (Busch, Macgregor 2009c). In its own turn, the terms and conditions of such a transaction can be unacceptable to the principal, besides in the period from the conduction of the transaction until the principal is informed about it, prices of goods and services can drop, which will also result in the refusal to ratify the agent’s actions.

In solving problems arising out of unauthorised agency relationship, in many legal systems priority in fact is given to interests of third parties. It is to be considered that these persons are the weak party to legal relationship of agency, who cannot access precise information about the scope of powers given to the agent. A third party is kind of an “outsider” in respect of the agreements between the principal and the agent and often has limited possibilities to check the agent’s authority (Busch, Macgregor 2009b). Such asymmetry of information and the circumstance that third parties usually have no choice as to whom to enter into contracts with (in business relationships, acting through an agent is often the only practically used way of implementation of civil rights) determined the need to ensure greater protection for third parties. However, their interests should not be unconditionally defended at the expense of other participants in agency relationship. The principal, as a financially stronger party, is often forced to unconditionally assume risks of actions of the unauthorised agent. Such interpretation of the principal’s liability based on the “deep pocket” principle can cause undesired economic consequences (Bisso, Choi 2008). Business entities, seeking to avoid negative consequences of unauthorised agency, are forced to maintain too strict control over agents and that causes additional costs in their activities, which are ultimately included into the final price of goods or services. In their own turn, agents too, due to the threat of their own liability, must act much more carefully, therefore, agency, as a way of implementation of civil rights, becomes not so efficient and expeditious.

According to the general principle of agency in civil law, legal actions performed by one person (agent) on behalf of another person (principal) directly create, modify and cancel the principal’s rights and obligations. These consequences do not arise for the principal if actions of legal significance are performed on his behalf by a person exceeding the authority given to him or having no authority at all. Still, in fact all modern legal systems admit that usual legal consequences of agency can arise even if a person does not express his will to be represented or the agent deviates from instructions given to him.

One of such cases when it is considered that the transaction is valid from the date of its conduction, though the agent acts under conditions of unauthorised agency, is when the principal ratifies actions of the unauthorised agent. Though this possibility is provided for in many legal systems, however the procedure and conditions of its implementation are usually not regulated. Besides, there is no uniform interpretation of the right of third parties to withdraw a request to ratify unauthorised actions of the agent before the principal does that. Also, problems arise when a good faith principal assigns property as the object of the transaction made by an unauthorised agent to other persons, the so-called fourth parties. Therefore, a question arises whether ratification of actions of the unauthorised agent, causing retrospective consequences, can affect the legal situation of these persons.

*The aim of this article* is to analyse sustainable business relationships, conditions and limitations of the principal's right to ratify actions of the unauthorised agent, evaluating possibilities of third parties to rely on this remedy for defence of their infringed rights.

This study is based on the *qualitative* methodology approach and principles. The paper is also based on methodological regulations of studies of law, matching ideas of theories of *normative* and *sociological* law. The main data collection method used during the study was the *document analysis method* and, taking into account the character of the study, the most important data analysis method in this paper is *comparative*. The reference point of this study is legal regulation of the ratification doctrine in the Civil Code of the Republic of Lithuania (2000), (hereinafter, the "Civil Code"), which is one of the latest examples of codification of private law in Europe and the whole world. Regulation in an article established in this legal act is compared to provisions of international instruments of unification of private law (the so-called *soft law*) and law of foreign countries.

## **2. Concept of ratification of actions of the unauthorised agent**

Usual legal consequences of unauthorised agency do not arise not only when apparent authority is determined, but also in cases when the principal ratifies actions of the unauthorised agent (*ratification*).

Ratification of actions of the unauthorised agent is, first of all, understood as a remedy for defence of third party's infringed rights, on which he can rely, when it is established that the agent exceeded the authority given to him or operates without any authority. It is true that differently than in case of apparent authority, the third party cannot exercise this right under the enforced procedure. Ratification of a transaction that the agent did not have the right to enter into is the principal's right that he may exercise when a relevant unauthorised transaction is useful for him. Thus, ratification of the agent's actions at the same time is a method of implementation of the principal's interests in legal relationship of unauthorised agency. The case law also emphasizes that it is the right of the principal to ratify a transaction that the agent did not have the right or was not authorised to enter into (E. D. v. A. D., A. G., V. J., and Association "Sahadža joga Lietuva" 2015).

It is noteworthy that ratification of actions of the unauthorised agent can be also described as a certain type of the agent's powers. It is indicated that in addition to expressly stated and apparent authority, one can also distinguish the agent's powers that he acquires retrospectively because the principal ratified his unauthorised actions (Bennett<sup>2006</sup>).

Irrespective of whether the principal expresses his will on his own initiative or taking into account a request of a third party, ratification of actions of the unauthorised agent most often is understood as a unilateral transaction of the principal (Tan 2009). This legal qualification is not affected by the form of ratification: both an expressly stated approval and the one implied from the principal's behaviour is deemed a unilateral transaction. The most important thing is that the principal, approving of the actions of the unauthorised agent, would express his true

will, and for this to happen, he must know all factual circumstances in connection with a specific unauthorised agency situation. Taking that into account, in legal doctrine evaluation of ratification of the unauthorised agent's actions is performed in two stages: first, it is analysed what information the principal acquired, then it is established what will he really expressed (Busch, Macgregor 2009a).

It is important to pay attention that the general rule is that for usual legal consequences of agency to arise, the principal must ratify actions of the unauthorised agent without any reservations. Meanwhile, partial or conditional ratification is recognised only in exceptional cases (DeMott 2009a). As it is stated in the commentary on the UNIDROIT Principles of International Commercial Contracts (2010) (hereinafter, the UNIDROIT Principles (2010)), if a principal ratifies a transaction made by an unauthorised agent only in part, it can be treated as an offer to a third party to modify terms and conditions of the initial transaction entered into through an agent. If the third party refuses to accept it, legal relationship between the principal and the third party will not appear just based on conditional ratification by the principal. Article 15(3) of the Geneva Convention on Agency in the International Sale of Goods (1983) directly provides that a third party may refuse partial ratification.

