Administrative Law / Droit administratif

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In this report an overview on specific case law of the Department of Administrative Cases of the Supreme Court of Latvia on matters of administrative law will be given. The first case concerns the restriction of the freedom of expression and freedom of association. The second and third case concern the use of the public domain. The fourth case regards the problematic of *locus standi.*

Refusal to Register an Association and a Political Organization

It should be noted that registration of associations and political organizations as well as registration of enterprises in Latvia falls within the area of administrative law. The official company register - the Register of Enterprises (RE) - in Latvia is an administrative body and its decisions on registration are administrative acts. Therefore review of decisions of the RE falls under the competence of the administrative court.

In this regard one of the most discussed issues in 2013 was the refusal to register a new association. In this particular case the RE

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refused to register the association "*Komunisma atbalsta kustība Latvijā*" ("The movement supporting communism in Latvia"). The refusal was based on Art. 6 and Art. 17 of the Law on Associations and foundations[1]. Art. 6 provides that the name of the association should not be contrary to the laws and moral principles; it should not contain the name of a group or organization recognized as criminal or unconstitutional. Art. 17 of the Law provides that the RE refuses to register an association if the aim of the association is contrary to the Constitution of the Republic of Latvia, laws or international treaties. The RE concluded that the name "The movement supporting communism in Latvia" and the aim identified in the statutes of the association constitute an explicit link with the promotion of the criminal (communist) ideology.

The association submitted an appeal against the decision of the RE to the administrative court focusing on arguments related to the freedom of association and the freedom of expression. The association also indicated that in a number of other European countries the expression of the communist ideology is not restricted.

The Administrative District Court and the Supreme Court dismissed the action as unfounded[2].

The Supreme Court reminded that in the 20th century in Europe a number of totalitarian regimes originated, the main varieties of which were Fascism (Italy), National Socialism or Nazism (Germany) and Stalinism or Bolshevism (Union of Soviet Socialist Republics (USSR or Soviet Union)). The ideology of communism or Marxism-Leninism "scientifically" justified the dictatorship of the proletariat as a prerequisite for the progress of the whole of humanity towards its bright future - communism. On this spiritual base one of the most inhumane totalitarian regimes of the 20th century - Stalinism was created. The ideology of communism proclaimed the class struggle as a main method of construction of the communism. On the basis of this view, Stalinist terror against the "exploiters (*kulaks*)" and "enemies of the people" was in fact con-

[1] Law adopted on October 30, 2003.

[2] Ruling of the Department of Administrative Cases of the Supreme Court Senate dated 30 April 2013, case No SKA-172/2013.

verted to genocide against part of the nation. In the Nazi Germany the genocide was directed against the Jewish people, as well as other people defined by a particular feature. Nazism in Germany and in the occupied territories killed 12 million people, including 6 million Jews. It is well known that the number of victims of communist crimes against humanity is not lower, it even exceeds the number of the Nazi victims. Murders in the Soviet Union began with artificially induced famine in Ukraine which costed more than three million lives, and continued with the 1937, 1938 and 1941 terror, when millions of people from many nations were shot or deported to Siberia.

The Supreme Court indicated that the Second World War had a devastating effect to almost every country in Europe; however there is no common appreciation of these past events in the European countries. After the fascist invasion of the Soviet Union on June 22, 1941, the ideological aspect of the Second World War took on a new dimension - it was the beginning of the common fight of Western democracies and the Soviet communist regime against German Nazism, which later left a great impact on the perception of the war for Western society. The victorious powers after the Second World War agreed to judge and condemn only crimes committed by the German Nazis and their allies. The international and war crimes committed by the Soviet communist regime fell by the wayside.

