

# PROCEDURAL DOCUMENTS DESIGN PROBLEMS IN ADMINISTRATIVE CASE TO OFFICIALS OF THE STATE BORDER GUARD

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**Abstract.** *In the paper, the main problems and conflicts that arise and could arise in the administrative cases are reflected, including various procedural documents. The authors describe the main problems in the work of State Border Guard employees in drafting administrative protocols of offenses, administrative detention protocols, inspection protocols, accepting explanatory persons, explaining human rights. The paper also identifies the main factors, why the State Border Guard has a relatively high percentage of appealed procedural documents. The article compares some of the norms of the Latvian Code of Administrative Offenses and some provisions of the Constitution which, in the opinion of the authors, are contradictory. These norms relate directly to the administrative detention of persons and the free movement of persons. The work is mainly based on the problems related to the completion of procedural documents that are ascertained by interviewing employees of the State Border Guard, who are directly involved in the review of administrative cases.*

**Keywords:** *decoding, record keeping, border control, police function, education, immigration, the State Border Guard of the Republic of Latvia.*

## Introduction

"The basic elements of the Latvian administrative penal system were based on the concepts of the socialist state law. The original wording of the Code reflected the views of the Soviet lawyers on the nature of administrative punishment and procedure for its application. As a result of the amendments to the Code of Administrative Offenses, the Latvian administrative penalty system is obsolete; the amendments made are fragmented, unsystematic." (www.politika.lv, 2012)

The Code is one of the few legal acts inherited by the Soviet legal system which is applied even today. However, when sorting out certain issues, abolishing old ones and introducing new law institutes, the law of administrative penalties was not always perceived as a legal system.

"As a result, several norms of administrative penalties, both dogmatically and practically, are contradictory and logically unfounded. Consequently, due to numerous amendments, the Code has become difficult to use." (www.providus.lv, 2012)

"Latvia is still wary of discussions on which way to choose the system of administrative penalties. Continue to develop the codification path when

all administrative violations are included in the same law, or to abandon such a uniform set of rules and to provide for sanctions for the violations in question in the specific legislation governing the matter?" (Litvins, Aperāne, 2010)

### **Problems in drawing up processual documents and handling an administrative violation case**

There is a concern that, if administrative law is subject to certain sectoral laws, but the processing of administrative violation cases would be regulated by a special law, then the substantive norms of administrative liability would be included in sectoral laws (decoded), while procedural norms of administrative liability would be one single law. Then, such a system would not promote the rights of the person and legal protection of interests which is the cornerstone of the administrative process, as sectoral laws tend to protect the interests of the sector in general.

One of the problems is translation of the text in language that is understandable to a person. In the process of globalization, when more and more people use the opportunity to travel, they often have to find themselves into miserable situations. As well, our own people try to be "smart" in the case of committing an offense, when they are introduced to their rights. The first part of Section 260 of the Administrative Offense Code of the Republic of Latvia provides that a person receiving administrative liability has the right, both personally and with the assistance of a lawyer, to get acquainted with all the file, provide explanations, submit requests, and make requests. That means the applicant had the right to submit both explanatory notes to the protocol and to post them later. The Regional Administrative Court has pointed out that later explanations give rise to greater doubts as to their reliability than if they were delivered immediately at the time of the event. The Senate supports this interpretation, because it meets the observations in life. The person, who receives administrative liability, has the right to take part in the proceedings, use the lawyer's assistance, submit additions and make requests, and appeal against the decision made in the case. A case without a person's presence can only be considered, if it is known that it is timely informed about the place and time of the trial and if no request for postponement of the case has been received from it. A person, who is called to an administrative liability or an offense case, is examined, if he or she understands the language, in which the record keeping is performed. It is the granted right to use the mother tongue and to use the services of an interpreter in accordance with the procedure established by law "(LAPK, 2006). If so far he/she has easily communicated with the employee of the

