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THE COMPARATIVE ANALYSIS OF THE EU AND LITHUANIAN LEGAL TRANSPORT REGULATIONS

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Abstract. The significance of the transport economy determines such a fact that the State and its institutions have a duty to look over this economic branch very narrowly. This duty is especially important while guaranteeing conditions for the fair competition in the transport sector.
The author presents the analysis of the EU and Lithuanian legal transport competition regulations. The conclusion is drawn that the national legal competition regulation complies with the EU legal competition regulation; the EU legal transport competition regulation is much more detailed than national legal transport competition regulation in Lithuania.

Keywords: constitutional competition law, transport competition law, supremacy of the Constitution, the EU legal transport competition regulation.

1. Introduction

Part 2 of Article 2 of the Law on the Principles of the Activities of Transport [1] provides that transport is the constituent part of the economic and social infrastructure of the Republic of Lithuania. Its objectives are to carry passengers and freight and to perform other transportation services. It is also universally known that transport is a significant branch of any country economy that ensures functioning of a country, its regions, cities or villages and international inhabitants' communication. About 9 % of all workers are employed in Lithuanian transport sector [2, p. 195].

The significance of the transport economy determines such a fact that the State and its institutions have a duty to look over this economic branch very narrowly [3, p. 68–74]. This duty is especially important while guaranteeing conditions for the fair competition in the transport sector. Under Item 4 of Article 3 of the Law on the Principles of the Activities of Transport the State using legal or, if it is needed, financial measures secures inter alia free and fair competition in the market of transportation services.

The Republic of Lithuania joined the EU on May 1, 2004. It is important to stress that one of the main goals of the EU is to strive for the fair competition in all fields of economy, also in the market of transportation services. Therefore, there are adopted legal acts regulating social competition relations, partially transport competition relations in the EU.

The objective of this article is to analyse the EU and Lithuanian legal transport competition regulations, and the main task of this article is to present the analysis of the EU and Lithuanian legal transport competition regulations. While investigating such problems methods of comparative and logical analysis will be used in the article.

It must be emphasized that legal transport competition regulation issues were not investigated in Lithuania. Although I. Norkus and D. Švirinas investigated the problems of competition regulations in the EU and Lithuania and published some articles [4–7], however those investigations presented the analysis of general competition regulations in the EU and Lithuania. So the main task of this article to present the analysis of the EU and Lithuanian legal transport competition regulations becomes more topical.

2. Relation between the EU and Lithuanian Law: general remarks

As it was mentioned the Republic of Lithuania joined the EU on May 1, 2004. The EU membership

led our national legal system to the harmonisation it to the EU legal system. On June 13, 2004 the Seimas (Parliament of Lithuania) adopted the Constitutional Act of the Republic of Lithuania "On Membership of the Republic of Lithuania in the European Union" [8]. According to Article 2 of this Constitutional Act the norms of acquis of the European Union shall be an integral part of the legal order of the Republic of Lithuania. Where these arise from the founding Treaties of the European Union, the norms of acquis shall apply directly, while in the event of a collision between legal norms, the norms of acquis shall prevail over the laws and other legal acts of the Republic of Lithuania. On June 13, 2004 Article 150 of the Constitution of the Republic of Lithuania [9] was supplemented inter alia with such words: the constituent part of the Constitution of the Republic of Lithuania shall be the 13 June 2004 Constitutional Act of the Republic of Lithuania "On Membership of the Republic of Lithuania in the European Union". So Lithuanian Constitution embodies the rule that in the event of a collision between legal norms, the norms of acquis shall prevail over the laws and other legal acts of the Republic of Lithuania.

