

GUARANTEE OF PRINCIPLES OF LEGITIMATE EXPECTATIONS, LEGAL CERTAINTY AND LEGAL SECURITY IN THE TERRITORIAL PLANNING PROCESS

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Abstract. *The article discusses the issue of realisation of the principles of legitimate expectations, legal certainty and legal security in the specific area of administrative activity – detailed territorial planning process. During this long and complex process, it is very important to ensure the protection of personal constitutional rights and guarantee the security of legitimate expectations, legal certainty and other essential principles.*

The article analyses the circumstances conditioning violation of the principles of legitimate expectations, legal security and legal certainty and provides suggestions on the improvement of legal framework in order to avoid these violations.

Keywords: *legal security, legal certainty, legitimate expectations, detailed planning.*

Introduction

Relevance of the topic. By accepting and declaring the Constitution of the Republic of Lithuania, the Lithuanian Nation expressed its will to live in the state under the Rule of law. The fundamental elements of the principle of state under the Rule of law are the principles of legitimate expectations, legal security and legal certainty. The purpose of these principles is to ensure the trust of each person in their own country and law as well as to guarantee harmonious and safe public life. The Constitutional Court of the Republic of Lithuania has repeatedly noted that “inseparable elements of the principle of a state under the Rule of law are the protection of legitimate expectations, legal certainty and legal security. The principle of legal security is one of the basic elements entrenched in the Constitution, principle of a state under the Rule of law, which means an obligation of the state to ensure certainty and stability of the legal regulation, to protect the rights of the subjects of legal relations as well as the acquired rights, to respect the legitimate interests and the legitimate expectations. If the protection of legitimate expectations, legal certainty and legal security were not ensured, the trust of the person in the state and law would not be guaranteed. The state must fulfil all its obligations to the person”¹.

Living in the state under the Rule of law, there are only exceptional cases when its members can avoid the need to apply to public administration subjects in order to acquire certain rights, implement personal rights or, in case of violation of personal rights, anticipate adequate protection of violated rights. In other words, each person seeking to meet their demands, realise the opportunities to feel legitimately secure in the society, cannot avoid applying to subjects of public administration. The obligations to apply to subjects of public administration are also provided for in the territorial planning process.

The territorial planning area, where private persons mostly face the need to apply to governmental authorities in realising their rights and seeking to implement their legitimate interests, is that of detailed planning.

In the report No VA-P-30-3-8 of the National Audit Office of 1 April 2010, entitled “Territorial Planning and its Organization”², the National Audit Office of the Republic of Lithuania held that there are “procedural” problems in the area of territorial planning. For the purposes of the audit, the effectiveness of territorial planning system was evaluated. According to the auditors, problems exist in the entire system of territorial planning starting from the general and finishing with detailed planning. However, the auditors have highlighted that most of the problems are found at regional, district and local levels and the most significant ones are observed in the area of detailed planning.

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- 1 Ruling of the Constitutional Court of the Republic of Lithuania of 13 December 2004. *Official Gazette*. 2004, No. 181-6708.
 - 2 Report No VA-P-30-3-8 of the National Audit Office of 1 April 2010, entitled “Territorial Planning and its Organisation” [interactive]. [accessed on 20-03-2012]. <http://www.vkontrole.lt/audito_ataskaitos.aspx?tipas=2>.

The main document regulating to the spatial planning process is the Law of the Republic of Lithuania on Territorial Planning³ (hereinafter – the Law on Territorial Planning). In view of the dynamics of public life, changes conditioned by the interests of the state, society and private persons, this legal act was amended and supplemented 20 times⁴. However, even such an abundance of legal regulation amendments could not solve the problems arising out of the territorial planning process: the complex territorial planning system, redundancy of functions of public administration institutions, abuse or misuse of the discretion granted to subjects of public administration, extensive procedural time-limits, planned excess of documents required from a person, etc.

