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Implementation of the Concept of 'Public Assets' in the Latvian Legal System

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The article analyses the problems of division between public and private legal relationships regarding the use of assets owned by public entities. Although most of the assets owned by public entities are managed within the framework of private legal relationships, some assets which are allocated for public use are treated as 'public assets', like rivers, the sea, public parks etc. The legal relationships arising out of the use of those assets are public legal relationships, reviewed by administrative courts in case of a dispute. The concept of 'public assets' has been implemented in the Latvian legal system from the German administrative law (*Offentliche Sache*). However, literal transplantation of the German concept has caused irregularities with the existing practices. Therefore, by case studies it is argued that a narrower approach should be used regarding the concept of public assets.

Keywords: public assets, subjective public rights, ports, forests, ownership.

Contents

Introduction

Inspiring concepts and successful practices of other legal systems are important factors influencing development of domestic legal system. The Latvian legal system has successfully transplanted several basic concepts of German administrative law, like the concept of public legal entity and several important features of administrative procedure law, most notably, the concept of administrative act (*Verwaltungsakt*). These concepts successfully thrived and become beautiful,

self-dependent 'plants' in their development and doctrinal understanding – although there are many similarities with the legal system of their origin, there are also many well-grounded differences and national peculiarities.[1] The Latvian experience of transforming administrative law in a sound and well-developed legal system is a unique success story and a valuable source of inspiration for other post-soviet states.

However, not all efforts to implement foreign legal concepts have been as successful. A rather novel and controversial issue even in the country of its origin is the concept of 'public assets' (*Offentliche Sache*) originally developed in the German legal system. In general, the concept of public assets concerns issues regarding public use of various assets owned or otherwise supervised by the public entities. The legal questions arising out of this concept include subjective public rights of private persons to use these assets and setting the disputes arising out of legal relationships regulating these assets.

The purpose of this article is to explain the ways in which the concept of public assets has been introduced in the Latvian legal system and legal problems arising out of this concept. The Latvian experience regarding this issue may be useful for other states where administrative courts have been established and where a consequential need to divide public and private legal relationships arises. For the national legal auditorium, this article provides guidelines for further development of the concept of public assets and propositions for a narrow approach to this concept.

1. Background and Origins of the Term 'Public Asset' in Latvian Legal System

Legal entities of public law (the State, local governments etc., hereinafter – public entities) own vast amount of movable and immovable assets: land, buildings of various kinds (living premises, warehouses, office buildings etc.), cars, computers, furniture etc. These objects are property in the sense of the Civil Law and are thus regulated by the Civil Law. "'State property', 'local government property' or 'private property' are more economic than legal terms, for in the sense of property law all owners are equal in the use of their rights. [..] The owner has an absolute right to his property."[2] Of course, the law also provides limits to the freedom of use of property, however, within this framework, the owner is entitled to use the property according to his own will. Therefore, legal relationships arising from the use or intention of use of property, including the property owned by public entities, usually are private legal relationships – the disputes arising out of property law are therefore dealt as private legal disputes and are not subject to judicial review in administrative courts, because public entities do not have any special public prerogatives (public power) regarding their property.

There are some laws, which provide several restraints on public entities regarding their ownership, most notable of them are the Law "On the Alienation of the

[1] See *Briede, J., Danovskis, E.* Administrative Law and Procedure. In: The Law of the Baltic States. Ed. by *T. Kerikmae, K. Joamets, J. Pleps, A. Rodiņa, T. Berkmanas, E. Gruodyte*. Springer, 2017, p. 204.

[2] *Balodis, K.* Ievads civiltiesībās [Introduction in the Civil Law]. Rīga: Zvaigzne ABC, 2007, p. 34; on ownership as an absolute right see also Commentary of the article 927 of the Civil law: *Grūtups, A., Kalniņš, E.* Civillikuma komentāri. Trešā daļa. Lietu tiesības. Īpašums [Commentary of the Civil Law. Part Three. Property Law]. 2nd revised edition. Rīga: Tiesu namu aģentūra, 2002, pp. 16–18.

