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PROBLEMS OF PRE-TRIAL INVESTIGATION OF LEGAL DISPUTES IN THE TERRITORIAL PLANNING

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Abstract. *The process of territorial planning is complicated, because there are different and even opposite interest of persons related with particular territory. Administrative legal regulation of territorial planning in Lithuania underlies emergence of a legal conflict, namely the administrative litigation. Investigation of the administrative dispute applying the pre-litigation procedure allows the parties thereof to save both money and time.*

This article presents the problematic aspects of the pre-trial investigation of the administrative disputes arising in the area of territorial planning. The article is composed of an introduction, three parts and conclusions. In the first part the characteristics of the disputes arising in the area of territorial planning, the preconditions of origin, and the demand for the pre-trial investigation thereof are analyzed. Legal regulation of pre-trial investigation out-of-court of the disputes arising in the area of territorial planning is revealed in the second part. In the third part key provisions of the reform of the pre-trial investigation out-of-court of the disputes arising in the area of territorial planning are discussed.

Keywords: *territorial planning, pre-trial investigation of disputes, public interest.*

Introduction

Relevance of the topic. After Lithuania had regained its independence, the issues related to territorial planning were in part regulated in a single legislative act—the Interim Regulations on Territorial Planning of the Republic of Lithuania, approved by the Decree of the Government of the Republic of Lithuania of 1993-03-12.[1] In a few years the Law on Territorial Planning of the Republic of Lithuania was adopted.[2] Considering the dynamics of social life, and changes caused by the interests of the state, society and individuals, this legislative enactment has been amended and supplemented 20 times.[3] However, even such abundant regulatory changes did not solve the problems arising in the process of territorial planning: the system of territorial planning remained complicated, including duplication of functions between public administration institutions, long procedural terms, and excess amount of documentation required from individuals, etc. Such administrative legal regulation underlies emergence of a legal conflict, namely the administrative litigation. Investigation of the administrative dispute applying the pre-litigation procedure allows the parties thereof to save both money and time. The currently valid legislation of Lithuania does not provide obligations of the parties to settle their dispute out-of-court first; therefore a conflict arising during the process of territorial planning often means the beginning of a new trial.

Considering the evolving complex legal relationships in the area of territorial planning, the Government of the Republic of Lithuania provided for to prepare a draft law on amendments to the Law on Territorial Planning (hereinafter referred to as the Draft Law) in its Activities Program for 2008-2012.[4] *The Explanatory note of the Draft Law stated that "in order to simplify, accelerate and make the process of territorial planning more efficient, the Draft Law shall in principle amend the current legal regulation of territorial planning and create a new system of territorial planning.*"[5] The provisions of the Draft Law shall be used to regulate the levels of territorial planning, document types and amounts, and provide for persons, who are empowered to organize territorial planning, as well as the competence of the institutions coordinating the documents of territorial planning, etc. The Draft Law provides for that "complaints or notifications on the decisions made by public administration bodies in relation to territorial planning, or inaction of these bodies prior to approval of the territorial planning documents, are subject to the mandatory pre-trial proceedings, as established and governed by this Law. Establishing of the pre-trial proceedings will enable individuals to effectively and

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1 Decision of the Government of the Republic of Lithuania "On Territorial Planning of the Republic of Lithuania" of March 12, 1993 No. 161. *Official Gazette.* 1993, No. 10-251.

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

3 2004-01-15 Was adopted new Law on Territorial Planning of the Republic of Lithuania. *Official Gazette.* 2004, No. 21-617.

4 Decision of the Government of the Republic of Lithuania "Of the Activities Program for 2008-2012 of the Government of the Republic of Lithuania". *Official Gazette*. 2009, No. 33-1268.

5 An explanatory note on the Republic of Lithuania Law on Territorial Planning Amendment Law [interactive]. [accessed 2011-07-27]. <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392609&p_query=&p_tr2=>.

quickly protect their violated rights and interests, rather than appeal to the court, as well as will reduce the workload of the courts."[6]

Core of the topic. Some issues of the process of territorial planning in Lithuania, the control systems thereof, and various problematic aspects of territorial planning have recently attracted the attention of few scholars. Some aspects of this topic are studied by Pranas Mierauskas[7], Virginija Gurskienė[8], Pranas Aleknavičius[9] and others. However, until now, an important area has not been studied, namely the cost-effective and rapid settlement of the disputes arising during the process of the territorial planning. In various countries disputes over the decision on territorial planning are subject to different patterns, which can basically be divided into two groups: in some countries such disputes are heard by the courts, while in the others—by quasi-courts. Both models for investigation of the disputes arising in the area of territorial planning have advantages and disadvantages. In order to improve the legal regulation of the process of territorial planning in Lithuania it is necessary to build a proper and efficient investigation system for settlement the administrative disputes in the area of territorial planning, which shall be in line with the modern human rights standards. It is therefore appropriate and meaningful to analyse the forthcoming legal regulation of the pre-trial settlement of disputes in the process of territorial planning, and to seek the most effective measures in order to present proposals that would underlie a thorough and comprehensive legal regulation of the pre-trial settlement of disputes, thus guaranteeing a proper implementation of the functions attributed to the quasi-judicial institutions.

