

CASE TRANSLATION: LATVIA

CASE CITATION:

Case No. A42738909

NAME AND LEVEL OF COURT:

Administratīvā rajona tiesa (Administrative District Court)

DATE OF DECISION: **19 April 2011**

MEMBERS OF THE COURT:

Judge L. Konošonoka

Calibration certificate of the measuring device submitted without a valid electronic signature; consideration of article 5(2) of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, OJ L 13, 19.01.2000, p. 12; submission of electronic documents to the competent authorities as evidence should not be denied solely on the grounds that the document is in electronic form and that does not have a secure electronic signature

JUDGEMENT

In the name of the Latvian people

Riga, 19 April 2011

Administrative District Court

composed of Judge L. Konošonoka,

with participation of I.B., the representative of the Riga Municipal Police of the Riga City Council, on the defendant's side,

in a public hearing reviewed the case of administrative violation, which was initiated on the basis of the application of R.R. (personal identity/personal identity) to revoke the decision No. D57/10-6/929 of the Traffic Police Bureau of the Riga Municipal Police of the Riga City Council (administrative violation report and notice No.107168861).

Descriptive part

[1] The applicant R.R. prepared an administrative violation report and notice No.107168861 because on 20 January 2009 at 9.59 vehicle VW (state registration number/registration number) was parked at Melngaila Street 1a, Riga, in a zone where road sign No.326 operates, thus violating subsection 135.11 of the Regulations of the Cabinet of Ministers of 29 June 2004 "Road Traffic Regulations" (hereinafter – the Road Traffic Regulations), for which an administrative liability is prescribed under Paragraph 11, subsection 5 of Section 149.10 of the Latvian Administrative Violations Code. A penalty of 30 lats was imposed upon the applicant.

[2] On 5 March 2009, after examining the cancellation request, the Chief of the Traffic Police Bureau of the Riga Municipal Police of the Riga City Council in his decision No. D57/10-6/929 (hereinafter – the Decision) decided to leave the decision to hold R.R. administratively liable unvaried.

The decision is based on the following considerations.

[2.1] the fact of violation is proved by the report that has been drafted in accordance with the legal acts, and by photographs that were taken at the place and time of violation.

[2.2] the Applicant's vehicle was parked in a zone where road sign No.326 operates because, first, the destination between road the sign No.326 with additional road sign No.803 (50 m), that are placed on the right side of E.Melngaiļa Street towards Strēlnieku Street after the crossing with Antonijas Street, and road sign No.532 that is located on the right side of E.Melngaiļa Street towards Strēlnieku Street, is 52.15 m. Secondly, the destination between the road sign No.326 with additional road sign No.805 (30 m; 20 m) that are located on the right side of E.Melngaiļa Street towards Strēlnieku Street after the crossing with

Antonijas Street, and the road sign No.532 that is located on the right side of E.Melngaiļa Street towards Strēlnieku Street, is 32.50 m.

The measurements were taken by using a “Geo Fennel” measuring wheel, which has been calibrated at the “Latvian National Metrology Centre” for measuring length.

[2.3] since the fine for violation of section 5 of the Code is 30 lats, there is no necessity for the authority to assess the proportionality of the fine.

[3] R.R. submitted an application to the court for the revocation of the Decision, including in his application the following considerations:

[3.1] there is no evidence that the applicant’s vehicle was parked in the zone where road sign No.326 operates. Since the vehicle was only partially positioned in the zone where the road sign No.326 operates, the Road Traffic Regulations were not unambiguously violated.

[3.2] there is doubt whether the operating areas of the additional road signs No.803 and No.805 to the applicant’s vehicle were measured, because the applicant was not provided with the measurements, and the distance between the vehicle and the additional road signs was different. The applicant’s vehicle is 4 m long, thus 2.15 m and 2.5 m distance is sufficient for the vehicle to be partially parked in a place where it is not prohibited.

[3.3] by placing the vehicle in the particular place, no damage was caused. Also no fault or illegal actions of the applicant that threaten public order were ascertained. The applicant did not want to commit a violation and has not conceded commencement of any consequences. When making the Decision, the text provided in paragraph 2 of section 32 of the Code has not been taken into account.

[4] In their explanations, the Riga Municipal Police of the Riga City Council note that they do not admit the application.

[5] At the court hearing, a representative of the

authority explained that there is no dispute regarding the factual circumstances in this case, but whether by parking the vehicle, the applicant has violated norms of the Road Traffic Regulations. A four-meter long vehicle cannot be parked in a two-meter long stretch of a road. The violation cannot be considered as minor since no special circumstances were found because of which the applicant would have been forced to park the vehicle contrary to requirements of the Road Traffic Regulations.

[6] The applicant did not attend at the court hearing. The applicant was informed about the time and place of the court hearing as prescribed by the law. The applicant requested the case to be heard in his absence.

After hearing the opinion of the representative of the authority, the court acknowledges that the case can be heard without the presence of the applicant.

Reasoned part

[7] The court, after hearing explanations of the representative of the authority and after assessing the evidence in the case in their reciprocity, acknowledges that the application is not justified and should be rejected.

[8] Subparagraph 11 of paragraph 5 of section 149.¹⁰ of the Latvian Administrative Violations Code (*legal norms expressed in wording that was in force at the moment of drafting the administrative violation report*) prescribes that for parking in the zone where road sign No.326 operates, a fine on the driver in an amount of 30 lats may be imposed.

Thus, for finding a person for an administrative liability under that provision, it must be determined that the vehicle was parked in the zone where road sign No.326 is located.