institution concerned, but from the moment, he/she became aware that he/she was entitled to use the interpreter's services, he/she no longer understood the words spoken or written by the official. Often, a person as an argument for the termination of office-work indicates the fact that he/she has not understood what the official wants and what document to sign. For example, the applicant was in a state of shock, it was at night when he/she was asleep, and he/she did not accurately translate the content of the administrative offense report, namely, the police officer explained that he/she was in alcohol, but had not indicated that she had been driving the vehicle under the influence of alcohol. As provided for in the regulatory enactments, the drafting of an administrative offense protocol is the procedural activity of the institution. The report, as any of the evidence in the administrative offense case, should be drawn up precisely in order to be able to be used later in the case. If the drafting of the administrative violation protocol results in its presentation errors, they are considered to be procedural errors in the case of an administrative offense. Consequently, these errors are assessed on the basis of general criteria for the assessment of procedural errors. The effect of a procedural violation on the outcome of the case is assessed. The main issue is whether this violation is significant or not, as only the material procedural irregularities can be affected by the outcome of the case. A procedural violation of a private individual becomes legally significant only if it affects or could affect the content of the administrative act. Consequently, it can be concluded that not every shortcoming in an administrative offense report is to be recognized as affecting the legal validity of this document. If a minor mistake is made in the preparation of procedural documents, then this could not be the reason for the invalidation of this document. However, a number of inaccuracies in the pleadings may serve as a reason for questioning the evidence of the State Border Guard. An example is the case in which the court indicated that the report of the administrative offense did not indicate the part of the code section on the basis of which the institution intended to bring the person to administrative liability. The court pointed out that the purpose of the inclusion of a normative justification in the protocol is to ensure that the addressee of this act is informed of the fixed legal basis of the violation. Consequently, the reference to a normative act must, in essence, be such as to enable the addressee to find the norm, on which the said document was drawn up, and to familiarize with its contents. However, the court at the same time found that in the initial decision, officials of the State Border Guard indicated certain articles and part of the Code of Administrative Offenses. This has, as a result, remedied the shortcoming in the report of administrative violation. At the same time, the court acknowledged that this deficiency had not been regarded as likely to lead to the annulment of the

decision, since, by eliminating the aforementioned shortage, the person was informed of the administrative act adopted on the basis of a regulatory act.

In another case, according to the court, the minutes were drawn up nicely. The court found a set of circumstances that called into question the evidence of the State Border Guard. A gauge certificate was not filed and the minutes incorrectly indicate that the applicant acknowledged his guilt, although in the same protocol the applicant explained that he disagreed. In this case, however, it should be said that the institution had committed a procedural irregularity in the absence of such a certificate at all. However, if that is the case, in the particular case, the failure to execute the court and infringement of the principle of objective investigation may also be established, since the court does not impose an obligation to monitor that the case has all the necessary evidence. The fact that a certificate has not been filed means that the court requires it, and not that the institution has committed a procedural violation.

Such and similar violations and failures in administrative offenses are often encountered in the record keeping, as with the newly adopted amendments, border crossing procedures often encounter conflict situations precisely as regards the certification of different measuring devices and checking instruments and compliance with the requirements of Latvian law. One of the problems encountered regarding the commencement of administrative offenses concerning the drawing up of administrative offenses protocols by the State Border Guard is the mistakes in the drafting of the protocol which are related to the presentation of the essence of the administrative violation. Frequently they are faced with erroneously indicating the offense or the information is insufficiently comprehensible, causing problems in keeping records. In 2011, 65% of all administrative violation protocols were challenged or appealed to the State Border Guard. One of the main problems is directly in the human factor, very often unnecessary and unconstrained abbreviations are used which is the basis for challenging an administrative violation report or appealing against a decision.

I would also like to mention the problems with the administrative detention of a person. According to the norms of the Code of Administrative Offenses, a person is considered to be arrested administratively from the moment when it is taken for the purpose of drawing up an administrative detention protocol, that is, the time of administrative detention begins to run from the moment when the person has been taken to a protocol that, in my opinion, is a violation of universal human rights and freedoms. In the eighth chapter of the Satversme of the Republic of Latvia which defines fundamental human rights, Article 94 stipulates that "everyone has the right to liberty and the inviolability of a person" (Satversme, 2008). No one

shall deprive or restrict freedom except in accordance with the law. Consequently, it can be concluded that in that time, while a person is being transferred to an administrative detention protocol, that person is unlawfully restricted by freedom, since the person is given an order to follow the State officials without any procedural sanctions. Another important problem in the process of processing procedural documents is the fact that the date of the administrative violation case is often not announced, thus denying the persons called to the responsibility to provide explanations on the particular circumstances of the case.

Another problem with the completion of procedural documents is that one official is indicated in the minutes as a drafter, but in fact, this procedural document and the original decision have been taken by another official. Consequently, if the administrative violation protocol is challenged or appealed, then the person who only signed the specified protocol will be difficult to provide any explanation about the concrete facts in the administrative violation case, since the compiler and the detective of the violation have been another official.

Article 21 of the Code of Administrative Offenses stipulates that if the administrative violation committed is insignificant, the institution (official) authorized to rule the case might release the offender from administrative liability and limit himself to an oral remark.

An administrative offense committed in road traffic, if the fine imposed for it does not exceed 40 euros, and if this violation has not caused a threat to other road users or their property, may be considered insignificant.