The official constitutional doctrine of Lithuania which is construed by the Constitutional Court of the Republic of Lithuania adjudicates constitutional principle of the supremacy of the Constitution. In its ruling of 29 May 1997 [10], the Constitutional Court firstly derives the principle of the supremacy of the Constitution from the provision of Paragraph 1 of Article 7 of the Constitution that any law or other act which is inconsistent with the Constitution shall be invalid [11, p. 390]. The Constitutional Court interpreting Paragraph 1 of Article 7 of the Constitution indicated separately that the legal system of the Republic of Lithuania is based on the fact that no law or other legal act as well as international treaties of the Republic of Lithuania may contradict the Constitution [12].

In its ruling of 25 May 2004 [13], the Constitutional Court emphasized that the Constitution is an act of the supreme legal power. The Constitution reflects a social agreement - a democratically accepted obligation by all the citizens of the Republic of Lithuania to the current and future generations to live according to the fundamental rules entrenched in the Constitution and to obey them in order to ensure the legitimacy of the governing power, the legitimacy of its decisions, as well as to ensure human rights and freedoms, so that the concord would exist in the society. As an act of the supreme legal power and social agreement the Constitution is based on universal, unquestionable values which are belonging to the sovereignty of the Nation, democracy, recognition of human rights and freedoms and respect for them, respect for law and the rule of law, limitation of the scope of powers, duty of state institutions to serve the people and their responsibility to the society, public spirit, justice, striving for an open, just, and harmonious civil society and state under the rule of law. The Constitution provides the bases of relationships between a person and the state, formation and functioning of public government, the national economy, local self-government, other major relationships of life of the society and the state. Having adopted the Constitution, the civil Nation formed the standardized basis for the common life of its own, as the state community, and consolidated the state as the common good of the entire society. The Nation usually amends the Constitution directly or through its democratically elected representatives and only according to the rules established in the Constitution itself. The Constitution is the supreme law. It provides the guidelines for the entire legal system - the entire legal system is created on the basis of the Constitution.

Interpreting the principle of the supremacy of the Constitution, the Constitutional Court emphasized that this principle was a fundamental requirement of a democratic state under the rule of law [14], and declared the Constitution as the main law possessing the supreme legal power in the hierarchical legal systems, consolidating the main provisions of the legal regulation and forming the foundation of legislation. It was not once emphasized that laws and other legal acts (international treaties as well) must not contradict the Constitution [15]. This principle also formulates positive obligations to the legislator, other subjects of lawmaking, e. g. reviewing the legal acts approved earlier, while taking into consideration the constitutional norms ensuring a harmonious hierarchical system of the legal acts regulating the same relations [16]. The principle of the supremacy of the Constitution in the doctrine of the Constitutional Court is also connected with the striving of the Nation for an open, just, harmonious civil society and state under the rule of law which is declared in the Preamble to the Constitution [17] as an indispensable element or feature of this striving. The principle of the supremacy of the Constitution in this respect and the other principle entrenched in the Constitution-the rule of law-especially having in mind that the Constitution is the supreme law, the measure and criterion of lawfulness of all legal acts are two sides of the coin. Any law or other legal act violating any provision of the Constitution also violates the principle of the supremacy of the Constitution [18].

It must be noted that the Constitutional Court directly connected its exceptional competence to construe the Constitution with the imperative of the su-

premacy of the Constitution [11, p. 391]. The Constitutional Court stated in its ruling of 12 July 2001 [19] that according to the Constitution the Constitutional Court must ensure the supremacy of the Constitution in the legal system; that the constitutional principles and norms have a clearly defined meaning and content, which are revealed in the constitutional jurisprudence; that the constitutional norms and principles cannot be interpreted on the basis of the acts approved by the legislator or other subjects of lawmaking, because this would deny the right of the supremacy of the Constitution in the legal system; that the Seimas as well as other state institutions, is bound by the Constitution in every case. The latter thesis has become like a mantra, it has been repeated in a great many of the rulings of the Constitutional Court, especially when the Constitutional Court states that the Seimas has discretion in a certain field [11, p. 392].