Speaking about the scope of application of the ratification of the unauthorised agent's actions, it is important to emphasize that it can be referred to both in those cases when the agent acts exceeding his authority and in case of situations of absolutely unauthorised agency. Similarly as in case of apparent authority, the principal can ratify not only transactions made by the unauthorised agent, but also other actions of legal significance. Transactions made by the unauthorised agent, which are admitted to be invalid, can also be ratified – however, the principal does not have such a right, when the agent entered into an absolutely invalid (null and void transaction). Besides, the principal can also use ratification if the transaction, by which it granted authority to the agent, is admitted to be invalid *ab initio* (from the moment it was made), for example, due to defects of will. Though relevance of the principal's ratification usually emerges when agency is under a contract, but it can also be referred to when the agent acts or should act based on an administrative act, court judgement or law. The doctrine discusses whether the rules regarding ratification can also be applied in case of undisclosed agency. Taking into account that in case of unauthorised agency it cannot be deemed that an implied transaction was made between the principal and the third party (it is namely the concept of an implied transaction, on which undisclosed agency is most often based), therefore, ratification should not be possible, either. However, the Agency Digest provides for a possibility of an undisclosed principal to ratify actions of the unauthorised agent (DeMott 2009b).

Ratification of actions of the unauthorised agent is regulated in two rules of the Civil Code (2000): paragraphs 6 and 7 of Article 2.133 and paragraphs 1 and 2 of Article 2.136. As in many other legal systems, the Civil Code (2000) describes ratification of actions of the unauthorised agent in the context of legal consequences of unauthorised agency: if a transaction is entered into on behalf of the principal by a person who does not have such a right, the transaction creates, modifies and cancels rights and obligations for the principal only in case the principal afterwards approves of this transaction and ratifies it. In the Lithuanian case law, ratification by the principal is also linked to the exception from the rule that actions of an unauthorised agent do not bind the principal. It is noteworthy that solely the circumstance that the agent exceeded his authority does not make his actions unlawful or null and void as the principal may ratify the agent's authority and consent to legal consequences caused by the agent's actions, and such ratification has retrospective effect (G. K. v. DNSB "Upė" 2011).

Attention should be paid to the fact that it ensues from the concept of ratification of actions of the unauthorised agent that such ratification should be referred to when it is established that the agent acted without having the necessary authority. Therefore, after stating that the agent acted within the limits of his powers, it is not expedient to analyse additionally whether the principal ratified specific actions of the agent. As the principal's ratification causes the same legal consequences as actions performed by a properly authorised person, no one should seek to

find out whether the principal later expressed his will regarding relevant actions performed by the agent, i.e. whether he approved of them or not. Lithuanian courts did not manage to avoid this mistake. It was established in civil case (UAB “Tristana” v. D. R. 2016) examined by the Supreme Court of Lithuania (hereinafter, the SCL) that the deputy manager of a company had powers to enter into the car lease agreement on behalf of the company and signing this contract did not exceed his powers. In spite of this circumstance, the court still evaluated whether the company admitted the contested lease agreement. Data collected in the case file confirmed that the company was paying rent monthly, referring to which the court made a conclusion that in case of this dispute paragraph 2 of Article 2.136 of the Civil Code (2000) can be applied, which provides that subsequent approval by the principal makes a transaction valid from the moment of its entry. The result of this decision is unquestionable, but, as it has been mentioned, in determining whether the agent acted without exceeding his powers, one should not take into account whether the principal later approved of such actions of the agent or not.

Ratification of actions of the unauthorised agent should not be confused with such cases when the principal expands the content of the agent’s rights. A situation may occur when the agent is yet intending to make a transaction for the benefit of the principal and if it is clear already then that the powers granted to the agent are too narrow, the principal, seeking appearance of desired legal relationship, can grant additional rights. These actions of his will create legal consequences from this point forward and later such a transaction will not need to be additionally ratified. The essential difference between these two legal situations is that the need for ratification of the unauthorised agent’s actions arises when the agent already enters into a transaction without having powers for this, whereas expansion of the agent’s rights is possible yet before conduction of a relevant unauthorised transaction. Besides, attention should be paid to the fact that the principal can ratify actions of the unauthorised agent both on his own initiative and after he was addressed by a third party, whereas expansion of the agent’s powers is usually linked to internal legal relationship of agency, i.e. the principal himself, seeing that rights granted to the agent are too narrow, can expand them or he can do that at the agent’s request.

A dispute was also settled in the Lithuanian case law whether the principal’s behaviour in a specific situation must be qualified as ratification of actions of the unauthorised agent or as expansion of the content of his powers. In civil case K. J. v. UAB “Bendra idėja” and R. J. (2016) examined by the SCL there was a dispute regarding the situation in which the claimant together with his spouse issued a power of attorney, by which they authorised their son to represent them in the matter of obtaining a credit and mortgage the land plot and a residential house owned by them to any lending bank. As it later turned out, the claimant’s son mortgaged the property to secure obligations of a third party arising out of a credit agreement concluded with the bank. A claimant stated that according to the power of attorney the son did not have the right to mortgage the property in question to secure obligations of third parties – he was authorised to mortgage property only for the spouses’ and his own obligations. For this reason, the transaction made by the defendant with the bank cannot create any rights and obligations for them. The claimant stated that the transaction did not have any legal consequences for them as upon learning of the conduction of the contested transaction, they did not approve of it. In solving the dispute, the court noted that it may happen that the agent intends to enter into or enters into a transaction for the benefit of the principal and, though the principal has a positive opinion on the transaction, powers granted to the agent by the power of attorney are too narrow. In this case, the problem of validity of the concluded transaction or transaction intended to be concluded arises, that civil laws allow to solve in two ways, depending on legal consequences of what transaction – concluded or intended to be concluded – are sought to be created: i.e. the principal can ratify the transaction made by the unauthorised agent or, if it is not made yet, can expand powers of the agent. The court established that the spouses had signed a notarised consent, in which they indicated their consent that their property would be mortgaged to the bank for a loan obtained by third parties. This action ratified the mortgage establishment transaction, which was already concluded but did not come into effect yet. It is to be presumed that referring to these factual circumstances, the court arrived at the reasonable conclusion that there was a basis for

stating not the expansion of rights granted to the agent, but ratification by the principals, i.e. their purposeful will to mortgage real property to secure obligations namely of third parties.