The Supreme Court declared that one totalitarian regime must not be considered less felonious by virtue of the simple fact of having been on the winning side in the war with another totalitarian regime. The two totalitarian regimes - Nazism and Communism - were criminal. There are still millions of victims of the communist totalitarian regime who have not got a “never again” guarantee, as did the victims of Nazism. The historical memory and the perception of the Second World War in many respects depend on the individual experience of each nation. A number of Western European countries which have experienced the Nazi German occupation and Nazi terror have banned the propaganda of the Nazi and the use of Nazi symbols. The communist terror for the Western European societies did not seem particularly important, because they did not suffer from it - communist organizations acted within the frame-

work of a democratic state. Therefore Western European countries often have a neutral stance on the communist ideology. By contrast, Central and Eastern European countries, including Latvia, which suffered both from the Nazi and communist ideology crimes, cannot deal with this ideology as neutrally as Western European countries. Just as Western European countries are guided by their historical experience also Latvia should be guided by its historical experience. Latvia unlike a number of Western European countries has experienced crimes not only from one but from two totalitarian ideologies. Latvia as a democratic state cannot ignore either of them. Therefore, an indication that in a number of other European countries the communist ideology is not restricted has no significant consideration in this case.

The Supreme Court referred to the European Parliament Resolution of 2 April 2009 on European conscience and totalitarianism which marked a new stage in the evaluation of history in Europe officially recognizing Communist and Nazi totalitarian regimes as equally criminal. The Resolution declares that the dominant historical experience of Western Europe was Nazism, but Central and Eastern European countries have experienced both Communism and Nazism and that this understanding has to be promoted in relation to the double legacy of dictatorship borne by these countries. The Resolution recalls that constant vigilance is needed to fight undemocratic, xenophobic, authoritarian and totalitarian ideas and tendencies. Although the European Parliament resolutions are political documents and are not binding, this Resolution expresses the European Union's common attitude towards totalitarianism, confirming the values which the European Union and its Member States, including Latvia, undertake to uphold and respect.

The Supreme Court confirmed the conclusion of the District Court that the name of the association and its aims are linked to promote the communist ideology, which equally to Nazism has created a totalitarian regime with repressions and genocide against nations, including the Latvian nation. The communist ideas for the Latvian people, as well as people of other Central and Eastern European countries are replete with a specific, realistic, experience-based content. They are associated with repression, terror, injustice.

In countries without such experience this reality of implementation of communism is not taken into account, instead it is attempted to describe these ideas as a form of humanism. In the Latvian context attempts to "redefine" the communist ideas, ignoring the crimes committed on behalf of their implementation, are equally unconvincing, as elsewhere in Europe attempts to "redefine" the Nazi ideas as humane, ignoring the crimes committed in their name. To highlight and promote any kind of humanitarian ideas, they must not be connected with any criminal ideology.

The Supreme Court referred to the jurisprudence of the European Court of Human Rights according to which the Convention does not protect such expressions, thoughts or ideas that deny the Holocaust or justify Nazism and neo-Nazism, contain allegations that Polish supposedly were persecuted by Jewish, blame all Muslims for terrorism, as well as call to violence. This position is expressed in a series of judgments of the European Court of Human Rights (see decision of 23 September 1998, Case of *Lehideux and Isorni v France*, decision of 7 July 2003[3] *Garaudy v France*, decision of 2 September 2004, *Case of W.P. and others v Poland*, decision of 16 November *2004*, Case *Norwood v United Kingdom*).

In the light of the arguments mentioned, the Supreme Court concluded that the expression of the communist ideology is not protected because it is contrary to democratic values in a society secured by the Constitution and the Convention.

The Supreme Court noted that the purposeful dissemination of the communist ideology is also considered a deep insult to victims of crimes of this ideology, as well as to each democratically-minded individual, and is therefore contrary to the Latvian public policy (*ordre public*).

In light of the above, it was concluded that this restriction of the freedom of expression and freedom of association of the applicants in the form of refusal of registration of the association is proportional, when weighted with the aim of protecting the fundamental values of democracy and taking into account the specific historical and political context of Latvia.

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[3] Most likely the correct date is 24/06/2003.

TAXI SERVICES AT THE AIRPORT AND THE TRAIN STATION

It should be noted that in Latvia the use of the public domain - squares, streets, parks - in German law called as *öffentliche Sachen im Gemeingebrauch*, still can be considered as a problematic area of public law. In 2013 the Supreme Court decided two cases where significant observations were related to this area. Both cases are connected with taxi parking.

