

ISSUES OF LICENSING OF WHOLESALE AND RETAIL TRADE IN ALCOHOL PRODUCTS IN LITHUANIA

Objective of the article is to analyse issues of administrative legal regulation for licensing of wholesale and retail trade in alcohol products in Lithuania and to provide reasonable proposals for directions and methods in order to streamline the regulation. As a result of research were formulated a few conclusions. The sanction of the institutions of public administration for violations of licensing procedure for trade in alcohol products is as often as not based on provisions of the Law is disproportionate with respect to the committed violations. Besides in Lithuania there is no unified national database for licenses granted to economic subjects allowing carrying out production, import and export of alcohol products. The author notes segmentation of the object of administrative legal regulation for licensing of retail trade in alcoholic beverages into ten smaller objects based on the period and place of sales of alcoholic beverages and potency of these beverages adds more confusion to the licensing system and aggravates access of fair business subjects to the market. As well licensing practice lacks consistent position with regards to business interest to engage in retail trade in alcoholic beverages and compete freely, relation of proportionality between limitations in the market of trade in alcoholic beverages and ensuring of public interest in safe, cultures environment and peace.

Keywords: Alcohol Products, Licensing, Wholesale Trade, Retail Trade



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Introduction

Legal literature defines Licensing as an activity of an institution granting a license in relation to granting, suspension, lift of suspension of or supervision of compliance with a license[1; p. 215]. Topicality of the research is attributable to the still existing fundamental shortages of administrative legal regulation for licensing in the sphere of licensing of particular economic (commercial) areas of activity in Lithuania: the State frequently establishes disproportionately and unreasonably strict, bureaucratically complex licensing conditions for a particular activity, which prevent elements of market mechanism from versatile actualization and suspend attraction of foreign investment (that also results to respective price level of goods and services and restricts business development, i.e. has a negative impact on majority of society members), as well as unjustifiably and unreasonably strict procedure for verification of a licensed activity. There are usually loopholes

left in legislation, which paves the way for public administration subjects which take decisions regarding licensing of certain activities to misuse their discretion.

The specified issues are particularly clear in the area of licensing of trade in alcohol products. There are still no indications of significant positive improvements in the implementation of the stated objectives, even though legislators of primary and secondary legislation, as well as State and municipal institutions, which exercise such legislation and the ones that supervise its enforcement, pay considerable attention to restriction of alcohol availability and reduction of the harm posed by alcohol to health and economy (such effect, *inter alia*, is intended to set forth adequate legal regulation for licensing of trade in alcohol products).

Objective of the Article is to analyse issues of administrative legal regulation for licensing of wholesale and retail trade in alcohol products in Lithuania and to provide reasonable proposals for directions and methods in order to streamline the regulation.

The following **tasks** have been formed in order to achieve the objective:

1. To analyse provisions of legislation of Lithuania regulating the procedure for licensing of wholesale and retail trade in alcohol products, as well as fundamental issues of legal regulation of licensing and its practical implementation.

2. To reveal and analyse case-law in the area of licensing of wholesale and retail trade in alcohol products.

Methods of analysis, abstraction, alternatives, modelling, systematic and generalisation have been used for the purpose of writing this article.

Licensing of Wholesale Trade in Alcohol Products

Licensing of wholesale trade in alcohol products is regulated by the Article 16 of the Law on Alcohol Control and the Rules on Licensing of Wholesale and Retail Trade in Alcohol Products approved by the Resolution № 618 of the Government of the Republic of Lithuania of 20 May 2004 [2].

Licensing objects of the wholesale trade in alcohol products are provided for in the provisions of Items 3 and 4 of the Rules on Licensing of Wholesale and Retail Trade in Alcohol Products.

It should be noted that the licenses set out above are granted, supplemented, adjusted by the Drug, Tobacco and Alcohol Control Department, which also notifies about possible suspension or lift of suspension of licenses, suspends licences, revokes license suspension and validity, as well as issues duplicates of licenses. This Department also supervises the compliance of license-holders for wholesale trade in alcohol products with the conditions of the licensed activity.

