

THE CONDITIONS OF APPARENT AUTHORITY FROM A COMPARATIVE PERSPECTIVE

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Abstract

This research examines the concept of apparent authority, a legal doctrine that can hold a principal liable for the unauthorised actions of an agent. Despite a person's lack of expressed desire for representation or an agent's deviation from instructions, the ordinary legal consequences of representation can still apply if the conditions of apparent authority are established. This research adopts a comparative approach, analysing the criteria for applying apparent authority across civil law and common law legal traditions, as well as in soft law instruments. Lithuania, with its explicit legal provisions on apparent authority, serves as the primary jurisdiction of this analysis. By examining the interpretation of the individual conditions of apparent authority, this research seeks to determine how to ensure balanced protection of the interests of the parties involved in agency relationships (i.e. the principal, the agent and the third parties).

Keywords: *apparent authority, agency law, representation, principal, agent, third parties.*

Introduction

According to the general principle of representation in civil law, legal acts performed by one person (the agent) on behalf of another person (the principal) directly create, modify and extinguish the rights and obligations of the principal. These effects do not arise for the principal if acts of legal significance are performed on their behalf by a person who exceeds the rights conferred or who has no rights at all. However, it is accepted in practically all modern legal systems that the usual legal consequences of representation may arise even if the person does not express an intention to be represented or if the agent deviates from the instructions given. Such exceptions to the general legal consequences of an unauthorised agency are necessary to ensure the stability of

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transactions concluded through agents and to protect the interests of honest participants in the civil market. One of the cases in which the principal may be bound by transactions concluded on the principal's behalf or by other legal acts performed by an unauthorised agent is that of apparent authority (Barnes and Oldham, 2019, p. 649–650).

Apparent authority is described as one of the key concepts of agency law (Macgregor, 2022). It refers to cases where, in certain circumstances for which the principal is normally held responsible, the impression is created that the acts having legal consequences are being performed by an agent who is authorised to do so. If apparent authority is established, the legal consequences are usually the same as if the agent had real (express or implied) authority. The purpose of apparent authority is primarily to protect the interests of the third party who, in good faith and on reasonable grounds, believes that a legal relationship of agency has been created. In turn, the principal, who has not granted authority to the agent, generally attempts to rebut the claim of apparent authority and transfer liability to the unauthorised agent. The agent is typically disinterested in the application of apparent authority, as it may be held liable for losses incurred by the principal due to the apparent transaction. Given that the parties to the agency relationship are pursuing substantially different legal effects, it is crucial to define the specific conditions for apparent authority to balance competing interests and prevent abuse. This article delves into the conditions necessary for the application of apparent authority, examining both civil law and common law approaches, as well as discussing relevant soft law instruments, i.e. UNIDROIT Principles of International Commercial Contracts (UNIDROIT Principles, 2016), Principles of European Contract Law (PECL, 2002), and Draft Common Frame of Reference (DCFR, 2009).

Apparent authority is primarily a product of case law and legal doctrine, with different legal systems developing unique interpretations based on general principles of private law. These interpretations vary across jurisdictions, resulting in diverse approaches to the legitimisation of unauthorised agent actions. Lithuania is one of the few countries that has incorporated the concept of apparent authority into its legislation (Jurkevicius, 2023, p. 137). The Civil Code of the Republic of Lithuania (CC, 2000) provides a specific legal framework for the application of apparent authority. This article, drawing on the best practices of foreign countries and soft law instruments, aims to assess whether Lithuania's legal framework and case law effectively balance the interests of parties involved in agency relationships.

1. THE SCOPE OF APPARENT AUTHORITY: A COMPARATIVE ANALYSIS IN CIVIL LAW, COMMON LAW AND SOFT LAW

As the concept of apparent authority is understood differently in various legal systems, the specific conditions for its application may also differ. In some jurisdictions, it is sufficient to prove only one condition (the case of France) to establish apparent authority, while in other jurisdictions, as many as

six conditions may be required (for example, in some common law jurisdictions) (Macgregor, 2006, p. 127). Although the specific legal frameworks and judicial approaches may vary, courts in different jurisdictions often reach similar results when applying the doctrine of apparent authority to resolve disputes arising from unauthorised agency relationships (Reynolds, 2009, p. 984).