But one cannot agree to the law interpretation rule formulated by the SCL in another civil case that granting of new powers after performance of actions of the unauthorised agent means that the principal approved of such actions (UAB “Mularda” v. UAB “Kauno Platanas” 2006). As it has been mentioned, the principal, authorising another person to act on his behalf, expresses a will regarding performance of future actions, meanwhile when the principal ratifies actions of the unauthorised agent, retrospective legal consequences arise. The principal in general may be ignorant about earlier transactions made by the same agent, besides, the latter may abuse the trust by asking that the principal would give him relevant rights already after performance of unauthorised actions. For this reason, in all cases when it is established that the agent acted under the conditions of unauthorised agency, the desired legal consequences may arise for the principal not by giving new powers to the agent, but by ratifying its unauthorised actions.

### **3. Conditions and procedure of ratification of actions of the unauthorised agent**

Actions of the unauthorised agent can be ratified in various ways. First of all, the principal can clearly indicate that he approves of such actions (both on his own initiative and upon request of a third party). In addition to an express ratification, actions of the unauthorised agent can also be approved of indirectly, i.e. a conclusion may be made on the basis of the actual behaviour of the principal that he has a positive opinion about the transactions made by the agent without having authority for this. That is called implied ratification of the unauthorised agent's actions, which is established taking into account specific circumstances in connection with the principal's conduct. It should be noted that in practice implied ratification is much more often than the express one (Vogenauer, Kleinheisterkamp 2009; Jefimovs 2017).

In Lithuania, implied or indirect ratification of the unauthorised agent's actions is linked to Article 1.79 of the Civil Code (2000). Its paragraph 2 establishes four cases when it is presumed that a transaction is ratified by the party – if, after it became possible to do that, any of the following events have taken place: 1) he has performed the transaction partly or in whole; 2) he has made a demand against the other party for the performance of the transaction; 3) he has granted a security for the performance of his obligations to the other party; 4) he has transferred the rights acquired according to that transaction to another person partly or in whole. Please note that not only circumstances indicated in this legal rule, but also other circumstances can prove that the principal approves of actions of the unauthorised agent. One could, for example, reasonably refer to the provision provided for in Article 2153 of the Civil Code of Quebec (1991) that the mandator is presumed to have ratified an act which exceeds the limits of the mandate where the act has been performed in a manner more advantageous to him than the one he had indicated. In case law attention is paid to the fact that ways of ratification are various, it is important that such ratification would be understandable to another person engaged in legal relationship (S. A. v. 159<sup>th</sup> Association of Apartment Owners of the City of Kaunas 2002). Still, in certain cases legal acts set requirements for the form of ratification of actions of the unauthorised agent. For example, paragraph 2 of Article 3:69 of the Civil Code of the Netherlands establishes that where a procuration has to be granted in a specific form, this formal requirement applies as well to a ratification of actions of the unauthorised agent. Besides, some legal systems maintain a position that if law establishes certain form requirements for a transaction that the principal seeks to ratify, they must also be followed in case of ratification (Busch 2009). It is debatable whether this rule must be applicable in all cases, especially when the principal's ratification is not express but implied. Presumably, taking into account needs for protection of third parties' interests, solely the circumstance that the principal expresses his will regarding actions of the unauthorised agent (no matter how, directly or indirectly) must be treated as a sufficient basis for usual legal consequences of agency to appear. Otherwise, a situation can occur when circumstances related to the principal will allow to state existence of ratification, but the principal, being not

interested in ratification of the unauthorised transaction, may abuse the fact that he did not express his will in the form set by law. Besides, an opposite situation is possible, where a third party, not seeking to be bound by a transaction made by the unauthorised agent, can attempt to refer to breaches of form, though the principal has expressed his will about ratification. Therefore, the fact that the Civil Code (2000) does not establish any form requirements for ratification of actions of the unauthorised agent is to be evaluated positively. Article 15(8) of the Geneva Convention (1983) confirms that ratification can be of any form. It is noteworthy that ratification by the principal should not cause any legal consequences only when the initial transaction made through the unauthorised agent is not of the form prescribed by legal acts.

Please note that Lithuanian courts usually properly qualify factual circumstances when deciding whether the principal ratified actions of the unauthorised agent. For example, in a civil case examined by the SCL (AB "Pamūšio linai" v. A. V. 2003) it was reasonably admitted that the principal ratified a contract concluded by the unauthorised agent, as he personally took the advance payment indicated in the contract, used it according to the conditions provided for in the contract and fulfilled other contractual obligations. In another civil case (G. A. v. AB "Alytaus tekstilė" 2004), it was stated that the principal ratified the employment contract concluded by the unauthorised agent by its behaviour: it paid the third party the work remuneration agreed in the employment contract, consented to accrual of default interest for work remuneration not paid in time, to the severance pay for two months and the compensation for unused vacation and fulfilled other obligations provided for in the employment contract.

Still, cases can be found in the Lithuanian case law in which certain circumstances are linked to ratification of actions of the unauthorised agent not very precisely. For example, it is noted in the ruling passed by the SCL UAB "Oriola Vilnius" v. PĮ "Rasmūtės Manelienės stomatologinė klinika" (2001) that the fact that the owner of the sole proprietorship admitted the contested contracts is confirmed by the circumstance that in solving the dispute in court she sought to enter into an amicable settlement agreement. To be true, agency ratification in this case is proved by the fact that the defendant paid the claimant a part of the debt under agreements in dispute. Presumably, initiation of an amicable settlement agreement should not in all cases be treated as the circumstance confirming ratification by the principal. One can take a decision on ratification of actions of the unauthorised agent only after a specific analysis of terms and conditions of such a contract and other related circumstances. There are also doubts regarding the fact that the court, when solving this dispute, linked the ratification by the principal to the circumstance that the defendant (the principal in agency relationship) did not file an appeal with an appellate court against the amount of the debt awarded on the basis of the contracts. It is noteworthy that the defendant had made a claim to admit these contracts to be invalid on the basis that they were concluded by an unauthorised person. Taking that into account, one cannot agree with the court's conclusion that absence of objections to the debt amount, though the very basis of debt is challenged, implies that the principal ratified actions of the unauthorised agent.