The object of the research is the system of the legal regulation of the pre-trial investigation of legal disputes in the territorial planning of Lithuania.

The aim of the article is to introduce the problematic aspects of the pre-trial investigation of the disputes arising in the area of territorial planning, and to present the potential models for solution of the problems.

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

– To reveal the preconditions of origin and characteristics of the disputes arising in the area of territorial planning, and to disclose the demand and opportunities for the pre-trial investigation of such disputes.

– To analyse and examine Lithuanian legislation governing the pre-trial settlement of the disputes arising in the area of territorial planning.

– To present the reform of the system of pre-trial investigation of the disputes arising in the area of territorial planning, and to submit proposals.

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

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6 An explanatory note on the Republic of Lithuania Law on Territorial Planning Amendment Law, *supra* note 5.

7 Mierauskas, P. *Suinteresuotųjų asmenų dalyvavimas saugomų teritorijų valdyme* [Participation of Interested Parties in the Management of Protected Territories]. *Policy and Practice of Sustainable Development: Theses*. 2009, 1(3): 44−49.

8 Tarvydienė, M. E.; Gurskienė, V. *Teritorijų planavimas: mokomoji knyga* [Territorial Planning: Studies Book]. Ardiva, Publication Centre of Lithuanian University of Agriculture, 2008.

9 Aleknavičius, P. *Aplinkosaugos ir aplinkotvarkos teisė: metodiniai patarimai* [Legislation of Environmental Protection and Environmental Management: Methodical Suggestions]. Ardiva, Publication Centre of Lithuanian University of Agriculture, 2008.

1. Characteristics of the Disputes Arising in the Area of Territorial Planning, the Preconditions of Origin, and the Demand for the Pre-trial Investigation Thereof

The disputes in the area of territorial planning, as well as all other administrative disputes, usually arise due to two reasons, namely

1) due to improper administrative legal regulation, and

2) due to improper implementation of the administrative legal regulation.[10]

The first reason, which is also called a dysfunction of the administrative legal regulation, is associated with the gaps in the legal regulation system, the incompatibility of legal regulation with protection of the fundamental human rights, a disproportionate restriction of human rights, fetishisation of the public interest, etc. By means of the administrative legal regulation the state administrative structures seek to regulate the behaviour of many individuals in accordance with the legislative standards adopted, which would attempt to protect the public interest.[11] However it is noted that when the public interest is given too much weight, and too little attention is paid to its essence, or too little effort is made to seek for a rational justification of the legal regulation of human behaviour in one or another field of activities in each particular case, there are always legal conflicts. Thus, the administrative disputes are caused by dysfunctions of the administrative legal regulation, occurring when the administrative legal regulation fails to fulfill its purpose, i.e., does not ensure protection of the public interest. For the sake of accuracy it should be noticed that due to diverse interpretation of the public interest, there are discussions ongoing among the scholars, and there is no single commonly accepted definition of the public interest. The terms "public interest," "social interest," "public good," "common good" and "common welfare" are often used in administrative law discourse. F.A. von Hayek argues that uncertainty about these terms enables representation of almost each interest as a common one, thus forcing many people to serve the purposes that merely concern them.[12]

Disputes on territorial planning very often invoke the public interest or social interest. The Law on Territorial Planning of the Republic of Lithuania provides for that one of the goals of territorial planning is "to concord the interests of natural and legal persons or groups thereof, society, municipalities and the state with regard to use of territories and land plots, and development of activities in this area."[13] However, the Law does not define the "social interest," "state interest" or "public interest."

The second reason of the administrative disputes is associated with the improper implementation of administrative legal regulation: if the administrative legal regulation

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10 Pranevičienė, B. *Kvaziteismai administracijos kontrolės sistemoje* [Quasi-courts in the Administration Control System]. Vilnius: Lietuvos teisės universiteto Leidybos centras, 2003, p. 48−49.

11 Pierce, R. J.; Shapiro, S. A.; Verkuil, P. R. *Administrative Law and Process*. 2nd Edition. University Textbook series, N.Y., Westbury: The Foundation Press. Inc., 1992, p. 1.

12 Hayek, F. A. *Teisė, įstatymų leidyba ir laisvė. II d. Socialinio teisingumo miražas* [Law, Legislation, and Freedom. Part II. Mirage of Social Justice]. Vilnius: Eugrimas, 1998, p. 7.