In its early development, the French legal system's approach to apparent authority was primarily rooted in tort law, specifically the doctrine of *l'apparence*, which focused on the principal's fault. This approach has often led to courts artificially constructing fault on the part of the principal, even in cases where the principal had not taken any actions that could reasonably be interpreted as conferring apparent authority upon the agent. (Smits, 2007, p. 40). For example, the principal was considered guilty even if he chose the wrong agent (Sainter, 2009, p. 24–25). This situation changed dramatically with the French Court of Cassation's decision in the *Banque Canadienne Nationale* case. In this case, the court determined that a principal can be held liable under the doctrine of apparent authority, even if the principal's conduct was not culpable if the third party's belief in the agent's authority was reasonable and justifiable (Beale, 2010, p. 1286–1287). The essence of the *Banque Canadienne Nationale* case was that a surety contract had been concluded in the name of a bank with the third party, under which the bank guaranteed a legal person with limited liability for the sum of 700,000 French francs. When the principal debtor failed to fulfill its contractual obligations, the third party invoked the guarantee and sought to hold the bank liable for the resulting damages. The bank argued that the guarantee agreement concluded by its agent was invalid since the bank's documents required two signatures in such cases. The bank asserted that it had not engaged in any conduct that would have led a reasonable third party to believe that the agent had authority to act on the bank's behalf. The court determined that the bank's argument was insufficient, as the third party's reasonable belief in the agent's authority was a sufficient condition for the principal's liability. This decision highlights a significant development in French law, as it now requires only one condition—the third party's legitimate belief—for the application of the doctrine of apparent authority.

In the Netherlands, the doctrine of apparent authority requires the satisfaction of three cumulative conditions: (1) a representation by the principal that creates the impression of authority; (2) a reasonable belief by the third party in the agent's authority based on that representation; and (3) actual reliance by the third party on the agent's authority (Busch, 2009, p. 149). The third condition, requiring actual belief in the agent's authority, is often considered unnecessary. Once it is established that the third party had reasonable grounds to believe in the agent's authority, it is generally assumed that the third party relied on that belief, unless the principal can demonstrate that the third party was aware of the agent's lack of authority (Busch, 2009, p. 149). In the Netherlands, the risk principle is employed to determine the principal's liability. If the circumstances surrounding the transaction fall within the principal's sphere of risk, and the third party's belief in the agent's authority is reasonable,

the principal may be held liable, even if they did not intend to confer authority upon the agent (Busch and Macgregor, 2009, p. 398). This principle could be successfully applied in other jurisdictions to ensure the conflicting interests of the principal and the third parties.

In Germany, the application of the principle of *culpa in contrahendo* (improper conduct of the parties in the negotiations) to apparent authority (*Ancheinsvollmacht*) raises questions about the specific conditions that must be met to hold the principal liable for the unauthorised actions of the agent. This uncertainty stems from the need to balance the interests of the principal, the agent, and the third party, while also considering the potential for abuse of the doctrine of apparent authority. The German legal system has relaxed the stringent requirement of a direct causal link between the principal's actions and the third party's reliance. Instead, a more general standard of principal liability is now applied, allowing for a broader range of circumstances in which the principal may be held accountable for the agent's unauthorised actions (Schmidt-Kessel and Baid, 2009, p. 120). The application of apparent authority is generally predicated on the existence of a pre-contractual relationship between the principal and the third party. The question arises as to whether the doctrine can be extended to situations where no such relationship exists (Schmidt-Kessel and Baid, 2009, p. 119–120).

In Italy, the doctrine of apparent authority requires the fulfillment of four distinct conditions: (1) the principal must have made a representation that led the third party to believe that the agent was authorised; (2) the principal must have acted negligently in creating this impression; (3) the third party must have genuinely believed that the agent had the necessary authority; and (4) this belief must be objectively reasonable based on the specific circumstances (Antoniolli and Veneziano, 2005, p. 153). In contrast to many other legal systems, Italian law conditions the application of apparent authority on the principal's fault. Nonetheless, even in jurisdictions that have adopted a more objective approach, the concept of fault continues to have some relevance (Antoniolli and Veneziano, 2005, p. 153).