Property Owned by a Public Entity"[3] and the Law "On Prevention of Squandering of the Financial Resources and Property of a Public Person".[4] The Law "On the Alienation of the Property Owned by a Public Entity" prescribes conditions under which a property belonging to a public person may be alienated to other public person or a private person, types of alienation (sale, exchange, alienation without compensation etc.) and procedures of alienation. The Law "On Prevention of Squandering of the Financial Resources and Property of a Public Person" provides a general obligation to use a property owned by a public entity rationally and in accordance with the law. It stipulates various prohibitions (for instance, a general prohibition to transfer a public entity's property for use to private person without compensation, a prohibition to donate property of a public entity) and procedures (for instance, on lease of a property owned by a public entity). These two main laws generally regulate the 'internal rules' of the government in managing its properties and they are not supposed to grant subjective rights for private persons to use or control the management of property owned by public persons. Since many of the rules are of technical and rather casuistic nature, and since the management of property is mostly a question of rationality, the legal provisions regulating these issues, as well as application of those laws has not achieved any significant interest from the legal scholarship. The respective rules are important mainly for those working in the government and infringements of these rules may cause disciplinary and criminal actions.

Since the establishment of administrative courts in 2004, there has been a consistent case law that decisions of public entities regarding their property are adopted in the sphere of private law. If a private entity submits a request to buy a property owned by a public entity, the denial to satisfy this request cannot be reviewed by administrative courts, because the public entity acts as any other owner, which does not want to alienate its property.[5] The same has been ruled regarding submissions of a private persons to conclude lease agreements on lease of a property (land area or premises) owned by a public entity.[6]

However, since 2007 the Department of Administrative Cases of the Supreme Court has ruled that some objects owned by public entities should be treated as 'public assets' and therefore some decisions regarding the use of those assets are

[3] Publiskas personas mantas atsavināšanas likums [Law on Alienation of Assets of a Public Entity]. *Latvijas Vēstnesis*, No. 168(2743), 2002.

[4] Publiskas personas finanšu līdzekļu un mantas izšķērdēšanas novēršanas likums [On Prevention of Squandering of the Financial Resources and Property of a Public Person]. *Latvijas Vēstnesis*, No. 114(397), 1995.

[5] See Decision of the Department of Administrative Cases of the Supreme Court of 25 August 2008 in case No. SKA-574/2008, pp. 11–12. In: Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departamenta spriedumi un lēmumi 2008. Rīga: Tiesu namu aģentūra, 2009, pp. 473–480; Decision of the Department of Administrative Cases of the Supreme Court of 11 Jaunary, 2018 in case No. 727/2018. Available: http://at.gov.lv/downloadlawfile/5441 [last viewed 13.06.2019]; Decision of the Department of Administrative Cases of the Supreme Court of 16 October 2018 in case No. SKA-1515/2018. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/365429.pdf [last viewed 13.06.2019].

[6] Decision of the Department of Administrative Cases of the Supreme Court of 2 October 2018 in case No. 1247/2018. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/364173.pdf [last viewed 13.06.2019]; Decision of the Department of Administrative Cases of the Supreme Court of 19 April 2018 in case No. 949/2018. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/351712.pdf [last viewed 13.06.2019]; Decision of the Department of Administrative Cases of the Supreme Court of 11 July 2014 in case No. 874/2014. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/357212.pdf [last viewed 13.06.2019].

administrative acts (subject to judicial review). The first decision of this kind was adopted regarding ports. Ventspils Port Authority – a public entity – owns docks in the Ventspils Port. A lease contract between Ventspils Port Authority and a private company on a lease of a dock was concluded. The contract, inter alia, designated provisions regarding payment of rent, and stated that the Ventspils Port Authority may unilaterally set the amount of rent payment. The private company objected to the decision of Ventspils Port Authority to increase rent payment and claimed in administrative court to annul the respective decision. Initially, the administrative court refused to initiate a case, because in the view of the court the agreement and dispute had a purely private law nature. However, the Supreme Court adopted a novel approach and concluded that "the Ventspils Port as an important object of national economy has been established to satisfy public interests. Therefore [..] the Ventspils Port is a public asset and therefore its operation is regulated by the law of public assets."[7] Hence, the agreement was treated as a contract of public law (administrative contract).

Since then, the concept of public assets in the decisions of the Supreme Court has been attributed to a public square in a city[8], bus station[9], airport[10] (all three in disputes between a taxi driver and a company operating bus station / the national airport to remove a traffic sign allowing access to driveway in front of the central station/bus station / airport to only some taxi companies), cemetery (a dispute between a local government and a private person regarding rent payments for a grave space)[11], park owned by a university (dispute between the university and a private person regarding refusal to allow trade in the park)[12] and several other objects (roads, etc.).