In view of the developing complex legal relations in the area of spatial planning, the Government of the Republic of Lithuania foresaw the preparation of the draft Law Amending the Law on Territorial Planning (hereinafter - the Draft Law) in the Operational Programme for 2008-2012⁵. *The explanatory note of the Draft Law stipulates that “in order to simplify, accelerate the territorial planning process and make it more effective, the Draft Law virtually amends the current legal regulation of territorial planning and creates a new territorial planning system”*⁶.

However, although the Draft Law was prepared in order to eliminate the problems existing in the area of territorial planning, the project organisers failed to achieve this aim and in respect of the remarks and suggestions submitted by: Legal Department of the Registry of the Seimas, the Special Investigation Service, the Ministry of Agriculture, Association of Local Authorities in Lithuania, the Lithuanian Free Market Institute, the Lithuanian Association of Land and Hydraulic Management Engineers, citizens, members of the Seimas, the Draft Project was returned to initiators for improvement.

In view of the foregoing, the current situation in the area of territorial planning process, including detailed planning, remains problematic and faulty legal regulation provides preconditions violation of legal expectations of persons resulting in the infringement of other constitutional principles.

Core of the topic. The future of the entire society and quality of residential environment depends on the capabilities to use the national territory, natural resources, develop cities, economy and infrastructure, to protect landscape and cultural heritage⁷. Therefore, the territorial planning process has recently received high focus and has been actively analysed with respect to various aspects that are mainly oriented to the following specific areas: general spatial concept of territorial development, land usage

3 The Law of the Republic of Lithuania on Territorial Planning. *Official Gazette*. 1995, No. 107-2391.

4 The Law Amending the Law on Territorial Planning was adopted on 15.01.2004 (*Official Gazette*. 2004, No. 21-617), the new amended Law, except for Articles 2 and 3, entered into force on 1 May 2004.

5 Resolution of the Government of the Republic of Lithuania on the approval of implementation measures of the programme of the Government of the Republic of Lithuania for 2008-2012. *Official Gazette*. 2009, No. 33-1268.

6 Explanatory note of the Draft Law Amending the Law on Territorial Planning of the Republic of Lithuania [interactive]. [accessed on 20-03-2012]. <[http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392609&p_query=&p_tr2](http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392609&p_query=&p_tr2>)>.

7 Venckus, Z. *Aplinkos apsaugos politika ir teisė: Mokomoji knyga* [Environmental Policy and Law: Teaching Book]. Vilnius: Technika, 2007, p. 191.

priorities, establishment of environment protection, monument protection and other conditions, formation of land, forest, water use, residential areas, production and infrastructure systems. Without denying the importance of the above-mentioned areas, it shall be noted that quite often when the respective rights and obligations of the subjects of legal relations in the territorial planning process are enshrined in legal norms, it is not evaluated gratuitously, whether the Law establishes a suitable mechanism for persons to exercise these rights properly. The Constitutional Court of the Republic of Lithuania has repeatedly noted that “the principle of protection of legitimate expectations implied the duty of the state, of the institutions implementing state power, as well as of other state institutions to follow the obligations undertaken by the state.” The Constitutional Court has repeatedly held that this principle also means the protection of acquired rights, i.e., persons have the right to expect reasonably that the rights acquired by them under valid laws or other legal acts that are not in conflict with the Constitution will be maintained for the established period and could be implemented in reality.⁸ Therefore, it is purposeful and meaningful to analyse the guarantee of realisation of protection of the principles of legitimate expectations, legal security and legal certainty in the area of detailed territorial planning, to look for the most effective measures in order to submit suggestions eliminating the assumptions for potential violations of those principles.

The object of the research. Legal regulation issues of the realisation of the rights granted in the detailed territorial planning process in the context of protection of principles of legal expectations, legal security and legal certainty.

The aim of the article is to present the problematic aspects of the realisation of the rights granted in the detailed territorial planning process in the context of the principles of legitimate expectations, legal security, and legal certainty and provide the models of potential problem solutions.

