Recent developments
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Latvia

Žaneta Mikosa, Riga Graduate School of Law

Recent legislative initiatives

1. Law on Waste Management (of 2008)

Amendments in the Law on Waste Management came into force 01.01.2018 that has been adopted rather quickly by the Parliament to ease quite pressure from the society to take some clear steps to improve waste management, in particularly, controls of flaw of waste coming into the country. Hence, the amendments to the law have been triggered by some events (problems) in area of waste management, including quite significant incident in the territory of presumably illegal location of tyres (at least at the amount that the inspectorate discovered there). These tyres were illegally burned causing quite some problems with air pollution and other damages.

Ultimately, as the reaction to quite some illegality (and problems) in the waste management that got wide resonance in the society, the Parliament asked the Government to reassess the regulation for the waste management in order to *inter alia* increase liability of the operators working in the field, as well as to improve control system.

Accordingly, the recently introduced amendments are worth noting with respect to two major changes:

1) Introduction of a requirement on a mandatory financial guarantee (bank guarantee or insurance) for certain categories of waste management activities. This requirement is applied also to companies importing (transporting) waste for regeneration or recovery into the country. (in force from 10.07.2018);

According to the discussions around these amendments there are two-fold objectives of mandatory financial system: firstly, to ensure "polluters pays principle;" secondly, exterminate "short-term" companies that are distorting the market and undermine the waste management system.

2) in order to strengthen traceability of waste that is classified under "green list" of Dir.2013/2006 imported in the country:
    a. an operator is obliged to notify 3 days in advance to transportation of this type of waste into the country (through the system of electronic notifications already used for hazardous waste transportations)
    b. receiving company (recovery or regeneration operator) has to notify within 3 days through the same system recipiency of imported waste.

As one may read from the explanatory material, similar system of Notification in advance of transportation of non-hazardous waste (apart from hazardous) functions in Estonia and recently has been launched in Lithuania.

2. Re-opened discussion **on possibilities of introducing Deposited-refund system (DRS)** for cans, plastic and glass bottles. It is already for the third (or forth) time when the Ministry of the Environmental Protection and Regional Development tries to proceed with the legislative initiative to introduce the DRS. However, it seems that also now it will be blocked by quite some opposition to this initiative organized trough other ministries (the Ministry of Agriculture in this time) by some producers' and waste management (intermediary) companies. At this moment, the legislative package is going through the consultation process. At the outset it seemed that it will go through taking into account upcoming elections (Oct.2018), as this system is quite popular in the society supporting the introduction of the system, in particularly, after both our neighbours have introduced it (EE and LT). However, since strong opposition from stakeholders an the minister of agriculture, it seems it is blocked at the government level now.

Recent Developments in Environmental Jurisprudence

1. The Constitutional Court case on increased noise limits (during moto racing)[1]

The first Constitutional Court case of such type – assessing in light of Article 111 of the Constitution (a right to a health) and Art.115 (a right to benevolent environment) - the noise limits allowed during motoracing (in city or village) that were significantly increased by the amendments of the Regulatory enactment of the Cabinet of Ministers on Noise Assessment and Management (No. 16/2014) in 2015.

According to the amendments of 2015, noise limits were increased (as an exception from other outdoor noise[2]) up to 80 dB(A) dependent on some conditions, for example, it is allowed for max. 16 competition days in a year taking place between 08:00 to 20:00 to reach noise limit: 75 dB(A) or 80 dB(A) and up to 70 dB(A) or 75 dB(A) above 16 competition days in a year on Saturdays and Sundays between 08:00 to 20:00.

