

## CREATION OF THE NATIONAL ADMINISTRATIVE AND ADMINISTRATIVE PROCEDURE LAW SYSTEM AND COMPLIANCE WITH THE EUROPEAN LAW

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### Summary

The establishment of a new legal system which would correspond to the interests of the Latvian State was started on May 4, 1990.

The government has started the coordination of the norms of Administrative Procedure Law, Civil Procedure Code, Criminal Code, Criminal Procedure Code and Administrative Offence Code and undertakes the alignment of legal system adjusting the legal acts to European standards. The Draft Administrative Procedure Code is still being discussed by society.

The following principles are taken into consideration: the principle of equality before the law means that administrative authorities should carefully and fairly consider each individual case. It is important that besides the personal information, referring only to the interests of an individual person, the administrative authorities inform the public if a decision of the administrative authorities is important for them. (The principle of trust or confidence.) The principles of administrative procedure are very important in defining legal regulations and their implementation. It testifies the great role of principles in administrative procedure law.

The state administration is not only the interrelations between the administrative authorities but also relations between each administrative authority and a person concerned with the administrative act. Summing up, it must be mentioned that the Draft Administrative Procedure Law is prepared as the body of procedural regulations for all administrative cases. It is the draft law providing the work of state administrative authorities for the interests of persons, considering the proportion between private and public interests.

May 4, 1990 was a starting point of the establishment of a new legal system which would correspond to the interests of the Latvian State and its individuals. On May 4, 1990 the Supreme Council of the Republic of Latvia proclaimed the Declaration of the Renewal of the

Independence of the Republic of Latvia and recognized the supremacy of the fundamental principles of international law over national law. Since then, a process of creating new legislation has been going on.

In December 1990, the decision of the Supreme Council of the Republic of Latvia was made about the formation of work groups for the development of draft codes. The work group was formed and it started to improve the Administrative Offence Code, but under objective circumstances the draft did not reach the Parliament. Nevertheless, since regaining independence in August 1991, the foreign policy has been consistently directed towards the European integration. This was confirmed by the Declaration by all parties in October 1995 in which the parties supported the Government's decision to submit its application for EU membership. The government started to improve the legal system so that it corresponds to the recommendations of "White Paper" as well as the demands stated in the European Agreement (Agreement Establishment on Association between the Republic of Latvia on the one part and the European Community and the Memberstates on the other part) signed on 12 June 1995 between Latvia and the memberstates of the European Community, that came into force in February 1998.

In accordance with the above mentioned, it is stated that the government undertakes to realize the alignment of legal system, adjusting the legal acts to European standards, perfecting the development of laws and at the same time mutually coordinating the norms of Administrative Procedure Law, Civil Procedure Code, Criminal Code, Criminal Procedure Code and Administrative Offence Code.

Criminal Code, Criminal Procedure Code and Civil Procedure Code have been prepared for the third reading at the Saeima. The draft Administrative Procedure Code is being discussed by society and has been prepared for the accept in the government.

In its turn, the Administrative Offence Code is in the Saeima. It has been voted for in the first reading and now an intensive work is going on to prepare it for the second reading. The subcommission of the Saeima's Legal Commission together with the representatives of the work group of the Draft Administrative Offence Code are working on the essential revision of the legislation on the administrative liability in order to coordinate this legislation with the legislation of other spheres and states.

The characteristic feature of the Administrative Offence Code (possibly "The Administrative Penal Law of the Republic of Latvia") is the specification of administrative offences and penalties determined not only by the dynamics of the administrative offences (in the spheres of customs, taxation, trade etc.) but also many declarations, provisions of inter-state treaties. The Draft Administrative Penal Law of the Republic of Latvia consists of two sections – general provisions and special provisions. For the first time the tasks of the Administrative Penal Law are clearly defined in general provisions, the acts or the failure to act which can be considered administrative offences are stated. The standards of the 1<sup>st</sup> Paragraph of the Administrative Penal Law lay the basis for the specification of the circle of subjects of administrative liability; as in the new law only administrative offences are mentioned, there must be other acts laying down the regulations of the disciplinary offences and the respective liability.