In order to achieve the determined aim, the following *tasks* will be settled:

- to reveal the problems of the guarantee of principles of legitimate expectations, legal security and legal certainty in the detailed territorial planning process;
- to perform the analysis of the Lithuanian legal acts regulating detailed territorial planning;
- to present the reform of territorial planning system carried out in Lithuania and provide suggestions for the guarantee of legitimate expectations, legal security and legal certainty principles.

Methodology of the Research. In the course of reaching the objective of the research, methods of systemic, analytical-critical, and comparative analysis were employed. In addition, methods of documentary analysis and generalisation were used.

8 Ruling of the Constitutional Court of the Republic of Lithuania of 2 September 2009. *Official Gazette*. 2009, No. 106-443; Ruling of the Constitutional Court of the Republic of Lithuania of 20 May 2008. *Official Gazette*. 2008, No. 58-2182; Ruling of the Constitutional Court of the Republic of Lithuania of 5 July 2007. *Official Gazette*. 2007, No. 76-3018; Ruling of the Constitutional Court of the Republic of Lithuania of 4 March 2003. *Official Gazette*. 2003, No. 24-1004; Ruling of the Constitutional Court of the Republic of Lithuania of 18 December 2001. *Official Gazette*. 2001, No. 107-3885.

1. The Essence of the Principles of Legitimate Expectations, Legal Certainty, and Legal Security

The principles of legitimate expectations, legal certainty and legal security are correlative and supplement each other. The roots of the principle of legitimate expectations are found in German public law. The German administrative courts used the principle of legitimate expectations (*vertrauensschutz*) while adjudicating administrative cases.⁹ This principle was derived from Article 20 of the Basic Law of the Federal Republic of Germany,¹⁰ and the main provisions, ensuring the validity of this principle, are consolidated in the Law of Administrative Process (*Verwaltungsverfahrensgesetz*)¹¹.

The principle of legitimate expectations evolved from 1970 in the laws of the European Community. The European Court of Justice has integrated legitimate expectations into its review of legality since the 1970s¹². The principle of legitimate expectations is used to support a balance between the achievement of the administration's objectives, and, in so far as possible, protection of the individual's expectations. By using law as a means of administration, equilibrium is achieved between the public interest and the individuals' expectations.

Gradually, the principle of legitimate expectations was acknowledged as a common (fundamental) principle of administrative law.¹³ According to John Usher, when the European Court of Justice decided to apply the principle of *vertrauensschutz*, the conception was first translated into French – the contemporary language of the Court – as “protection *de la confiance légitime*”. Later it was translated from French to English as “legitimate confidence”, but afterwards it was changed to “legitimate expectations” because of the specific meaning of the word “confidence” in the English law.¹⁴

In a *Rechtsstaat* (*the Rule of Law*) the principle of legitimate expectations is used in order to guarantee that the aims in public administration would be achieved by preserving personal expectations. In such cases the law helps keeping the balance between public interests and personal expectations. While speaking about aims in the European Court of Justice, R. Thomas pointed out that “The Court contributes towards Community policy by ensuring that the administration is able to achieve its objectives but also guard against over-zealous policy implementation that can create injustice for individuals”.¹⁵

9 Schwarz, K. A. *Vertrauensschutz als Verfassungsprinzip. Studien und Materialien zur Verfassungsgerichtsbarkeit Vol. 87*. Baden-Baden: Nomos, 2002, p. 65.

10 Grundgesetz für die Bundesrepublik Deutschland [interactive]. [accessed on 20-03-2012]. <<http://www.gesetze-im-internet.de/bundesrecht/gg/gesamt.pdf>>.

11 *Verwaltungsverfahrensgesetz für die Bundesrepublik Deutschland*, art. 48, art. 49 [interactive]. [accessed on 20-03-2012]. <<http://bundesrecht.juris.de/vwvfg/index.html#BJNR012530976BJNE006803301>>.