Attention is drawn to the fact that subjects who may supply such products to the persons who carry out wholesale trade in alcohol products and to whom the products may be later sold, also generally fall into the range of subjects who are subject to administrative legal regulation for licensing. Let's assume that undertakings which hold license to carry out wholesale trade in alcohol products can acquire such products within the Republic of Lithuania only from the undertakings, which are licensed to produce them or engage in wholesale trade thereof, and can mostly sell them only to the undertakings which hold licenses to engage in

wholesale and retail trade in alcoholic beverages and to export alcohol products (with several exceptions when wholesale trade in alcohol products is carried out with ship managers and aircraft owners carrying passengers on international routes; with diplomatic representative offices of foreign states, consular institutions and representative offices of international organizations accredited at the Ministry of Foreign Affairs, etc.).

Item 7 of the Paragraph 3 of the Article 17 of the Law on Alcohol Control provides for that license is not mandatory in the cases when ethyl alcohol (alcoholic beverage) acquired for the manufacturing purposes turns into another alcohol product during manufacturing operation and that other product is fully used up for the production of any other end non-alcohol product, as well as in the cases when alcohol is used for technical, medical, veterinary needs or for scientific research. Rule in Paragraph 13 of the mentioned Article also provides for that undertakings, institutions and organisations which, in accordance with the established procedure, have acquired ethyl alcohol for production, technical, medical, veterinary needs or for scientific operations are prohibited from using it for other purposes. Violation of the prohibition by the specified subject may incur in a fine in the amount from LTL 1.000 to LTL 50.000 (Paragraph 2 of the Article 34 of the Law on Alcohol Control).

Experts of the Lithuanian Free Market Institute observe several fundamental shortcomings in the aforementioned provisions of the Law on Alcohol Control [3]. Firstly, they argue that the size and content of the said fines is equiva-

lent to those of criminal penalties, although these fines are imposed by the Drug, Tobacco and Alcohol Control Department and not by the courts, therefore there are substantial doubts if the participants of the mentioned fine imposition process are provided with the same procedural safeguards as the participants of criminal process. Secondly, subjects who hold licenses to engage in wholesale trade in alcohol products are expected to verify if the buyers of the marketed production hold licenses to carry out wholesale and retail trade in alcoholic beverages, licenses to export alcohol products, etc. According to the Free Market Institute, such restrictions for realisation of alcohol products oblige undertakings to perform unusual functions; therefore such regulation is groundless and needlessly restricts undertakings. The said institute also criticizes the instrument of responsibility applied for the subjects who fail to comply with the conditions for execution of wholesale trade in alcohol products, i.e. withdrawal of a license (to be more precise – procedure for application of this instrument), by indicating that withdrawal of a license may be equal to the bankruptcy of an undertaking, therefore application of such strict penalty should be always sanctioned by the court and withdrawal of a license should only be subject to the most serious violations of the licensing procedure. For instance, provision of the Paragraph 17 of the Article 34 of the Law on Alcohol Control, which has been valid till 24 April 2006 and has provided for application of the most serious sanction, i.e. withdrawal of a license, even in the cases when the undertaking engaged in trade

in alcohol products could not manage to justify legal acquisition of just one marketed bottle with alcoholic beverage during the time of inspection [4]. However, after recognizing the inadequacy of sanctions, the aforementioned legal regulation has been rejected. Constitutional Court of the Republic of Lithuania has also recognized with its ruling on 21 January 2008 that withdrawal of license to sell alcohol products based only on the fact that these products have been kept in a place other than the one specified in the license (such sanction has been provided for in the Items 34 and 51.6 of the wording of Rules on Licensing of Wholesale and Retail Trade in Alcohol Products, which was valid till 31 December 2008) should be considered as a sanction which is inadequate and disproportionate with respect to the nature of the sanction. Therefore it should be agreed with the representatives of administration of the licensed undertakings that, in the case of a less significant violation, the Drug, Tobacco and Alcohol Control Department should at first warn the subject who has committed (or is in the process of committing) violation and to oblige the subject to remedy the deficiencies of the activity during the defined period, instead of applying sanctions right away [5]. In addition, according to the Lithuanian Free Market Institute, withdrawal of a license is an inefficient penalty in general with respect to prevention, since its effect may be avoided by performing re-registration of an undertaking or officially transferring the property or undertaking's management to other persons.