In common law jurisdictions, the doctrine of apparent (ostensible) authority is typically applied when three conditions are met: (1) the principal must have made a representation, either expressly or impliedly, that the agent has authority to act on their behalf; (2) the third party must have reasonably relied on this representation; and (3) the third party must have suffered a detriment as a result of their reliance on the agent's apparent authority (Strone, 2013, p. 214). The last condition is no longer specifically mentioned in some doctrines and is not required to be substantiated in case law (Tan, 2019, p. 188-195). As demonstrated by recent case law, the third party bears the onus of proving that the principal made a misleading representation regarding the agent's authority and that the third party reasonably relied on this representation to their detriment (the High Court of England, 2022).

Under Lithuanian law, as outlined in Article 2.133(2) and (9) of the Civil Code (CC, 2000), the application of apparent authority is contingent upon the fulfillment of two conditions: (1) the principal's conduct created a

reasonable ground to believe that the agent is acting with the right to do so; and (2) the third party's reasonable and good faith belief in the representation relationship. An analysis of the relevant Lithuanian case law shows that it has evolved: initially, the Lithuanian courts, while not identifying the specific conditions for the application of apparent authority, have, in deciding whether there is a basis for relying on this doctrine, identified circumstances which broadly reflect the above conditions. The development of Lithuanian case law demonstrates a gradual refinement of the conditions for applying the doctrine of apparent authority. The Supreme Court has clarified that the principal's conduct must create a reasonable impression in the mind of the third party that the agent is authorised to act on the principal's behalf. Additionally, the court has emphasised the importance of the third party's due diligence in verifying the agent's authority (Supreme Court of Lithuania, 2012). Recent case law from the Supreme Court of Lithuania has emphasised that the central question in determining apparent authority is whether the principal's conduct has given rise to a reasonable belief on the part of the third party that the agent is authorised to act on their behalf. This focus on the principal's conduct and the third party's reasonable belief, rather than the existence of actual authority, is a key aspect of the Lithuanian approach to apparent authority (Supreme Court of Lithuania, 2017, 2021, 2022 (1), 2022 (2)).

Soft law instruments, such as PECL, DCFR, and the UNIDROIT Principles, demonstrate a consistent approach to the concept of apparent authority, with each instrument outlining similar conditions for its application. PECL Article 3:201(3) outlines three essential elements for the application of apparent authority: (1) a representation by the principal that creates the impression of authority, (2) reasonable and good faith reliance on this representation by the third party; and (3) a causal link between the principal's representation and the third party's belief in the agent's authority (PECL, 2002). Although the official commentary to the DCFR does not explicitly identify the specific conditions for the application of apparent authority (DCFR, 2009), it is presumed that the DCFR adopts a similar approach to PECL, which requires, as mentioned, a representation by the principal, reasonable reliance by the third party, and a causal link between the two. Finally, The UNIDROIT Principles emphasise that, in assessing whether a particular situation constitutes apparent authority, two crucial factors must be considered: (1) the reasonableness of the third party's belief in the agent's authority and the causal link between the principal's conduct, and (2) and the formation of that belief (UNIDROIT Principles, 2016).

2. GENERAL CONDITIONS FOR THE APPLICATION OF APPARENT AUTHORITY

A comparative analysis reveals that, while the specific conditions for the application of apparent authority may differ across jurisdictions, the underlying principles remain largely consistent. In general, the doctrine requires the following: (1) the principal's statements or conduct that creates the impression of authority, and (2) reasonable reliance on that authority by the third party. Although additional factors, such as the principal's fault or the third party's diligence, may be considered in certain jurisdictions, these two core elements are essential for the application of apparent authority. It is important to note that the first condition of apparent authority is not restricted to express statements or actions of the principal. Rather, it encompasses a broader range of circumstances, including the principal's conduct, the position of the agent within the organisation, and any other factors that may reasonably lead a third party to believe that the agent is authorised to act on the principal's behalf."

Before applying the doctrine of apparent authority, it is crucial to ascertain the nature of the actual authority granted by the principal to the agent. If the agent has been granted actual authority, and the agent's actions fall within the scope of that authority, then the doctrine of apparent authority will not apply. However, if the agent has acted beyond the scope of their actual authority, the doctrine may be relevant, provided that the other conditions for its application are met.

