

CONSTITUTIONAL PRINCIPLES IN PUBLIC ADMINISTRATOR'S DECISION-MAKING UNDER THE CASE LAW OF THE SUPREME ADMINISTRATIVE COURT OF LITHUANIA

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Abstract: This paper serves few purposes. First, it examines the principles of public administration in Lithuania. Good administration principle is analysed as constitutional principle relying on the case law of the Supreme Administrative Court of Lithuania. Second, it explores impact of the decisions of Constitutional Court of the Republic of Lithuania to the contemporary judicial review of Lithuanian administrative courts. Therefore, one of the latest rulings of the Supreme Administrative Court of Lithuania related to the spelling of names and family names in the passports of citizens of the Republic of Lithuania will be reviewed.

Key words: constitutional principle, good administration, public administration

1 INTRODUCTION

The Law on Public Administration was adopted in Lithuania in 1999.¹ This act is important because of several reasons.

First, it establishes the notion of public administration. Article 5 of the Law on Public Administration governs five main spheres of the activity of public administration entities. These five spheres are: administrative regulation (adopting of administrative acts, namely regulatory), control of subordinate entities and supervision of non-subordinate entities, provision of administrative services (licensing, authorizing, submission of information, provision of consultations, etc.), administration of the provision of public services (services in the sphere of education, healthcare, science, culture, sport, etc.), internal administration of public administration entity.

Second, Article 4 of the Law on Public Administration establishes system of public administration entities in Lithuania. It is composed of state administration entities and entities of municipal administration. State administration bodies are institutions of executive power and independent regulatory bodies. There are 59 municipalities in Lithuania and all of them have their own organs of municipal administration.

Third, Article 8 of the Law on Public Administration governs general requirements for individual administrative acts. They are: an act should be based on objective data (facts) and the provisions of legal acts, if sanctions are applied by the act then reasons should be established, rights and duties should be clearly established or granted in the act, an act must be signed by a competent authority. Each person to whom an act is designated or whose rights and duties are directly affected, not later than within three working days of its adoption, should be notified in writing about the adoption of

¹ Law on Public Administration. 17 June 1999 No VIII-1234, Vilnius.

the act and receive a copy of this act. In contrast, requirements to regulatory administrative act are governed by different act – Act on the Basis of Law-making.²

Fourth, Article 3 provides principles which should be followed by public administrators. They are: the supremacy of law, objectivity, proportionality, absence of abuse of power, institutional assistance, efficiency, subsidiarity, “one-desk” principle, equality, transparency, responsibility for the adopted decisions, novelty and openness to change, principle of completeness or particularity. Among these principles easily could be identified constitutional principles. For example, the supremacy of law, proportionality, equality of persons before the law.

Following the aforementioned provisions of the Law on Public Administration of the Republic of Lithuania we can draw some conclusions. First, areas of activity of Lithuanian public administrators are regulated by the law, they do not stem from case law of national courts. Second, Lithuanian public administrators system consists of state administration and municipal bodies. Third, Article 8 of the Law on Public Administration is the main provision according to which Lithuanian administrative courts make judicial review over individual administrative acts. Fourth, Article 3 of the Law on Public Administration does not provide principle of good administration, except we can find some similarities with Article 41 of the EU Charter of Fundamental Rights. Thus, the report is mainly dedicated to analyze the principle of good administration as a constitutional principle.

For the introduction of this discourse we gave some legal backgrounds on the legal framework of Lithuanian public administration.

2 PRINCIPLE OF GOOD ADMINISTRATION AS A CONSTITUTIONAL PRINCIPLE

In Lithuania there are no commentaries on the Law on Public Administration or the Law on Administrative Proceedings.³ However, the Supreme Administrative Court of Lithuania published a set of case law when the provisions of the Law on Public Administration are applied.⁴

Consequently, one chapter in this publication was dedicated to principles of public administration. Above we noticed that there is no definition of the principle of good administration in the Law on Public Administration, the Supreme Administrative Court in its publication begins the chapter on principles of good administration with Article 41 of the Charter of Fundamental Rights of the EU⁵ which establishes the right to good administration. According to Article 41 the right to good administration includes the right to be heard before the individual decision could be taken, the right to have access to his or her file, reasoning decisions of public administrator. Moreover, administration should be impartial, fair and reasonably organize the time of decision-making.