As mentioned, it is clear that under the Constitution in the event of a collision between legal norms, the norms of acquis shall prevail over the laws and other legal acts of the Republic of Lithuania. However, the principle of the supremacy of the Constitution presupposes that the in the event of a collision between legal norms, the Constitution shall prevail over the norms of acquis: this conflict would arise between secondary EU law and fundamental constitutional principles and values. In opinion of the President of the Court of Justice of the European Communities Mr. G. C. R. Iglesias, since Community law comprises the fundamental constitutional values shared by all Member States, such a conflict seems to be purely hypothetical [20, p. 67]. So the conclusion may be drawn that the Constitution and the norms of acquis comply with each other, and in the event of a collision between legal norms, the norms of acquis shall prevail over the laws and other legal acts of the Republic of Lithuania.

3. Constitutional and statutory competition regulation in Lithuania

Under Paragraph 4 of Article 46 of the Constitution the law shall prohibit monopolisation of production and the market, and shall protect freedom of fair competition. Interpreting this provision in its rulings of 6 October 1999 [21] and 26 January 2004 [22] the Constitutional Court emphasized that the necessary guarantees for effective functioning of the market economy are provided for in the constitutional provision "the law shall prohibit monopolisation of production and the market, and shall protect freedom of fair competition". Competition creates self-regulation of the economy as a system which promotes optimal distribution of economic resources, their effective use, economic increase and that of the welfare of consumers. However, freedom of individual economic activity by itself does not guarantee competition, therefore the state must protect fair competition. The constitutional guarantee of fair competition obligates the institutions of state authority to ensure freedom of fair competition by legal means. Such measures are prohibition of agreements between/among entities of economy whereby one attempts to impede or impedes or may impede competition, prohibition of abuse of the domineering position, control of the concentration of the market and respective prohibitions of concentration, prohibition of unfair competition, control over adherence to the rules of fair competition protection as established by laws, and responsibility for their violations. The guarantee of the protection of fair competition means prohibition for state authority or local government institutions regulating economic activity to adopt decisions distorting or are capable of distorting fair competition. An opportunity for competition decreases or competition is removed from a respective market when monopoly begins to dominate in it. The state must restrict monopolistic tendencies by legal means. In case that a monopoly has been formed, the state shall regulate monopolistic economic activity by establishing by law corresponding requirements for the monopolist. The scope of such legal regulation may depend on a number of factors: the regulated economic area, peculiarities of the time period etc. The provision "the law shall prohibit monopolisation of production and the market" of Article 46 of the Constitution means that one may not introduce a monopoly, i. e. one may not grant an entity of economy exclusive rights to act in a certain sector of economy due to which this sector might become monopolised. However, the prohibition of monopolisation of production and the market established in Article 46 of the Constitution does not mean that it is prohibited to state in the law that there exists monopoly in a particular sector of economy. Such a statement creates legal pre-conditions to apply respective requirements to the monopolist in protecting the interests of consumers. The special measures of protection of the interests of consumers are: restriction of establishment of discriminatory prices, state regulation of the size of prices and tariffs for the goods of monopolistic market, establishment of the requirements for the quality of goods as well as other requirements for monopolistic entity of economy etc. State institutions exert control over how entities of economy adhere to the established regulations.

On March 23, 1999 the Seimas adopted the Law on Competition [23]. This Law was amended in essence on April 15, 2004 (amendments came into force on May 1, 2004). Under Part 1 of Article 1 of the Law

