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7. Baltic States

(1) INTRODUCTION

Estonia, Latvia, and Lithuania are grouped together here due to geographical proximity. They have different legal systems, although membership in the European Union (EU) as well as similarities in terms of geography, demography, and history contribute to similar situations and legal issues and approaches. Environmental law in Estonia, Latvia, and Lithuania remains primarily influenced by the environmental law of the EU. This year, concerns about Russia's aggression against Ukraine dominated public debate in the region and environmental concerns might have been given less attention. The destruction of the North Stream pipelines in the Baltic Sea, however, highlights that security and environmental safety are closely connected. In general, energy-related questions are likely to continue to dominate the discourses about environmental protection in the region.

(2) ESTONIA

The forestry and biofuels economy plays an important role in Estonia, Latvia, and Lithuania. With the EU's 2021 decision to consider wood and other biofuels as green forms of energy and the 2022 decision to wean the EU off Russian gas (a move that was already supported by Estonia early in 2022), the relevance and influence of these industries for Estonia are likely to remain high, and, in 2022, the draft Forestry Development Plan for the years 2021–30 was still debated among lawyers in Estonia. It therefore appears likely that this particular approach to biofuels will be continued in the future.

Another area of likely future contention between Estonia and the EU remains the country's reliance on oil shale as a source of hydrocarbons. The transition away from energy sources from the Russian Federation this year also meant a renewed emphasis on oil shale in Estonia. Like in other European countries, such as Germany, where lignite and coal continue to remain important sources of energy, this development has seen a move back to forms of energy that had been on a decline across the continent. As the loss of access to cheap Russian energy had to be compensated for quickly, Estonia and other countries have returned to fossil fuels in order to obtain fast results and to secure energy stability, while investments in renewable sources of energy are seen as time intensive.

While the current security situation can contribute to a strengthening of renewable energies in the long run, the first reaction of many governments in Europe, including Estonia's, was to return to fossil fuels. These moves come against the backdrop of dramatically rising energy prices across Europe and inflation that particularly affected households. In Estonia, according to Statistics Estonia, the inflation rate reached almost 25 percent in August (after

just over 11 percent in January). Also in August, Estonia's Supreme Court, the Riigikohus, rejected an application by an environmental non-governmental organization that was directed at stopping the construction of a new oil-based power plant (appeal of the non-profit association Loodusvõlu for the annulment of Order no. 157 of the Narva-Jõesuu City Government of 20 March 2020, Case 3-20-771, decision of 25 August 2022).

A rapid move back to fossil fuels was seen by many European countries as a way to reign in the galloping inflation. This came at a price for the natural environment and the climate and in Estonia, too, the intention has been stated to end the reliance on shale oil as soon as possible. As a locally available form of energy that can be used with existing infrastructure, many European states, including Estonia, will continue to use fossil fuels to close the gaps between cheap Russian gas and a more complete transition to greener forms of energy. This is reflected in less than ambitious goals for the green energy transition. According to the Ministry of Economic Affairs and Communications, Estonia wants to end the use of shale oil for the generation of electricity in 2035 and end shale oil production by 2040. Russia's invasion of Ukraine has given some fossil fuels a second lease on life in many European countries, although the EU envisions the move away from Russian hydrocarbons as part of the overall green energy transition.

In Estonia, it was also noted that large parts of the oil used for the production of plastic shopping bags have their origins in Russia, which was seen as another argument against single-use plastic bags. In the long term, a transition towards renewable sources of energy will also contribute to energy independence. This, too, is part of the discussions that are currently ongoing in Estonia and elsewhere. The current situation is a setback, but only another chapter in the move towards greener energy. But also, other forms of electricity generation are not uncontested, as was shown by litigation by fishing interests against the continued operation of a hydroelectric power plant. Overall, if biomass is taken into account, only Sweden, Finland, and Latvia have a higher percentage of renewable energy in the national energy mix. The relative importance of biomass-based electricity generation in Estonia is not to be underestimated—in particular, in times of uncertainty.