The idea of transferring of process for application of large-scale penalties

(for violations of licensing procedure) and withdrawal of a license to the court should be considered as a more significant one. Although license-holders can currently challenge the penalties imposed by the Drug, Tobacco and Alcohol Control Department in the courts, but certain differences between procedural and process peculiarities of imposition of penalties prevent the aforementioned subjects from making full use of wider procedural safeguards in the pre-trial stage of a case and make a pre-trial case hearing quite official and determine high possibility for the resolutions adopted by the Drug, Tobacco and Alcohol Control Department to be challenged in the courts. For instance, if a subject, which holds a license of wholesale and retail trade in alcohol products, commits a small-scale violation of procedure for compliance with licensing conditions, the subject of public administration, which is authorized to decide on withdrawal of a license of wholesale and retail trade in alcoholic beverages (i.e. the Drug, Tobacco and Alcohol Control Department and municipal enforcement authority), has no right of option to decide to withdraw or not to withdraw a license subject to the violation provided for in the Paragraph 17 of the Article 34 of the Law on Alcohol Control, i.e. such subject of public administration must withdraw a license (procedural decisions of the Supreme Administrative Court of Lithuania in administrative cases № A438-2130/2011[6], № A261-96/2009[7], № A525-346/2009[8], etc.). And only in the cases, when holder of the license subject to withdrawal appeals such decision of the subject of public administration to the administrative court, the court may

decide that the aforementioned sanction must not be applied, since due to certain extremely important circumstances it is apparently deemed disproportionate (inadequate) with respect to the committed infringement of law and thereupon is unjust. Such reasonably artificial procedure for application of sanctions for violations of licensing procedures forces to consider whether enabling the aforementioned public administration authorities (institutions) to mitigate responsibility (without applying sanction of license withdrawal), or fully transferring the procedure of application of the aforementioned sanction to the administrative courts.

Besides, attention should also be paid to none too consistent case-law of administrative courts when it comes to proportionality and adequacy of economic sanctions (fines and withdrawal of licenses) applied for the licensed subjects. The latter criteria are evaluative, therefore, let's say, in certain administrative cases[9] keeping of more than ten or even tens of litres (bottles) of alcoholic beverages in the trading venue without possessing documents approving acquisition of such alcohol products may be considered as a small-scale violation which does not give rise to application of the strictest sanctions, while in other cases[10] violation of similar nature and scale is approached as sufficient in order to apply such sanctions.

In view of the fact that undertakings which carry out wholesale trade in alcohol products are usually short of information about the types of subjects that hold valid licenses for wholesale and retail trade in alcohol products[5], having in mind dynamic and fairly fast procedures of granting and withdrawal of such

licenses and the fact that each municipality possess its own database containing granted licenses to engage in retail trade in alcohol products in order to facilitate implementation of the mentioned control function (contribution to its implementation) for the wholesalers of alcohol, it is suggested to establish a unified (centralised) and publicly available national database, where data about subjects holding the aforementioned licenses would be stored and constantly updated.

Summarizing the analysis carried out in this part, attention should be paid to the pursue of the implementation of the objective of licensing of wholesale trade in alcohol products, i.e. restricting availability of alcohol products by employing inadequate, disproportionate and ineffective means: 1) The strictest sanction of the Drug, Tobacco and Alcohol Control Department for violations of licensing procedure for trade in alcohol products (i.e., withdrawal of license for wholesale trade in alcohol products) is as often as not based on provisions of the Law on Alcohol Control and is disproportionate with respect to the committed violations, therefore it enables and creates background not for the restriction of availability of alcohol products, but for the reduction of competition between business subjects in the area of wholesale trade in alcohol products and, respectively, for violations of legal interests of consumers and users of alcohol products. Constitutional Court of the Republic of Lithuania has stated that withdrawal of license of trade in alcohol products should only be subject to non-compliance with and violation of fundamental conditions for being in the market of trade in alcohol prod-

ucts in order to exclude unfair participants from the market[11]; 2) In the absence of the unified national database for licenses granted to economic subjects allowing to carry out production, import and export of alcohol products, the wholesalers of alcohol products cannot be reasonably required to properly implement the verification obligation in order to verify, if the subject which acquires alcohol products from them hold relevant licenses.

Licensing of Retail Trade in Alcoholic Beverages

Paragraph 3 of Article 16 of the Law on Alcohol Control provides for that «only the undertakings holding licences to engage in retail trade in alcoholic beverages shall be permitted to engage in retail trade in alcoholic beverages». Meanwhile the Rules on Licensing of Wholesale and Retail Trade in Alcohol Products provides for several types of licenses to engage in retail trade in alcoholic beverages.