As the performance of work duties is mostly subjected to labour law, then, accordingly, the cases of failure to perform one's duties will be regarded as the disciplinary offence and will be considered in the frame of disciplinary cases. Thus, in many cases, where the liability subject is an official, if the legal regulations of labour are violated, there will be a disciplinary case. But in those breaches of law where any other institutions or enterprises are to be blamed the liability subject is stated – a juridical person. For example, the valid rules of the 41<sup>st</sup> article of the Administrative Offence Code of the Republic of Latvia provide a fine to the employer or the official for the breach of labour law or labour protection law. In the Draft Administrative Penal Law, for the breach of labour or labour protection law "physical (natural) person is fined up to 250 Lats, but juridical (legal) person – up to 5000 Lats". We think that a very important feature of the Draft Administrative Penal Law of the Republic of Latvia and an essential deviation from the prescribed provisions in the legal act is the punishment of the

offender for each administrative offence irrespective of how many times during a year the person has committed a breach of law. In other words, the repeated breach of law does not form a criminally punishable offence. The repeated administrative offence does not develop into a crime as it was stated in law previously. In the future, the administrative offence will remain administrative offence but, in accordance with the general provisions, the respective administrative offence or in cases of breaking the law repeatedly, the offender is punished more severely. Namely, the fact of the repeated administrative offences lays the basis for determination of stricter punishment, more often it is a larger fine.

No less important as the before mentioned is the innovation that there is stated the liability for the regulation, i.e. the breach of rules issued by competent state institutions in the Draft Administrative Penal Law of the Republic of Latvia. The valid Administrative Offence Code tries to define the offences in detail in all articles, but the new draft law gives reference to regulations. It has great practical value because the "general" definition of administrative offence is given.

This definition given in the article or articles of the Draft Administrative Penal Law of the Republic of Latvia is not to be changed together with the changes of the corresponding regulations. For example, trade regulations on tobacco can be changed comparatively often, but it would not arise the necessity to change each time the corresponding article in the Administrative Penal Law. Because of the same considerations there is an article in the draft law where administrative offences are combined, which are committed in mutually connected spheres – e.g. storage, realization and trade in tobacco. All the mentioned activities were subjected to separate regulations as the offences' liability was provided in three separate articles. The new draft law offers administrative liability for offences in three different regulations, which are laid down as "general" provisions, but the liability is formulated in one article.

When already working with the Draft Administrative Penal Law, the work group supported the proposal to introduce amendments in the valid code, including article 175.<sup>2</sup>2. In accordance with it, there was stated administrative liability for dereliction of legal claims by state officials, institutions fulfilling the functions of control, supervision or investigation.

The introduction of this article in the Code (it is also retained in the new wording of the Administrative Penal Law) made possible reduction of a number of articles. The reduction of articles is not an end in itself. It is a strive for reduction of various authorized state institutions and their officials, who are authorized to consider cases of administrative offences. It is a strive, at least, to restrict the amount of such institutions and officials, not to allow the situation when the liability is stated according to two different parts of the same article by two institutions. At the same time, it is a strive to reduce the tendency towards the increase of the amount of the institutions established by the executive authorities and a will to lay down the law act determining the possibility of applying administrative liability only to the subjects of public law.

An important, positive gain would be the specification of administrative liability, because in the Draft Administrative Penal Law we have refused from the punishment not applied in practice, e.g. the seizure of the objects of administrative offence for reimbursement, but in the new wording it is also offered to introduce, besides administrative penalties, administrative means of influence, e.g. such as to annul the licence, to calculate extra charge. That would create the situation when one institution could lawfully apply administrative liability and the other institution must not apply administrative means of influence, which till now are met beyond the Administrative Offence Code, for example in "The Law on Taxes and Dues", etc. Therefore, it is so essential to revise the standards of substantive law, to develop the acts defining action or failure to act, which is considered to be an administrative offence by the law or regulation, which determines administrative penalties and administrative means of influence. To our mind, it is wrong, that in the Draft Administrative Penal Law there would not be revised the standards of the 4<sup>th</sup> and 5<sup>th</sup> sections (they have to be laid down in the Draft Administrative Procedure Law), which are the procedural standards of record keeping in cases of administrative offences and the execution

of decisions about the imposition of the administrative penalties. It would be wrong to come to the conclusion that the standards of the administrative procedure do not receive proper attention.

For the first time in this country, the Draft Administrative Procedure Law [1] was developed under the guidance of the Ministry of Justice [2] in May, 1940. But this Draft Law did not receive any further move. After the regain of the Independence in Latvia, the formation of judicial state and state administration reform were started. In accordance with the concept of state administration reform, one of its tendencies is reforming the state administrative system and one of the measures of provision of its activities is the preparation and introduction of Administrative Procedure Law [3], which is mentioned in the concept as one of the main instruments of state administrative reform.