2.1. The principal's conduct and other relevant factors that lead to believe in the agent's authority

The doctrine of apparent authority, which may deviate from the principle of autonomy of the will, is justified by the existence of a causal connection between the principal's conduct and the third party's belief in the agent's authority. This condition, while not always explicitly stated, is inherent in the other requirements for the application of apparent authority. In Belgium, for example, where the principal is completely unaware that an unauthorised person has acted on his behalf, apparent authority does not apply (Sainter, 2009, p. 26–43). Similarly, in France, although the doctrine of apparent authority places significant emphasis on the third party's reasonable belief, it is still necessary to demonstrate a connection between the principal's conduct and the creation of the impression of authority. This connection may arise from the principal's active representations or from circumstances that are attributable to the principal (Kotz and Flessner, 1997, p. 236).

In many legal systems, the liability of the principal under the doctrine of apparent authority is often predicated on the principal's own conduct (Busch and Macgregor, 2007, p. 367). This means that the application of the doctrine of apparent authority requires a demonstration that the principal's words, actions, or omissions created a reasonable belief in the mind of the third party as to the agent's authority. This idea is directly reflected in PECL and is likely

to be invoked in the UNIDROIT Principles and DCFR, as they use the construct “the principal has caused” in defining apparent authority, which implies that the principal's affirmative conduct is a necessary precondition for the application of apparent authority. Nevertheless, *soft law* instruments illustrate that apparent authority may arise even in the absence of explicit conduct by the principal.

Direct actions by the principal that can give rise to apparent authority include express statements or representations regarding the agent's authority. These declarations may be made to specific third parties or to a broader audience. Additionally, the principal's failure to clearly define the scope of the agent's authority in a written power of attorney can lead to the implication of broader authority, particularly if the agent's actions are consistent with the general nature of the agency relationship.

The principal's direct actions can contribute to the formation of the third party's belief in the agent's authority. This may occur, for example, when the principal grants authority that, while limited in scope, does not explicitly restrict the agent's authority to act in certain ways. In such cases, if the agent's actions are consistent with the general nature of the agency relationship, the third party may reasonably believe that the agent has broader authority than that which is formally conferred (Vogenauer and Kleinheisterkamp, 2009, p. 372).

Although direct actions by the principal are a common source of apparent authority, liability may also arise from circumstances that, while not directly attributable to the principal, are nevertheless within their sphere of influence. In other words, the principal may be held liable for the unauthorised actions of an agent, even if the principal has not taken any specific action to create the impression of authority. This principle, known as the risk principle, is particularly well-developed in Dutch law and has been influential in comparative legal scholarship. The essence of the risk principle is that if certain circumstances fall within the principal's sphere of risk, and a reasonable third party would believe that the agent is authorised to act on the principal's behalf, the principal may be held liable, regardless of the absence of any direct action by the principal (Busch and Macgregor, 2009, p. 398).

Although the doctrine of apparent authority is often associated with the principal's express or implied representations, case law demonstrates that liability may arise from a broader range of circumstances, including the principal's implicit conduct and the reasonable expectations of third parties. While the courts have generally adhered to a strict interpretation of the principal's conduct, requiring a direct causal link between the principal's actions and the third party's belief, this approach may sometimes overlook the broader implications of the principal's behaviour. Indirect factors, such as the nature of the agent's role and the structure of the organisation, can also contribute to the creation of apparent authority. Furthermore, the omissions on the part of the principal, such as failing to take reasonable steps to prevent unauthorised actions by the agent, can also give rise to apparent authority. This is particularly relevant in cases where the principal has knowledge or should have knowledge

of the agent's propensity to exceed their authority. A risk approach would offer a more equitable and objective framework for assessing the principal's liability.

Circumstances that may fall within the principal's sphere of risk include situations when the principal's conduct, including the appointment of the agent to a position with implied authority, has led a reasonable third party to believe that the agent has authority to act on the principal's behalf. This is particularly relevant in situations where the agent's apparent authority exceeds their actual authority, such as when the agent is granted a position with implied authority that is not explicitly limited by the principal.

The principal's liability for apparent authority can arise not only from affirmative conduct but also from omissions. For instance, a shop owner's failure to implement reasonable security measures to prevent unauthorised sales, such as requiring identification or monitoring employee activity, can create the appearance of authority in the mind of a customer. In such cases, the principal may be held liable for the unauthorised actions of the employee, even if the principal did not intend to confer authority (Reynolds, 2009, p. 978).