12 Case 112/77 *August Topfer and Co GmbH v. Commission* [1978] ECR 1019.

13 Thomas, R. *Legitimate Expectations and Proportionality in Administrative Law*. Oxford: Hart Publishing, 2000, p. 41.

14 Usher, J. A. *Bendrieji Europos Bendrijos teisės principai* [The General Principles of the European Union]. Vilnius: Naujoji Rosma, 2001, p. 64.

15 Thomas, R., *supra* note 13, p. 42.

The principle of legitimate expectations is close to the principle of legal certainty, which has to guarantee citizens' ability to be certain about actions of the state that may affect them and be able to act according to the situation. The principle of legal certainty shall guarantee that a citizen can foresee possible State action affecting him and act accordingly. Thus, legal certainty and legitimate expectations are related values, which find a common justification in the need for security and predictability. The implementation of legitimate expectations and legal certainty principles has to generally guarantee the human needs of safety and predictability. While applying the principle of legitimate expectations, the European Court of Justice emphasized that "there cannot be any doubt about the law, applied at that moment in a particular area and about fairness or illegality of any law or actions".¹⁶ In other words, this principle prevents the retroactive application of the law, especially if it concerns the laws that establish any kind of penalties. Legal certainty is an objective value and has to ensure the processes of legislation and administration.

In the Lithuanian law the principle of legitimate expectations and legal certainty appeared comparatively not a long time ago. For the first time, the principle of legitimate expectations was mentioned in the Lithuanian Constitutional jurisprudence in 1999,¹⁷ when a petitioner group of members of the Seimas of the Republic of Lithuania applied to the Constitutional Court with the request to investigate the compliance of the provisions of the Law of the Republic of Lithuania on the Assessment of the USSR Committee of State Security (NKVD, NKGB, MGB, KGB) and Present Activities of the Regular Employees of this Organization with the Constitution. According to the representative of the petitioners, a provision that prohibits the former regular employees of the Committee of State Security to take up posts in certain areas, "violates the principle of legitimate expectations of such a person, therefore this contradicts Article 23(3) of the Constitution". In this case, even though the Court agreed that some provisions of the aforementioned law contradicted the Constitution, it based its conclusions on the arguments that were not founded on the principle of legitimate expectations.

In its ruling of 12 July 2001 the Constitutional Court not only mentioned, but also explicated more broadly the conception of the principle of legitimate expectations, deriving it from the principle of the law-governed state and relating it to such principles as legal certainty, legal security etc. "One of the essential elements of the principle of a law-governed state established in the Constitution is the principle of legal security. It means that the duty of the state to ensure the certainty and stability of legal regulation, to protect the rights of the subjects of legal relations, including the acquired rights, and to respect legitimate interests and legitimate expectations. The purpose of this principle is to guarantee the faith of the person in their state and law".¹⁸ In the ruling of the Constitutional Court, two aspects of this principle are analysed in greater detail:

16 *R. v. Minister for Agriculture, Fisheries and Food, ex parte Fedesa*, Case C-331/88, 1990 ECR I-4023.

17 Ruling of the Constitutional Court of the Republic of Lithuania of 4 March 1999. *Official Gazette*. 1999, No. 23-666.

18 Ruling of the Constitutional Court of the Republic of Lithuania of 12 July 2001. *Official Gazette*. 2001, No. 62-2276.

“first, the imperative of legal security presupposes certain obligatory requirements for the legal regulation itself. It must be clear and harmonious, legal norms must be formulated precisely. Legal acts of lower level may not conflict with legal acts of higher level, and no legal act may conflict with the Constitution. Legal normative acts must be promulgated under established procedure and all subjects of legal relations must have an opportunity to get acquainted with them. Second, this principle also includes several requirements linked with the validity of legal regulation. Under this principle, legal regulation may be amended only in pursuance with a pre-established procedure and without violating the principles and norms of the Constitution. It is also necessary, *inter alia*, to follow the principle *lex retro non agit*, it is impermissible to deny legitimate interests and legitimate expectations of persons, the continuance of jurisprudence shall be guaranteed”. Hence, the Constitutional Court links the principle of legal security to the principle of legal certainty, and underlines that the main purpose of the principle of legal security is to guarantee the persons faith in their state and law.