The Supreme Court has transplanted the concept of 'public assets' in the case law from the German concept of 'public assets' (*Offentliche Sache*). In Germany, the concept of public assets is one of the most ambiguous concepts of Administrative Law. On the one hand, the concept of public assets has been traditionally outlined in textbooks on general administrative law as a particular branch of administrative law dealing with the use of public assets for the benefit of public good. Public assets are usually divided in assets for inner use of the government (includes government buildings and their inventory, police cars etc.) and public assets for public use, which comprise buildings intended for use of private persons (schools, public libraries, museums, theatres, hospitals, stadiums etc.) and objects that according to their nature are intended for public use, like public streets, public

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7 Decision of the Department of Administrative Cases of the Supreme Court of 26 January 2007 in case No. SKA-78/2007. In: Latvijas Republikas Augstākās tiesas Senāta Administratīvo lietu departamenta spriedumi un lēmumi 2007. Rīga: Tiesu namu aģentūra, 2008, p. 543.

8 Decision of the Department of Administrative Cases of the Supreme Court of 22 February 2010 in case No. 101/2010. Available: http://at.gov.lv/downloadlawfile/4747 [last viewed 13.06.2019].

9 Decision of the Department of Administrative Cases of the Supreme Court of 10 February 2017 in case No. 808/2017. Available: http://at.gov.lv/downloadlawfile/718 [last viewed 13.06.2019].

10 Judgment of the Department of Administrative Cases of the Supreme Court of 23 March 2017 in case No. 470/2017. Available: http://at.gov.lv/downloadlawfile/5530 [last viewed 13.06.2019].

11 Decision of the Department of Administrative Cases of the Supreme Court of 20 November 2015 in case No. 1427/2015. Available: http://at.gov.lv/downloadlawfile/4335 [last viewed 13.06.2019].

12 Decision of the Department of Administrative Cases of the Supreme Court of 27 July 2016 in case No. 1190/2016. Available: http://at.gov.lv/downloadlawfile/5148 [last viewed 13.06.2019].

air space, rivers and other public waters.[13] The concept of public assets should not be understood as an opposite to ownership in private law, but rather as a set of particular rules regulating the use of assets available for public use.[14] On the other hand, as the notable German legal scholar, Prof. Ulrich Stelkens has written, the concept of public assets has recently been omitted in several textbooks on general administrative law due to the considerable uncertainties concerning its scope and content.[15] He argues that there are no general rules on 'public movable assets'.[16] The law on public assets is something more than a mixture of rules on borderline between the public and private law, because the main legal questions around this issue deal with construction, use and maintenance of public infrastructures of the government.[17] Although the Latvian legal scholarship has attempted to implement the concept of public assets from the German law[18] several times, it appears that transplantation of a legal concept vague: even in the country of its origin it has created a result contrary to the essence of law, yielding uncertainty and superficiality. As has been generally observed, the doctrine of the public assets in Latvia is underdeveloped and the use of the foreign doctrine can be used only in a limited scope due to differences of the legal regulation.[19]

The next chapter analyses two particular examples of how a premature and even superficial use of the concept of 'public assets' has created legal uncertainties and irregularities within the existing legal practices.

2. Two Examples of Case Studies

Ports as Public Assets

As has been mentioned earlier in this article, the first case in which the Supreme Court used the term 'public asset' was heard in 2007 regarding ports. The respective decision ruled that the port is a public asset and therefore an agreement between the port authority and a private company regarding the lease of a dock owned by the port authority is regulated by the law on public assets and therefore lies under the jurisdiction of administrative courts. Such approach was later used in one other court ruling regarding commercial activities in the ports.[20] In this ruling, the court

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[13] See, for instance, *Wolff, H., Bachof, O., Stober, R.* Verwaltungsrecht. Band 2. München: Verlag C. H. Beck, 2000, S. 682–686; *Paine, F. J.* Vācijas vispārīgās administratīvās tiesības. Vācijas Administratīvā procesa likums [German General Administrative Law. German Federal Administrative Procedure Law]. Rīga: Tiesu namu aģentūra, 2002, pp. 415–425.