The doctrine of apparent authority should be applied judiciously, particularly when dealing with situations involving completely unauthorised agents. While the doctrine is designed to protect the reasonable expectations of third parties, it should not be used to impose liability on a principal who has taken no steps to create the appearance of authority. In such cases, the third party's reliance on the agent's apparent authority may not be considered reasonable, and the principal may not be held liable for the agent's unauthorised actions. (Kotz and Flessner, 1997, p. 236). One of those exceptions is when specific acts of a legal nature are carried out on the premises where the principal carries out its activities (DCFR, 2009). This should be interpreted as meaning that the principal has a duty to implement reasonable security measures to prevent unauthorised actions at their place of business.

The application of the doctrine of apparent authority is highly fact-specific and requires a careful analysis of the circumstances surrounding each case. While the unauthorised use of stolen documents may, in certain circumstances, give rise to apparent authority, it is essential to consider whether the principal took reasonable steps to prevent the theft or misuse of such documents. If the principal has taken all reasonable precautions, they may not be held liable for the unauthorised actions of the agent.

The application of apparent authority to legal persons often involves a stricter standard of liability. The complexity of corporate structures and the potential for internal inconsistencies can make it difficult for third parties to accurately assess the scope of an agent's authority (Busch, 2009, p. 142). In all cases, to successfully invoke the doctrine of apparent authority against a legal person, the third party must establish that the unauthorised actions of the agent can be attributed to the decision-making authority of the legal person. This requires demonstrating that the agent's actions were within the apparent scope of their authority, as determined by the legal person's organisational structure, internal policies, and external representations (UNIDROIT Principles, 2016).

In principle, the appearance of authority must be attributable to the conduct of the principal, rather than the agent. (Antoniolli and Veneziano, 2005, p. 153). If the third party's belief in the agent's authority is due to the agent's acts or statements, apparent authority is not established. However, the doctrine emphasises that it is only in very rare cases that the third party's belief can be attributed solely to the principal. In practice, while the principal's conduct is essential to the creation of apparent authority, the agent's actions can also influence the third party's perception of the agency relationship. The third party's belief may be formed based on a combination of factors, including the agent's representations, the agent's position within the organisation, and the principal's past dealings with the third party. However, the principal's liability should only be imposed when their conduct, either by action or omission, has contributed to the third party's reasonable belief in the agent's authority (Seavey, 1964, p. 13).

While earlier Lithuanian case law did not explicitly distinguish between the principal's direct actions and indirect circumstances, recent decisions have clarified that the principal's conduct, whether explicit or implicit, plays a crucial role in establishing apparent authority. The Supreme Court has emphasised that the principal's actions must create a reasonable belief in the mind of the third party that the agent is authorised to act on the principal's behalf. This requires a careful analysis of the specific circumstances of the case, including the principal's position, the agent's role, and the nature of the transaction. The Supreme Court determined that the principal's provision of the company seal, signature stamp, and broad authority to manage business affairs constituted sufficient grounds for the third party's reasonable belief in the agent's authority (Supreme Court of Lithuania, 2007). In another civil case, the liability of the principal was because he had drafted the contested contract, that it had been concluded at the defendant's registered office, and that the director was present at the time of its conclusion (Supreme Court of Lithuania, 2004).

Recent Lithuanian case law has underscored the importance of the principal's conduct in establishing apparent authority. The court has emphasised that the third party's belief in the agent's authority must be reasonable and based on objective circumstances, such as the principal's actions, omissions, or the position of the agent within the organisation. In other words, the principal's conduct must create a reasonable impression in the mind of the third party that the agent is authorised to act on the principal's behalf (Supreme Court of Lithuania, 2012). Therefore, the doctrine of apparent authority is grounded in the principle that the principal's conduct, rather than the agent's, is the primary factor in creating the impression of authority. While the court's emphasis on the principal's actions is appropriate, it is important to recognise that apparent authority may also arise from the principal's omissions or failures to act. A more flexible approach, which considers both active and passive conduct, would allow for a more nuanced application of the doctrine, particularly in complex commercial relationships where the principal's role may be less explicit. Recent case law from the Supreme Court of Lithuania has underscored the importance of the principal's conduct in the application of

apparent authority. The court has emphasised that the principal's actions or omissions must create a reasonable belief in the mind of the third party that the agent is authorised to act on the principal's behalf (Supreme Court of Lithuania, 2017, 2021, 2022 (1), 2022 (2)).