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

of one or another area of public life is justified, focused on protection of the public interest, and concerns the requirements for implementation of human rights and freedoms, it might still occur, that the authorized bodies will not manage to properly implement the legal requirements and thus violate the individual rights. It should be noted that the concept of human rights is expanding, and includes the rights not only of natural persons, but also those of legal entities. For example, the Convention on Basic Human Rights and Freedoms recognises legal entities as objects of some human rights.[14]

Administration, with the power to adopt various solutions (e.g., to approve or reject the issue of planning conditions, to approve the documents of territorial planning or withdraw such approval), can influence the rights and responsibilities of both natural persons and legal entities. An improper exercise of powers of the administration, while adopting baseless, false and illegal decisions, can cause a significant damage to the rights of individuals. Due to these reasons, a particular emphasis is made worldwide on improving public administration, control of legality of the action of the administration, strengthening of legal security for individuals, and development of legal mechanisms for settlement of the administrative disputes.

The system of settlement of administrative disputes is generally defined as the administrative justice, and it is focused on settlement of conflicts arising between the citizens and the administration. At the same time administrative justice is focused on the control of the administrative activity. The specificity of administrative disputes and need to control the administrative action determine the characteristics and development of the systems of administrative justice. It is noted that until now there is no unified system of administrative justice in the world; in many countries the systems of settlement of the administrative disputes and control of legality of the administrative action are slightly different, even in those countries where there are specialised administrative justice bodies – the administrative courts.

The systems of settlement of the administrative disputes in various countries have advantages and disadvantages, similarities and differences. In some countries the functions of the administrative justice are implemented in the general jurisdiction courts, e.g., in the USA[15], Great Britain[16], etc. In other countries these functions are implemented in the specialised administrative courts, e.g., in France[17], Germany[18], Lithuania, etc. Furthermore, in many countries the functions of the administrative justice are implemented not only in the courts, but also in quasi-courts. Investigation of the administrative disputes in such institutions is generally referred to as quasi-judicial,

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14 Gomien, D.; Harris, D.; Zwaak, L. *Law and Practice of the European Convention on Human Rights and the European Social Charter*. Council of Europe Publishing, 1998, p. 406.

15 Holland, K. M. The Courts in the United States. In: *The Political Role of Law Courts in Moderns Democracies.* Waltman, J. L.; Holland, K. M. (eds.). New York: St. Martin's Press, 1988, p. 12.

16 Jackson, R. M. *The Machinery of Justice in England*. 7th edition. Cambridge: Cambridge University Press, 1977; Greenwood, I. R.; Wilson, D. I. *Public administration in Britain*. London, 1984, p. 243.

17 Bell, J.; Boyron, S.; Whittaker, S. *Principles of French Law.* Oxford University Press, 1998, p. 41; Radamaker, D. The Courts in France. In: *The Political Role of Law Courts in Moderns Democracies*, *supra* note 15, p. 144.

18 Foster, N. G. *German Legal System and Laws*. 2nd Edition. London: Blackstone Press, 1996, p. 44, 45.

because settlement of the administrative disputes in quasi-courts is subject to a similar procedure as in the administrative courts, taking into account the fundamental principles of the judicial process, namely the principle of legality, the principle of the right to be heard, etc. The term *Quasi-judicial* describes a particular activity, that is inherent in the judicial practice, which is however performed not by the court, but by a state authority not belonging to the judicial power. Disputes arising in the area of territorial planning are specific; they differ from other administrative disputes. Usually the needs of people who think that their rights or legitimate interests are damaged intersect with the public interest. Persons, who are unable to implement their owners' rights to property properly, and unable to implement the desired processes of territorial planning, often feel unduly constrained. Therefore, in order to ensure the effective legal protection of citizens' interests, quasi-courts may perform a special role, while addressing the administrative disputes arising in specific areas of administration.

In many countries various quasi-judicial authorities have been established following the considerations of rationality, where settlement of the disputes is cheaper not only for citizens but also for the state. Another interesting fact is that in those democratic countries, where the main laws establish the principle of separation of powers, and specify the functions carried out by each branch[19], there are various quasi-courts, and there have been no opposition of the courts with regard to their establishment and operation.[20]

The origin of the quasi-courts was caused by many reasons. The role of the state in people's lives was changing in line with changes and diversification of social relations: there emerged an increasing need for more intervention into and regulation of complex social relationships by means of legal norms. The researchers note that the largest jump in the administrative law and legislation was observed in the 19th century, and during the 20th century adoption of legal norms further intensified.[21]

It was observed that the more the state intervened into the socio-economic relations, the more it increased the number of claims. Therefore the courts could no longer cope with an avalanche of complaints. At the same time it was difficult to ensure the effective

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19 The oldest in the world U.S. Constitution that was adopted in 1787, Article 3 states that "the judicial power of the United States is executed by the Supreme Court and those lower courts that are established by the Congress." Consequently, the major law of the state establishes the exclusive right of the court to administer justice. But it is the U.S. that can be characterised by abundance of quasi-judicial bodies, where disputes between citizens and the administration are settled by an independent officer, formerly known as the "Hearing Examiner", and since 1978 - the Administrative Law Judge.

