



**Seminar organized by the Council of State of France and
ACA-Europe**

“The Judicial review of Regulatory Authorities”

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Answers to questionnaire: Latvia



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Disputes concerning acts by regulatory authorities

Regulatory authorities have gradually emerged as one of the new forms of State intervention. In addition to the Regal State or the State as a supplier of goods and services, the regulatory authorities, in the broad sense, cover a wide range of administrative activities: they may be authorities responsible, in a given sector or across the board, for correcting market imbalances in a context of opening up markets to competition, or for ensuring that free competition is reconciled with other general interest objectives; in the broadest sense, regulatory activities may refer to any administrative activity that seeks to reconcile interests that may be contradictory or to organise access to scarce resources in a manner consistent with general interest objectives. In this broadest sense, this notion can refer as much to the transversal authorities responsible for enforcing competition law (e.g. the French Competition Authority) as to sectoral authorities (electronic communications, transport, energy, etc.), including national data protection authorities or authorities responsible for the marketing or evaluation of health products.

The symposium planned for December 2021 should be an opportunity to examine the specific issues that disputes concerning acts taken by these regulatory authorities may raise in the administrative courts. These questions arise from certain characteristics of the acts of these authorities, characteristics over which they do not have a monopoly compared with other forms of administration, but which combine or take on a particular role. These characteristics are at least three in number: firstly, the use of a wide range of acts or intervention tools, from flexible laws and codes of conduct to more traditional regulatory acts or sanctions, via a variety of communication media (press releases, public statements, FAQs, etc.); secondly, the degree of expertise and technicality of the decisions taken in a given activity sector (energy, health, electronic communications, etc.) and/or a certain technological context (personal data protection, cyberspace, etc.); finally, integration into complex economic and social ecosystems, often with a significant European or even international dimension, and likely to have a high media profile.

In this context, from the particular object of study that is disputes concerning the acts of these regulatory authorities, the symposium planned for December 2021 will make it possible to address the important challenges that these appeals raise for the effectiveness and credibility of the court's intervention.



Courts with competence to hear disputes concerning regulatory authorities

1. Does your supreme administrative court have competence to hear appeals against acts by regulatory authorities? Yes/no

If yes:

Without being exhaustive, could you present the main regulatory authorities in your country whose acts are brought before your supreme administrative court, specifying if these appeals are subject to several levels of jurisdiction? Please distinguish, if necessary, according to the nature of the acts concerned (in the event, for example, that individual acts taken by these authorities are subject to separate jurisdictions from their general acts, notably regulations).

The main authorities that perform regulatory functions in Latvia are:

- The Public Utilities Commission or the Regulator. The Regulator is institutionally and functionally independent, full-fledged, autonomous body governed by public law which carries out regulation of public services in energy, electronic communications, post, municipal waste management and water management sectors.
The Regulator independently performs the functions transferred by law and within its competence independently adopts decisions and issues administrative acts which are binding to specific providers and users of public services.

An administrative act or an actual action of the Regulator may be appealed to a Regional Administrative Court. The Regional Administrative Court shall examine the case as a court of first instance. A judgement of the Administrative Regional Court may be appealed by submitting a cassation complaint in the Department of Administrative Cases of the Supreme Court.

Matters regarding conformity of regulations of the Regulator with the norms (acts) of a higher legal force shall be adjudicated by the Constitutional Court according to the Constitutional Court Law.

- The Financial and Capital Market Commission. The Commission is an autonomous public institution, which take care for the public interests by regulating and monitoring the functioning of the financial and capital markets, by protecting the interests of investors, depositors and the insured persons, including financial literacy, the development and stability of the financial and capital markets.

An administrative act or an actual action of the Commission may be appealed to a Regional Administrative Court. The Regional Administrative Court shall examine the case as a court of first instance. A judgement of the Administrative Regional Court may be appealed by submitting a cassation complaint in the Department of Administrative Cases of the Supreme Court.

Matters regarding conformity of regulations of the Commission with the norms (acts) of a higher legal force shall be adjudicated by the Constitutional Court according to the Constitutional Court Law.

- Competition Council. The main aim of the Competition Council is to ensure possibility to every market participant to perform his economic activities in free and fair competition

environment as well as to promote competition development in all sectors of national economy for the benefit of all society.