[14] *Wolff, H., Bachof, O., Stober, R.* Verwaltungsrecht. Band 2. München: Verlag C. H. Beck, 2000, S. 679.

[15] *Stelkens, U.* Das Recht der Offentlichen Sachen: Allgemeines Verwaltungsrecht, Besonderes Verwaltungsrecht, Trümmerhaufen – oder was? *Die Verwaltung*, Band 46, Heft 4, 2013, S. 493.

[16] Ibid., S. 507–508.

[17] Ibid., S. 535.

[18] See, for instance, textbook on administrative law *Briede, J., Danovskis, E., Kovaļevska, A.* Administratīvās tiesības. Mācību grāmata [Administrative Law. Textbook]. Rīga: Tiesu namu aģentūra, 2016, pp. 232–247; *Jambuševa, L.* Ielas kā publiskas lietas statuss un tās parastā lietošana [Street as a public asset and its ordinary use]; *Jurista Vārds*, No. 38(890), 2015; *Briede, J.* Publisko lietu sevišķā lietošana [Particular Usage of Things for Public Use]. In: Tiesību efektīvas piemērošanas problemātika. Latvijas Universitātes 72. zinātniskās konferences rakstu krājums. Rīga: LU Akadēmiskais apgāds, 2014, pp. 211–318.

[19] *Saulītis, E.* Publisko personu īpašums un īpašuma realizācijas formas. Promocijas darbs [Public person's property and property rights]. Rīga: Biznesa augstskola "Turība", 2016, p. 40. Available: http://www.turiba.lv/f/Promocijas_darbs_E_Saul itis.pdf [last viewed 13.06.2019].

[20] Decision of the Department of Administrative Cases of the Supreme Court of 3 May 2011 in case No. SKA-482/2011. Available: http://www.at.gov.lv/downloadlawfile/4615 [last viewed 13.06.2019].

explained that "the term 'public asset' means an asset with a special status of its use provided by provisions of public law norms". This statement was supported with a reference to a German Administrative law textbook of professor Franz-Joseph Peine translated in Latvian.[21]

Unfortunately, the conclusion that a port is a public asset was too vague and superficial. The port territory consists of various objects – waterway, navigation facilities, docks, land areas used for different purposes (warehouses, cafeterias, living premises etc.). It is clear that some of these objects are exclusively governed by the port authority – aquatorium, waterway, navigation facilities, etc. Therefore, decisions of the port authority regarding availability and use of those facilities are adopted in the sphere of public law, i.e., they are manifestation of the public power. However, land area and docks are not exclusively governed by the port authority. Article 4, part one of the Law on Ports[22] states that land area in the port may be owned by either the state, local government or other legal of physical person. Part four of the same article prescribes that docks may be owned not only by the state and local government, but by other legal or physical persons as well. Therefore, according to the law, docks are a property that can be owned either by a public entity or by a private person. Most of the docks are owned by the state and these docks according to the part five of the Law on Ports are in the possession of the port authority which "may rent or lease the land owned by the State or a local government, or encumber it with easements for the purpose of constructing buildings and structures, surface and underground communications systems, or in order to perform other economic activities, particularly with respect to the right of use or right of use for construction. In such transactions a port authority shall act on behalf of land owners." Consequently, the port authority does not use an exclusive (public) right, but acts merely as any other owner of a dock. In practice, a long-term lease contracts are concluded on a lease of a dock – the private company usually invests huge resources to develop and maintain a dock for specific operations – reloading and storage of various chemicals, coal, timber etc. The accessibility of these docks for freight operations is dependent upon private transaction between the company renting or owning the dock and the company using the ship.

It should be rather clear that according to the law docks in the port are property owned by both public and private entities. Public entities have entrusted their property for economic development to the port authority. Therefore, there is no logical nor legal reason why the legal relationships between owner of the dock and renter of the dock should be considered as public legal relationships. Consequently, in 2013 the Parliament amended the Law on Ports by stating that the collection of rent payments is an activity performed by the port authority in the private sphere. Even before that, the law clearly stated that the port authority acts in the private sphere when it "manages the property owned or transferred to its possession – [..] docks [..]". Afterwards, the Supreme Court had to change its case law and concluded that now the legislator has clearly stated that the agreement between the port authority and a private company regarding the rent of a dock is a private law contract, and therefore disputes arising out of it are private law disputes not

[21] *Paine, F. J.* Vācijas vispārīgās administratīvās tiesības. Vācijas Administratīvā procesa likums [German General Administrative Law. German Federal Administrative Procedure Law]. Rīga: Tiesu namu aģentūra, 2002.