As the judge of the European Court of Justice, E.Levits, emphasized, in a democratic state of law, public administration must strive to ensure fairness and the formal application of legal norms cannot be allowed, ignoring factual circumstances, if they differ in a particular case from other cases in which the legislator has foreseen a certain mode of utilization of state power. Therefore, in an atypical case, the institution has the right to derogate from the implementation of legal consequences prescribed by law, justifying such a derogation by specific, reportable and convincing arguments. We believe that such a restrictive provision should be repealed as discriminatory. If there is a suspicion that an official is abusing his position, then the state has many other means of influence to prevent such corrupt transactions. It should also be possible for an official to assess the severity of a particular violation in road traffic, and to assess the whole set of circumstances, decide on the utility of naming or exempting an official from liability. (Levits, 2007)

Often officials dealing with administrative offenses have encountered problems such as:

1. The official has not indicated the specific place where the administrative violation report has been drawn up. For example, if the State Border Guard official draws up an administrative report on a particular road section, then the report should indicate the direction (from where the offender was moving) and also the approximate kilometre of the road segment where an administrative violation has been detected. Often, officers are faced with the fact that officials do not indicate the direction and approximate location of the administrative offense when drawing up an administrative offense report.
2. When stopping a vehicle or carrying out border control on persons, the State Border Guard official must always stand ahead, often encounters instances when officials forget about it, thus it could serve as a reason for the administrative violation report to be challenged or appealed.
3. Frequently incorrect registration or verification (if any) of the devices or test devices is indicated. Along with the introduction of such mistakes, the processing of administrative offenses is complicated and difficult, as the incorrect numbering in the administrative violation report may lead to the termination of the administrative office and the cancellation of the decision (penalty).
4. A very common problem is the fact that officials use the so-called "templates" to draw up an administrative offense report which, according to experts, is incorrect, since it is believed that each administrative offense is individual and each has its own individual characteristics and drawing up administrative offense reports after "Templates" encounter errors in drawing up reports both in terms of design and in terms of applicable laws and regulations. The main problems in filling in the administrative violation reports thus arise from fixing the essence of the violation, as, as already mentioned, each violation is individual and the fixing of the essence of the same violation can lead to the appeal and appeal of the administrative violation reports.
5. Another problem with the commencement of administrative offenses record is that after the drawing up of an administrative offense reports, the offender is often not given the opportunity to provide explanations or attach the appendix to the minutes to individual pages.
6. A significant problem directly attributable to the reports on administrative offenses to be drawn up by the State Border Guard is

the fact that in the State Border Guard the administrative violation reports must be drawn up in 2 (two) identically identical copies, and not as is the case in the State Police, that the forms of the administrative offense report are drawn up for simpler ones forms and do not need to spend additional materials and time to fill in the forms of the administrative violation reports. Regarding the presentation and filling in, in our view, the forms of the State Police administrative violation reports are much simpler to complete than the forms of the State Border Guard administrative violation reports.

It is evident from Articles 248, 249 and 270 of the Latvian Administrative Violations Code that the drawing up of an administrative offense reports and the adoption of a decision are two different acts that may vary in time: first, an administrative offense report is sent to the competent authority and after the receipt of the report; and the review body shall take a decision.

Compared with fewer problems, officials of the State Border Guard encountered the preparation of inspection reports and explanations. The main problem in drawing up these procedural documents which could be mentioned are various negligence errors, or the lack of influence of the used accessories in procedural documents (ruler, tape measure, camera and other consumables).

### **Conclusions and suggestions**

When studying the peculiarities of filling in various procedural documents, the State Border Guard faces several problems, thus the following conclusions can be drawn and solutions offered:

1. To initiate the State Border Guard to consider the possibility of simplifying the technical presentation of the form without changing the content and meaning of the existing form of the administrative violation report (fill in the sections of the report form for an official by choosing from the variants already offered - similar to the State Police and Municipal Police administrative violation protocol forms), without violating the Cabinet of Ministers requirements of the regulations;
2. It would be useful for the State Border Guard to develop a uniform procedure for filling in procedural documents and the procedure for the application of administrative penalties, similar to those of the State Police, the State Revenue Service and other competent state institutions;
3. In order to prevent officials from making mistakes in completing the procedural forms, it would be necessary to pay more attention to the training of officials. To organize special courses for officials of the State Border Guard, related directly to the completion of procedural

documents. In my opinion, the courses should not only be theoretical, but it would be necessary to pay more attention to practical work, to evaluate different situations, to start office work and to bring a person to administrative responsibility;

4. It would be useful to issue and formally approve forms in foreign languages (even in an official foreign language, in English), since this would greatly facilitate the processing of administrative records and procedural documents, but also officials involved in initiating administrative investigations, investigating and taking decisions in a case, must be sufficiently competent and knowledgeable in the foreign language concerned.

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