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IN this report, an outline on particular important questions in the area of administrative law will be given. The first one is an issue related with economical recession and findings of courts in this connection. The second one regards the question on freedom of information concerning state institutions and the rights of citizens to obtain an answer from the state. The last issue will be a review on noticeable verities of the Supreme Court in the field of Construction Law.

INFLUENCE OF THE ECONOMICAL RECESSION ON ADMINISTRATIVE LAW

In 2011 Administrative Law was very much influenced by the economic and financial recession of the state. Economic recession still has an impact on both the legal regulation and the administrative court practice.

In administrative courts' litigation, there are a great number of cases due to the economic recession. The vast majority of them are cases of civil servants dismissed from public service because of cutting down expenses of state administration, as well as cases of reducing social benefits of public servants.

Besides, in 2011 the Supreme Court dealt with a relatively big number of cases related with the decision of the Cabinet of Ministers dated September 23, 2008 "On decreasing the number of employees in state administration in 2008-2009". Regarding this decision, the Cabinet of Ministers obliged the state ministries to ensure the decrease in the number of civil

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formation, the opinion of the child must be considered in accordance with the age and maturity of the child as well as that the rights to private life of the child must be taken into account[8].

Construction Rights

In 2011 the Supreme Court dealt with numerous cases and expressed several noticeable verities in the area of construction rights. In a number of these cases, the court examined the issue of how far the area of construction rights is regulated by public law and how far these matters are covered by private law.

The Supreme Court dealt with a case where an individual had applied to the building authority with a preliminary project according to which a plot had to be divided into two separate real estates. This project was not approved by the construction authority because the plot is located in a protected area of the city in which the historical planning structure of the territory must be preserved. Parceling out the plot would disrupt this structure.

The administrative court dealing with this case found out that in the court of general jurisdiction the dispute between two co-owners of the particular joint estate had been dealt before the dispute between the individual and the construction authority appeared. The court of general jurisdiction had allowed parceling the plot without considering any legal norms of public law.

In this case, the Department of Administrative Cases of the Supreme Court pointed out that the legal norms of public law are imperative norms which must be abided by private persons also when forming legal relationships in the area of private law. An agreement in the area of private law is permissible as far as it is not restricted by imperative norms. Since the enforcement of private legal norms is restricted by public legal norms, public legal norms must be taken into account also by the court of general jurisdiction when dealing with a case where there is a dispute between two private persons. In the particular case, the court decided in favor of the applicant and divided the plot. The issue of whether and how far the legal norms of public law and the consent of the municipality have been taken into account in deciding the case cannot be judged anymore; only the binding effect of the court judgment must be considered (Article 16 of the

[8] Ruling of the Department of Administrative Cases of the Supreme Court Senate dated 10 October 2011 in the case SKA-290/2011.

Law on Power of Courts). Therefore, the application must be satisfied and the construction authority of the city has an obligation to issue an administrative act favorable to the applicant - a decision on preliminary project setting conditions for allowing parceling of the plot into two separate real estates[9].

The second case which dealt with the question of whether and how far the dispute must be solved in the administrative court is linked with the approval of the technical project of the building. A company had a lease agreement with the municipality and wanted to build premises on that plot. However, the law allows construction only if the owner of the plot permits it. In the particular case, the owner of the plot was the municipality and the applicant had no permission for constructing.

It appeared to the applicant that because the owner of the plot was the municipality, the court can oblige the approval of the project without permission of the owner of the plot. Nonetheless, the court indicated that the municipality as well can be an owner of a plot leasing the plot to another person and the municipality as owner of the plot can allow or prevent the construction of buildings in the plot. A decision of the owner of the plot to allow or prevent the construction is deemed as an expression of will in the field of private law. If there is no permission, any further examination of the construction plan in the area of public law is irrelevant.

In the particular case, the municipality as the owner of the plot had prevented the construction of the particular building because it was against the lease agreement. This decision was taken in the field of private law; there is no issue in the area of public law, examination of which lies in the competence of the construction authority. Therefore, in administrative proceedings the court cannot examine either reasons of the refusal of permission or whether the permission must be given. The disputes of that kind must be solved like other disputes in the area of private law, including possibility to apply to the court of general jurisdiction.