[22] Likums par ostām [Law On Ports]. *Latvijas Vēstnesis*, No. 80(211), 1994.

under the jurisdiction of administrative courts.[23] However, the Supreme Court has still consistently reminded that "in choosing a person with whom to conclude the rent contract the port authority as a public entity is not entirely free, because the port is a public asset and the decision on the person with whom to conclude a lease agreement is adopted in the public sphere."[24] Again, the argument about the port as a public asset is superficial, because the legal regulation on objects in the port is more complex and clearly states that all activities regarding docks are in the domain of private sphere and therefore free of burdens posed by the principles of public law. This example clearly shows the dangers of vague legal reasoning and uncritical transplantation of general examples in the textbooks on a foreign legal system in a current legal reality of another state.

Forests as Public Assets

A recent 'alarm bell' regarding erroneous use of the concept of public assets has been adopted in a case regarding a decision of a local government to agree to exchange land – a land area partially covered with forest owned by the local government and other area owned by a private person. The council of the local government adopted a decision in which it generally agreed to conclude a respective agreement and set preconditions for conclusion of such an agreement. This decision was contested in the administrative court by a third person – an environment protection association. The judge of administrative court refused to initiate proceedings because the contested decision was directed towards conclusion of private legal relationships and therefore according to consistent case law it was not an administrative act (not subject for judicial review in administrative courts). The Supreme Court ruled that the contested decision was not adopted in the sphere of private law. Supreme Court ruled that a forest owned by the local government is a public asset, because according to the Forest Law it is publicly available to everyone. With the reference to aforementioned book of German professor Franc-Joseph Peine, the Supreme Court concluded that a decision terminating public use of public asset is administrative act – "in this regard, there is no reason in Latvia to look differently towards thesis of the doctrine of public assets developed in the German Administrative law scholarship where termination of the use of a public asset is treated as an administrative act."[25]

The argumentation in this decision is false in two aspects. The first aspect concerns the reference to the German administrative law supporting the statement that a decision to terminate the status of a public asset is an administrative act – such a statement simply cannot be found in the respective reference. The page mentioned in the reference begins a chapter titled "Termination of allotment" (in German: *die Widmung*) and contains a short general statement that termination of allotment is made in the same way as establishment of allotment. The chapter

[23] Decision of the Department of Administrative Cases of the Supreme Court of 16 January 2018 in case No. SKA-825/2018. Available: http://www.at.gov.lv/downloadlawfile/5420 [last viewed 13.06.2019].

[24] Ibid., para. 7.

[25] Decision of the Department of Administrative Cases of the Supreme Court of 30 January 2018 in case No. 838/2018, para. 8. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/346942.pdf [last viewed 13.06.2019] – this text in the decision is based on a ference to the following work: *Paine, F. J.* Vācijas vispārīgās administratīvās tiesības. Vācijas Administratīvā procesa likums [German General Administrative Law. German Federal Administrative Procedure Law]. Rīga: Tiesu namu aģentūra, 2002, p. 434.

next explains termination of allotment of public roads.[26] In Germany rights to enter a forest for recreational purposes is prescribed by article 14 of the Federal Forest Law.[27] The respective article grants the right to enter a forest for recreational purposes irrespective of whether a forest in owned by a public person or private person. However, article 14, paragraph two stipulates that German Federal Lands are entitled to prescribe details and restriction regarding that right. In German legal literature, forests are treated as public assets only insofar as the law grants their public availability.[28]

The second aspect is the ignorance of allotment regulation in the Forest Law[29]. Article 5, part one of the Forest Law states that every physical person is entitled to free movement in forests owned by the state or local municipality. Article 16, part three of the Forest Law states that physical persons are entitled to gather fruits, mushrooms and other products of a forest owned by the state or local municipality. In this regard, the law prescribes general availability of forests owned by state or local municipalities. If a forest is owned by a private person, then that owner is entitled to limit availability of the forest (article 5, part two of the Forest Law). Therefore, the public availability of a forest for public use is dependent only upon a single legal criterion – ownership. The availability (allocation) of the forest for public use therefore is provided only by the law itself, and not a decision to conclude contracts of exchange, sale etc. Consequently, the decision if and how a public entity acquires or disposes of its forests does not include use of state power and therefore is not subject for judicial review. In the present case, the argument of Supreme Court regarding forest as a public asset was expressed obiter dictum, i.e., luckily the Supreme Court concluded that the claimant did not have subjective rights to contest the decision of the local government.