2.2. The third party's reasonable belief in the agent's authority

The third party's belief in the agent's authority must be objectively reasonable, considering all relevant circumstances, including the agent's position, the nature of the transaction, and any representations made by the principal. The third party must have acted in good faith, without knowledge of any limitations on the agent's authority (Busch and Macgregor, 2007, p. 374).

The reasonableness of the third party's belief is assessed by applying the standard of *bonus pater familias*. This involves considering factors such as the third party's experience, knowledge, and the specific circumstances of the transaction. The third party cannot rely on a mistaken belief that is caused by their own carelessness or negligence. The reasonableness of the third party's belief is determined by considering the specific circumstances of the case, including the third party's knowledge, experience, and the nature of the transaction. Factors such as the third party's professional expertise, the complexity of the transaction, and any representations made by the agent may also be relevant (Sainter, 2009, p. 24–25). The third party is expected to exercise due diligence in verifying the agent's authority, but the level of diligence required will vary depending on the specific circumstances. It is noted in legal doctrine that the third party's belief in the agent's authority must be objectively reasonable, notwithstanding any subjective beliefs held by the third party (Samoy, 2009, p. 70).

The third party's belief in the agent's authority is assessed considering the agent's professional status and any potential conflicts of interest. If the agent is a professional, such as a lawyer or accountant, the third party may be justified in relying on the agent's representations regarding their authority, even if the agent's actions exceed the scope of their actual authority. However, if the agent has a personal interest in the transaction, the third party may be required to exercise a higher degree of care in verifying the agent's authority (Sainter, 2009, p. 37). The doctrine of apparent authority may not apply if the third party should have been aware of the agent's potential conflict of interest.

An analysis of the case law shows that, in some cases, the mere existence of these circumstances may be considered sufficient grounds for establishing the third party's reasonable belief. In other cases, the courts have held that such formal links between the agent and the principal should not be decisive for the purpose of establishing the third party's reasonable belief. For example, the Supreme Court of the United States held that the use of a company email address alone is not sufficient to establish apparent authority (Supreme Court of the United States, 2006). While the possession of company materials, such as letterheads and business cards, by the agent may create a presumption of authority, it is not conclusive. The third party must still exercise reasonable

care to verify the agent's authority, particularly if the transaction is unusual or involves significant sums of money. The mere possession of such materials, without more, is not sufficient to establish apparent authority.

The reasonableness of the third party's belief in the agent's authority is assessed based on a variety of factors, including the nature and urgency of the transaction, the level of trust between the parties, the agent's position within the organisation, and the specific circumstances of the case. If the transaction is urgent or the parties have a long-standing relationship of trust, the third party may be justified in relying on the agent's apparent authority, even if they have not conducted extensive due diligence. However, for larger or more complex transactions, the third party may be expected to exercise a higher degree of care in verifying the agent's authority (Sainter, 2009, p. 41–43). It is also important to consider the practice between the parties concerned. In the context of long-standing relationships, a third party may reasonably assume that the agent possesses the necessary authority, even if the agent's actual authority has been revoked. However, for non-routine transactions, the third party should exercise greater caution. For example, if a company secretary, who used to order only paper from a stationery supplier, approaches the supplier to purchase a computer, this is likely to be seen as insufficient grounds for establishing the third party's reasonable belief (Vogenauer and Kleinheisterkamp, 2009, p. 372). It must also consider certain general considerations such as the customs prevailing in the relevant field of business, the characteristics of the type of transaction in question, etc. If the circumstances of a particular transaction are different from those customary in the relevant business practice, the courts should probably refuse to apply the doctrine of apparent authority (Busch and Macgregor, 2007, p. 374).

While the third party is not required to conduct an exhaustive investigation, they should take reasonable steps to verify the agent's authority, especially if the circumstances suggest that the agent may be acting outside the scope of their authority. Factors such as the nature of the transaction, the agent's position within the organisation, and any unusual circumstances should be considered. If the third party has reason to doubt the agent's authority, they should take steps to confirm it directly with the principal.