In addition, the Senate of the Supreme Court pointed out that the main task of the construction authority is to ensure the legality of construction and building. In case when, during examination of construction plans, the construction authority comes to disquiet or belief that a building does not comply with the original permission, the authority has not only the right, but also an obligation to ascertain whether the permission of the owner of the plot is correctly interpreted or whether the plan is made knowingly against the real wish of the owner. The objection of the construction's ini-

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[9] Ruling of the Department of Administrative Cases of the Supreme Court Senate dated 8 March 2011 in the case No. 26/2011.

tiator implying an argument that the latest expression of the wish of the plot's owner possibly is against his earlier expression, is a question of private law and can be a ground for a claim for fulfillment of the contract or adjustment of damages, for example[10].

In another case[11], the applicant had got construction permission for building a sauna. After finishing the construction, the act of approval was issued (the act of approval allows exploiting the building). A year after, the construction authority of the municipality delivered an act stating that the applicant had built the sauna on a parcel owned by the municipality. The Council of the Municipality adopted a decision obligating the applicant to tear down the sauna from the land owned by the municipality within three months. The applicant had appealed to the court for the abolition of this decision indicating that neither during construction nor after that had the representatives of municipality noticed the infringements in the construction.

The court concluded that the applicant had an approved construction plan and construction permit for the construction of sauna on the parcel owned by him. However, the sauna was built in a different place - on the parcel owned by the municipality, more than 20 meters away from the proposed site. Therefore, there are no grounds for the claim that the construction permission serves as a legal basis for the building of the sauna as it was issued for the construction on the applicant's parcel and the applicant has not complied with it. According to the law, the authority is obliged to take a decision on the elimination of the effects of such a construction. In this case, there is no other solution but the demolition of the particular building. There are unavoidable obstacles for legalizing the construction because it has been built on a parcel of the local community and the local government flatly refuses to approve the building. Legitimate expectations shall not be protected because there are no rights or advantages due to deliberate unlawful actions.

The Senate of the Supreme Court pointed out that the construction can lead to commitments in the field of private law and at the same time also be the subject of public law. Through construction, the person shall be required to comply with the construction requirements of public law (territorial planning, building regulations, building standards) and private rights of other persons; for example, an individual shall not through construction

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[10] Ruling of the Department of Administrative Cases of the Supreme Court Senate dated 6 January 2011 in the case No. 32/2011.

[11] Ruling of the Department of Administrative Cases of the Supreme Court Senate dated 17 February 2011 in the case SKA-39/2011.

damage a building belonging to another person. The municipality (its construction authority) in principle supervises the observation of public legal norms in the construction process. If construction is contrary to the law, the construction authority has the right and the duty to decide about the elimination of the infringement of the legal norms regardless of the existence of a private agreement. This is in the public interest, taking into account the need to ensure the compliance of the construction with public law.

In some cases, a question can be the subject of regulation of both private and public law. This is the case when the construction takes place on a parcel owned by another person. Of course, initially it is a question of private law because property rights belong to the legal institution of private law; there always is a possibility to appeal to the court of general jurisdiction against the infringement of property rights.

However, the issue is so important that supervision in this area is committed also to the construction authority. This derives from the Law on Construction which determines preconditions for the construction in an imperative manner: a parcel can be covered with buildings if the construction is performed in accordance with territorial planning and building regulations, and there is an agreement from the owner of the parcel (if the construction takes place on a parcel owned by another person); the parcel can be covered with buildings only by the owner or another person if there is an agreement with the particular owner of the parcel.

The supervision of the legality of construction in the area of public law takes place before construction (it terminates with the delivery of an administrative act - construction permit), during construction and also after construction, if there is a need for elimination of the consequences of illegal construction.