An administrative act or an actual action of the Competition Council may be appealed to a Regional Administrative Court. The Regional Administrative Court shall examine the case as a court of first instance. A judgement of the Administrative Regional Court may be appealed by submitting a cassation complaint in the Department of Administrative Cases of the Supreme Court.

2. In particular, can any of these authorities themselves impose sanctions (including fines)? Yes/no

If yes:

is it possible to challenge them before your supreme administrative court?

All of mentioned regulatory authorities themselves can impose sanctions. Individual act or sanctions imposed by regulatory authorities may be challenged before administrative court including Department of Administrative Cases of the Supreme Court.

3. Are any of these regulatory authorities subject to judicial review by civil courts, for some or all of their acts? Yes/no

If yes:

Please give examples.

The only exemption according to general rules are cases regarding disputes relating to the protection of the civil, mostly employment, rights and lawful interests of persons.

4. Are the courts with competence to hear the acts of regulatory authorities:

- specifically identified by the texts in force, by way of derogation from the normal rules of territorial or material competence? Yes/no

In cases related to individual acts or actual actions of mentioned regulatory authorities the legislator has defined exemptions to general three-instance court procedure. According to special rules such cases may be heard in two instances of administrative court – the Regional Administrative Court (court of appellate instance) as a court of first instance and the Department of Administrative Cases of the Supreme Court as court of cassation.

- or do they result from the application of the general rules on the distribution of competences? Yes/no

Matters regarding regulations of the regulatory authorities shall be adjudicated by the Constitutional Court according the general rules.

Is there any specific distinction in relation to the rules of competence applicable to equivalent acts of other administrative authorities in your country? Yes/no

If yes:

Please explain.

5. Are the remedies available against the acts of these authorities of the same nature as those available against the equivalent or similar acts of other administrative authorities? Yes/no

If no:

Please explain.



Admissibility of appeals against regulatory acts

6. In your view, do disputes concerning “hard law” acts (regulatory acts, sanctions, individual authorisation decisions, etc.) of these authorities raise particular issues of admissibility? Yes/no

If yes:

Please explain.

7. Are “soft law” acts (opinions, recommendations, warnings, position papers) of these authorities and, more broadly, their various positions on the behaviour to be adopted by the actors in their field of intervention (whatever form they take: code of conduct, guidelines, etc.) liable to be the subject of a direct action for annulment? Yes/no

If yes: under what conditions? Make any distinction you think useful according to the degree of normativeness of the acts.

8. Can positions taken by these authorities, possibly with little or no formality (press release, website section, FAQ, etc.) be challenged in court? Yes/no

In general terms positions taken by any authority with little or no formality cannot be challenged in court. However theoretically such position as an exemption may be challenged by a private person whose rights or legal interests have been infringed by particular position, for example if right to commercial secret could be infringed by website section or press release that reveals some details of particular commercial secret.

9. Who can challenge the acts of regulatory authorities? Specify the criteria for assessing the interest in bringing proceedings, making any useful distinction according to the type of act (soft law act; individual decisions of a non-repressive nature; sanction; etc.).

According to general rules the individual acts of authorities can be challenged by a private person whose rights or legal interests have been infringed or may be infringed by particular acts.

The right to submit an application to the Constitutional Court regarding compliance of regulations or parts thereof with the norms (acts) of a higher legal force is held by:

- 1) the President;
- 2) the Saeima;
- 3) not less than twenty deputies of the Saeima;
- 4) the Cabinet;
- 5) the Prosecutor General;
- 6) the Council of the State Audit Office;
- 7) a local government council;
- 8) the Ombudsman, if the authority or official, who has issued the disputed act, has not rectified the established deficiencies within the time period specified by the Ombudsman;
- 9) a court, on adjudicating a civil matter, criminal matter or administrative matter;
- 10) the Land Registry Office judge in performing an entry of immovable property or associated corroboration of rights thereof in the Land Register;
- 11) a person in the case of the fundamental rights being infringed upon as defined in the Constitution;

12) the Board of Justice within the scope of the competence stipulated in the law.

10. Please indicate any other particularities that you consider relevant to the admissibility of appeals against the acts of these authorities (interest in bringing proceedings, time limits for appeal, specific means of appeal open to State authorities, etc.).

There are no particularities to the admissibility of appeals against the acts of these authorities in Latvia.

