LATVIAN WASTE LAW – THEORY AND PRACTICE

General information

Initial legal regulation of issues concerning waste in Latvia was adopted in 1993 by adopting a statute about hazardous waste (bīstami atkritumi). In 1998 another statute – a statute on household waste – was adopted, and for two years both of these statutes with several additional regulations of lower force in legal hierarchy of norms were applied to regulate issues of waste.

In December 2000 a new statute was adopted – a Waste Management Law. It unites both previous statutes and regulates the competence of state and local government in the sphere of waste, the drawing up of waste management plans and permits, the duties of persons having a license for managing waste, the basic principles for defining waste management fees and the main rules for transporting waste across the border of Latvia. A separate chapter is included for the management of electrical and electronic waste.

The statute on waste managing has been amended for several times until now and the wording presently in force contains an informative reference to eighteen directives of European Parliament and European Council, including the Waste Framework Directive.

Article 1 of the Waste Management Law gives legal definitions for several terms later used in the statute, including the term “waste”, which is meant to be “any object or substance which the holder disposes of, has decided or is forced to dispose of pursuant to the categories given in the classifier of waste. Basically this definition matches the definition given in article 1(a) of the Waste Framework Directive. Rules determining the classifier of waste and the qualities making waste hazardous, that are at present in force, were adopted by the Cabinet of Ministers in November 2004. These rules came into force on 4.th of December 2004, and they also contain an informative reference to the Waste Framework Directive, which means that the requirements of the directive are implemented in these rules.

The classifier gives categories, sections, groups and classes of waste. There are 16 categories, 20 sections, 111 groups and 838 classes of waste, covering all kinds of waste from waste resulting from prospecting, extraction, treatment and storage of mineral resources and the working of quarries, to waste resulting from gardens, parks and cemeteries. The classifier also gives a notification if a particular class of waste is

considered hazardous, and gives additional qualities, chemical substances and connections determining the hazardness of waste.

Legal practice in determining the scope of what is waste

There has been a dispute in administrative courts of Latvia where the national court has been asked to determine whether a substance is waste in Latvian jurisdiction. This question was considered in administrative courts of Latvia in year 2004; still the issues concerned took place from year 1998 to 2000. Two ships belonging to the free port directorate of Ventspils collected a mixture of water and fuel and sold it to legal entities and physical persons. The tax administration considered such actions import and decided to calculate taxes and fine, which resulted in over 3000 Ls (approximately 2000 EUR). The free port directorate of Ventspils considered this decision unlawful therefore appealed it to court.

The Supreme Administrative court announced a decision on March 9, 2004, case number SKA-6. The court faced a question whether the mixture of water and fuel can be regarded as foreign goods, which is followed by a duty to pay taxes. The court considered EU directive 2000/59/EC and national rules on waste resulting from ships and decided that in accordance with these norms depositions, water e.t.c. containing petroleum products, including the substance in the case at bar, must be regarded as waste resulting from ships. The aim of these norms is to eliminate pollution in the seas, and not to regulate commercial activities with petroleum products.

In fact there was no particular norm in any statute in force, which would clearly state the legal form of the mixture of water and fuel. Still the court declared that the collection of this substance is a duty of the free port directorate of Ventspils as an entity responsible for managing waste in the territory of the port. Therefore the substance cannot be considered as foreign goods. It must be treated as latvian goods.

The court adjusted to the situation a similar regulation found in a statute regulating custom matters. The regulation states that waste resulting from process of production in Latvia must be treated as latvian goods. Although the statute regulates the legal form of waste resulting from process of production, the court applied it also to waste resulting from a public duty of managing waste. Therefore waste resulting from petroleum products collected in waters of Latvia by a public person performing a duty of waste management must be considered and treated as Latvian goods. The court also found that the same result can be achieved interpreting verse 12 of the Directive 2000/59/EC.

Legal practice in determining persons entitled to manage waste

Another dispute over waste management in Latvia has been raised in connection with a license for managing waste. In Latvia waste management is associated with other public utilities like water-supply, sewerage system (kanalizācija) and heat supply, and providing all these utilities is an autonomous function of self-government. Verse 9 of the statute on managing waste also provides for self-government to insure waste management in its territory, leaving to the state only the working out of policies, normative regulations and drawing up the national waste plans as well as controlling their execution. Self-government is also entitled to work out normative regulations for managing waste in its administrative territory, including determining the locations for garbage dumps (izgāstuve) and fees for waste managing services.