This example illustrates that a careless reference to the German legal literature can lead to superficial results. Although generally the Forest Law grants rights to free access and use of the forest, it is indeed rather hard to imagine how in the use of these rights the concept of public asset could be of importance.

3. True and Safe Contents of the Public Assets Concept

The approach and cases introducing the concept of 'public assets' in the Latvian legal system has been severely criticized before, even as far as stating that "the argumentation of several decisions of the Supreme Court regarding public assets raises doubt whether they correspond to the legal regulation and the will of the legislator."[30] However, the occurrence of this subject in administrative law in some ways is inevitable, because it is a logical consequence of division between public legal relationships and private legal relationships.

The division of public and private legal relationships depends upon a following criterion: if a public person adopts a decision that, according to legal provisions, in

[26] *Paine, F. J.* Vācijas vispārīgās administratīvās tiesības. Vācijas Administratīvā procesa likums [German General Administrative Law. German Federal Administrative Procedure Law]. Rīga: Tiesu namu aģentūra, 2002, p. 434.

[27] Gesetz zur Erhaltung des Waldes und zur Förderung der Forstwirtschaft. Available: https://www.gesetze-im-internet.de/bwaldg/BJNR010370975.html [last viewed 13.06.2019].

[28] *Wolff, H., Bachof, O., Stober, R.* Verwaltungsrecht. Band 2. München: Verlag C. H. Beck, 2000, S. 681.

[29] Meža likums [Forest Law]. *Latvijas Vēstnesis*, No. 98/99(2009/2010), 2000.

[30] *Saulītis, E.* Publisko personu īpašums un īpašuma realizācijas formas. Promocijas darbs [Public person's property and property rights]. Rīga: Biznesa augstskola "Turība", 2016, p. 39. Available: http://www.turiba.lv/f/Promocijas_darbs_E_Saulitis.pdf [last viewed 13.06.2019].

similar situation could also be made by a private person, then the public person does not use the state power.[31] Indeed, the state power – exclusive rights by their nature – is the only safe legal criterion to determine which actions of a public person should be treated as public legal relationships and therefore subject to judicial review in administrative courts and which – as ordinary private legal relationships or a simple management of one's own property. In this regard, it is obvious that there are objects which, according to their nature or legal provisions, are in exclusive management of a public person, like public roads, rivers, air space, the sea and seaside, parks owned by local governments, collection of the National Library etc. There are two cumulative criteria with a practical significance to mark an object as a public asset:

1) the object according to its nature or legal provisions is in an exclusive management or supervision of a public entity;
2) the object has been allocated to a public (common) use.

Only these criteria may rise legally relevant issues to be decided by the administrative courts, namely, disputes regarding designating these assets for special use (permissions to use streets for souvenir trade, permission to organise fireworks on a river, etc.) and disputes regarding equal availability to those objects.

Objects used for purposes of government tasks should not be included in this concept, because most of them by their nature may also be used for other purposes. For instance, sometimes public schools have been considered as 'public assets'[32]. Although the school premises are used for performing government tasks (public education), the building as such contains premises just like any other building – it has corridors, rooms with doors and windows, etc. The local government, which usually owns the building, may use it for different purposes as well, for instance, to lease a part of those premises for a private company to establish cafeteria or the school hall for dance lessons on Sundays. Disputes regarding the availability of those premises for lease should not be considered as public-law disputes, because the local government manages these premises as any other owner of a property when it is not used for educational purposes. It is merely a matter of efficiency and usefulness for the owner to decide whether the premises should or should not be leased to private persons for other purposes. This is more evident in the case when the school building itself does not belong to the local government but a part of it is leased from a private entity.