In one of those cases the circumstances were as follows. The public holding company "International airport 'Riga'" announced a public tender for the provision of taxi services at the airport. The purpose of the tender was the conclusion of a concession agreement with one company providing taxi services. Under the agreement, the company would have obtained exclusive rights for five years to use a special taxi line at the airport "Riga" in front of the airport building and to provide taxi services for airport passengers. Minimum concession fee was intended to approx. 8000 € per month. Two taxi companies filed a complaint with the Public Procurement Office. The Public Procurement Office decided to forbid the airport to enter into a contract with the company that won the tender and instructed the airport to terminate the competition without results. The Airport and the company that won the tender submitted an appeal to the administrative court for annulment of the decision of the Office.

The Administrative District Court and the Supreme Court[4] dismissed the proceedings upon appeal of the Airport as inadmissible, but the appeal of the winnig taxi company as unfounded.

Both courts agreed that the Airport is not entitled to initiate appeal against the decision of the Public Procurement Office, because it is considered as an institution under the Administrative Procedure Act. The contracting authority in these relationships acts as a legal person governed by public law and could not be equated with a private individual. Therefore, the proceedings upon application of the Airport were terminated.

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[4] Ruling of the Department of Administrative Cases of the Supreme Court Senate dated 20 September 2013, case No SKA-18/2013.

Considering the company's application, the Administrative District Court concluded that the subject of dispute in the present case is a public procurement procedure, rather than the granting of the concession. In turn the Supreme Court disagreed with this conclusion, stating that it is contrary to the criteria of separation of public procurement and concessions, as well as the facts of the particular tender.

The Supreme Court concluded that in the present case, the terms of the tendering procedure provided that only the winner obtains the right to pick up passengers at the airport area, to control the entry of taxis in the area concerned, etc. According to the terms, the winner has an obligation to pay a certain fee and bears the risk for a given service. Therefore the tender should be regarded as a service concession, not procurement.

Nevertheless, the Supreme Court stated that the taxi service is not a public service, but rather a private service. The airport has no rights or legal interests for such a service. Taxi services cannot be a resource for concessions which is at the disposal of the airport. According to the Law on Transport Services[5], the taxi service has been regulated by a permit (license) system. The municipality has the right to issue permits for taxi service in the particular administrative territory. In accordance with the general framework, taxis can pick up passengers and provide their services without restrictions. Other institutions (including the airport) have no rights to regulate the provision of taxi services. It is not in the competence of the airport to provide for the manner in which passengers or other visitors of the airport can reach it. In order to improve the management, the Airport was entitled to provide a taxi service for its employees, but not for passengers and other visitors.

The Supreme Court also criticized the applicant's view that the granting of the concession is an action in the field of private law. The state or a local government (including a public holding company) acts in the field of public law when granting a concession. Therefore in the selection process of the concessionaire it is obliged to respect the principle of equality.

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[5] Law adopted on August 23, 1995.

In the second case the dispute concerned the taxi parking space at the main square of the Riga Central Railway Station. The public holding company "*Valsts nekustamie īpašumi*" (National Real Estate) had leased the main square of the Central Railway Station to the private company "*Linstow*", which in turn had leased part of it to the taxi company "*Rigas taksometru parks*" ("Riga taxi park"). The taxi company arranged the taxi parking so as to provide entry only for its own cars.

The applicant - individual taxi driver - submitted an appeal to the administrative court asking access to the main square of the Central Railway Station for any taxi. The administrative court of the first and second instance dismissed the appeal arguing that it complies with the agreement mentioned before. The Supreme Court disagreed with the lower courts[6].

The Supreme Court emphasized that neither a lease nor a sale of a public square deprives the public of the right to use this square. The purpose of use of the square can be changed only according with the law, for example, by way of territorial planning.

The Supreme Court concluded that the contract between "*Linstow*" and "Riga taxi park" actually locked the market of taxi services in the main square of the Central Railway Station, creating a preference for one taxi service and it is therefore a breach of competition rules.

Locus Standi to Bring an Action for Reducing the Noise Pollution

In 2013 in a number of cases the Supreme Court dealt with the issue of *locus standi*. One of these cases was related to excessive noise from the main national highway, which is close to the applicant's house.