It is analysed in the doctrine whether it can be regarded that the principal ratified unauthorised actions of the agent without performing any specific actions, i.e. tacitly. It is stated that the principal's behaviour after the agent was granted powers can in a certain sense mean that the scope of initial rights has changed: the principal, being aware that the agent acts exceeding his powers and without taking any active actions about it, indirectly confirms that the agent has more rights than he was actually granted. Presumably, solely the principal's inaction should not be treated as a sufficient basis for stating ratification of actions of the unauthorised agent by the principal. If the principal does not perform any actions, which would indicate that he approves of unauthorised actions of the agent, usual legal consequences of agency most probably should not appear. But if the principal gets certain benefit out of actions of the unauthorised agent, such passive behaviour of his could be qualified as expressing a relevant approval. For example, the French Court of Cassation in case *George Blanche v. Boutonnet et autres* (1931) was solving a dispute of this nature. The claimant and the defendant were co-owners of a house. None of

them lived in the house, but the defendant was responsible for its maintenance. Taking that into account, the defendant concluded a contract with Ms Dufour for lease of the house, and later also for its sale. Ms Dufour was paying rent each month, making such payments to the claimant's bank account. Then she decided to implement the purchase and sale contract made with the defendant but the claimant indicated that he was not bound by the contract as he did not know anything about its conclusion, besides, he had not ratified that transaction. The court established that the claimant's silence can mean his implied ratification because, though he did not directly express his will regarding actions of the other co-owner, but the fact that he used to get rent each month, without stating any objections to this, indicates that he knew about unauthorised actions and approved of them. It is noteworthy that in deciding whether the principal's silence regarding ratification of actions of the unauthorised agent can cause usual legal consequences of agency, one must analyse in detail all factual circumstances, as only referring to them one can state whether in a specific case the principal did not act as he was expected (Sainter 2009).

Please note that it has been established in many legal systems in case of legal relationship of commercial agency, i.e. when the agent is a professional intermediary and the principal is a person engaged in economic commercial activities, that failure by the principal to notify about non-ratification of a transaction conducted by the unauthorised agent means that such a transaction is deemed valid. Such a rule is set in the Civil Code (2000), too. Paragraph 1 of Article 2.163 of the Civil Code (2000) contains a provision that where a commercial agent concludes a contract on behalf of the principal without having authority to do so and where the other party was not aware and was not able to be aware thereof, it is recognised that the principal has ratified the contract in the case, where he, upon notification about the said contract by the commercial agent or the third person, failed to inform, without delay, the third person of his disapproval thereof. Taking into account specifics of commercial agency relationship, this reservation can be treated as reasonable, but presumably in other cases the general provision should apply saying that the principal must express his will about ratification of the unauthorised transaction by his active actions. If he fails to do that, the transaction, in conduction of which the agent exceeded the authority given to him or acted without any authority, should not bind the principal. Analysing foreign case law, it is evident that even in case when commercial transactions are entered into not through a professional intermediary, the principal's inaction can be treated as a sufficient basis for stating ratification of actions of the unauthorised agent, especially if in a specific case business entities can reasonably expect that the principal, understanding that his interests are infringed upon, would have expressed his clear disapproval of this (Schmidt-Kessel, Baide 2009).

In Lithuanian case law the principal's behaviour after conduction of an unauthorised transaction is qualified differently. In the ruling of the SCL of UAB "Dausa" v. AB "Turto bankas" and UAB "Rožinis flamingas" (2004) it is stated that the claimant's letter to the defendant, which mentioned the contested transaction of mortgage for a loan of a third party, makes it possible to consider application of consequences provided for in Article 66 of the Civil Code of 1964, which are related to ratification of actions of the unauthorised agent. Referring to this ruling of the SCL, one can arrive at the conclusion that the fact that the claimant, being aware of the transaction made by the unauthorised agent, did not immediately address the court for defence of his infringed rights, means that he approved of the transaction. Though it has been mentioned that in the general case the principal's silence is not a sufficient basis for stating ratification of actions of the unauthorised agent, but in the context of this specific dispute the principal's inaction (it addressed the court for admitting the transaction to be invalid more than seven years later) and other circumstances established in the case could be evaluated as the principal's abuse of the institution of unauthorised agency. A similar evaluation was given of a circumstance established in another civil case settled by the SCL (S. D. v. A. K. Č. "Turizmo firma" and A. M. B. 2005) where the firm owner, being aware that his deputy entered into credit agreements with the claimant, did not contest them throughout the whole period the case was pending, which lasted over nine years. In another civil case S. A. v. 159<sup>th</sup> Association of Apartment Owners of the City of Kaunas (2002) the SCL stated that owners of premises in the association ratified

the fact that some members of the association were represented without powers of attorney, as they did not challenge the resolution of the meeting, in favour of which these agents without powers of attorney voted (it is interesting that in this civil case it was not the ratification by the principals that was taken into account, but whether third parties both the association itself and its members ratified actions of unauthorised agents). Meanwhile, it is already pronounced in the latest case law of the SCL that the principal's inaction should not be treated as ratification of actions of the unauthorised agent (Ministry of Health of the Republic of Lithuania v. UAB "Kraujo donorystės centras", Notary Public R. S. of Office No. 1 of Notary Public of the Kaunas District 2012). Facts of the case: the claimant addressed the court and requested to cancel the resolution of the general meeting of shareholders of the defendant UAB "Kraujo donorystės centras" of 30 April 2008 regarding amendments to the Articles of Association. It indicated that the Ministry of Health was the holder of 49 percent of shares in UAB "Kraujo donorystės centras" owned by the state, the remaining 51 percent of shares were owned by the Manager of the company A. J. V. According to the claimant, as the agenda of the meeting held on 30 April 2008 did not contain the matter regarding amendments to the Articles of Association and the person who represented the state did not have a proper power of attorney, the general meeting of shareholders held on 30 April 2008 could not pass a resolution regarding amendments to the Articles of Association, as approval of the shareholder holding 49 percent of the shares (i.e. of the state) was necessary for this but was not obtained. In solving the dispute whether a resolution of the general meeting of shareholders can be treated as valid, the SCL did not agree with arguments of the appellate court that the fact that the claimant did not challenge the resolution of the general meeting of shareholders after its adoption means that it ratified this resolution. The court additionally noted that there was no evidence proving the circumstance that the principal by any active actions gave its approval for this resolution. One should agree with such interpretation by court due to the reasons mentioned above.