11. Can the general acts of a regulatory authority, whether “hard law” or “soft law”, be challenged by way of exception in an appeal against an individual decision (sanction, follow-up to a complaint, etc.) taken by that same authority and applying that general act (for example, if a sanction imposed on an economic operator refers to previously issued guidelines or recommendations to set out the applicable legal rules and the authority’s interpretation of the texts in force)? Yes/no

If yes, to what extent? Will the plea of illegality against this general act, if upheld, lead to the (retroactive) annulment of this act?

The general acts (regulations) of a regulatory authority cannot be challenged in an appeal against an individual decision. However, upon examining the lawfulness of an administrative act or actual action, the court shall, in case of doubt, verify whether the legal provision applied by the institution or to be applied in the administrative court proceedings conforms to the legal provisions of higher legal force.

If a court believes that a legal provision does not conform to the Constitution or provision (act) of international law, it shall suspend court proceedings in the case and send a substantiated application to the Constitutional Court. After coming into force of the decision or judgment of the Constitutional Court, the court proceedings in the case shall be renewed and the following court proceedings shall be based upon the opinion of the Constitutional Court.

If a court finds that the binding regulations do not conform to Cabinet regulations or the law, it shall not apply the relevant legal provision. The court shall substantiate its opinion on the non-conformity with the legal provisions of higher legal force in a decision or judgment.

12. Where the actions of these authorities have harmful consequences, should liability claims be brought:

- against these authorities? Yes/no

- or against the State on whose behalf they may have acted? Yes/no

In Latvia obligation to compensate is determined by the general rules of institutional system of public administration.

Compensation shall be claimed from:

- the Republic of Latvia if the financial loss or personal damage was caused by an institution of direct administration;
- derived legal person governed by public law if the financial loss or personal damage was caused by an institution of indirect administration fulfilling functions which are within the scope of the autonomous competence of the relevant legal person governed by public law.

The Public Utilities Commission and The Financial and Capital Market Commission are derived public person therefore liability claims are brought against these authorities.



The Competition Council is an institution of direct administration, which shall be financed from the State budget therefore liability claims are brought against the State.

Internal organisation of the courts and hearing of appeals

13. Are cases concerning these authorities assigned, within the courts and more particularly within the supreme administrative court, to panels specifically dedicated (to the authority concerned, or more generally to regulatory litigation), in order to allow for an increase in the level of competence or a critical mass of cases? Yes/no

If yes: please explain and give examples.

In both Administrative Regional court and Department of Administrative Cases of the Supreme Court there is a specialisation of judges in particular areas of law. For example, 3 out of 13 judges of Department of Administrative Cases are specialised in cases related to competition law and appealing against decisions of the Public Utilities Commission and the Financial and Capital Market Commission. Distribution of cases and composition of the panel is performed observing specialisation of judges.

- Or is it a distributed dispute with no particular allocation rule? Yes/no

Please indicate, in a more general way, any notable particularities in the internal organisation of your courts that may be relevant.

14. What investigative or examination techniques can you use in particular in the examination of particularly technical cases:

- oral inquiry hearing in the presence of the parties,
- expert's report,
- amicus curiae,
- solicitation of a reference expert administration,
- other?

Please explain, where applicable by giving some examples from your experience.

There are no special investigative or examination techniques in the examination of particularly technical cases. In general terms administrative court shall examine cases in accordance with principle of objective investigation. In order to determine the true circumstances of a case within the limits of the claim and achieve lawful and fair examination of the case, the court shall give instructions and make recommendations to the participants to the administrative proceedings, and also shall collect evidence upon its own initiative. According to general rules explanations of a participants, testimonies of witnesses, written evidence, physical evidence, expert-examination, expert opinion, amicus curiae may be used as means of evidence. Also, the court may determine examination of the case in the oral procedure.

Do you feel that these regulatory cases require a particular method? Yes/no

If yes:

Please explain.



15. What is the role of the traditional administrations (especially when the act of an independent administrative authority, distinct from the ministry concerned, is at issue) in the examination of appeals against regulatory authorities:

- are they invited to comment? Yes/no

If the court considers that the opinion of particular institution also traditional administrations may assist the court in taking an objective decision in the case, it shall determine questions regarding which the institution may submit its opinion.

- or do they remain outside the case? Yes/no

16. More generally, when examining appeals against acts with a high socio-economic impact issued by these authorities, in particular those in charge of a field of economic regulation, does the court collect (on the initiative of the court or the interested organisations) observations from other stakeholders? Yes/no

If yes:

Please explain.

If the court considers that the opinion of particular organisation may assist the court in taking an objective decision in the case, it shall determine questions regarding which the institution may submit its opinion.