Analysis of these two legislations reveals that the Paragraph 3 of the Article 16 of the Law on Alcohol Control indirectly designates a legal regulation object of licensing of retail trade in alcoholic beverages, i.e. interpersonal relations developing between the respective subjects during the trade in alcoholic beverages, that is split into the following licensing forms in the very same norms of legislation: general licensing of retail trade in alcoholic beverages; licensing of retail trade in alcoholic beverages in recreational and tourist areas during the recreational and tourist season period and licensing of retail trade in alcoholic beverages at public events, exhibitions and

fairs. Meanwhile provisions of secondary legislation, with reference to criteria of potency of alcoholic beverages (concentration of ethyl alcohol within them), additionally splits the aforementioned three objects into ten smaller objects.

Besides, types of licenses provided for in the Items 3 and 4 of the Rules on Licensing of Wholesale and Retail Trade in Alcohol Products are extraordinary, since certain specified license types are considered as including other, smaller license types, for example, a license to carry out retail trade in alcoholic beverages includes all the rest of the nine license types, while a license to carry out retail trade in alcoholic beverages with ethyl alcohol concentration not exceeding 22 per cent should include both a license (permit) to engage in retail trade in beer, beer blends with non-alcoholic beverages and naturally-fermented cider of not more than 8.5 per cent ethyl alcohol concentration, and seasonal as well as onetime licenses to engage in retail trade in alcohol products. Logically, license types that provide for higher limit of ethyl alcohol concentration in alcoholic beverages should also include a permit to engage in trade in weaker alcoholic beverages, while permits to engage in long-term retail trade in alcoholic beverages should include licenses granted for a shorter term of trade therein. On the one hand, such segmentation of legal regulation object for licensing of retail trade in alcoholic beverages works to the advantage of differentiation of taxation for licenses of different types, yet on the other hand, it adds confusion to the control system of licensing of retail trade in alcoholic beverages and compliance with license con-

ditions, in particular, given that, licenses granted for retail trade in alcoholic beverages must anyhow contain groups of alcoholic beverages that are allowed to be marketed and maximum ethyl alcohol concentration thereof, following Items 9.3 ad 9.4 of the Rules on Licensing of Wholesale and Retail Trade in Alcohol Products. Admirable examples of foreign countries, such as the one of Great Britain, where business subjects engaged in trade in alcohol products have experienced significant facilitation of business conditions after combining several types of licenses granting the right to engage in such activity which has led to a more transparent procedure for granting of licenses, demonstrates the need and necessity to streamline the procedure for licensing of retail trade in alcoholic beverages [5].

It is also to be noted that, unlike in the cases of licensing of wholesale trade, licensing of retail trade in alcohol products is limited to alcoholic beverages, therefore it is not permitted to trade in other alcohol products upon the possession of such license. Unlike in the cases of licensing of wholesale trade, retail trade in alcoholic beverages may be subject to appointment of both perpetual and time-limited licenses. For example, licences to engage in seasonal retail trade in beer and alcoholic beverages whose ethyl alcohol concentration volume does not exceed 22 % in resorts and other recreational and tourist areas designated by the municipal councils must be issued for the resort, recreational and tourist season period set by the municipal councils. Onetime licences issued to retail establishments and catering establishments to engage in sale of alcoholic beverages

whose ethyl alcohol strength by volume is not over 13 % at public events, exhibitions and fairs and also, to engage in the sale of all alcoholic beverages at exhibitions and fairs held in permanent buildings, must be issued for no longer than the time of the event's. Therefore, the latter provisions of the Paragraph 3 of the Article 16 of the Law on Alcohol Control provides for an exception of the rule established in the Paragraph 1 of the Article 2.79 of the Civil Code of the Republic of Lithuania[12] that licenses must be granted in perpetuity.

Licenses to engage in retail trade in alcoholic beverages are granted by the respective municipalities, while the Drug, Tobacco and Alcohol Control Department control the issuance of licences in the municipalities. Therefore, licensing of retail trade in alcoholic beverages, unlike in the cases of licensing of wholesale trade, is appointed to central enforcement authorities, instead of municipal ones. In addition, content of capacity for subjects of licensing in retail trade in alcoholic beverages also differs due to the fact that persons who hold license to engage in retail trade in alcoholic beverages can sell such products not only for special subjects who are usually licensed as well, but also for natural and legal persons who do not possess any special capacity.