Licenses for managing waste are granted to the private enterprises by Regional environment directorate. Still having a license is not enough to perform waste managing activities in Latvia. As was mentioned previously, waste management is an autonomous function of self-government; therefore the next step for an enterprise to perform waste managing functions is a contract with self-government. This raised an issue in Latvian courts.

For a significant period of time an enterprise “Hoetika” was the only one licensed and wishing to perform household waste management in Riga, the capital of Latvia. In 1997 this enterprise concluded a corresponding contract with the self-government of Riga for a period of more than 20 years. Still after a couple of years other companies showed interest in managing household waste in Riga, and self-government concluded similar contracts with them. “Hoetika” was not satisfied and argued, that the contract of 1997 grants an exclusive privilege to perform household waste management in Riga. “Hoetika” argued that the freedom of self-government in this area is restricted by waste managing contracts, and the aim of “Hoetika” is to protect its position in waste managing market. By concluding similar contracts with other companies, self-government unlawfully exercises its public power.

The application was rejected in all three instances of administrative court. The court stated that an enterprise cannot be entitled to claim protection from competition. The basic objective of the state economic is to protect and develop competition, and a wish for the protection against competition as such cannot be defended in court. Defense of one’s economic interests only cannot be regarded as legal interest. The court established that in this sphere there are no legal norms in force; therefore the above mentioned principles can be applied. Any physical person or legal entity having appropriate transport and equipment, having gained a license for managing waste and having concluded a corresponding

contract with self-government can perform waste management in line with the contract. The contract between self-government and enterprise is only a means for endowing (nodrošināt) a proper performance of the waste managing function of self-government, it cannot restrict competition.

Administrative court also marked that in case the contract between self-government and "Hoetika" contains terms forbidding self-government to conclude similar contracts with other enterprises; this dispute goes in the competence of civil court. Nevertheless a prohibition to conclude contracts with other companies does not derive form public law.

Yet in another case (SKA-256, December 7, 2004) the Supreme Administrative court stated that a decision to conclude or not to conclude a contract about managing waste is an administrative act which falls within a scope of competence of administrative courts. In this case another enterprise was dissatisfied with a rejection to conclude a contract on managing waste. This issue has not been decided by the court on its merits yet, therefore it is not possible to give a detailed description of it, but the question concerning the competence of the administrative court was decided in the above mentioned way.

Legal practice in the sphere of managing hazardous waste

In Latvia there has also been a dispute over hazardous waste. In year 1999-2000 the government ascertained a necessity to build a factory for burning hazardous waste. The first step was to find an appropriate place. In the process of evaluating impact on environment it was established that the factory would not generate excessive pollution and that the fallouts correspond the norms of environment protection. Three different places for the factory were recommended. In July 2001 self-government of Olaine accepted the project of building factory for burning hazardous waste in its territory. The government accepted the choice by an order of August 8, 2001.

This order of the government was challenged in Constitutional court by 20 deputies of the Parliament. The submitter of the application pointed out that when taking the decision on installing incineration (sadedzināšana) equipment the fact that incineration of waste is nowadays an out of date way of recycling waste has not been taken into consideration. Besides they stressed that no reusable material and useful energy shall be obtained in the process. Several investigations prove the territory of Olaine to be a polluted area; therefore one more potential polluter must not be installed. To the mind of the submitter of the

application the challenged decree is unconformable with the Constitution (Satversme) and several other norms of higher legal force.

The Cabinet of Ministers argued that the challenged decree facilitates the right of every person of Latvia, also the right of the Olaine population to live in a benevolent (labvēlīgs) environment. Articles 5 and 6 (Items 1-3) of the Waste Management Law establishes criteria, which are to be observed when managing the waste. Incineration facilities are functioning in Denmark, Finland, Sweden, the USA and other states. Not infrequently incineration facilities are installed in cities. The incineration equipment to be installed in Olaine has been certified to meet the EU requirements of the sector of the environment protection.

Expert R.Bendere, when answering the questions asked at the Constitutional Court, explained that every year about 25 000 tons of hazardous wastes, which can be disposed off by incineration, accumulate in Latvia. She stated that the consequences of hazardous polluting emissions in the atmosphere and in waste water (caused by the activities of the incineration facility) shall be purified and meet the requirements of both - the EU Directive 94/67/EC and the Republic of Latvia normative acts. Waste water of the incineration furnace will not come into contact with the local inhabitants and – after processing it at the sewage treatment - cannot be hazardous to the environment. Smells might arise in the locality but it will be technologically kept low as the activities with the waste are carried out in an isolated space.