As it has been mentioned, the principal can make ratification of actions of the unauthorised agent both on his own initiative and when he is addressed by a third party with such a request. In both these cases, the time limit, within which actions of the unauthorised agent can be ratified, is important. In some states (for example, in the Netherlands), it is established that the principal can ratify behaviour of the unauthorised agent within the general period of limitation (Busch 2009). In other legal systems (for example, in common law countries) ratification by the principal must occur within a reasonable time limit (Tan 2009). Such a position probably is reflected in *soft law*, too – for example, the UNIDROIT Principles (2010) and the Principles of European Contract Law (2000) (hereinafter, PECL) (Lando, Beale 2000). Finally, in some other jurisdictions as, for example, in Belgium (Samoy 2009) no time limits are set at all, but it is emphasized that if the principal does not express any will regarding an unauthorised transaction for a long time, it can be treated as his implied ratification.

Meanwhile, in those cases when a third party addresses the principal for ratification of actions of the unauthorised agent, the time limit for ratification is defined either in legal acts or is set by that third party. Let's say, in Germany, a time limit of two weeks is set for the principal to express his will regarding ratification of the transaction. In the Netherlands and the UNIDROIT Principles (2010) a third party is not bound by any specific time limits, however it is noted that the time limit set by a third party must be reasonable. A similar situation exists in Lithuania, where paragraph 6 of Article 2.133 of the Civil Code (2000) establishes a rule that a third party can request in writing to ratify or refuse to ratify a transaction within a time limit set by him, which cannot be shorter than fourteen days. In essence, all legal systems establish that if the principal does not respond within a time limit set by a third party, it is to be regarded that the principal refused to ratify the transaction, and any later approval by the principal does not have any legal effect. One should agree that only in case the principal replies to the third party's enquiry, it can be regarded that he expressed his relevant will, but it is doubtful whether one can agree that if the principal does not ratify actions of the unauthorised agent within a set time limit, he cannot do that later. Presumably, if a third party is interested and if time limits meeting reasonability criteria are honoured, the principal should be allowed to approve of actions of the unauthorised agent in the future, too.

Please note that different legal systems also do not have uniform interpretation as to whether the principal has a duty to notify that he ratified actions of the unauthorised agent. Such a requirement is provided for in the Netherlands, meanwhile in other jurisdictions (for example, in France or common law countries) the principal is not subject to this obligation. Since, as it has been mentioned, ratification only rarely is stated expressly, it is not clear how really the principal's duty in connection with making his will public must and can be implemented in cases of implied ratification. Besides, an issue arises which parties to the legal relationship of agency must be informed about it. In the Netherlands, the principal must inform third parties about ratification, whereas in Germany both third parties and the agent can be informed. Presumably, the practice when the principal has the right but not the duty to inform third parties and/or the agent about ratification would be most reasonable. It is obvious that if the principal is interested in fulfilment of an unauthorised transaction, he will himself initiate a relevant notification to third parties. Meanwhile, if a third party has doubts whether the principal ratified actions of the unauthorised agent, they can be dispersed by addressing the principal directly (both asking to indicate if he approves of a relevant transaction and making a specific claim according to the conducted transaction). As it has been mentioned, taking into account that in private law it is presumed that transactions are valid as long as the opposite is not proven, both the principal and a third party can claim from each other fulfilment of obligations assumed according to the conducted transaction. Application of the institution of ratification of actions of the unauthorised agent and other related institutions becomes relevant only when one of the parties indicates that a specific transaction was made by a person who did not have such a right. Until then, the unauthorised agency problem is mostly theoretical.

It is also important to note that some legal systems (for example, of Germany, the Netherlands) provide for a right of a third party to refuse a conducted transaction before it is ratified by the principal. Paragraph 7 of Article 2.133 of the Civil Code (2000) also establishes that the other party to a transaction, that entered into a contract with a person who did not have such a right, can refuse the transaction before it is ratified by the principal, except for cases when at the time of entering into the transaction he knew or should have known that he was entering into the transaction with an unauthorised person. A possibility for a third party to refuse an unauthorised transaction is also provided for in *soft law*. For example, paragraph 3 of Article 2.210 of the UNIDROIT Principles (2010) contains a provision that if a third party did not know or should not have known that the agent acted without necessary powers, he may, at any time before the principal ratifies actions of the unauthorised agent, declare to the principal that he does not wish to be bound by this ratification. This right of a third party is similarly regulated in the Agency Digest, just here it is not related to good faith of a third party, i.e. a third party can cancel a relevant transaction even if he knew or should have known that the agent that made it acted without the necessary powers. It is noteworthy that common law does not admit the right of a third party to refuse an unauthorised transaction before it is ratified by the principal. Such a position was formed in the case *Bolton Partner Ltd v. Lanbert* (1889), in which the court indicated that after the principal ratifies actions of the unauthorised agent, retrospective legal consequences arise, which cannot be cancelled by the third party's refusal of the unauthorised transaction even if it was expressed before the principal expressed his will. It is admitted in this case that the third party is bound by the unauthorised transaction already from the moment when the unauthorised agent sought to make it.

In legal doctrine, it is also debated intensively about this right of a third party. Please note that a possibility to refuse a conducted transaction makes it possible for a third party to play the market (Reynolds 2009). Therefore, one can agree with the position formed in the case law of the Dutch courts that in those cases when a third party refuses a transaction conducted by the unauthorised agent because he seeks to enter into another transaction of similar character, however at more favourable terms, such a conduct is to be treated as unfair, therefore a relevant refusal by a third party should not cause unfavourable legal consequences for the principal (Busch 2002). In general, it is to be presumed that if a third party, when negotiating with the agent, was interested in conduction of a relevant transaction, he should not be later allowed to change his position referring to the circumstance that the

agent did not have necessary powers. Attention should also be paid to the fact that if possibilities are created for a third party to refuse a transaction conducted by the unauthorised agent, he would unreasonably find himself in a more favourable position than the person who enters into the transaction with another party not through an agent but directly. Therefore, it is to be proposed that in those cases when the principal seeks to implement the transaction, which was entered into by the unauthorised agent, the third party should not be allowed to refuse such a transaction, in spite of the fact whether he expressed such intentions yet before the ratification or after it.