One of the specific areas of administrative activity, where individual rights could be infringed, is the detailed territorial planning process. The detailed territorial planning process consists of the preparatory stage, the stage for the development of a territorial planning document, the stage for the evaluation of the consequences of solutions and the final stage, completed by the approval of the territorial planning document. During this long and complex process, it is very important to ensure the protection of personal constitutional rights and guarantee the security of legitimate expectations, legal certainty and other essential principles.

2. The Issues of Guaranteeing the Principles of Legal Expectations, Legal Security and Legal Certainty in the Detailed Territorial Planning Process

The complex detailed planning process is additionally aggravated by the fact that it is regulated by series of legal acts the incompleteness of which causes a variety of problems (irrational number of planning documents, long time-limits of preparation and coordination, double revision, succession of approval of planning documents, ambiguous hierarchy of plans, etc.) as well as inconsistency of the respective legal norms. “One of the basic elements of the principle of a state under the Rule of law, which is consolidated in the Constitution, is legal certainty and clearness. The imperative of legal certainty and clearness presupposes certain obligatory requirements for legal regulation. Legal regulation must be clear and harmonious, legal norms must be formulated precisely and contain no ambiguities¹⁹. Particularly it is this factor, i.e. imprecise formulation of obligatory requirements consolidated in the legal norms that quite often conditions the

19 Ruling of the Constitutional Court of the Republic of Lithuania of 30 May 2003. *Official Gazette*. 2003, No. 53-2361.

violation of the principle of legal expectations in the entire detailed territorial planning process.

The detailed planning consists of four stages²⁰:

at the preparatory stage, the goals and tasks of the planning are established, the programme of planning works is prepared and approved and the start of planning is publicly announced;

at the development stage, the current status is analysed, the concept is established and the solutions are specified;

at the stage of the evaluation of consequences, the impact of solutions of territorial planning document is evaluated;

at the final stage, the solutions are discussed and coordinated and the documents of territorial planning are evaluated.

The preparatory stage of detailed planning commences by transferring the rights and obligations of the organiser of detailed territorial planning to the land manager or user and the planning conditions are issued to the planning organiser.

Article 20(1) of the Law on Territorial Planning establishes that the director of municipality administration and managers of State land are the *organisers of territorial planning*. Part 2 of the same Article stipulates that the municipality or State land managers, acting in accordance with the procedure, in cases and following the conditions established by the Government, may conclude a contract on the transfer of the rights and obligations of the organiser of detailed territorial planning to the manager or user of land parcels. The procedure and conditions of the transfer of rights and obligations of the organiser of detailed territorial planning to the manager or user of land parcels and conclusion of agreements on the transfer of rights and obligations of the organiser of detailed territorial planning are regulated by the Description of procedure of transfer of rights and obligations of the organiser of detailed territorial planning and conclusion of the agreement (hereinafter – the Description), approved by Resolution No 635 of the Government of the Republic of Lithuania of 26 May 2004²¹.

Article 20(2) of the Law on Territorial Planning and Item 3 of the Description stipulate that the municipality, represented by the director of the municipality administration, acting pursuant to the Law on Territorial Planning and to the Description, can conclude an agreement on the transfer of rights and obligations of the organiser of detailed territorial planning to the manager or user of land parcels when the planning goals indicated in their applications are consistent with the requirements of the laws and other legal acts and solutions of general and special plans. Thus, in this case, the discretionary power granted to the public administration subjects is confronted.

In practical application of this norm, it happens quite often that a person seeking and having the right established by the laws to conclude an agreement on the transfer of

20 The Rules on the preparation of detailed plans, approved by Order No D1-239 of the Minister of Environment of the Republic of Lithuania of 03.05.2004. *Official Gazette*. 2004, No. 79-2809.