The applicant had repeatedly appealed to the Ministry of Transport indicating that the noise level coming from the highway is too high and asking for a solution. The Health Inspectorate carried out

[6] Ruling of the Department of Administrative Cases of the Supreme Court Senate dated 25 February 2013, case No SKA-301/2013.

tests and found that the noise level exceeds the level permitted by normative acts. However, the Ministry replied that according to the law it is not obliged to take measures to prevent or reduce noise, because the intensity of traffic on the road is not sufficient for the creation of an obligation to install anti-noise barriers. According to the Regulation on Noise Assessment and Management Procedures[7], the Ministry has the duty to develop strategic maps and action plans for roads with traffic of more than 3 million vehicles per year. The specific motorway does not fall into this category of roads (1.7 million vehicles per year).

The person applied to court asking it to oblige the Ministry to carry out anti-noise protection measures, as well as for compensation for moral and personal injury.

The court of first instance denied *locus standi* of the applicant. The court concluded that the legislation on the noise caused by road traffic is mainly directed to the protection of the common interest of society rather than the interests of individuals. Consequently, the applicant has no right to claim for anti-noise protection measures at the specific location of the motorway.

The applicant submitted an appeal against the decision mentioned to the Supreme Court.

The Supreme Court[8] agreed with the Ministry and the lower court that the abovementioned Regulation does not grant individuals the right to demand for certain measures to be taken in order to reduce the noise in a specific area.

The Supreme Court noted that if someone wants to be isolated from other human influences, he has to live on a desert island far away from populated areas and traffic routes. Living in an inhabited area, a person has to tolerate to some extent noise, odors and other environmental pollution generated by other individuals and legal entities. The limit of this extent usually is determined by the law and subsequent legislation. If such a limit or specific protective measures of public administration have not been established by

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[7] Regulation of the Cabinet of Ministers adopted on July 13, 2004.

[8] Ruling of the Department of Administrative Cases of the Supreme Court Senate dated 12 July 2013, case No SKA-759/2013.

laws or regulations, they are to be derived from the Constitution which guarantees the right to health, life, private life and property.

If environmental pollution reaches a level that substantially infringes the rights of individuals to health, life, private life or property, and when it would be unfair to require the individual to tolerate it in the interest of society, but the law does not regulate such a situation, the State has positive obligations arising from the Constitution. Consequently the individual has a subjective right to demand that certain activities are carried out in order to reduce environmental pollution.

An interference with private life and the right to integrity of the person can be carried out not only with physical harassment, but also includes other nuisance, such as noise, emissions, odor, etc. A significant pollution can affect an individual's well-being and may distort living at home to such an extent that affects the private and family life. The applicant stated that the road noise and vibrations affect her and her family members' health. She has also submitted the findings of the Food and Environmental Investigations Laboratory, which shows that the level of noise exceeds the limit. It follows that there is a potential violation of the applicant's private life. Therefore, the court has to review the decision of the Ministry of Transport on the merits to determine whether in the particular case the environmental pollution (noise) intensity has reached such a level that the applicant is entitled to require that certain measures are taken. Therefore, the Supreme Court referred the case back to the court of first instance to consider it on the merits.

ABSTRACTS / RÉSUMÉS

The chronicle of administrative law in Latvia presents several most important cases of the Department of Administrative Cases of the Supreme Court of Latvia in 2013. It gives an overview on the ruling which explains why the expression of the communist ideology in Latvia and its historically specific political context cannot be protected. It also gives an insight into two rulings on the use of the public domain in connection with taxi parking. Finally, the chronicle gives an overview on the ruling on *locus standi* to bring an action for reducing noise pollution from highways.

La chronique sur le droit administratif en Lettonie présente nombreuses affaires significatives du Département des Affaires Administratives de la Cour Suprême de la Lettonie en 2013. Elle donne une vue d'ensemble de la décision qui explique la raison pourquoi l'expression de l'idéologie communiste en Lettonie et son contexte politique traditionnellement spécifique ne peuvent pas être protégés. Elle donne également un aperçu des deux décisions sur l'utilisation du domaine public à l'égard du stationnement des taxis. Finalement, la chronique examine la décision sur le *locus standi* afin d'intenter un recours pour la réduction de la pollution sonore provenant des autoroutes.

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