Expert I.Kalniņš pointed out that the planned incineration of pesticides will create pollution with dioxins and furans, which are hazardous and toxic substances. The expert stressed that the limit of the permissible concentration of cadmium, mercury, cobalt, vanadium and nickel in the atmosphere will be exceeded. Besides the amount of dioxins and furans left in the waste water after the process of incineration shall also surpass the permissible limit. In addition the compounds of dioxins and furans are not decomposed during the biological sewage treatment and may continue polluting the waters and the soil.

The court established that management of the hazardous waste is one of the most important undertakings, which shall be carried out under the system of Latvian Environmental Protection. Only during the last few years measures, regulating the management of the hazardous waste so as not to violate the interests, mentioned in Article 5 (the first part) of the Law on Management of Waste, namely, life and health of persons as well as the property of the person have been undertaken to observe the international liabilities and take into consideration the EU experience.

In conformity with Article 4, Item 1 of the Waste Administration Law, hazardous waste is ”waste with one or more qualities, which make it harmful to health and life of people as well as to the property of persons

and which comply with the categories of hazardous wastes, determined in the classificatory of wastes". Normative acts, regulating management of the hazardous waste, envisage several complicated procedures also during the process of installation and activities of the incineration facility. Therefore the Constitutional Court evaluated not only the challenged decree but also the other activities, connected with installation of the incineration facility – the significance of the final report and conclusion on it at the time of adoption of the challenged decree as well as preconditions for starting the operation of the incineration facility.

Article 7 (Item 2) of the Waste Management Law authorizes the Cabinet of Ministers to determine the concrete place of location of a hazardous waste incineration facility after one or several municipalities have reached the decision that it/they agree to locate the object in its/their administrative territory. Furthermore, the confirmation of the location by the Cabinet of Ministers is needed in both cases – when EIA (impact upon the environment) on the incineration facility and its potential location has been realized and when in accordance with the law EIA (impact upon the environment) is not needed. Thus – as regards location of new incineration facilities (regardless of their capacity) - the Waste Management Law determines two fundamental requirements: agreement of the municipality and the Cabinet of Ministers decision on the concrete location of the facility.

The Waste Management Law does not envisage specific criteria for the Cabinet of Ministers to take into consideration when confirming the location of a hazardous waste incineration facility. If more than one municipality agrees to locate the facility in its territory then the Cabinet of Ministers shall evaluate ecological, social and economic considerations, included in EIA (impact upon the environment) or other documents, of every alternative. However, even in case if there are no alternatives, the decision shall be made on the basis of the principle of assessment, determined in Article 3 (Item 4) of the Environmental Protection Law. Namely – any activity or undertaking, which may affect the quality of the environment, is permissible only in case if the positive result of the above activity, achieved by the actor and the public, exceeds the negative influence on the quality of the environment or the harm done to the environment and the public.

Taking into consideration that it is within the authority of All Riga Regional Environmental Board to grant permits for operating facilities only if the prospective emissions comply with the requirements of the normative acts, the Constitutional Court holds, that when passing the challenged act the main objective of the government was to determine the optimal locality of the facility but not to take the decision on the compliance of the equipment parameters with the requirements of the

normative acts. Thus the fact that at the moment of passing the challenged decree parameters of the equipment did not comply with some requirements of regulations and that during public participation in the EIA (impact upon the environment) process shortcomings were observed, shall not be considered as a sufficient reason to declare the challenged decree unlawful and null and void. Provisions of Articles 5 and 6 (Items 1-3) of the Waste Management Law as well as Articles 14 and 17 (the first part) shall be applied to granting of the permit to carry out polluting (dangerous) activities and general improvement of the environment, but are not directly pertained (attiekties) to the challenged decree.

Waste management plans in Latvia

The regulation within the sphere of drawing up waste management plans is included in the Waste Management Law, which contains a separate chapter on this issue. There are three levels of planning waste management in Latvia – state level, regional level and local level plans. These plans must contain information about the kinds of waste, the origin, amount and composition of it, the planned activities in the sphere of waste management, the necessary technical support for these activities, the institutions responsible for carrying out these activities, the costs of these activities and the required finances as well as the possibilities to improve waste management. The state level plan for managing waste in Latvia has been accepted for a period of time from year 2003 to year 2012.

To conclude, as it can be seen, the normative regulation of managing waste in Latvia generally corresponds the requirements of the EU. Several difficulties can be pointed out, but they have been successfully solved this far, and hopefully will be solved even more successful in future.