17. What role does orality play, even before the hearing, in the investigation of complex cases, in particular those involving regulatory acts?

According to general rules, in deciding an issue of an application, a judge may, if necessary, invite the possible participants to the proceedings to appear in order to question them about the legal and actual circumstances which are relevant when deciding the issue of the initiation of a case. Such preparatory hearings are usually held if the circumstances of the case are complex.

18. Do you have, in one form or another (specialisation of magistrates, continuing education, expert decision support unit to assist magistrates, etc.) internal resources in your courts enabling you, if necessary, to familiarise yourself with or master sectoral but also transversal expert subjects (technologies protecting privacy, communication technologies in the case of audiovisual or electronic communications regulators, role and architecture of social networks, etc.)? Yes/no

If yes:

Please explain and give examples.

There is a Division of Case-law and Research in the Supreme Court which function is to elaborate studies on solutions of particular problems in field of the European Union law and international law, case-law of international courts, or laws and case-law of other countries. At the request of a judge, the relevant division may elaborate a study on a specific issue.

Also there are four legal research counsels in the department of administrative cases to assist judges in a particular area of law. None of legal research counsels is specialised in cases related to acts of regulatory authorities, however, if necessary, they can be involved in the study of a specific issue.

With the aim of improving professional qualifications and knowledge judges and assistants to judges regularly take part in organised trainings, courses and experience exchange programs in particular areas of law.

The extent of the judge's control, the court decision

19. What are the main categories of grounds that can be invoked and relied upon against the acts of regulatory authorities? Based on your experience and the case law of your country, do you find that appeals against acts of independent authorities raise particular problems (real independence in decision-making, impartiality, etc.) compared with disputes concerning acts taken by other administrative authorities? Please share any relevant analysis you may have.

The acts of these authorities are subject to the general rules of administrative proceeding. The main categories of grounds that can be invoked is an issue, setting aside (setting aside in full or in part, including amendment) or validity (invalidation, revocation, also validation) of an administrative act.

20. Does your court consider itself bound by the technical or economic assessments made by the regulator? Or does it feel entitled to control them? In the latter case, is this control complete or only limited to the manifest error of assessment?)

A court shall render a judgment having examined whether:

- 1) the administrative act has been issued in compliance with procedural and formal preconditions;
- 2) the administrative act conforms to the norms of substantive law;
- 3) the basis for an administrative act justifies the obligation imposed on the addressee or rights granted, approved or refused to such addressee.

Therefore, if the technical or economic assessments are the basis for the administrative act, court is entitled to control them. This court control is not only limited to the manifest error of assessment but shall be complete. According to principle of objective investigation to determine the true circumstances of a case (also technical or economic assessments made by the regulator) the court shall give instructions and make recommendations to the participants to the administrative proceedings, and also shall collect evidence upon its own initiative.

21. If you receive an application against an act of a regulatory authority or against a sanction imposed by it, is your court only competent to annul the act or sanction or can it also modify the sanction imposed?

In most cases according to general rules, if a court finds an application for setting aside or invalidation of an administrative act as founded, it shall set aside the relevant administrative act in full or in part or declare it invalid. Where necessary, a court shall assign an institution to issue a new administrative act that replaces the administrative act which has been set aside or declared invalid. In deciding to issue a new administrative act, the institution shall take into account the facts and legal considerations established in a court ruling.

In cases provided for by law a court may amend an administrative act and determine the specific content thereof. However, there is no such cases provided for by law which allows court to amend act of a mentioned regulatory authorities or a sanction imposed by it.

22. Have you been confronted with the problem of an independent authority in your country taking into account a foreign element such as an opinion given by an authority in another country or a decision by a European authority (for example, in the context of the mechanisms set up by the

GDPR between the European data protection authorities, which lead these authorities to submit some of their decisions to the European Data Protection Committee for approval)? Yes/no

If yes: what kind of legal treatment? Please explain and give examples.

23. Are these cases a particular field of preliminary questions to the Court of Justice of the European Union? Yes/no

If yes:

Please explain and give examples.

In cases regarding the interpretation or validity of a provision of the European Union law court shall submit a question to the Court of Justice of the European Union in order to make a preliminary ruling.

Department of Administrative Cases of the Supreme Court has submitted a request for a preliminary ruling to the Court of Justice of the European Union in four cases with regulatory authority as a participant.