After complaint from the Ombudsman and another from the Administrative Court[3] (two cases joined in one), the Constitutional Court found non-compliance of the amendments

[1] Constitutional Court Case No. 2017-02-03, judgment of 19 Dec.2017.
[2] Ann.I of the Regulation No.16, ranging these limits between 40dB(A) (night) to 65dB (day)(A).
[3] The Administrative Court initiated a case before the Constitutional Court taking into account the case before the former court (No. 420346615) where the private applicant (living next to motoracing track - Kandava) has challenged the authorization to re-open terminated Kandava's motoracing track based on the Regulation No.16, after it was amended allowing them to work with increased noise limits. Before these amendments, the track was terminated requesting to take appropriate steps (for example, walls against noise) to ensure compliance with existing noise limits (up to 65dB (day)(A).

of the Regulation No.16/2014 with respect to increased noise limits for motoracing with Art.111 and Art.115[4] of the Constitution.
In this case, the Court was examining whether the Cabinet of Ministers acted duly in adopting such exception. While the Court acknowledged that the government has acted within its delegated competence (authorized by the legislator to adopt such provisions), however, **the Court found that the government has breached obligation to act appropriately (duly)**. The conclusion was based mainly on two points: the government breached the principle of precautionary (being part of the legal framework of Art.115), as it has increased the noise limits for particular type of activities without, however, appropriately assessing possible adverse effect to a health and living environment for inhabitants. Secondly, the Court argued that the government did not reach "just balance between different interests involved."

2. Case on noise limits before the Administrative Court

In the context of this case, it is worth noting very recent judgment of the Administrative Court (yet, at the first instance),[5] based on the judgement of the Constitutional Court that ruled *inter alia* in favour of the applicant (EF) before the Administrative Court (in favour of whom the latter court initiated above-discussed constitutional case).

After the judgment of the Constitutional Court, the Administrative court found illegal the decision of the municipality to re-open Kandava's motoracing track, as based on void Regulation of Cabinet of Ministers. And the Court decided to partly satisfy the applicant's request to compensate (personal) damages. According to the judgment the municipality has to pay to the applicant "non-material" **(moral) damages** of 500 EUR that has originated from the state action breaching her fundamental rights. The court refused, however, the rest of amount (~19 000 EUR) as the damages to health and any other had not been proved by the applicant during the court proceeding.

3. Case on *locus standi* before the Administrative Court

Case no. SKA-757/2018 of the Administrative Supreme Court[6] on the decision of the Administrative District Court refusing standing for the private applicant initiated to challenge authorization to build warehouses (in area of aprox.25 ha) without a detailed plan and without any public consultations.

The first instance court refused the application based on the lack of standing of particular applicant (inhabitant living within vicinity of 1 km from planned development) to challenge such type of decision, as the municipality has decided that

[4] The Constitutional Court agreed with the complainants that "noise as polluting activity for the environment has to be seen *inter alia* in light of Art 115 of the Constitution" (para.16.7). Hence, it assessed the government decision-making in light of obligations of the state to ensure the effective system for environmental protection and the right of everyone to live in a benevolent environment.
[5] The Administrative District Court Case No. 420346615, judgment of 17 April 2018 (not appealed, yet).
[6] The Department of Administrative Case of the Supreme Court, Case No. SKA-757/2018 of 26.Janv.2018.

there is nor a detailed planning neither public consultations needed according to the Construction Law.

The Administrative Supreme Court (ASC) annulled that decision and sent it back for adjudication on substance by the first instance court recognizing that in particular case the first instance court should have been applying the provisions of environmental law authorizing the public to initiate a case that might adversely affect the environment.

This case law is quite significant within the area of the right of public participation and locus standi as the line of argumentation based on the decision of a municipality not to organize public consultations during construction initiatives are quite wide practice. In this case of 2018, the ASC acknowledged the right of members of the public to challenge such decision if there is "sufficiently grounded concerns" that the right of public participation has been breached even where the applicant may not be capable of proving any particular threat to or damage to the environment while initiating a case.

The Court based its line of argumentation close to the principles behind the "Aarhus rights" by stating that there has to be effective instruments available for the public allowing to control through the court actions of a public authority (controlling construction and development initiatives) that has decided not to organize public consultations for a decision that might affect the environment.