Therefore, there is a view expressed in the concept that Administrative Procedure Law is the means of the reorganization of the state administration.

Different view is found in the work "Human Rights and Basic Law Standards and their Legal Status in the Present Legal System of Latvia", by E. Levits, where the author states that if "there is a breach of human rights then with the establishment of the legal error and with the help of correction mechanism there is made an adjustment. The adjustment is possible and in democratic and judicial state it is established by formalized administrative procedure in institutions and courts. According to E. Levits, the general administrative procedures (the so called administrative trial) are established in Latvia in accordance with the standards of judicial and democratic states of the European Council. They are determined by the regulations of the Cabinet of Ministers of the Republic of Latvia from 13 June 1995, No 154 "The Regulations of the Administrative Trial", but the administrative procedure (the so called administrative trial procedure) is tried in accordance with The Civil Procedure Code Articles from 239.<sup>1</sup>1 to 239.<sup>8</sup>8 [4]. But E. Levits has not said, that administrative authority (the deed and the result of the deed) is regulated by the standards of Administrative Procedure Law.

The administrative authorities performing the function of the state administration, decide and try administrative cases. The Administrative Procedure Law is necessary for the trial of administrative cases, as well as the execution of the issued acts in the administrative case, appeals, repeals and so on. Otherwise, the implementation of the corresponding substantive standards is provided by the corresponding legal procedure. So, the implementation of the Civil law standards is carried on according to the legal standards of the Civil Procedure Code (proceedings of civil cases). The implementation of criminal law standards – according to the legal standards of Criminal Procedure Code (proceedings of criminal cases). The implementation of administrative legal standards (proceedings of administrative cases) to our mind, must be carried on according to the legal standards of administrative procedure [5]. The systematization of the legal standards of Civil and Criminal Procedure is successfully going on and as it was mentioned before, the legal acts of these spheres are now waiting for the third vote in the Parliament.

A little bit different is the situation with the preparation of the Draft Administrative Procedure Law. The tendencies of the legal system of our state and the trends of the development of the legal acts were taken into consideration in the concept worked out by the work group of the Draft Administrative Procedure Law. In its turn, the components of the system of legal acts – the Administrative Procedure Law must be coordinated by the legal standards and principles of the European states. Progressive democratic and judicial state is distinguished not only by formal norms of conduct but also by the existence of legal principles in the system of legal acts. The Principles of Administrative Procedure [6] are formally prescribed and applied in practice in most European states, to our mind, have to be included in the Draft Administrative Procedure Law. But conceptually, the alternative project was supported where the enumeration of the recommendations and resolutions was restricted referring to administrative procedure and the authors admit "they are considered as separate issues of administrative procedure [7]. They are practically introduced in the Handbook and supplemented with the progressive experience of each European

memberstate in the sphere of performance of administrative authorities. This informative material of great importance must be taken into consideration in the process of preparing the Draft Administrative Procedure Law. It would adjust the system of legal acts of this state to the European system of legal acts. According to the author's opinion, in the Draft Administrative Procedure Law, there must be included the constituting and procedural principles which are bounding to the courts and administrative authorities in their relations with persons.

Here, the relations with the physical persons must be stressed (private/natural persons) as well as legal persons (individual persons). Unfortunately, the authors of the Draft Administrative Procedure Law restricted the appliance of principles and all regulations to the relations between administrative authorities or court and individual (private person i. e. "natural/ physical person") and the move of administrative act.

Only because of such presumption in the Draft Administrative Procedure Law, there are two main parts, in the first part "the administrative procedure in the administrative institutions, relaying on the Rules about Administrative Acts issued on June 13, 1995, and the second part comprises the administrative procedure in court, which would include the trial of all administrative cases in the courts. Here, it must be added that "in the enumeration of all administrative cases there were not included the cases" of administrative offences, which, as it was mentioned before, must be tried according to a different procedure; administrative cases arising from the applications, suggestions and complaints of persons are not mentioned. Evidently the practice of consideration of administrative cases would give new material for suggestions on the development of the Draft Administrative Procedure Law.

The above stated refers also to the basic principles mentioned in the draft law. A principle of equality in the Draft Administrative Procedure Law is offered; according to it, "issuing an administrative act the institution when approached by the similar actual and legal set of facts must issue the similar administrative act (underlined by – J. N.) irrespectively of the sex, age, racial origin, language, religious or other beliefs, political opinions, social origin, nationality, education, social and property status of the participant of the administrative procedure". The introduction of such principle refers only to such administrative cases where there would be similar factual and legal set of facts, but the circumstances of the cases could be different. Only because of this, the mention of the principle could be expressed by differentiating it as two expressions of one principle.