The Supreme Administrative Court in its case law emphasizes that the principle of good administration is set in the main national acts and the Charter of Fundamental Rights of the EU.⁶ Here the

² Act on the Basis of Law-making. 18 September 2012 No XI-2220, Vilnius.

³ Law on Public Administration or Law on Administrative Proceedings. 14 January 1999 No VIII – 1029, Vilnius.

⁴ Case law of the Supreme Administrative Court of Lithuania applying the provisions of the Law on Public Administration of the Republic of Lithuania. Approved by the justices of the Supreme Administrative Court of Lithuania in 1st of June, 2016.

⁵ Charter of Fundamental Rights of the European Union (2000/C 364/01).

⁶ Case law of the Supreme Administrative Court of Lithuania applying the provisions of the Law on Public Administration of the Republic of Lithuania, p. 464 – 465.

Court as the “main national acts” meant namely Article 5(3) of the Constitution of the Republic of Lithuania: “*State institutions shall serve the people*”. Thus, Supreme Administrative Court states that “Notwithstanding the fact that the principle of good administration is not directly enshrined in the Law on Public Administration, according to the case law of the Supreme Administrative Court of Lithuania it comes from the provisions of the Constitution”.⁷ The institutions of public administration are bound by the principle of good administration with the help of which Article 5(3) of the Constitution is implemented.⁸ Consequently, the principle of good administration could be considered as a constitutional principle.⁹

According to the case law of Lithuanian administrative courts the principle of good administration contains various imperatives.¹⁰ Each of them will be briefly described.

First, the obligation of public administrators to state reasons. This imperative reflects Article 8 of the Law on Public Administration and Article 41 of the Charter of Fundamental Rights of the EU. In the case law it is stated, that “an individual administrative act, which does not sufficiently detail the circumstances and legal provisions on which the legal act is based, does not <...> comply with the principle of good administration”.¹¹ Moreover, the principle of good administration obliges a public administration entity to make a decision on the matter and to specify the whole set of the facts and legal rules on the basis of which the decision was made.¹²

Second, the duty of public administrators to interpret the procedure for appeal of an administrative act. According to the Supreme Administrative Court, the principle of good public administration and the principle enshrined in the Constitution that public authorities serve people does not coincide with the failure to explain the procedure for appealing against an administrative act.¹³

Third, the obligation of public administrators to inform about an infringement of public interests. The Court emphasizes that public administrators shall inform the prosecutor or other competent entity about the possible violations of the public interest.¹⁴

Fourth, a duty to be impartial. It means that the priority in decision-making is in the public interest. This principle should prevent the emergence and spread of corruption in civil service. One of the instruments in order to prevent corruption in civil service are the provisions of the Law on the Coordination of Public and Private Interests.¹⁵

Fifth, the duty of public administrators to take active steps, help and act diligently. This means that public administrators shall act with care and diligence when making administrative decisions. Moreover, they have to ensure that applicable legal provisions are complied with during the admin-

⁷ Case law of the Supreme Administrative Court of Lithuania applying the provisions of the Law on Public Administration of the Republic of Lithuania, p. 465.

⁸ Supreme Administrative Court of Lithuania. Administrative case No eA-1245-662/2015.

⁹ EUCJ in its case law regards the principle of good administration as part of the general principles. See: Supreme Administrative Court of Lithuania. Administrative case No A858-47/2014.

¹⁰ Case law of the Supreme Administrative Court of Lithuania applying the provisions of the Law on Public Administration of the Republic of Lithuania, p. 465 – 472.

¹¹ Supreme Administrative Court of Lithuania. Administrative case No A444-878/2013.