[9] Paragraph 291 of the Road Traffic Regulations prescribes that the operating zone of road sign No.326 is from the placement of the sign to the nearest crossing after that sign, but if the crossing does not exist – to the road sign No.519. The operating zone of road sign No.326 may be

reduced by:

- 1) Installing road sign No.330 or No.803 (subparagraph 292.1 of the Road Traffic Regulations);
- 2) Repeatedly installing road sign No.326, No.327, No.328, or No.329 together with road sign No.808 in the operating zone (subparagraph 292.4 of the Road Traffic Regulations);

In turn, the additional sign No.803 “Operational Area” indicates the operating area of a prohibiting road sign (subparagraph 307.3 of the Road Traffic Regulations).

[10] The court finds that road sign No.326 together with the additional road sign No.803, which restricts the operational area of road sign No.326 to 50 m, is installed on the right side of E.Melngaija Street towards Strēlnieku Street after the crossing with Antonijas Street. Road sign No.326 together with the additional sign No.805, which restricts the operational zone of road sign No.326 towards Strēlnieku Street to 30 m and towards Antonijas Street to 20 m, is also installed on the right side of E.Melngaija Street towards Strēlnieku Street. The above mentioned information on the facts has been fixed in the administrative violation report (case page 19) and in photographs (case page 20).

[11] From the photographs in the case it can be seen that the vehicle was parked before road sign No.532 “Parking”. The authority has noted that the distance between road sign No.326 and the additional road sign No.805 (30 m; 20 m), that are installed on the right side of E.Melngaija Street towards Strēlnieku Street after the crossing with Antonijas Street, and road sign No.532 that has been installed on the right side of E.Melngaija Street towards Strēlnieku Street, is 32.50 meters.

The authority has submitted a calibration certificate No. G2066Ko8 (case page 34-35) of the measuring device to the court – a measuring wheel for measurement of length – and photographs showing the reading of 52 m from the measuring wheel (case page 36). The above mentioned written evidence has been submitted in electronic form.

Although the court secretary has pointed out that the above mentioned evidence has been submitted

without a valid electronic signature, the court takes into account the wording of paragraph four of section 3 of the Electronic Documents Law and of paragraph 2 of article 5 of the Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, that submitting electronic documents to the competent authorities as evidence should not be denied solely on the grounds that the document is in electronic form and that does not have a secure electronic signature. The court has no doubt about the compliance of the documents with their originals, and the court takes into account the written evidence – declaration of validity of the authority representative’s signature (case page 39).

Consequently, the written evidence is admissible. At the same time the court does not grant credibility to the assertions of the applicant that the distance from road sign No.805 to road sign No.326 is 35 meters. The applicant has not indicated how he had obtained such measurements and has not submitted other evidence that could confirm the veracity of the information provided by him.

[12] In the court’s opinion, with the evidence acquired in the case – the administrative violation report, photographs, where the position of the vehicle at the time of the administrative violation is fixed and which reflect the measurements taken by the authority, taken with the explanations of R.R. – the fact that R.R. had placed the vehicle in the operating zone of road sign No.326, is established. Namely, since the distance from the additional road sign No.805 to road sign No.532 is 32.50 meters, but the applicant’s vehicle is at least four meter long, the applicant placed the vehicle in the operating area of road sign No.326.

Considerations of the applicant that the vehicle has been only partially placed in the operating area of road sign No.326 are not relevant. According to the Road Traffic Regulations, it is prohibited to stop and park in the operating area of road sign No.326. Thus, even if the vehicle is partially placed in the operating area of road sign No.326, a violation of the Road Traffic Regulations is committed.

Under such circumstances, the authority has reasonably found that the activities of R.R. form a substance of administrative violation as prescribed in

paragraph 11, subsection 5 of section 149.10 of the Latvian Administrative Violations Code. The court also points out that by placing the vehicle in the operating area of road sign No.326, the applicant should have been aware of the illegality of his action and the emergence of harmful consequences respectively.

[13] The court also rejects the applicant's argument regarding not considering the usefulness. Considerations of usefulness are related to the freedom of choice of the authority. Namely, if in decision making the authority has a freedom of choice regarding the issuance or content of the Decision, it must consider usefulness. The sanction of subsection 5 of section 149.10 of the Latvian Administrative Violations Code prescribes imposing a fine in the amount of 30 lats. In other words, this legal norm does not provide the authority with a freedom of choice regarding the imposition of fine. When finding a violation, the authority must apply the sanction provided in the legal norm. Thus, the authority did not have to consider the usefulness regarding the proportionality of the imposed fine. It is also not possible for the court to take into account such considerations.

[14] Taking into account the above mentioned, the court acknowledges that the decision regarding finding the applicant to an administrative liability is justified and reasoned, and therefore there are no grounds for its revocation.

Operative part

Based on paragraph 1, subsection 1 of section 286 of the Latvian Administrative Violations Code, the Administrative District Court

holds:

To reject the application of R.R.

To leave unvaried the decision of 5 March 2009 No. D57/10-6/929 of the Traffic Police Bureau of the Riga Municipal Police of the Riga City Council.

The Decision can be appealed to the Administrative Regional Court within 20 days from the date of its pronouncing, by submitting an appellate complaint to the Riga court house of the Administrative District Court.

Judge (signature) L. Konošonoka

DUPLICATE CORRECT

Administrative District Court

Judge

L.Konošonoka

Riga, 19 April 2011

With thanks to Sorainen Law Firm for
helping with this translation
<http://www.sorainen.com/>