



The norm, which allows a court to amend an administrative act and to determine the specific content thereof only in cases provided for in law, is compatible with the *Satversme*

On 22 December 2017, the Constitutional Court has passed a judgement in case No. 2017-08-01 “On Compliance of Section 253 (3) of the Administrative Procedure Law with the First Sentence of Article 92 of the *Satversme* of the Republic of Latvia”.

The Contested Norm

Section 253 (3) of the Administrative Procedure Law provides: “In cases provided for by law a court may amend an administrative act and determine the specific content thereof.”

The Norm of Higher Legal Force

The first sentence of Article 92 of the *Satversme* of the Republic of Latvia (hereinafter– the *Satversme*): “Everyone has the right to defend his or her rights and lawful interests in a fair court.”

The Facts of the Case

The case has been initiated with respect to two applications by the Administrative Regional Court (hereinafter – the Applicant). The Applicant is examining two administrative cases regarding revoking or amending decisions by the Competition Council. It is noted in the application that pursuant to the contested norm a court may amend or determine concrete content of an administrative act instead of an institution only if such competence has been envisaged for it in legal norms. However, neither the Competition Law, nor any other norms of competition law directly provide for the rights of an administrative court to amend the decisions adopted by the Competition Council. The Applicant holds that the contested norms restrict the jurisdiction of an administrative court and prohibits from ensuring a person’s right to a fair trial.

The Court's Findings and Ruling

On the limits of examining the contested norm

First of all, the Constitutional Court recognised that in the case under review it had to specify the extent to which it was going to assess the contested norm. The Court took into account a number of considerations, *inter alia*, that: 1) the case had been initiated with respect to applications by a court and the Applicant had under review cases regarding revoking or amending decisions by the Competition Council; 2) the Constitutional Court had to ensure comprehensive and objective review of the case, as well as procedural economy and the existence of such legal system, which would eliminate regulation that is incompatible with the *Satversme* as completely and comprehensively as possible; 3) the legal consequences of the contested norm did not differ, depending on which institution had issued the contested administrative act; 4) legal proceedings had been suspended in a number of other administrative cases, where the contested norm would have to be applied. [10., 11.]

Consequently, the Constitutional Court decided to examine compliance of the contested norms with the first sentence of Article 92 of the *Satversme* irrespectively of the institution that had issued an unfavourable administrative act, with respect to which a judgement was being made in an administrative act. [11.]

On the scope of the first sentence of Article 92 of the *Satversme*

The Constitutional Court noted: to recognise an institution of judicial power as being “ a fair court” in the meaning of the first sentence of Article 92 of the *Satversme*, it had to be independent, unbiased and competent. Moreover, the competence means not only the professional skill but also jurisdiction and the right to examine and decide on certain matters. [12.2.]

For an administrative court, in exercising control over the decisions by the executive power, to be able to ensure a person's right to a fair trial, it should have the right to examine all circumstances that are essential in the case and verify the appealed decision both from the perspective of facts and of law. Ensuring a person's right to a fair trial requires revoking of

a decision by the executive power, which is incompatible with legal norms, or specific actions taken by the public administration. Thus, in the administrative procedure, a comprehensive control over the decisions by the executive power must be implemented and, as the result of this control, consequences with respect to a person caused by an administrative act, which is incompatible with legal norms, must be eliminated. [12.3.]

On examining the constitutionality of the contested norm

In examining the compliance of the contested norm with the first sentence of Article 92 of the *Satversme*, the Constitutional Court established, whether: 1) comprehensive control over the decisions by the executive power was performed in the administrative procedure; 2) as the outcome of this control, the court eliminated consequences with respect to a person caused by an administrative act, which was incompatible with legal norms. [13.]

On the place of the contested norm within the legal system

The Constitutional Court took into consideration the place of the contested norm within the legal system and its connection to other norms. [13.1.]

The Constitutional Court recognised that the administrative procedure had to ensure simultaneously both protection of persons against unlawful actions by the executive power and had to implement the principle of separation of power between the executive power and the judicial power. The regulation on the administrative proceedings in court is created to ensure that these objectives are met. Likewise, the contested norm is part of the system, which determines the competence of the administrative court in controlling actions by the executive power. In accordance with the principle of separation of powers, the initiation of an administrative case and issuing of an administrative acts fall within the competence of an institution. Whereas the court has the competence to decide on the legality of the administrative act. [13.1., 13.2.]

Thus, the legal regulation, which determined the competence of an administrative court, was concretisation of the principle of separation of power in the relationship between the executive power and the judicial power. [13.2.]

On the scope of control executed by an administrative court

The control by an administrative court covers both the formal legality of actions by the executive power and the expedience as to its content. An administrative court has the right to establish and assess both the actual circumstances of the case and legal considerations. [14.1.] The Constitutional Court found that an administrative court, in exercising its competence, established and assessed all essential circumstances in a case, and also verified the administrative act from the perspective of facts and the perspective of law. [14.2.]

Hence, comprehensive judicial control over the decisions by the executive power is performed in administrative proceedings. [14.2.]

On whether an administrative court eliminates consequences with respect to a person caused by an administrative act, which is incompatible with legal norms

In the meaning of the contested norm, amending an administrative act or establishing new, different legal consequences is possible, when the court makes expedience considerations instead of the institution, i.e., performs a task, which is characteristic of the executive power. [15.2.]

The Constitutional Court noted that a court's ruling on amending an administrative act did not terminate the functioning of an administrative act but changed the legal consequences of this act. Whereas a judgement on revoking an administrative act terminates the functioning of an administrative act or of a part thereof. [15.4.]

If a court, on the basis of the first sentence of Section 253 of the Administrative Procedure Law, fully or partially revokes an administrative act, which is unfavourable to a person, or recognises it as being invalid, the consequences caused by this act with respect to a person have been eliminated. In this way, an effective final regulation is achieved in the administrative case. Consequently, there are no grounds to consider that exactly the contested norm must be applied to eliminate the consequences caused by an unfavourable administrative act. [15.4.]

Rather than issuing instead of the institution another act unfavourable to a person, a regulation, pursuant to which a court revokes or recognises as being invalid an administrative act is more appropriate for the nature of the administrative procedure. Likewise, the right to a fair trial does not require that the court, in reviewing the legality of an administrative act unfavourable to a person, should always make considerations of expediency itself and, on the basis of these, determine a new content for the administrative act. [15.4.]

Thus, the Constitutional Court decided to recognise the contested norm as being compatible with the first sentence of Article 92 of the *Satversme*.

The Judgement by the Constitutional Court is final and not subject to appeal, it enters into force on the day it is published.

The text of the Judgement [in Latvian] is available on the homepage of the Constitutional Court:

http://www.satv.tiesa.gov.lv/wp-content/uploads/2017/03/2017-08-01_Spriedums.pdf

The press release was prepared with the aim to facilitate understanding of the actual facts of the case. It shall not be regarded as part of the judgement and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the homepage of the Constitutional Court: www.satv.tiesa.gov.lv.

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