¹² Case law of the Supreme Administrative Court of Lithuania applying the provisions of the Law on Public Administration of the Republic of Lithuania, p. 466.

¹³ Supreme Administrative Court of Lithuania. Administrative case No AS858-284/2014.

¹⁴ Supreme Administrative Court of Lithuania. Administrative case No A146-335/2008.

¹⁵ Law on the Coordination of Public and Private Interests. 2 June 1997 No VIII-371, Vilnius.

istrative procedure. This also means that a public administrator must provide the person concerned with objective and correct information on a matter of his/ her interest.¹⁶

Sixth, cooperation between the parties. It is related with the availability of administrative services. The latter means that a public administration entity is required to advise an applicant on how to initiate a process on an issue and provide information to help a private person to find the most effective ways of achieving the goal.¹⁷

Seventh, the right to be heard and informed. This imperative means that public administrator in the decision-making process if it negatively and directly affects the rights of individuals must give the opportunity within a reasonable time and in a manner prescribed by laws to express their views. Lithuanian administrative courts rely on Article 41 of the Charter of Fundamental Rights of the EU, Article 8 of the Law on Public Administration of the Republic of Lithuania and Article 14 of Recommendation to Member States on Good Administration¹⁸ explaining this right of individuals.

Eighth, the right to effectively protect individual's rights. This principle, according to national administrative courts is related to "one-desk" principle. This principle is established in Article 3(8) of the Law on Public Administration: "person shall receive information, submit an application, a complaint or a notification and receive an answer to them at one workplace. An entity of public administration who is considering an application, a complaint or a notification and adopting an administrative decision shall consider the application, complaint or notification and shall receive information from its administrative units, subordinate entities and, where necessary, from other entities of public administration, and shall not impose such obligation on a person who has submitted the application, complaint or notification".

3 ON THE SPELLING OF NAMES AND FAMILY NAMES IN THE PASSPORTS OF CITIZENS OF THE REPUBLIC OF LITHUANIA

According to Article 72 of the Law on Constitutional Court of the Republic of Lithuania,¹⁹ the rulings of the Constitutional Court are binding on all authorities, courts, all enterprises, institutions and organizations, officials and citizens. However, in the last few years a new trend has occurred. The Lithuanian courts, including administrative courts appeal less to the Constitutional Court and instead rely on the jurisprudence of the EUCJ and ECHR.

This new development can be found in the case concerning the writing of foreign names and surnames in passports of Lithuanian citizens.²⁰

1. The Constitutional Court in 1999 rendered a decision in which it ruled that:

¹⁶ Supreme Administrative Court of Lithuania. Administrative case No eA-2142-624/2015; Case law of the Supreme Administrative Court of Lithuania applying the provisions of the Law on Public Administration of the Republic of Lithuania, p. 467.

¹⁷ Supreme Administrative Court of Lithuania. Administrative case No A822-2220/2012; Supreme Administrative Court of Lithuania. Administrative case No A143-1486/2014; Supreme Administrative Court of Lithuania. Administrative case No eA-2266-858/2015; Case law of the Supreme Administrative Court of Lithuania applying the provisions of the Law on Public Administration of the Republic of Lithuania, p. 470.

¹⁸ Recommendation CM/Rec(2007)7 of the Committee of Ministers to Member States on Good Administration.

¹⁹ Law on Constitutional Court of the Republic of Lithuania. 31 May 1994 No I-480, Vilnius.

²⁰ There are no „q“, „x“, „w“ characters in Lithuanian language alphabet.