Request for a preliminary ruling in Case C-480/18 concerns the interpretation of Article 2(2) and Articles 20, 21, 75 and 80 to 82 of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market, amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC, as amended by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009. The request has been made in proceedings concerning the legality of a decision by Financial and Capital Markets Commission to impose on it a fine for failure to execute a payment order.

Requests for a preliminary ruling in Case C-702/20, C-152/21 and C-17/21 concerns the interpretation of Article 107(1) of the Treaty on the Functioning of the European Union in conjunction with other European Union regulations on state aid and regulated sectors. The requests have been made in proceedings with similar legal and actual circumstances concerning the dispute over compensation for the loss to the electricity producer caused by not received payments for electricity realization to a public operator at a price higher than the market price.

24. Does the drafting of court decisions raise particular issues related to the technical nature or media exposure of some of these cases? Yes/no

If yes:

Please explain and give examples.

The judge in the regulatory ecosystem

25. Are judgments on such appeals subject to any particular publicity or accompanying measures (press release)? Yes/no

If yes:

Please specify.

There is no special publicity procedure for such judgements. All judgements of the Supreme Court, which affect an essential public interest or legal issue or have a significant importance to the establishment of case law, are a subject to publicity. Such judgements are published in a case-law database on the website of the Supreme Court. Also, in most such cases press releases are prepared.

Judgements containing a commercial secret or other protected information are not a subject to publicity.

26. Are regulatory authorities entitled to challenge acts or decisions taken by other public persons on the grounds that they impinge on their competence? Yes/no

27. Independently of a particular case, do your court or its members regularly participate in general exchanges bringing together professionals (regulatory authorities, operators, doctrine, ministries, etc.) from the regulatory sectors concerned? Yes/no

If yes:

Please specify.

28. Are the judges in your courts, or more generally the staff of your investigating and registry departments, sometimes led in their careers to take up activities in regulatory authorities, and are such careers encouraged where appropriate? Yes/no

If yes:

Please explain.

Quantitative data

29. What is the number of cases concerning regulatory authorities registered before your supreme administrative court in 2020?

The Public Utilities Commission – a total of 51 case was registered before Department of Administrative Cases of the Supreme Court in 2020, 2 of which were received in 2020.

The Financial and Capital Market Commission – a total of 19 cases were registered before Department of Administrative Cases of the Supreme Court in 2020, 10 of which were received in 2020.

Competition Council – a total of 17 cases were registered before Department of Administrative Cases of the Supreme Court in 2020, 6 of which were received in 2020.

30. What is the number of cases concerning regulatory authorities settled by your supreme administrative court in 2020?

The Public Utilities Commission – 2 cases were settled by Department of Administrative Cases of the Supreme Court in 2020, 1 of which was related to procedural issue (admissibility of appeal).

The Financial and Capital Market Commission – a total of 8 cases were settled by Department of Administrative Cases of the Supreme Court in 2020, however 6 of which were related to procedural issue (admissibility of appeal, request for temporary protection).

Competition Council – 2 cases were settled by Department of Administrative Cases of the Supreme Court in 2020, 1 of which was related to procedural issue (request for temporary protection).

31. What is your estimate of the percentage of cases concerning regulatory authorities in the total number of cases registered before your supreme administrative court in 2020?

The total number of cases registered before Department of Administrative Cases of the Supreme Court in 2020 was 1677, 826 of which were received in 2020. The percentage of cases concerning

mentioned regulatory authorities in the total number of registered cases was 5%, but in the total number of received cases – 2%.

32. What is your estimate of the percentage of cases concerning regulatory authorities in the total number of cases settled by your supreme administrative court in 2020?

The total number of cases settled by Department of Administrative Cases of the Supreme Court in 2020 was 940. The percentage of total number of cases concerning mentioned regulatory authorities was 1,3%.

33. What percentage of applications against the acts of regulatory authorities were annulled, in whole or in part, by your supreme administrative court in 2020?

The Supreme administrative court of Latvia does not re-examine a case on the merits, but in accordance with the cassation procedures shall examine only the lawfulness of the existing judgment of Regional Administrative Court. Therefore, the Department of Administrative Cases of the Supreme Court does not have competence to annul applications against the acts.

The Department of Administrative Cases of the Supreme Court has examined the lawfulness of 3 judgments of Regional Administrative Court by which applications against the acts of regulatory authorities were annulled. All of mentioned judgments were uphold.