on Competition the purpose of this Law is to protect freedom of fair competition in the Republic of Lithuania. According to Part 4 of Article 1 of the Law on Competition provisions of this Law shall implement the Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty [24]. Under Article 4 of the Law when carrying out the assigned tasks related to the regulation of economic activity within the Republic of Lithuania, public and local authorities shall ensure freedom of fair competition. Public and local authorities shall be prohibited from adopting legal acts or other decisions which grant privileges to or discriminate against any individual undertakings or their groups and which bring about or may bring about differences in the conditions of competition for competitors in the relevant market, except where the difference in the conditions of competition cannot be avoided when the requirements of the laws of the Republic of Lithuania are complied with. The Law on Competition provides measures against prohibited agreements, abuse of dominant position, unfair competition. It also provides measures for the control of concentrations. Part 1 of Article 18 of this Law provides that the Competition Council is a public body of the Republic of Lithuania implementing the state competition policy and supervising compliance with this Law. Under Part 1 of Article 19 of the Law on Competition the Competition Council shall: 1) control the compliance by undertakings, public and local authorities with the requirements of this Law; 2) establish the criteria and procedure for providing the definitions of the relevant market and a dominant position, investigate and define relevant markets, determine the market share of undertakings, and their position in a relevant market; 3) give obligatory instructions to undertakings, from among them - to banks and other credit institutions as well as public and local authorities to submit financial and other documentation, including that containing commercial secrets and other information required for market investigation or fulfilment of other tasks of the Council; 4) examine the conformity of legal acts or other decisions adopted by public and local authorities with the requirements of Article 4 of this Law, and, where there is sufficient cause, apply to public and local authorities with the request to amend or revoke legal acts or other decisions restricting competition. In case of failure to satisfy the requirement the Council shall have the right to appeal against such decisions, except for the statutory acts issued by the Government of the Republic of Lithuania, to the Supreme Administrative Court of Lithuania, and appeal the decisions of the local authorities to the regional administrative court; 5) investigate and consider infringements of this Law and impose penalties on the defaulters in the cases and following the procedure provided for by law; 6) appeal to the court for the protection of interests of the State and other persons safeguarded by this Law; 7) adopt legal acts within the limits of its competence; 8) within its competence carry out expert examination of drafts of laws and other legal acts, submit findings on the effect of said acts on competition to the Seimas and the Government of the Republic of Lithuania; 9) exercise other powers provided for by this and other laws.

The conclusion may be drawn that national legal competition regulation complies with the EU legal competition regulation; more over, as mentioned, provisions of the Law on Competition shall implement the Council Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty.

4. Legal transport competition regulations in the EU and Lithuania

As mentioned, under Item 4 of Article 3 of the Law on the Principles of the Activities of Transport the State using legal or, if it is needed, financial measures secures inter alia free and fair competition in the market of transportation services. Under Item 2 of Article 4 of the Code on Railway Transport [25] one of principles of the activities of railway transport is fair competition with other transport branches. However, other Lithuanian transport codes - the Code on Road Transport [26] and the Code on Inland Waterway Transport [27] - don't provide any norm regulating competition relations. Thus legal transport competition regulation in Lithuania is quite poor: the main competition rules are entrenched in the Law on Competition.

Almost the same situation is with the EU legal transport competition regulation: the main competition rules are entrenched in the Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. However, there are regulations which embody some competition rules in addition: Regulation (EEC) No 1017/68 of the Council of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway; Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway; Regulation (EEC) No 1192/69 of the Council of 26 June 1969 on common rules for the normalisation of the accounts

of railway undertakings; Regulation (EEC) No 2988/74 of the Council of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition; Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport; Council Regulation (EEC) No 479/92 of 25 February 1992 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia); Council Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector; Commission Regulation (EEC) No 1617/93 of 25 June 1993 on the application of Article 85 (3) of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports; Council Directive 96/67/EC of 15 October 1996 on access to the ground handling market at Community airports [28].

So the conclusion may be drawn that the EU legal transport competition regulation is much more detailed than national legal transport competition regulation in Lithuania.

5. Generalization

As mentioned, the Constitution and the norms of acquis comply with each other, and in the event of a collision between legal norms, the norms of acquis shall prevail over the laws and other legal acts of the Republic of Lithuania. Besides, State institutions applying legal norms must follow this rule. For example, according to Part 3 of Article 33 of the Law on Courts [29] courts, while investigating cases, apply legal norms of the EU and follow decisions of the EU judicial institutions and their preliminary rulings concerning questions of the interpretation and validity of the EU legal acts.

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