Lithuanian case law underscores the importance of the third party's due diligence in verifying the agent's authority. The third party must take reasonable steps to ensure that the agent is acting within the scope of their authority, particularly in cases where the transaction is unusual, or the agent's conduct appears questionable. This may involve requesting additional documentation, verifying the agent's identity, or contacting the principal directly to confirm the agent's authority (Supreme Court of Lithuania, 2012). The third party's belief in the agent's authority must be reasonable at the time of the transaction. However, subsequent events, which were not known to the third party at the time of the transaction, may be relevant in assessing the reasonableness of that belief. For example, if the principal takes steps to revoke the agent's authority after the transaction has been concluded, this may cast doubt on the reasonableness of the third party's initial belief. While the third

party's belief in the agent's authority must exist at the time of the transaction, subsequent events may provide valuable context for assessing the reasonableness of that belief. For example, if the principal takes steps to repudiate the transaction or to clarify the agent's authority, this may undermine the third party's initial belief. Conversely, if the principal takes no action to disavow the transaction, this may strengthen the third party's belief in the agent's authority (Busch, 2009, p. 15).

3. ADDITIONAL CONDITIONS FOR THE APPLICATION OF APPARENT AUTHORITY

While specific legal systems may vary in their precise requirements for establishing apparent authority, the core elements of the principal's representation and the third party's reasonable reliance are generally recognised. Additionally, the good faith of the third party and the potential for harm to the third party because of the agent's unauthorised actions may be relevant considerations. These factors, while not always explicitly stated, can influence the application of the doctrine of apparent authority in specific cases.

The good faith of the third party is frequently recognised as a prerequisite for the application of apparent authority in civil law jurisdictions. (Busch and Macgregor, 2009, p. 402). The third party's belief in the agent's authority must be objectively reasonable, considering the specific circumstances of the case. The third party cannot simply rely on a subjective belief but must exercise due diligence to verify the agent's authority, especially if the circumstances suggest that the agent may be acting outside the scope of their authority. If the third party has knowledge or reason to know that the agent lacks authority, they cannot invoke the doctrine of apparent authority to hold the principal liable. Therefore, in assessing the third party's reasonable belief, not only objective but also subjective good faith must be considered. It should be noted that in some legal systems, to emphasise the distinction between the two forms of good faith, objective good faith is linked to the condition of the third party's reasonable belief, while subjective good faith is identified as a separate condition (Busch and Macgregor, 2009, p. 402–403). In the Netherlands, the third party's reasonable reliance on the agent's apparent authority is a key factor in determining liability. If the third party has taken reasonable steps to verify the agent's authority, they may be excused from proving their good faith, even if the agent's actions were ultimately unauthorised (Busch, 2009, p. 155). The presumption of apparent authority can be rebutted by demonstrating that the third party knew or should have known of the agent's lack of authority. It is interesting to note that the legal doctrine states that the doctrine of apparent authority may apply even if the third party is aware of the agent's lack of actual authority (Reynolds, 2009, p. 976).

Lithuanian case law underscores the importance of the third party's good faith in the application of apparent authority. The third party's belief in the agent's authority must be both reasonable and bona fide. While the burden of

proof generally lies with the principal to demonstrate that the third party knew or should have known of the agent's lack of authority, the third party may also be required to exercise due diligence in verifying the agent's authority, particularly in cases where the circumstances suggest that the agent may be acting beyond the scope of their authority (Supreme Court of Lithuania, 2011).

In some countries, and in *soft law*, proof of damage (detriment) is also required as a mandatory condition for apparent authority. This condition is characteristic of legal systems that do not recognise apparent authority as a source of direct contractual obligations. In common law jurisdictions, the concept of damage in the context of apparent authority is not strictly analogous to the traditional concept of damages in tort or contract law. In the context of apparent authority, "damage" encompasses any adverse legal effect on the interests of the third party. In jurisdictions where apparent authority creates a direct contractual relationship between the principal and the third party, the third party may seek specific performance of the contract (obligation in kind), in addition to damages.

4. BALANCING INTERESTS IN THE CASE OF APPARENT AUTHORITY

The doctrine of apparent authority was initially conceived as a means of protecting the interests of third parties who have reasonably relied on the appearance of authority created by the principal. However, traditional approaches to the doctrine, particularly in common law jurisdictions, have often imposed stringent requirements on the third party, making it difficult to establish liability on the part of the principal. More recently, there has been a shift towards a more flexible and equitable approach, recognising that the principal's conduct, both active and passive, can contribute to the creation of apparent authority. This development aims to strike a fair balance between the interests of the principal and the third party, ensuring that the doctrine is applied in a manner that promotes commercial certainty and protects the reasonable expectations of honest third parties (Macgregor, 2006, p. 126).