It should be noted that appointment of trading venue and trading time for sales of alcoholic beverages is of a much more significant importance when it comes to licensing of retail trade in such beverages. Item 19.1 of the Rules on Licensing of Wholesale and Retail Trade in Alcohol Products 19.1 provides for that an undertaking which wants to ac-

quire license to engage in retail trade in alcoholic beverages must submit a reasoned application to the municipal enforcement authority by specifying <...> time and place (its address and name) for trade in alcoholic beverages, method of trade in alcoholic beverages (for on-site and/or off-site consumption), activity types of the undertaking (trading or public catering) and addresses of warehouses where alcoholic beverages are stored and distributed from. Meanwhile currently valid legal regulation, its interpretation and practical application recognizes that, let's say, possession of alcoholic beverages in a trading venue which is not specified in the license, when the license is granted to engage in production of or wholesale trade in alcohol products, is usually not considered as a serious violation of licensing rules, in the case of retail trade in alcohol products this can lead to application of a fairly strict sanction, i.e. suspension of a license to engage in retail trade in alcoholic beverages, since the violation of the mentioned requirement in relation to the trading venue may significantly increase availability of alcoholic beverages, strictly violate public interest and order and endanger the safety of the persons residing or being present near to the illegally changed place of trading in alcoholic beverages, as well as to violate their interest in a calm and safe living environment. Similar or even stricter legal consequences may be expected in case of violation of other important requirements of procedure for licensing of retail trade in alcoholic beverages, i.e. an obligation to trade in alcoholic beverages only during the period of time and using a method specified in the li-

cense and following the requirements for the undertaking's activity type (trading or public catering) provided for in the license. However, attention should be paid to the fact that in the case of licensing of retail trade in alcoholic beverages, unlike in the case of licensing of wholesale trade, violation of fundamental rules of licensing may lead to withdrawal or suspensions of a license(s) only in those trading venues, where violations have been found (Paragraph 17 of the Article 34 of the Law on Alcohol Control), and not to the limitation (withdrawal) of a right of a certain economic subject to engage in retail trade in alcoholic beverages in general.

Subjects who seek to be engaged in and/or are engaged in retail trade in alcoholic beverages are also subject to other requirements related to time and venue for marketing of such beverages. For example, licenses to engage in retail trade in alcoholic beverages are not granted to trading, public catering undertakings and kiosks which are established in warehouses where wholesale trade in alcoholic beverages takes place (Item 16.4 of the Rules on Licensing of Wholesale and Retail Trade in Alcohol Products). Paragraph 4 of the Article 16 of the Law on Alcohol Control also provides for that the undertakings willing to engage in retail trade in alcoholic beverages at the retail establishments and catering establishments set up in multi-dwelling buildings shall be issued licences where these undertakings present, in accordance with the procedure established by the Government of the Republic of Lithuania, a consent of a meeting (board) of the community of flat owners of a residential building or, where the community has not

been established or the community manages more than one multi-dwelling building, a consent of the majority of owners of the residential building's premises and tenants of non-privatised flats (the persons signing the consent may indicate therein the time of trade in alcoholic beverages).

In the Republic of Lithuania, the sale of alcoholic beverages in retail establishments is prohibited from 10 p.m. to 8 a.m. (Item 11 of the Paragraph 3 of the Article 18 of the Law on Alcohol Control). This prohibition does not apply to the alcoholic beverages sold on international trains, ships, aircrafts carrying passengers on international routes, in the tax-free shops and sales outlets in which alcoholic beverages are sold only for passengers departing from the Republic of Lithuania. Paragraph 9 of the Article 18 of the Law on Alcohol Control also provides for that, taking into consideration the location of trade in alcoholic beverages and the opinion of residents, societies, communities or representatives thereof, public organisations or other institutions as stated in writing, proposals of police commissioner's offices, municipal councils have the right to restrict the time during which it is allowed to sell alcoholic beverages, not to issue a licence to engage in retail trade in alcoholic beverages. The case-law [13] emphasises that these limitations should correspond to legal and globally important objectives, the measures applied must be proportionate with respect to reasonable administration objectives and must not restrict a person evidently more than it is needed in order to achieve those objectives, decisions made by municipal authorities on behalf of the interests of the community

must not violate rights of individual citizens as guaranteed by the laws. In fact, the aforementioned proportionality criterion is evaluative; therefore even the Supreme Administrative Court of Lithuania may sometimes establish different relation of proportionality between the limitation of interest in engagement in retail trade in alcoholic beverages and the public interest in safe, cultured environment and peace, in similar situations [13; 14]. In certain cases [15], probability of violation of public interest in a safe, cultured environment and peace is deemed sufficient in order to justify time limitations for sale of alcoholic beverages, and it is not mandatory to submit documents proving the facts of violations of public order near the respective place of alcohol sale or within it, meanwhile in other cases [13; 16] even submission of the documents proven such facts may sometimes be deemed insufficient to substantiate the proportionality of limitations of time for sale of alcoholic beverages.