A key decision was handed down by the Estonian Supreme Court on 30 September (FIE Olar Järvloo's appeal in the mining permit procedure to establish the illegality of the opinion given by the Saue Municipal Council and to oblige the council to give a new opinion, Case 3-20-1247, decision of 30 September 2022). In this case, the Riigikohus ruled that a municipality was right in refusing a mining permit in order to protect the rights of local residents. Municipalities are part of the mining permit procedure under Estonian law, but, as was reported by the Tallin-based Center for Environmental Law (SA Keskkonnaõiguse Keskus) in October 2022 (Keskkonnaõiguse Uudiskiri), in practice environmental impact assessments (EIAs) might not yet be available during the limited timeframe that municipalities are given when they must make their decision. The Supreme Court's decision helps municipalities make meaningful decisions if the EIA is not available in time: municipalities are empowered to make decisions on mining permits with the information available, based on guidance provided by the Supreme Court. In the case at hand, the Riigikohus ruled that the municipality was permitted to deny the mining permit due to the presence of residential buildings in the vicinity. This decision will be important as it enables municipalities to take into account the practical situation on the local level and to prevent rushed decisions on an artificially limited information base.

(3) LATVIA

That Latvia, as mentioned, can boast a high rate of renewable energy should not be a surprise as the concept of sustainability is part of the national constitutional law. As of late 2022, the

discussion in Latvia centred on the possible creation of an additional constitutional body within the Latvian governance system—that is, for the purpose of facilitating the inclusion of sustainability ideas in legislative processes: for example, at a December conference featuring president Egils Levits and Latvian European Court of Justice judge Ineta Ziemele on the issue of the State Council and sustainability. The role of sustainability in law-making processes was given particular attention. The establishment of a State Council in addition to the unicameral parliament, the Saeima, has been discussed in Latvia since the early 2000s. An increasing need for sustainability in legislation might be among the factors that will bring this idea closer to realization.

Already in August, the University of Latvia and Latvia's Constitutional Court had organized a conference entitled 'Sustainability as a Constitutional Value: Future challenges.' It is a cause for optimism to note that sustainability receives this kind of attention also at the political, legal, and academic levels. From a practical legal perspective, the creation of environmental law in Latvia is still largely based on developments at the level of the EU.

From a practical perspective, air pollution remains a major concern in Latvia, with a large number of complaints from residents to Latvia's State Environmental Service (*Valsts vides dienests* (VVD)) focusing on this issue, which is closely connected to human health. Of the approximately 8,000 complaints received by the VVD this year, over 1,200 concerned air pollution, although the VVD considered the vast majority to have been unfounded. This indicates that there is a mismatch between public perceptions of what constitutes clean air on one hand and on the standards that are employed by the authorities on the other hand. Given that many clean air standards in Latvia are based on EU law, this situation might point to an enforcement problem or to an information challenge.

The Court of Justice of the European Union (CJEU) ruled in '*Piltenes meži*' *SIA v Lauku atbalsta dienests* (Case C-251/21, judgment of 28 April 2022) and in '*Sātiņi-S*' *SIA v Dabas aizsardzības pārvalde* (Case C-238/20, judgment of 27 January 2022) on issues concerning Natura 2000 areas. The Supreme Court of the Republic of Latvia (*Latvijas Republikas Augstākā tiesa*), also referred to as the Senate of Latvia (*Latvijas Senāts*)—in particular, the Supreme Court's Department of Administrative Cases—had the opportunity to rule on environmental issues on several occasions this year: Cases nos. SKA-79/2022 and SKA-14/2022, decided on 19 April and 25 March respectively, also concerned Natura 2000 areas, indicating, together with the aforementioned decisions by the CJEU, the relative importance of this protective scheme in Latvia.

In Case no. SKA-191/2022, the Supreme Court found in its judgment of 31 May that in case sand or minerals are extracted not as the main purpose of an activity but as the result of a water surface object, a license by the VVD is required if the activity in question is undertaken in a mineral deposit area. Such extraction will be treated as a *de facto* mineral extraction, with the procedural requirements that come with that.