"Where cases are objectively the same, their treatment must be the same."

"Where cases are objectively different, there will normally be corresponding differences in treatment. The principle of equality before the law does not mean that administrative authorities should not carefully and fairly consider each individual case by reference to the applicable laws and rules. The laws and rules should not be drawn up so as to prevent the administrative authorities from treating every case in a manner appropriate to its circumstances." Commenting upon this principle, it was correctly marked in the handbook [8], that "...treatment of cases should only be different if plausible reasons plead for that and the difference in treatment should be appropriate with respect to the difference in the situations."

No less disputable than the previous is the regulation of the Draft Administrative Procedure Law about giving information to other person [9]. The injunction of the regulation states that "the authorities must give out the information, connected with some administrative procedure. It must be given after the request from a physical or legal person, which is at their disposal with the exception of cases when the information contains state secrets or it is meant for internal use only or it refers to the private life". Suppose that the injunction could be made up in a more progressive formulation, in correspondence with the principles mentioned in the Handbook. "The administrative act must be notified to all persons concerned". Notification normally means informing personally the person or persons concerned. In the case of administrative procedures concerning a large number of persons, the notification of the administrative act taken and of the possible remedies against it may be made, for certain categories of persons concerned, not by informing personally but by public notification" [10]. It is important that, besides referring only to the interests of the individual person, the

administrative authorities inform the public if the decision of administrative authorities is important for them. The concerned person and public will undoubtedly contribute to the implementation of the offered that the person can rely on the legality of the action of authorities by the Draft Administrative Procedure Law. (Principle of trust or confidence.) The Handbook offers contextually broader principle – the principle of objectivity and impartiality. It means that all the factors relevant to a particular administrative act should be taken into account, while giving each its proper weight. Factors which are not relevant must be excluded from consideration. At the same time, it must not be influenced by the private or personal interests or prejudices of the person taking it. Therefore, no civil servant or employee of an administrative authority should be involved in the taking of an administrative act, in a matter concerning his or her own financial or other interests, or those of his or her family, friends or opponents or in any appeal against an administrative act which he himself or she herself has taken, or where other circumstances undermine his or her impartiality. “Friends and opponents” in the sense of this principle are persons towards whom the official involved in passing (the taking) of the administrative act has a positive or negative predisposition. The notion implies a close relation between the official and the private person concerned, be it an ongoing or a formal relation. It is important that this principle is observed and in force also in those cases when the administrative procedures are revoked in appeal or cassation.

Here only some of the principles are mentioned; of course, they are more numerous, given separately, besides a short characteristics of each principle is given. It is necessary for the process of scientific cognition, it stresses the importance of each principle. The administrative authorities in each case apply several of these principles at a time, e.g. the right to be listened to and the duty to inform.

The principles of administrative procedure are very important not only in the mentioned aspects but also in defining legal regulations and their implementation. It is necessary to mention the fact that nowadays authors of legal texts comparatively broadly describe the principles regulating public relations, defining them as principles, regulations [11]. It testifies to the great role of principles in administrative law and administrative procedure law as in systems of law and the not less important role of principles in the legal regulations of administrative procedure law.

Overlooking the conceptual differences in the development of the draft administrative procedure law, the author expresses a wish that administrative authorities, each of them and all together would be legally subjected to this new law in a system of state administration, implementing the authority defined in the laws. Important would be those legal regulations, principles determining the order according to which the administrative authority with the help of administrative act carries out the function of state administration within its competence. The state administration is not only the interrelations between the administrative authorities but also relations between each administrative authority and the person concerned with the administrative act. Therefore, the definition of regulations allowing the person to solve problems in the higher administrative institution or court, in case the administrative act is appealed, is very essential. It is possible to agree with the view, that it is essential for the Republic of Latvia to establish Administrative Procedure Law corresponding to the standards of judicial state. It is a legal duty, determined by the 1<sup>st</sup> article of the Satversme (the Constitution), according to which Latvia is a democratic state. And 65<sup>th</sup> article of the Agreement between Latvia and the Association of the European Community, from 12 June 1995, entrusts Latvia with the international legal duty “to adjust” its system of legal acts to the legislation of the European Community. Both legislative systems could be adjusted only if the administrative procedure in Latvia is accomplished on the same principles as in the European Community [12].