While it is important to protect the legitimate interests of third parties, it is equally important to maintain a fair balance between the rights of the principal and the third party. An overly expansive application of apparent authority may have unintended consequences for businesses. (Macgregor, 2006, p. 126). Therefore, there is a growing debate in the doctrine on measures to reconcile the conflicting interests of the parties in the application of the concept of apparent authority.

One of these is risk theory. It offers a more flexible approach to apparent authority, balancing the interests of both third parties and principals. While it seeks to protect the reasonable expectations of third parties, it also recognises the importance of limiting the principal's liability to situations where the principal's conduct has created a reasonable impression of authority. The successful application of this theory depends on the courts' ability to carefully

consider the specific circumstances of each case and to strike a fair balance between the competing interests.

While the doctrine of apparent authority does not explicitly require proof of the principal's fault, the assessment of the circumstances surrounding the creation of apparent authority often involves an implicit evaluation of the principal's conduct. This ensures that the principal's liability is not imposed lightly and that a fair balance is struck between the interests of the principal and the third party. By requiring that the principal's conduct has contributed to the creation of the appearance of authority, the doctrine helps to limit the principal's liability to situations where it is truly justified.

The doctrine of apparent authority requires a careful balance between protecting the interests of third parties and avoiding undue liability for principals. While the third party's reasonable belief in the agent's authority is essential, it is equally important to consider the extent to which the principal's conduct has contributed to the creation of that belief. Overly broad application of the doctrine, without considering the principal's culpability, could lead to unfair results. Therefore, the common law criticises the case law of the French and Belgian courts, according to which it is sufficient to prove only the third party's well-founded belief for the purpose of relying on apparent authority. (Reynolds, 2009, p. 980). The concept of apparent authority seems to contradict the idea of holding a principal liable for actions they did not authorise.

The *least-cost avoider* principle, which is used in many jurisdictions to allocate risks between the principal and the third party, could help to balance the parties to the legal relationship. It suggests that the party best positioned to prevent the harm should bear the loss. In the context of apparent authority, this means that the principal, who can control the agent's actions, should be held liable for the agent's unauthorised conduct, particularly if the principal could have taken reasonable steps to prevent the harm. (Rasmusen, 2001, p. 18–19). The allocation of liability between the principal and the third party should be based on an assessment of their respective abilities to prevent the harm. If the principal could have taken reasonable steps to prevent the agent from acting outside their authority, the principal may be held liable.

Conclusions

Apparent authority is a legal doctrine that imposes liability on a principal for the actions of an agent, even if the agent lacks actual authority. This occurs when the principal's conduct, either by action or omission, creates a reasonable belief in the mind of a third party that the agent is authorised to act on the principal's behalf.

The doctrine of apparent authority has evolved to provide greater protection to third parties who have reasonably relied on the agent's apparent authority. However, it is essential to strike a balance between the interests of third parties and the principal. Overly broad application of the doctrine could lead to unjust results, particularly where the principal has taken reasonable steps to prevent unauthorised actions by the agent. Clear and precise conditions

should be established to limit the principal's liability, ensuring that the doctrine is applied only in appropriate circumstances.

To ensure a fair balance between the interests of the principal and the third party, the application of the doctrine of apparent authority necessitates two essential conditions: first, the principal's conduct must create a reasonable belief in the third party that the agent is authorised to act on the principal's behalf; and second, the third party must have reasonably relied on that appearance of authority.

The *least-cost avoider* principle and the theory of risk can also help to balance the competing interests of parties involved in an unauthorised agency relationship. The *least-cost avoider* principle suggests that liability should fall on the party best equipped to prevent the damage at the lowest cost. The theory of risk imposes liability on the principal for foreseeable consequences arising from their conduct or omissions.

A fair assessment of apparent authority requires a careful consideration of the specific circumstances of each case. The doctrine should be applied in a manner that balances the interests of both the principal and the third party. To establish liability, it must be demonstrated that the principal's conduct, either by action or omission, has created a reasonable belief in the third party's mind that the agent is authorised to act on the principal's behalf. This requires a clear causal link between the principal's actions and the third party's reliance.

The Lithuanian courts' emphasis on the principal's conduct and the third party's reasonable reliance in determining apparent authority is commendable and aligns with the standards of foreign countries. In more complex cases, where the boundaries of apparent authority are less clear, applying the *least-cost avoider principle* and the theory of risk can provide valuable insights.

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