In a decision on 29 July in Case no. SKA-842/2022, the Supreme Court clarified that the powers of the Ministry of Environmental Protection and Regional Development are limited when it comes to the supervision of local governments, at least from the perspective of individuals. This supervisory function is between different authorities on the national and local levels and is not part of the administrative processes that concern individuals and local authorities. The supervisory function of the ministry does not provide individuals with a possibility to request that local authorities are overruled by the ministry in environmental matters.

The first day of January 2023 brought a substantial change to local administration that also has the potential to be relevant for environment-related administrative processes, as Latvia's new Local Government Law entered into force. The law is intended to provide citizens more participatory opportunities through the establishment of consultative councils.

On a local level, ideas that are still being discussed at the national level are already being implemented to some degree. It remains to be seen if and how the new law will facilitate the protection of the natural environment at the local level.

(4) LITHUANIA

Lithuania is on track to catch up with Latvia and Estonia when it comes to renewable energy use. The path chosen by Lithuania, however, is focused not so much on biomass and the forestry industry but on wind energy. Lithuania has been experiencing something of a wind power boom. This is reflected in the work of Lithuania's Environmental Protection Agency, which is reporting an increase in the number of EIAs related to wind energy installations. This is in line with a general trend that is visible in the Baltic Sea region: this year, representatives of the eight EU Baltic coastal states (Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, and Sweden) agreed to cooperate to increase the number of wind energy installations in the Baltic Sea region. In Lithuania, large wind energy projects are also planned further inland, with the largest number of wind energy installations approved this year planned on the territory of the municipality of Jonava, approximately 200 kilometres from the coast. Lithuania plans to have a wind energy capacity of 1.2 gigawatts on the mainland by the year 2025.

Like in Latvia, air pollution complaints also play a role in Lithuania—in particular, in connection with industrial production sites. Here, too, a discrepancy between subjective feelings of bad air quality and emission standards was noted. Air pollution issues were also dealt with in connection with regulations for the operation of the port in Klaipėda.

One legal challenge that the courts in Lithuania also had to deal with this year was illegal deforestation. While more than one-half of the territories of both Estonia and Latvia are forest, only just over one-third of Lithuania's land territory is covered with forest. This explains the different approach to biomass and the use of waste products from the forestry industry for the generation of electricity in Lithuania when compared to Estonia and Latvia, but also is a reminder why illegal tree logging is taken seriously by the courts. In this context, it has to be noted that while fines for illegal logging are not insubstantial in the Lithuanian economic context, they are still below market values of wood, therefore reducing the potential profit margin but not entirely erasing financial incentives. Here, stricter fines might help reduce the risk of illegal logging.

The year 2023 is likely to see a high-profile criminal case concerning environmental issues, as the prosecutor's office in the port city of Klaipėda referred a case to the court in the last days of 2022 that involved alleged damage to the natural environment at a volume of approximately €5.6 million. The allegations concern the illegal dumping of 2,000 tons of road construction waste in the municipality of Neringa. The case gained particular attention as the municipality in question administers the Lithuanian part of the Curonian spit, a significant tourist destination and the location of the Curonian Spit National Park. It is alleged that the construction waste was dumped in protected areas. Among the areas that are said to have been affected are the aforementioned Curonian Spit National Park, the landscape reserves of Parnidis and Alksnynė, and the stone age settlement site referred to as 'Five Hills' in Nida. Given the symbolic value of the region not only for Lithuania but also in the region, the case is likely to garner more attention and might contribute to an increasing interest in the criminal law dimension of environmental law protections of natural sites in Lithuania.

(5) OUTLOOK

Just short of two decades after joining the EU, at least from the perspective of environmental law, Estonia, Latvia, and Lithuania have long arrived as active players that go beyond merely

implementing standards created in Brussels. In particular, in the field of tension between the necessary continuation and acceleration of the green energy transition and the indispensable need to provide energy security in an environment characterized by regional armed conflict and inflation affecting, in particular, households, the three states focus on biofuels. This approach is facilitated by the EU's acceptance of biofuels as a form of green energy in 2021. The energy crisis caused by Russia's escalation of its war of aggression against Ukraine since 24 February 2022 has shifted considerations in the context of energy and environmental protection also in these three countries.

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