- “Attention should be paid to the fact that individuals residing in Lithuania regard themselves as belonging to more than a hundred nationalities. Various characters are used in their languages which often are totally or in part different from Lithuanian characters. In case legal norms provided that the names and family names of these citizens had to be written in other, non-Lithuanian characters, then not only the constitutional principle of the state language would be denied but also the activity of state and municipal institutions, that of other enterprises, establishments and organisations would be disturbed. Due to this citizens would face more difficulties in implementing their rights and legitimate interests and the principle of their equality before the law established in the Constitution would be violated”.
 - “Writing entries in the passport of a citizen of the Republic of Lithuania in the state language does not deny the right of citizens regarding themselves as belonging to various national groups to write their names and family names in any language as long as it is not linked with the sphere of the use of the state language pointed out in the law”.²¹
2. In less than 10 years Lithuanian courts in contrast to above-mentioned decision of the Constitutional Court instructed the migration and other competent authorities to issue passports of the Republic of Lithuania with the original characters of foreign names and surnames. The panel of justices of the Supreme Administrative Court ruled that:
- “The jurisprudence of supranational courts has revealed that the use of a person name and surname is an integral part of the right to private and family life and state interference, prohibiting the original spelling of the person’s name and surname, can only be carried out if there is a proportionate measure for achieving legitimate aims”.²²
3. The panel of justices relying on the preliminary ruling of the EUCJ²³ noted that it would be inconvenient for a person to be able to write his or her surname on his identity card and passport of the Republic of Lithuania differently from his father’s surname. Moreover, justices relied also on the jurisprudence of the ECHR.²⁴

In May of 2017 the ECHR asked the Government of Lithuania for explanations regarding the writing of names and surnames in personal documents of Lithuanian citizens because the petition of Lithuanian woman married to Austrian man was filed to the ECHR. The woman argued a breach of her right since she was not able to enter her surname with the character “W” in the passport and marriage certificate. The Strasbourg court pointed out that these decisions cannot be enforced until the law is amended.²⁵ In spring of 2017 several drafts of the Law on the Writing of Names and Surnames were released. However, the new law is still not adopted. The current law is adopted in 1991²⁶ and it governs that the name and surnames of non-native persons are written in Lithuanian characters when a passport of the Republic of Lithuania is issued.

²¹ Ruling of Constitutional Court of the Republic of Lithuania on the spelling of names and family names in the passports of citizens of the Republic of Lithuania, 21 October, 1999. Case No 14/98.

²² Supreme Administrative Court of Lithuania. Administrative case No eA-2176-662/2017; other case related to the same topic: Supreme Administrative Court of Lithuania. Administrative case No A-2445-624/2017.

²³ Malgožata Runevič-Vardyn and Łukasz Paweł Wardyn v Vilnius miesto savivaldybės administracija and Others. Case C-391/09; ECLI:EU:C:2011:291.

²⁴ Znamenskaya v. Russia – 77785/01 [2005] ECHR 361 (2 June 2005); Johansson v. Finland, no. 10163/02, ECtHR (Fourth Section) (6 September 2007); Mentzen v. Latvia, no. 71074/01, ECtHR (Fourth Section) (7 December 2004); Bulgakov v. Ukraine, no. 59894/00, ECtHR (11 September 2007).

²⁵ <<http://www.lrt.lt/naujienos/lietuvoje/2/179894/eztt-praso-lietuvos-paaiskinimu-del-pavardziu-rasyimo-dokumentuose>>.

²⁶ Decision of Supreme Council of the Republic of Lithuania on writing of names and surnames in the passport of the citizen of the Republic of Lithuania, 31 January 1991 No I-1031, Vilnius.

4 CONCLUSIONS

1. There is no definition of good administration in Lithuanian legal regulation. The Supreme Administrative Court of Lithuania presumes that it could be derived from Article 5(3) of the Constitution of the Republic of Lithuania where it is stated that “*State institutions shall serve the people*”. According to the jurisprudence of the Supreme Administrative Court, the principle of good public administration includes 8 imperatives: obligation to state reasons, the duty to interpret the procedure for appeal of an administrative act, obligation to inform about a public interest infringement, impartiality, the duty to act carefully, cooperation between the parties, the right to be heard and informed, and the right to effectively protect individual’s rights.
2. A new development in the Lithuanian courts has occurred. The Lithuanian courts, including administrative courts, rely less on the case law of the Constitutional Court and rely more on the jurisprudence of the EU CJ and ECHR.

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