Consequences of incompatibility with EC law for final decisions and final judgments of administrative courts in the Member States

Answers to the questionnaire of the Republic of Latvia

1.

An administrative body may, pursuant to its own initiative or the request of the addressee, set aside administrative decision which has become final. The possibility of revocation depends on whether administrative decision is lawful or unlawful and favourable or unfavourable.

A lawful administrative decision unfavourable to a person concerned may be revoked at any time, except for the case where in accordance with the legal provision it would be required that an administrative act of the same content immediately be issued anew. An unlawful administrative decision unfavourable to a person concerned may be revoked at any time.

If an administrative decision has become final, an administrative proceeding regarding the same matter may be initiated *de novo* on the basis of a submission of the addressee if at least one of the following circumstances exist: 1) the actual circumstances of the matter, which were the basis for taking the decision, have changed; 2) the legal circumstances of the matter have changed in favour of the addressee; or 3) the European Court of Human Rights or another international or supranational court has made an adjudication in the matter from which it follows that the administrative procedure has to be initiated *de novo*. In such case, the institution in taking a decision in the resumed matter shall rely on the facts determined in the relevant court adjudication and the legal assessment thereof.

A submission regarding initiation of an administrative proceeding *de novo* may be submitted while the administrative act is in effect or within a six-month period from the day when the relevant participant in the administrative proceedings comes to know of the facts giving the right to do this.

A submission regarding initiation of the administrative proceeding *de novo* shall be submitted in the same matter, to the institution which has jurisdiction over the matter in the administrative proceeding initiated *de novo*.

The institution has a duty to initiate an administrative proceeding *de novo* in the same matter if it is necessary for execution of an adjudication adopted in this matter by the European Court of Human Rights or another international or supranational court. In such case, the institution in taking a decision in the resumed matter shall rely on the facts determined in the court adjudication and the legal assessment thereof.

An administrative proceeding may be initiated *de novo* in the same matter by the institution which has jurisdiction over the matter in the administrative proceeding initiated *de novo* irrespective of which institution has issued the relevant administrative act in the initial administrative proceeding.

Chapter 39 of the Administrative Procedure Law regulates adjudication of matters *de novo* in connection with newly-discovered facts. According to this regulation, one of possible newly-discovered facts is an adjudication of the European Court of Human Rights or other international or supranational court in this matter from which it follows that the administrative proceedings should be initiated *de novo.* In such case the court in taking a decision in the resumed matter shall rely on the facts

determined in the adjudication of the European Court of Human Rights or other international or supranational court and the legal assessment thereof.

A matter in connection with newly-discovered facts may be initiated by a participant in an administrative proceeding by submitting an application regarding the setting aside of an adjudication of a district administrative court – to a regional court; and regarding the setting aside of an adjudication of a regional administrative court – to the Senate. The application may be submitted within three months from the day when the facts which are the basis for the adjudicating *de novo* of the matter are ascertained.

There is no special provision regarding EC law. The legal provisions have general application.

2.

Provisions of the Administrative Procedure Law in principle grant discretionary power to decide the matter. This depends on the usefulness of the issue (the necessity of the administrative decision for the attaining of a legitimate goal; the suitability of the administrative decision for the attaining of the relevant goal; the need for the administrative decision, that is, whether it is possible to attain such goal by means which are less restrictive of the rights and legal interests of participants in the administrative proceeding; and the conformity of the administrative act, comparing the infringement of the rights of a private person and the benefits for the public interest, as well as taking into account that substantial restriction of the rights of a private person may only be justified by a significant benefit to the public). Protection of legitimate trust must be considered.

In principle there is no the obligation to revoke a decision under certain conditions.

3.

The obligation of revocation of final administrative decisions does depend also on the reason of their incompatibility with EC law.

Incompatibility with EC law would be a condition “the legal circumstances of the matter have changed” which is one of conditions for revocation of an administrative decision.

The Administrative Procedure Law of Latvia provides for the individual to decide whether to challenge an administrative decision or not. Regulation concerning initiating the same matter may *de novo* is based on the change of circumstances *after* the administrative decision has become final.

The Administrative Procedure Law also provides for the administrative authority to pursuant to its own initiative set aside administrative acts which have become final.

4.

In order to revoke a final administrative decision a party must challenge the decision by submitting an application to the administrative body which issued the decision or to the court of higher authority if a court decision must be challenged. There is no special provision to which institution - administrative body or the court - a person concerned must apply. If the person chooses to go to the court it is not necessary to exhaust all means of judicial review.

In principle it is possible also that a public attorney (procurator) uses his power to protest administrative decision. However it is used very seldom.

5.

In the ordinary procedure of issuing an administrative decision or making a court decision, the principle of objective investigation (ex officio) must be taken into account, which provides for the institution and the court to objectively determine the circumstances of a matter and provide a legal assessment of these. Therefore an individual can raise the question of the infringement of Community law, but he is not obliged to do so.

To initiate a proceeding *de novo* in case when an administrative decision has become final, individual must submit an application and give proper grounds for initiating a proceeding *de novo.* Therefore in this case an individual should raise the question of the infringement of Community law.

6.

The national court of Latvia, reviewing the legality of administrative decisions takes into consideration the provisions of Community law *ex officio*.

7.

The principle of objective investigation is related equally to all court instances. One should only take into consideration that court of Cassation instance examines only breaches of norms of law but does not re-examine the facts of the case.

8.

When an administrative decision, which has become final as a result of a judgment of a national court, is suspected to be contrary to EC law, both would be appropriate – to revoke the administrative decision or to reopen the judicial proceedings. Only exception can be in situation if a judgement of a court holds *res judicata* which can be an obstacle for an administrative body to revoke the administrative decision. Then only reopening of the judicial proceedings is appropriate.

9.

The *Kapferer* judgment of the ECJ interprets article 10 of the Treaty on European Union, therefore it is applicable also to the judgments of national courts both in civil and administrative matters.

10.

The judgment of the ECJ in *Kühne* case recognizes the principle of procedural autonomy of the Member States, because one of the criteria for the obligation to review a final administrative decision is that under national law the competent institution has the power to reopen the decision. It was later confirmed in the *Kapferer* case, requiring only equal provisions for national and EC matters.

11.

National law in Latvia does not differentiate between national provisions, EC provisions and other international provisions concerning the revocation of final administrative decisions, thus complying with the principles of equivalence and effectiveness. See also answer to question number 1.

12.

Considering the case concerning the revocation of a final administrative decision, it is always necessary to interpret national law in compliance with Community law, and all national authorities should act in accordance with Community law.

National courts do interpret national law in compliance with EC law, for example, concerning immigration, taxation, provisions of providing temporary legal protection in administrative matters etc.

13.

If a non-disputable administrative act is challenged, a submission regarding initiation of an administrative proceeding *de novo* may be submitted while the administrative act is in effect or within a six-month period from the day when the relevant participant in the administrative proceedings comes to know of the facts giving him or her the right to do this.

If a non-disputable court decision is challenged, the application may be submitted within three months from the day when the facts which are the basis for the adjudicating *de novo* of the matter are ascertained.

A six month period may be considered appropriate, taking into account the fourth criteria of the *Kühne* case – the necessity to complain immediately after becoming aware of the facts giving the right challenge a decision.

14.

According to article 92 of Administrative Procedure Law, everyone is entitled to claim due compensation for financial loss or personal harm, including moral harm, which has been caused him or her by an administrative act or an actual action of an institution.

There are no provisions for liability regarding revocation of court decisions.

In Latvia administrative court is empowered to decide on state liability cases upon the application of the individual.