21 The Description of procedure of transfer of rights and obligations of the organiser of detailed territorial planning and conclusion of the agreement, approved by Resolution No 635 of the Government of the Republic of Lithuania. *Official Gazette*. 2004, No. 86-3120.

rights and obligation of the organiser of detailed planning territories in accordance with the procedure established by Item 12 of the Description, applies to the local authority institution, and nevertheless receives negative and sometimes even unmotivated reply. Therefore, in order to exercise this right, legal regulation is insufficient. In this case, persons have to apply to judicial institutions regarding the violated principle of legal expectations.

In interpreting that norm, the Supreme Administrative Court of Lithuania stated that “the opportunity provided for by this legal regulation to transfer the rights and obligation of the organiser of detailed territorial planning does not mean the right of the subject of public administration to choose whether to conclude an agreement of this type or not. The application of the manager or user of land parcels and the conditions consolidated in the legal acts of the transfer of rights and obligations of the organiser of detailed territorial planning encompasses an obligation for the director of the municipality administration to conclude an agreement on the transfer of rights and obligations of the organiser of detailed territorial planning. Different interpretation of the norms would contradict with the principles of public law”²².

The case-law holds the view that such written refusal to conclude an agreement on the transfer of rights and obligations of the organiser of detailed territorial planning with the expressed will of the subject of public administration is treated in the same way as an individual legal act (decision). Therefore an individual administrative act should such as to be able to show the essence of public relations and the subjects participating in these relations in order to achieve clear legal evaluation of these public relations. In addition, the reasoning of this act shall be adequate, clear and sufficient.

Thus, in this case it must be concluded that legal regulation is insufficient, and it does not ensure a possibility for a person meeting the conditions established in the legal acts to acquire certain rights in accordance with those legal acts and therefore a person can only achieve this by means of judicial procedure. Therefore, in this context it is suggested to concretise the legal regulation with regard to the transfer of rights and obligations of the organiser of detailed territorial planning and to stipulate an obligation incumbent on the administrator to state the reasons for a decision refusing to conclude the agreement on the rights and obligations of the organiser of detailed territorial planning.

When concluding the agreement on the transfer of rights and obligations of the organiser of detailed territorial planning, the detailed territorial planning process starts by issuing the digest of the planning conditions. However, the legal acts do not stipulate any clear criteria as to how to establish the specific detailed planning conditions, therefore the majority of planning conditions issued by institutions are abstract and do not provide for the specific planning requirements or criteria or parameters and quite often the Description of the procedure of preparation and issuing of the planning conditions for preparation of territorial planning documents are simply not followed²³.

22 Rulings of the Supreme Administrative Court of Lithuania in cases Nos A²- 1874/2005, A¹⁷-1114/2006, A¹¹-1034/2007, A⁵⁰²-47/2008.

23 The Description of the procedure of preparation and issuing of planning conditions for the preparation of territorial planning documents. *Official Gazette*. 2009, No. 145-6460.

Specific and clear planning conditions have fundamental influence on further stages of detailed territorial planning, so that the planning organiser knows exactly which actions to perform, which documents to prepare in order to achieve the final goal and the prepared detailed plan to be approved. When the established planning conditions are abstract and contain no concrete parameters, the institutions issuing and coordinating planning conditions are provided with an opportunity to abuse the existing abstractedness and, thus, cause the protraction of the territorial planning process, additional expenses and assumptions for corruption²⁴.

Another problematic aspect relating to the issuing of a digest of planning conditions is the term for issuance. The digests of planning conditions are usually issued within a longer period of time than it is provided for in the legal acts. Digests of planning conditions are issued belatedly as the time limits for issuing the planning conditions are regulated under the legal acts only for municipalities, whereas for private economic entities no such time limits are established. Such legal regulation or most probably the absence of it is another assumption providing boundaries for ensuring the principles of legitimate expectations, legal security and legal certainty.