#### **4. Legal consequences of ratification of actions of the unauthorised agent**

##### **4.1. Legal consequences arising in external relationship of agency**

It is considered that after the principal ratifies actions of the unauthorised agent, usual legal consequences of agency arise, i.e. it results in the same legal relationship as in case when the agent acts with necessary powers. Such legal consequences in external legal relationship of agency are also defined in the Lithuanian case law. It is noted in the SCL ruling of 27 July 2012 (K. J. v. UAB “Bendra idėja”, R. J. 2012) that ratification of the transaction conducted by the unauthorised agent directs the principal’s will towards the past events and that determines changes in already formed legal relationship, to be specific – it eliminates agency related faults of the transaction, which would otherwise make it possible to challenge and prove such transaction to be invalid.

In essence in all legal systems ratification of actions of the unauthorised agent causes retrospective circumstances: subsequent approval by the principal makes the transaction effective from the moment it was entered into, in spite of the fact that the agent entered into the transaction on behalf of the principal exceeding his powers or having no right to do that. This power of retrospective effect is also provided for in paragraph 6 of Article 2.133 and in paragraph 2 of Article 2.136 of the Civil Code.

It is important to note that after ratification of actions of the unauthorised agent not only a third party can make any claims to the principal arising out of a relevant transaction, but the principal can also do that in respect of the third party. In other words, the consequence of ratification of actions of the unauthorised agent is that mutual rights and obligations appear between the principal and the third party. The SCL also supports this opinion, noting that after ratification of the unauthorised transaction, the possibility of the principal to take part in civil legal relationship is implemented, that means that by this action he acquires rights and related obligations (K. J. v. UAB “Bendra idėja”, R. J. 2012).

In many legal systems, there is a rule that if third parties do not address the principal for ratification of the agent’s actions, it means they did not have doubts that the will of the principal was not properly expressed, i.e. that the agent performed unauthorised actions. It means that it is only when the principal indicates that a relevant transaction was concluded by an unauthorised agent, can third parties address him asking to ratify the transaction. Usually that becomes obvious when third parties make a claim arising out of a relevant transaction that the principal refuses to perform, indicating that the agent did not have the right to enter into it. In the Lithuanian case law, it is admitted that the fact that third parties did not ask the principals to ratify a transaction, means that they had no doubts about the will of the principals (J. G. v. L. S. 2010).

It is also important to pay attention to legal consequences, which ratification causes for fourth parties. In many jurisdictions it is admitted that interests of these persons, who most often are not aware of violations in agency relationship, should not suffer by reason of ratification. Therefore, in spite of the fact that, as it has been mentioned, ratification acts retrospectively, rights that fourth parties acquired yet before ratification remain with them (especially the right of ownership and other rights in rem). Besides, if fourth parties have interest in relevant

legal consequences, they can also address the principal themselves with a request to ratify actions of the unauthorised agent.

#### **4.2. Legal consequences arising in internal relationship of agency**

Legal doctrine almost fails to analyse what legal consequences arise in internal legal relationship of agency after the principal authorises actions of the unauthorised agent. Presumably that after the principal expresses approval of such actions of the agent, it should not be regarded that his rights are infringed and he can defend them by making a relevant claim against *falsus procurator*. Though, according to the general rule, after the agent exceeds his powers or acts without any powers at all, it is considered that he violated his duties arising out of the assignment or another agreement, on which the internal legal relationship of agency is based, but after the principal legitimises his unauthorised actions, the agent should not be held liable. Ratification of actions of the unauthorised agent also means that the principal has to perform his duties to the agent, one of which is payment of remuneration for fulfilment of an assignment.

One of the exceptions when the above-indicated legal consequences would not arise is legal relationship of commercial agency, where slightly different principles pertaining to ratification of actions of the unauthorised agent are formed. As it has been mentioned, if the principal did not immediately notify a third party that he disapproved of the transaction that a commercial agent entered into without having necessary powers for this, it is regarded that the principal ratifies such a transaction. It is debatable whether these legal consequences, which are significant in external relationship of agency, are to be analogously qualified in the relationship between the principal and the agent, i.e. whether it is to be admitted that the agent did not act as *falsus procurator*. Taking into account that the principal's action or inaction are evaluated only after he objectively learns of conclusion of the unauthorised transaction, it is to be considered that in such cases the principal usually has all possibilities to defend his infringed rights. Therefore, in case the principal does not object to validity of a specific transaction, it can be regarded that in this way he expresses his position that the unauthorised agent did not act in a manner contrary to his interests. Still, in exceptional cases (for example, when the principal takes a wrong decision concerning a concluded unauthorised transaction relying on information presented by the agent) active failure to express the principal's will can imply the commercial agent's liability if all conditions for its application are proven. It is to be presumed that also in those legal systems where it is admitted that the principal can also express his approval of actions of the unauthorised agent tacitly, the agent's liability to the principal should be discussed, too.

It is interesting to note that in common law, where usually legal consequences in internal and external legal relationship of agency coincide, there is a possibility that the principal, when ratifying actions of the unauthorised agent, can make a reservation about the agent's liability (Tan 2009). However, as case law reveals, such cases are rather rare and are to be treated as violating the agent's interests. In fact, it should be admitted that if the principal were not interested in legal consequences caused by actions of the unauthorised agent, he would simply refuse to ratify them. If the principal, making ratification, derives a certain benefit from it, it would be unreasonable for him to also get the right to make certain claims against the agent.

#### **4.3. Relationship of ratification of actions of the unauthorised agent with apparent authority**

Apparent authority is described as one of the main problems of the agency institution (Stoljar 1961). It should be noted that differently than in Lithuanian jurisprudence, sources of foreign law do not use the concept "apparent agency" but rather "apparent (ostensible) authority" (in French *mandat apparent*, in German *Anscheinsvollmacht*). Taking into account the terminology established in the Lithuanian legal doctrine, in this paper the concept of apparent authority, as a type of agency, is also mostly used. These are cases when, taking

certain circumstances into account, for which the principal is usually held responsible, an impression is created that actions causing legal consequences are performed by the agent authorised to do that.