In the administrative case № A492-2814/2011, the Supreme Administrative Court of Lithuania has also formed an important rule for application of the limitations provided for in the Paragraph 9 of the Article 18 of the Law on Alcohol Control in relation to necessity to ensure equal business opportunities for all establishments engaged in trade in alcoholic beverages in a certain area. UAB «Dominika», applicant in the case in question, has stated that a bar «Šaulys», operating from 7 a.m. until midnight about 100 meters away from the beer bar belonging to the applicant, has not been subject to time limitation for sales of alcoholic beverages, thus

the applicant has been unreasonably discriminated and the other economic subject gains an advantage. The Supreme Administrative Court of Lithuania, even bearing in mind that violations of public order take place after 10 p.m. near the bar managed by UAB «Dominika», has extended sale of alcoholic beverages for the applicant till midnight in order to provide the applicant with an opportunity to carry out economic activity equally to other economic subjects in the same market. It must be held that in this case the court has unreasonably intercepted the implementation of an obligation of public administration subjects who carries out licensing activity to ensure free and fair competition between the licensed subjects by deviating from its own practice which, while evaluating validity and proportionality of the time limitation for sale of alcoholic beverages, obliges to initially consider the possibility to coordinate interest of alcohol trading business and public interest in safe, cultured environment and peace, instead of considering the necessity to maintain free and fair competition between alcohol trading subjects. It was the latter aspect that the Supreme Administrative Court of Lithuania preferred in the aforementioned case. In addition, attention should be paid to the fact that, in order to ensure fair competition between the subjects selling alcoholic beverages, the court had to initially evaluate the fact that there are constant violation of public order in the environment of one of the specified subjects (i.e. applicant UAB «Dominika»), meanwhile public order is maintained in the environment of the

other subject, bar «Šaulys», and near its area, or at least there are no complaints received regarding violations of public order, therefore it is obvious that the right of the applicant UAB «Dominika» to free competition in the market of trade in alcoholic beverages could be and had to be limited with respect to other economic subject operating in the same market by emphasizing the necessity to defend public interest. Such interpretation and evaluation of the Law and totality of actual circumstances of the case also corresponds to the position formed in the case № A492-2799/2011[15] considered by the Supreme Administrative Court of Lithuania that Paragraph 9 of the Article 18 of the Law on Alcohol Control provides for a trading venue as an evaluative criterion in evaluation of time limitation for sale of alcoholic beverages, therefore in the presence of an unfavourable criminal situation in a certain place, repetitive violations of public order may be considered as a sufficient cause to limit time of sales of alcoholic beverages, independent of a guilt (presence or absence thereof) of the subject engaged in trade in alcoholic beverages due to the occurrence of situation.

There other reasons why case-law of the Supreme Administrative Court of Lithuania in the area of time limitation for sales of alcoholic beverages should not be deemed consistent. For example, in administrative cases № A492-2814/2011[15], № A261-517/2009[14] and № A756-1047/2009[17] the Supreme Administrative Court of Lithuania has emphasized that municipality is not obliged to determine and consider respective

violations of law specified by citizens, communes, communities or their representatives, public organizations or other institutions, as a suggestion to limit time for sales of alcoholic beverages. Meanwhile in other cases [18] it states the necessity to verify the validity of actual circumstances laid out in the applications and requests of the aforementioned subjects, as well as to carry out an investigation in order to fully investigate such circumstances.

The following conclusions can be drawn after evaluating and summarizing the above: 1) Segmentation of the object of administrative legal regulation for licensing of retail trade in alcoholic beverages into ten smaller objects based on the period and place of sales of alcoholic beverages and potency of these beverages adds more confusion to the licensing system and aggravates access of fair business subjects to the market and their competition therein; 2) Licensing practice lacks consistent position with regards to business interest to engage in retail trade in alcoholic beverages and compete freely, relation of proportionality between limitations in the market of trade in alcoholic beverages and ensuring of public interest in safe, cultures environment and peace and there is no consistent practice in terms of level of completeness and validity of decisions of municipal councils concerning time limitation for sales of alcoholic beverages.