## Conclusions

Summing up, it must be mentioned that the Draft Administrative Procedure Law is prepared as the body of procedural regulations for all administrative cases. It is a draft legal act for implementation of material legal regulations, providing the implementation of lawful interests and defence with lawful means of the subjects of private and public law. It is the draft law providing the work of state administrative authorities for the interests of persons, considering the proportion between private and public interests.

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## REFERENCES

1. **Likumprojekts** par administratīvo procesu. "Tieslietu ministrijas Vēstnesis". – 1940. – Nr. 4.
2. **Saskaņā** ar Latvijas Republikas Ministru kabineta iecerētās darbības Deklarāciju un atbilstoši nolikumam Tieslietu ministrija izveido likumprojektu darba grupas, tai skaitā Latvijas Administratīvo pārkāpumu kodeksa, Latvijas Administratīvā procesa likuma un koordinē visu darba grupu sagatavotos projektus un virza tos iesniegšanai Valdībā.
3. **Latvijas** valsts pārvaldes reformas koncepcija. "Latvijas Vēstnesis". – 1994. gada 28. decembris. – Nr. 151.
4. **Diskusijas** "Kā mācīt cilvēktiesības ierēdņiem". Materiāls Latvijas Universitātes Cilvēktiesību institūtā. – 1996. gada 16.-18.septembris.
5. **Načisčionis J.** "Konceptuāli par Administratīvā procesa likuma projektu". "Latvijas Vēstnesis". – 1996. gada 6. decembris. – Nr. 211.
6. **A Handbook** "Principles of Administrative Law Concerning Relations Between Administrative Authorities and Private Persons". Directorate of Legal Affairs. – Strasbourg, 1996.
7. **"Par Administratīvā procesa likumu"**. "Latvijas Vēstnesis". – 197. gada 22. jūlijs. – Nr. 186.
8. **A Handbook.** Principles of Administrative Law Concerning the Relations Between Administrative Authorities and Private Persons. Directorate of Legal Affairs. – Strasbourg, 1996. – P. 11. see ibid, – P. 124.
9. **Šeit** netiek dota atsauce uz oficiālu publikāciju avotu, jo Administratīvā procesa likumprojekts uz dotā raksta tapšanas brīdi bija pieejams tikai manuskriptā.
10. **A Handbook.** – P. 20-21.
11. **Tihomirovs J.** Publiskās tiesības. Izdevniecība BEK. M. – 1995. – Lpp.51. Sk. arī Collection of Recommendations of the Committee of Ministers of Council of Europe Concerning Administrative Law Together with their Explanatory Memorandums in Chronological Order. – Strasbourg, 1 June 1994.
12. **Par Administratīvā procesa likumu.** "Latvijas Vēstnesis". – 1997. gada 22. jūlijs. – Nr. 186.

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***Nacionalinés administracinés teisés ir administracinio proceso sistemas kūrīmas ir derīnīmas su Europos teise***

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## SANTRAUKA

*Nauja, Latvijos interesus atitinkanti teisiné sistema pradéta kurti 1990 m. gegužés 4 d. Vyriausybé pradéjo derinti Administracinio proceso įstatymą, Civilinio proceso, Baudžiamąjį, Baudžiamąjo proceso ir Administracinių teisés pažeidimų kodeksus bei visą teisinę sistemą su Europos*

standartais. Administracinio proceso kodekso projektas pateiktas svarstyti visuomenei. Laikomasi šių principų: lygybės prieš įstatymą principas reiškia, kad administracinės institucijos turi įdėmiai ir teisingai tirti kiekvieną bylą. Svarbu, kad administracinė valdžia informuotų visuomenę apie reikšmingus jai sprendimus (pasitikėjimo arba konfidencialumo principas).

Administracinio proceso principai labai svarbūs nustatant teises normas ir jas įgyvendinant.

Valstybės valdymas – ne tik administracinės valdžios institucijų santykiai, bet ir atskiros administracinės institucijos ir su administraciniu aktu susijusio asmens santykiai. Pažymėtina, kad Administracinio proceso įstatymo projektas parengtas kaip procesinių normų, taikytinų nagrinėjant administracines bylas, rinkinys. Šis projektas įpareigoja administracinę valdžią tarnauti žmonių interesams ir nustatyti privačių bei viešųjų interesų proporciją.