In many jurisdictions the relationship of ratification of actions of the unauthorised agent and apparent authority is such that after the principal ratifies actions of the unauthorised agent, rules on apparent authority usually are not referred to. It is considered that only in case when the principal does not express his relevant approval, the application of the apparent authority doctrine can be discussed. In other words, priority of ratification of actions of the unauthorised agent over apparent authority is established. As it has been mentioned, in those legal systems where apparent authority is understood exclusively as a manner of defence of third party's infringed rights, the principal does not have the right to refer to this doctrine when cases of unauthorised agency are established. In order that the principal could make claims arising out of an unauthorised transaction against a third party, it is necessary to ratify such a transaction. Therefore, in certain cases ratification of actions of the unauthorised agent is the only way of implementation of the principal's interests and defence of his infringed rights when the agent exceeds powers granted to him or acts without them.

It should be noted that in some jurisdictions it is admitted that a third party can apply both apparent authority doctrine and doctrine of ratification of actions of the unauthorised agent referring to the same facts. Such a possibility exists in those legal systems (for example, in the Netherlands, also in case of application of the UNIDROIT Principles (2010) and PECL (2000), where, in establishing whether a specific situation of unauthorised agency meets conditions for apparent authority, in addition to other things, the principal's behaviour after the conclusion of the disputed transaction is also taken into account (Busch, Macgregor 2009). Still, it is admitted that if facts of the dispute prove ratification of actions of the unauthorised agent, it is not expedient to analyse conditions for application of apparent authority.

The relationship of apparent authority and ratification of actions of the unauthorised agent has been analysed in the Lithuanian case law indirectly, too. The SCL in its case law in the ruling UAB "Kreivė" v. UAB "Orgreitos transportas" (2011) and in the ruling R. Z. v. BUAB "Metoil" (2016) noted that in deciding about validity of a transaction concluded by an agent who exceeded his powers, the circumstance provided for in paragraph 6 of Article 2.133 of the Civil Code (2000), i.e. subsequent will of the principal either to ratify such a transaction or not, is decisive only in case when the other party to the transaction does not refer to paragraph 9 of Article 2.133 of the Civil Code (2000). When the counterparty to the transaction requires validity of the transaction and seeks to prove that he had a serious reason to think that he was entering into the transaction with an agent having such a right, the principal has to challenge validity of the transaction seeking to prove that the counterparty to the transaction knew or should have known that the agent was exceeding his powers. Taking this interpretation into account, a conclusion can be made that if a third party seeks to refer to the apparent authority doctrine, it does not have to prove that the principal has ratified a relevant transaction or not. Another logical conclusion follows from this ruling that having established the circumstance that the principal ratified actions of the unauthorised agent, the apparent authority rules, provided for in paragraph 9 of Article 2.133 of the Civil Code (2000), can no longer be applied. In other words, ratification of actions of the unauthorised agent eliminates application of apparent authority. It is noted in the ruling of 12 April 2011 (UAB "Kreivė" v. UAB "Orgreitos transportas" 2011) that analogous provisions on interpretation and application of law are set out in the ruling of passed in civil case T. Ž. v. sole proprietorship of J. V. V. (2007). Though this ruling, as well as the ruling of 12 April 2011 (UAB "Kreivė" v. UAB "Orgreitos transportas" 2011), analyses certain aspects in connection with unauthorised agency to be specific, whether the agent's actions meet conditions established in Article 2.133 of the Civil Code (2000), but the court does not pronounce on the relationship of paragraphs 6 and 9 of Article 2.133 of the Civil Code (2000). This position in essence corresponds to tendencies of legal regulation and case law in other countries.

In spite of the fact that apparent authority and ratification of actions of the unauthorised agent are understood as two independent ways of defence of infringed rights of a third party, analysis of related case law shows that courts regard facts both in the context of apparent authority and in the context of ratification of actions of the unauthorised agent, though in fact it would be enough to refer to just one of them. For example, the Vilnius Regional Court was solving a dispute regarding award of rental debt (*Ramirent Baltic AS v. UAB "Nekilnojamojo turto valdymas"* 2012). The claimant filed a statement of claim with the court and indicated that it entered into the lease agreement with the defendant, where the defendant undertook to pay rent to the claimant for transferred construction equipment. The construction equipment was transferred to the defendant under deeds of transfer and acceptance of the equipment and VAT invoices were issued for provided services, which the defendant did not pay in full. The defendant did not agree with the statement of claim, indicating that the deeds of transfer and acceptance of the equipment were signed by persons who did not work for the defendant company, therefore it thought that it did not have the obligation to pay for lease of the equipment. In settling this dispute, the court, first of all, referred to paragraph 2 of Article 2.133 of the Civil Code (2000), establishing that if a person by his behaviour created a serious reason for third parties to think that he appointed another person as his agent, transactions made by such a person are binding on the principal. In the court's opinion, this rule of law should be applied to the relationship in dispute, as delivering the equipment to a specific object of the defendant, where persons present thereat used to confirm in writing (by signing a deed) receipt of this equipment, the claimant could reasonably believe that those persons and the defendant were linked by legal relationship of agency (assignment). These reasons allow arriving at the conclusion that the court established the fact of apparent authority without specifying it directly. In spite of that, the court noted that the claimant's belief that the equipment was transferred to a proper agent could be supported not only by the presence of the persons who accepted the equipment in the specific object, for which the equipment was ordered, but also by payment of invoices according to equipment acceptance deeds signed both by a person having a written power of attorney of the defendant and by other persons having no such power of attorney. The circumstance that the defendant, referring to the equipment acceptance deeds, paid some of the claimant's invoices, can already be qualified as ratification of actions of the unauthorised agent. For this reason, when settling the dispute between the parties, it would have been enough to refer to this fact only and not to analyse additionally whether there are grounds for application of the rules on apparent authority. And it is only in case if the principal had negated that it ratified actions of the unauthorised agent, could the court take a decision on application of apparent authority. This delimitation of apparent authority and ratification of actions of the unauthorised agent is important not only for proper qualification of the relationship in dispute, but also practically, as it is much simpler to prove ratification of actions of the unauthorised agent than meeting of conditions for apparent authority. Another important thing is that having established ratification by the principal, he loses the right to make claims against the agent that performed unauthorised actions. Meanwhile, establishment of apparent authority, as it has been mentioned, means presumption of unlawfulness, as one of the conditions for the agent's liability to the principal. For this reason, the agent in fact is interested that, if possible, not apparent authority but ratification of actions of the unauthorised agent would be established.