The provisions of the Operation Strategy for 2008-2012 prepared by the Government of the Republic of Lithuania and approved by Resolution No 189 of 25 February 2009²⁵ stipulate the necessity to refuse the repetition of revision procedure of territorial planning documents in the national supervisory institutions and in municipalities; the detailed planning process shall be simplified by refusing the preparation of detailed plans in certain cases; other measures shall be provided for stimulating investment, however, the provisions of the Draft Law are formulated in a way that, in accordance with the legal regulation proposed in the Draft Law, the two territorial planning systems would be effective almost at the same time: the current system (general, special and detailed territorial planning documents) and the new system (complex territorial planning documents and special territorial planning documents). It is assumed that such legal regulation would not only be unhelpful in terms of elimination of the aforementioned problems, but would also aggravate the territorial planning process even more, it would become more complex and difficult to understand for the state and municipal institutions and the persons concerned.

Conclusions

1. The principle of legitimate expectations protects the interests of the individual to whom the system of law guarantees positive outcomes if they act in accordance with the law. The principle of legitimate expectations is close to the principle of legal certainty, and is related to the principle of legal security. In a law-governed state these principles are used in order to guarantee that while achieving the aims of public administration,

24 Report of the National Audit Office, *supra* note 2.

25 The Operation Strategy for 2008-2012 prepared by the Government of the Republic of Lithuania and approved by Resolution No 189. *Official Gazette*. 2009, No. 33-1268.

the individual's expectation would be guaranteed as much as possible. The principle of legitimate expectations has to guarantee citizens the possibilities to foresee the actions of the state that may affect them and the ability to act accordingly in a particular case. This means that the responsibility of the state is to ensure the stability and certainty of legal regulation, to protect rights of the subjects of legal relationships, as well as acquired rights, and to respect legal interests and legitimate expectations.

2. After the analysis of the rulings of the Constitutional Court of the Republic of Lithuania, the conclusion is drawn that the principles of legitimate expectations, legal security and legal certainty are recognised in the Lithuanian constitutional jurisprudence. The above-mentioned principles, even though they are not directly mentioned in the Constitution, in the constitutional jurisprudence are referred to as the principles deriving from the principle of the Rule of law, enshrined in the preamble of the Constitution.

3. The purpose of the principles of legitimate expectations, legal certainty, and legal security is to consolidate the legal regulation of the detailed planning process and the practice of the implementation of specific laws, while aiming to ensure the realisation of the objectives of legal regulation, proper balance of the public interest and the protection of individual rights.

4. One of the problematic areas of administrative activity where the need to reconcile individual and public interests emerges is detailed territory planning. The complex detailed planning process is additionally aggravated by the fact that it is regulated by a series of legal acts the incompleteness of which causes a variety of problems as well as inconsistency of the respective legal norms. Vague formulation of obligatory requirements consolidated in the legal norms, quite often determines the infringements of individual legitimate interests in the entire detailed territorial planning process.

5. Existing legal regulation and steady practice of administrative authorities presupposes situations when a person seeking and having the right established by the laws to conclude an agreement on the transfer of rights and obligation of the organiser of detailed planning territories applies to the local authority institution, and nevertheless receives a negative and sometimes even unmotivated reply. The conclusion is that the legal regulation is insufficient in order to ensure smooth realisation of this right. Therefore, in this context it is suggested to concretise the legal regulation with regard to the transfer of rights and obligations of the organiser of detailed territorial planning and to stipulate an obligation incumbent on the administrator to state the reasons for a decision refusing to conclude the agreement on the rights and obligations of the organiser of detailed territorial planning.

6. Specific and clear planning conditions have fundamental influence on further stages of detailed territorial planning, so that the planning organiser knows exactly which actions to perform, which documents to prepare in order to achieve the final goal and the prepared detailed plan to be approved. When the established planning conditions are abstract and contain no concrete parameters, the institutions issuing and coordinating planning conditions are provided with an opportunity to abuse the existing abstractedness and, thus, cause the protraction of territorial planning process, additional

expenses and assumptions for corruption. Therefore, in this context it is suggested to concretise the legal regulation.