Bibliography:

1. Bakaveckas A. Lietuvos administracinė teisė : bendroji dalis (Administrative Law of Lithuania : General Part). Vilnius: Mykolas Romeris University Publishing Centre, 2005. – 215 lpp.
2. Resolution № 618 of the Republic of Lithuania «On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcohol Products and the Rules on the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering» of 20 May 2004 // Valstybės žinios (Official Gazette). – 2004. – № 84–3050.
3. Lithuanian Free Market Institute. Analysis and conclusions of the Draft Law on Alcohol Control, 04/11/2003 [interactive]. – Access over the Internet : http://www.lrinka.lt/index.php/analitiniai_darbai/alkoholio_kontroles_istatymo_projekto_analize_ir_isvados/1569;from_topic_id;151.
4. Ruling of the Supreme Administrative Court of Lithuania of 12 March 2008 in an administrative case T. O. Undertaking «Biguva» v. Vilnius City Municipality Administration, Case № A143 – 16/2008, cat. 25.
5. Systematic Analysis Study on Licensed Activity Types: Applied Research Work. The study has been prepared by the Professional Law Partnership «Jurevičius, Balčiūnas ir Bartkus» in collaboration with the Department of Civil Law and Civil Procedure of Faculty of Law of Vilnius on the request of Ministry of Economy of the Republic of Lithuania. November 2005. P. 55 [interactive]. – Access over the Internet : <http://www.ukmin.lt/lt/strategija/doc/studija-lru00-final-05-12-01-lt.pdf>.
6. Ruling of the Supreme Administrative Court of Lithuania of 11 July 2011 in an administrative case UAB «Vengriško maisto ir gėrimų ambasada» v. Vilnius City Municipality Administration, Case № A438-2130/2011, cat. 10.6.1.1; 10.10.
7. Ruling of the Supreme Administrative Court of Lithuania of 19 January 2009 in an administrative case UAB «Nimfėja» v. Vilnius City Municipality Administration, Case № A261–96/2009, cat. 20; 79.1.
8. Ruling of the Supreme Administrative Court of Lithuania of 6 April 2009 in an administrative case TŪB «Penki laipsniai» v. Vilnius City Municipality Administration, Case № A525–346/2009, cat. 38; 26.

9. Ruling of the Supreme Administrative Court of Lithuania of 8 October 2009 in an administrative case UAB «Palink» v. Šiauliai District Municipality Administration, Case № A146-1224/2010, cat. 38; Ruling of the Supreme Administrative Court of Lithuania of 19 October 2009 in an administrative case UAB «Čilija» v. Vilnius City Municipality Administration, Case № A-438-1229/2009, cat. 20.

10. Ruling of the Supreme Administrative Court of Lithuania of 27 August 2009 in an administrative case UAB «Sanmeridus» v. Vilnius City Municipality Administration, Case № A502 – 1059/2009, cat. 38; Ruling of the Supreme Administrative Court of Lithuania of 14 April 2009 in an administrative case UAB «Dovlitas» v. Vilnius City Municipality Administration, Case № A525 – 463/2009, cat. 38.

11. Ruling of the Constitutional Court of the Republic of Lithuania of 21 January 2008 «On the compliance of Paragraph 8 (wording of 9 March 2004) of Article 18, Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 and Article 41 (wording of 9 March 2004) of the Republic of Lithuania Law on Alcohol Control with the Constitution of the Republic of Lithuania, on the compliance of Items 28.5 and 51.5 (wording of 20 May 2004) and Item 51 (wording of 20 May 2004) of the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products approved by Government of the Republic of Lithuania Resolution № 618 «On Approving the Rules of Licensing the Wholesale and Retail Trade in Alcoholic Products and the Rules of the Retail Trade in Alcoholic Beverages at the Enterprises of Trade and Public Catering» of 20 May 2004 with the Constitution of the Republic of Lithuania, Paragraph 17 (wordings of 9 March 2004 and 25 April 2006) of Article 34 of the Republic of Lithuania Law on Alcohol Control, on the compliance of Item 51 (wording of 17 October 2006) of these rules with the Constitution

of the Republic of Lithuania and Paragraph 17 (wording of 25 April 2006) of Article 34 of the Republic of Lithuania Law on Alcohol Control, as well as on the compliance of Item 51 (wording of 2 May 2007) of these rules with the Constitution of the Republic of Lithuania, and Paragraph 17 (wordings of 25 April 2006 and 21 June 2007) of Article 34 of the Republic of Lithuania Law on Alcohol Control» // Valstybės žinios (Official Gazette). – 2008. – № 10-349.