In another civil case *I. T. (G.) v. ŽŪB "Pavasaris"* (2014), in spite of the fact that it was possible to state apparent authority in it, infringed rights of a third party could be defended on that basis that the principal ratified the transaction in dispute. The court ignored the circumstance that the principal accepted money from the third party according to the transaction in dispute, which could prove the fact of indirect ratification of actions of the unauthorised agent.

It is important to note that in certain cases the agent's request to the principal asking for ratification can eliminate the possibility of application of apparent authority. A third party, asking the principal to ratify a relevant transaction, admits that the agent made it without having the necessary authority. As one of the conditions for application of apparent authority is that at the time of conclusion of the transaction the third party must be

reasonably convinced of the presence of the agent's powers. In this way, the third party, addressing the principal for ratification, kind of negates reasonability of its belief and, probably, that may be taken into account when establishing apparent authority. For this reason, third parties, before addressing the principal, should evaluate the risk, which could arise if the principal refused to ratify actions of the unauthorised agent and later it were sought to rely on the apparent authority doctrine. As an example, civil case Tauragė District Board v. V. B., G. B (2001), settled by the SCL can be mentioned. Though the dispute between the parties was settled referring to provisions of the Civil Code of 1964, which, as it has been mentioned, did not yet provide for the institution of apparent authority, but the interpretation by the court allows to make a conclusion that as a third party made a request to the principal to ratify a transaction entered into through an agent, such request implies the third party's understanding that an unauthorised transaction was made, by reason of which his interests should not be defended in case the principal refuses to ratify such a transaction. The essence of the dispute: the Tauragė District Board requested to invalidate the agreement for purchase and sale of real property, which was signed by the defendants, who had only the power of attorney issued by the Tauragė State Board of Apartments Sector. As the Tauragė District Board had not taken a decision to sell the said structures, there was no power of attorney issued by the Board to sell the structures. The court established that the Tauragė State Board of Apartments Sector, not being authorised itself and having no right to solve issues of sale and purchase of apartments, did not have any legal basis, in the absence of a relevant decree of the Tauragė District Board, to authorise Chief Engineer A. B. of the Tauragė State Service of Apartments Sector to enter into the agreement for purchase and sale of structures in dispute with the defendant V. B. Thus, in the absence of the expression of the will of the Tauragė District Board to sell the structures in dispute, the agreement for purchase and sale was made on behalf of the Tauragė District Board by a person not authorised to do that. The material in the case file does not show that the Board later approved of the transactions at its own will. The case file contains a copy of the defendants' request to the Board, by which the latter asked to acknowledge the contested transaction, but there was no positive reply to it. It is to be presumed that if this dispute were settled by applying the Civil Code (2000), the defendant (the third party in the agency relationship) could reasonably refer to the apparent authority rule, taking into account that he, probably, had a serious reason to believe that the agent acted having real powers.

Presumably, the court should not make an application by a third party to the principal so absolute and should not treat it as a circumstance that would negate the possibility of application of apparent authority. As it has been mentioned, presence of apparent authority does not eliminate the fact that the agent acted without having necessary powers, therefore application of third parties to the principal, first of all, should be linked to disclosure of relevant information to him and the aim of the third party that the principal would express his will about the concluded transaction as soon as possible. If the principal states his disapproval, the third party should not lose a possibility to defend his infringed rights if it has a serious reason to believe the fact of the agent's powers.

In this context, it is noteworthy that courts do not always manage to properly delimit ratification of actions of the unauthorised agent from another basis for agency relationship related to apparent authority – implied authority. The general rule is that determination that the agent acted having implied rights should not result in the decision on whether the principal ratified actions of the unauthorised agent. A dispute was settled by the Vilnius Regional Court in civil case A. U. v. UAB "Druskininkų autobusų parkas" (2011) regarding lawfulness of an employee's dismissal from work. In addition to some other arguments, the claimant based unlawfulness of his dismissal from work on the circumstance that the defendant's authorised person V. V., when issuing an order on imposition of the disciplinary penalty on the claimant – dismissal from work, exceeded his powers. The court indicated that V. V. exceeded his powers, as according to the power of attorney issued to him he was given the right only to conclude employment contracts but not to terminate them. As it has been mentioned previously when analysing this case, such a court conclusion is too formal, made only on the basis of the literal text of the power of attorney. The court did not pay attention to the fact that the disputed right of the agent can be treated as integrally related to the assignment he must carry out. Therefore, instead of relying on implied authority rules in settlement of the

dispute, the institution of ratification of actions of the unauthorised agent was applied. The court established that solely the circumstance that A. D., as the head of the company, later ratified actions of V. V. who signed the order on the claimant's dismissal from work, allowed to make a conclusion that the will of the head of the company concerning the dismissal of the claimant from work was implemented properly. Thus, the court stated ratification of actions of the unauthorised agent by the principal, though for analogous legal consequences to appear, it would have been enough to state implied actions of the agent.

## Conclusions

Ratification of actions of the unauthorised agent is a method of implementation of interests and defence of infringed rights not only of third parties but also of the principal in those cases when the agent exceeds powers granted to him or acts without them.

Ratification of actions of the unauthorised agent is most often established on the basis of the actual behaviour of the principal and other circumstances related to him, therefore ratification should not be subject to any requirements of form.

A third party should not be allowed to refuse a transaction entered into through the unauthorised agent, if the principal seeks to implement it. Interests of fourth parties should not in any case suffer due to the right of a third party to cancel such a transaction.

After the principal ratifies actions of the unauthorised agent, usual legal consequences of agency arise both in internal and external relationship of agency.

Apparent authority and ratification of actions of the unauthorised agent are two independent ways of defence of third parties' infringed rights. In cases when the principal ratifies actions of the unauthorised agent, rules on apparent authority should not be referred to.

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