An example with the National Library may also be useful to explain the necessity of distinction between various kinds of objects owned by the state. According to the Law on National Library, "the collection of the National Library of Latvia and databases are generally accessible State property."[33] Therefore, according to the law, the issues regarding use and accessibility to the collection of

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[31] This criterion has been widely used both in the legal doctrine (*Briede, J., Danovskis, E., Kovaļevska, A.* Administratīvās tiesības. Mācību grāmata [Administrative Law. Textbook]. Rīga: Tiesu namu aģentūra, 2016, p. 25; *Danovskis, E.* Publisko un privāto tiesību dalījuma nozīme un piemērošanas problēmas Latvijā [Importance and Problems of Application of Public-Private Law Divide in Latvia]. Rīga: Latvijas Vēstnesis, 2015, p. 241) and case law (see, for instance, Judgment of Department of Civil Cases of the Supreme Court of 28 February 2017 in case No. SKC-49/2017, para. 9. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/301014.pdf [last viewed 13.06.2019]; Decision of the Department of Administrative Cases of the Supreme Court of 16 October 2018 in case No. SKA-1515/2018, para. 7. Available: https://manas.tiesas.lv/eTiesasMvc/nolemumi/pdf/365429.pdf [last viewed 13.06.2019]).

[32] *Briede, J., Danovskis, E., Kovaļevska, A.* Administratīvās tiesības. Mācību grāmata [Administrative Law. Textbook]. Rīga: Tiesu namu aģentūra, 2016, p. 233.

[33] On the National Library of Latvia. Article 3, part 1. *Ziņotājs*, No. 1/2, 1993.

the library are performed within the sphere of public law. However, if the library for some reason refuses access to the collection of the library (for instance, because the person has breached library rules) then the dispute can be resolved without any reference to the concept of 'public assets'. It is obvious that accessibility and use of the collection of the library is within the realm of government's tasks and that the state manages this property not as any other owner. However, accessibility to other premises of the National Library building, for instance, conference hall, are not as such allocated for public use, therefore decisions regarding availability of those premises are of purely private nature. It would be quite wrong to state that 'library is a public asset' without specifying to which part or use of the 'library' (i.e., collection, building, etc.) this expression is attributed.

Consequently, in future development of case law regarding disputes on the use of public assets it is very important not to use generalizations or examples from another legal system, because legal regulation and details are of utmost importance in determining whether the use of an asset constitutes the use of public power or is merely a management of property. It is also doubtful whether a concept of 'law on public assets' should be separated as a distinct branch of administrative law, since there are very few common principles regarding the use of public assets. From the doctrinal point of view, the 'law on public assets' in textbooks is mostly descriptive accounts on the meaning and types of public assets, types of allocation for public use and types of use of public assets. However, when one looks closer into legal regulation of particular public assets, a very complex picture is revealed. A notable German law professor Hartmut Maurer explains omission of chapter on public things in his classical work on General Administrative Law by stating that "this area for students is most actual within the context of road laws which usually is dealt within the special part of administrative law."[34] Therefore, although the concept of public assets undeniably exist in the Latvian legal system and is a consequence of use of public power towards several assets available for public use, it implies so few general legal consequences that for the time being it does not form a unified system of legal rules regulating the use of these assets.

Summary

1. The concept of public assets in Latvia is a consequence of division between the public and private law. If an asset according to its nature or legal provisions is in an exclusive management or supervision of a public entity and the object has been allocated to a public (common) use, then legal relationships regarding the public use of the asset by private persons are public legal relationships, i.e., disputes are resolved in the administrative courts in accordance with the principles of public law.
2. The development of the public assets concept has been elaborated in the case law of the Department of Administrative Cases of the Supreme Court in the past 10 years. The concept has clearly been derived from the German administrative law, where the debate regarding its scope and system is still ongoing. Overly literal approach adhering to the German concept of public assets and vague generalizations have led to inconsistencies with the existing legal practices and law, which have treated the lease and sale of several

[34] *Maurer, H.* Allgemeines Verwaltungsrecht. 17. Auflage. München: Verlag C. H. Beck, 2009, S. VIII.

properties, including docks in the ports and forests owned by public entities as activities within the realm of private law.

3. Since the practical effect of the public assets concept is to determine whether and how private persons are entitled to use public assets, and since the right to use public assets is completely dependent upon legal acts providing allocation of public use, in further case law a particular attention should be devoted to scope and content of allocation (subjective rights to use the asset) and determining whether the allocation of the asset to public use is a manifestation of public power (exclusive rights to manage the asset).

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