12. Civil Code of the Republic of Lithuania // Valstybės žinios (Official Gazette). – 2000. – № 74–2262.

13. Ruling of the Supreme Administrative Court of Lithuania of 5 September 2008 in an administrative case S. M. Sole Proprietorship v. Klaipėda District Municipality, Case № A-756-1489/2008, cat. 35.3.

14. Ruling of the Supreme Administrative Court of Lithuania of 20 April 2008 in an administrative case UAB «Ribava» v. Alytus City Municipality, Case № A-261-517/2009, cat. 38; 79.1.

15. Ruling of the Supreme Administrative Court of Lithuania of 15 September 2011 in an administrative case UAB «Dominika» v. Šiauliai City Municipality, Case № A492-2814/2011, cat. 38.

16. Ruling of the Supreme Administrative Court of Lithuania of 29 September 2008 in an administrative case H. Tautkuvienė's Undertaking «Floros simfonija» v. Palanga City Municipal Council, Case № A525 – 1640/2008, cat. 38, 2.3.2.

17. Ruling of the Supreme Administrative Court of Lithuania of 12 January 2009 in an administrative case A. V. Public Catering Undertaking «Laima» v. Druskininkai Municipal Council, Case № A756-1047/2009, cat. 38.

18. Ruling of the Supreme Administrative Court of Lithuania of 7 November 2008 in an administrative case UAB «Gargždų aibė» v. Klaipėda District Municipal Council, Case № A146-1843/2008, cat. 38.

Новіковас А. Питання ліцензування оптової та роздрібною торгівлі алкогольної продукції в Литві.

Метою статті є аналіз питань адміністративно-правового регулювання ліцензування оптової та роздрібною торгівлі алкогольною продукцією в Литві і виро-блення обґрунтованих пропозицій щодо напрямів та методів упорядкування регулювання. У результаті дослідження було сформульовано певні висновки. Санкції органів державного управління за порушення процедури ліцензування торгівлі алкоголем часто не ґрунтуються на положеннях закону і не пропорційні вчиненим порушенням. Крім того, в Литві немає єдиної національної бази даних для ліцензій, наданих господарюючим суб'єктам, що дозволяють здійснювати виробництво, імпорт і експорт алкогольної продукції. Сегментація об'єкта адміністративно-правового регулювання ліцензування роздрібною торгівлі алкогольними напоями на десять дрібніших об'єктів, виходячи з періоду, місця продажу алкогольних напоїв та їх міцності, додає більше плутанини для системи ліцензування та погіршує доступ чесних суб'єктів бізнесу до ринку. Так само у практиці ліцензування бракує послідовної позиції щодо ділового інтересу займатися роздрібною торгівлею алкогольними напоями та вільно конкурувати, пропорційності між обмеженнями на ринку торгівлі алкогольними напоями та забезпеченням громадського інтересу до безпечного, культурного середовища.

Ключові слова: алкогольна продукція, ліцензування, оптова торгівля, роздрібна торгівля.

Новіковас А. Вопросы лицензирования оптовой и розничной торговли алкогольной продукцией в Литве.

Целью статьи является анализ вопросов административно-правового регулирования лицензирования оптовой и розничной торговли алкогольной продукцией в Литве и представление обоснованных предложений относительно направлений и методов упорядочивания регулирования. В результате исследования были сформулированы некоторые выводы. Санкции органов государственного управления за нарушение процедуры лицензирования торговли алкогольной продукцией часто не базируются на положениях закона, являются не пропорциональными допущенным нарушениям. Кроме того, в Литве нет единой национальной базы данных для лицензий, предоставленных хозяйствующим субъектам, разрешающим осуществлять производство, импорт и экспорт алкогольной продукции. Сегментация объекта административно-правового регулирования лицензирования розничной торговли алкогольными напитками на десять более мелких объектов, исходя из периода, места продажи алкогольных напитков и крепости данных напитков, добавляет больше путаницы в систему лицензирования и ухудшает доступ честных субъектов бизнеса на рынок. Точно также в практике лицензирования нет последовательной позиции относительно делового интереса заниматься розничной торговлей алкогольными напитками и свободно конкурировать, пропорциональности между ограничениями на рынке торговли алкогольными напитками и обеспечением общественного интереса к безопасной, культурной среде.

Ключевые слова: алкогольная продукция, лицензирование, оптовая торговля, розничная торговля.

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