7. The digests of planning conditions are usually issued within a longer period of time than provided for in the legal acts. Digests of planning conditions are issued belatedly as the time limits for issuing the planning conditions are regulated under the legal acts only for municipalities, whereas for private economic entities no such time limits are established. Therefore, in this context it is suggested to regulate the terms for issuing the planning conditions under legal acts applicable for private economic entities.

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TEISĖTŲ LŪKESČIŲ, TEISINIO TIKRUMO IR TEISINIO SAUGUMO PRINCIPŲ UŽTIKRINIMAS TERITORIJŲ PLANAVIMO PROCESĖ

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Santrauka. Straipsnyje analizuojama teisinio saugumo, teisinio tikrumo ir teisėtų lūkesčių principų realizacijos problematika specifinėje administravimo srityje – detaliojo planavimo procese.

Teritorijų planavimo sritis, kurioje dažniausiai privatūs asmenys, realizuodami savo teises ir siekdami teisėtų interesų įgyvendinimo, susiduria su poreikiu kreiptis į valstybinės valdžios institucijas, yra detalusis planavimas.

Detaliojo teritorijų planavimo procesą sudaro parengiamasis etapas, teritorijų planavimo dokumento rengimo etapas, sprendinių pasekmių vertinimo etapas ir baigiamasis etapas, kuris pasibaigia teritorijų planavimo dokumento tvirtinimo stadija. Visuose minėtuose etapuose administravimo subjektai priima sprendimus, kurie laikytini administraciniais aktais.

Galiojantis teisinis reguliavimas numato pareigą asmenims, net ir tuo atveju, kai keičiamas naudojamo žemės sklypo ribos ir plotas, pagrindinė tikslinė žemės naudojimo paskirtis ir pan., rengti detalųjį planą, t. y. kreiptis į viešojo administravimo subjektus, kad šie

priimtų administracinius aktus ar atliktų kitus, jų kompetencijai priskirtinus veiksmus, kad asmenys galėtų įgyvendinti jiems teisės aktais suteiktas subjektines teises. Todėl labai svarbu šiame ilgame ir sudėtingame procese užtikrinti asmens konstitucinių teisių apsaugą ir garantuoti teisėtų lūkesčių, teisinio saugumo ir kt. esminių principų užtikrinimą.

Atsižvelgiant į besiklostančius sudėtingus teisinius santykius teritorijų planavimo srityje, Lietuvos Respublikos Vyriausybė savo 2008–2012 metų veiklos programoje numatė parengti Teritorijų planavimo įstatymo pakeitimo projektą (toliau – Įstatymo projektas). Tačiau, nors Įstatymo projektas buvo parengtas siekiant pašalinti teritorijų planavimo problemas, projekto rengėjams to pasiekti nepavyko, ir atsižvelgiant į Seimo kanceliarijos Teisės departamento, Specialiųjų tyrimų tarnybos, Žemės ūkio ministerijos, Lietuvos savivaldybių asociacijos, Lietuvos laisvosios rinkos instituto, Lietuvos žemėtvarkos ir hidrotechnikos inžinierių sąjungos, piliečių, Seimo narių pastabas ir pasiūlymus, Įstatymo projektas grąžintas iniciatoriams tobulinti.

Šiandieninė situacija teritorijų planavimo procese, taip pat – ir detaliojo planavimo srityje, išlieka problemiška, ydingas teisinis reguliavimas sudaro prielaidas asmenų teisėtų lūkesčių pažeidinėjimui, suponuojančiam kitų konstitucinių principų pažeidimus.

Straipsnyje analizuojamos teisėtų lūkesčių, teisinio saugumo ir teisinio tikrumo apsaugos principų pažeidimus lemiančios aplinkybės bei pateikiami siūlymai dėl teisinės bazės tobulinimo, siekiant jų išvengti.

Reikšminiai žodžiai: *teisinis saugumas, teisinis tikrumas, teisėti lūkesčiai, detalusis planavimas.*

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