Therefore, one of public law preconditions of construction is the question whether construction on a parcel owned by another person occurs with an agreement of the owner. That is, if construction occurs without the agreement of the owner, it can be the basis for the construction authority to eliminate the consequences of the arbitrary construction or to annul the administrative act issued before if conditions are not fulfilled or if the authority has made a mistake by accepting construction on a parcel owned by another person. In the particular case, the applicant had a construction permission (administrative act), which allowed construction on his own parcel; in reality, the applicant constructed the building on a parcel owned by another owner, the building having been authorized by an act of approval taking into account the applicant's statement that the construction had been

built according to the project; after the adoption of the act of approval of the building, the municipality found disparity with the construction plan.

The municipality has not decided about the annulment of the act of approval of the building. The act of approval of the building is an administrative act, which affirms the operational readiness of the building and allows its exploitation. An undisputed administrative act in force allows the individual to exercise vested rights as long as the administrative act has not been annulled. Annulment can be carried out by withdrawing the particular administrative act or by substituting it by another administrative act regarding the same issue. This means that, after the determination of the illegality of construction, the municipality (its construction authority) cannot disregard the fact that an administrative act on approval of the building still is in force and confirms the applicant's right to utilize the building. Before deciding on the elimination of the consequences of illegal construction (demolition of the building), the municipality has to solve the question of the annulment of the particular administrative act.

In another case[12], the Supreme Court analyzed the application of the Aarhus Convention. This is the case in which the construction permit for a little apartment house in the city of Jurmala was appealed against. The applicants appealed to the administrative court claiming annulment of the particular permit and emphasizing infringement of their neighboring rights as well as the right to live in a benevolent environment. The applicants referred to the Aarhus Convention arguing that public disputing (airing) had to be organized because the construction of the particular building reduces the value of their property.

The Senate of the Supreme Court pointed out that it does not presume that the Aarhus Convention protects the rights of society to participate in the decision-making process, which affects residents living conditions of little importance or, even less, the value of real property. The aim of the Aarhus Convention is to solve more important questions in the field of environment as it is visible from the essence of legal instruments ensured in the Convention. Namely, it is unlikely that a broad involvement of society should be provided for the settlement of the questions which require only consideration of living changes only for some individuals. The same applies to a greater number of persons if the changes of living conditions are insignificant and are naturally expected in every case where a construction project has been implemented and which are mainly connected only with the property instead of the protection of life, health or the quality of life.

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[12] Ruling of the Department of Administrative Cases of the Supreme Court Senate dated 7 March 2011 in the case SKA-44/2011.

Every construction more or less can affect the living conditions of neighbors; therefore, interpretation of living conditions as elements of environment must be understood in such a way that on the level of the Aarhus Convention only significant changes of living conditions of population are protected. Only in cases when living conditions are changed substantially, can this be a question of environment in the meaning of the Aarhus Convention. The same applies to Article 115 of the Constitution of the Republic of Latvia which protects the right to live in a benevolent environment. Therefore, the reference to the Aarhus Convention and Article 115 of the Constitution is permissible as far as the construction affects issues of environment in the meaning mentioned above. Therefore, regarding the opinion of the Senate, the interest to keep the value of the property cannot be considered as protected value under the Aarhus Convention nor Article 115 of the Constitution. It is an interest of financial character.

ABSTRACTS / RÉSUMÉS

The chronicle provides an overview of particular issues connected with the economic recession and the consequential dismissal of public servants. In addition, the chronicle gives some significant indications on the Supreme Court regarding the freedom of information and the right to obtain an answer from public authorities. Besides, the chronicle includes an overview of a number of significant decisions of the Department of Administrative Cases of the Supreme Court in the field of construction law.

La chronique passe en revue certains problèmes particuliers liés à la récession économique et aux licenciements de fonctionnaires qui ont suivi. En outre, elle fournit des indications importantes sur la Cour suprême concernant la liberté d'information et le droit d'obtenir une réponse de la part des autorités publiques. Enfin, la chronique donne une vue d'ensemble sur un certain nombre d'arrêts importants de la Section des affaires administratives de la Cour suprême en matière de droit de la construction.

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