20 e.g.: In the USA, in 1932, in the case *Crowell v. Benson*, the Court decided that the administrative dispute over infringement of individual rights could be settled by the administrative agency, provided that the Congress had assigned such rights to it, and provided that it could ensure the due process of law.

21 See Pierce, R. J.; Shapiro, S.; Verkuil, P. R., *supra* note 11, p. 31; Breyer, S.; Stewart, R. *Administrative Law and Regulatory Policy.* 2nd Edition. Boston: Little Brown, 1985; Kelman, S. *Regulating America. Regulating Sweden: A Comparative Study of Occupational Safety and Health Policy.* Cambridge, Mass.: MIT Press, 1981; Weidenbaum, M. *Business, Government, and the Public.* 2nd Edition. N.J.: Englewood Cliffs, 1981, p. 7−10; Pertschuk, M. *Revolt Against Regulation: The Rise and Pause of the Consumer Movement.* New Jersey: University of California Press, 1982, p. 5.

protection of human rights, as the courts, although being an important guarantor of human rights in every country, operates under complex and formal process that is lengthy and expensive for the parties of litigation. In addition, the trial proceedings are unavailable for a number of people and frightening for many reasons (financial resources, education, stress, etc.).[22]

Search for rationality encouraged countries to establish the alternative mechanisms for settlement of the administrative disputes, to search for new solutions of the conflicts between the administration and citizens; and thus in many countries two ways were selected:

- first, the existing administrative bodies were empowered to deal with the disputes, in other words, they were granted the quasi-judicial power, and
- second, the specific institutions were established with the purpose (usually the only one) of investigation of the administrative disputes.

Summarising the causes of origin of the quasi-courts, we can identify the most important of them: (1) the maintenance costs of the judicial system, (2) the legal costs per person, (3) deliberation and formality of court proceedings.

In countries, where part of the judicial powers was transferred to the administration, the following circumstances were identified as well: (1) the personnel of the administrative authorities have special knowledge; (2) the administration perform the functions of control (supervision) and investigation, e.g., the administration has the right to initiate the prosecution of an offender, while most courts do not have such right.

Considering the fact that the process of territorial planning is specific and the assessment of its legitimacy requires some special knowledge, it is assumed that in Lithuania there is a need to effectively, economically and quickly resolve conflicts, and to avoid formal litigation that is tiresome for both an individual and the state.

2. Legal Regulation of Pre-trial Investigation Out-of-court of the Disputes Arising in the Area of Territorial Planning

Territorial planning in Lithuania and in the process of settling disputes arising governed by several laws:

- the Law on Territorial Planning of the Republic of Lithuania (*hereinafter referred to as the Law on territorial Planning*);
- Regulations of Public Awareness and Participation in the Process of Territorial Planning[23];
- Description of the Procedure of the State Supervision of Territorial Planning[24].

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22 Cane, P. *An Introduction to Administrative Law*. Oxford: Clarendon Press, 1996, p. 337.

23 Decision of the Government of the Republic of Lithuania of September 18, 1996 No. 1079. *Official Gazette.* 1996, No. 90-2099.

24 Order No. D1-831/3D-868 of the Minister of Environment and the Minister of Agriculture of the Republic of Lithuania of September 28, 2010. *Official Gazette.* 2010, No. 116-5949.

The analysis of the above-mentioned legislative acts has shown that the existing legal regulation regulates the issues of the disputes arising in the process of territorial planning not thoroughly. Legislation is limited to the denomination of the entities that are empowered to investigate the disputes and determination of the time limits for submission and settlement of complaints. For instance, Article 27, paragraph 7 of the Law on Territorial Planning provides that "the disputes which arose between institutions issuing the conditions of planning and/or the organiser of planning, as well as the disputes which arose during the coordination and reflection procedure shall be heard and decisions shall be taken by the institutions performing the State supervision of territorial planning."

Article 32, Paragraph 2 of the Law on Territorial Planning obliges the organiser of territory planning to analyse the proposals submitted by the public and to respond in writing in a reasoned manner to the persons who submitted the proposals. If the provided solutions do not satisfy the persons who have submitted proposals, the law provides for the opportunity to appeal against them to the institution that carries out State supervision of territorial planning within one month from the date of receipt thereof.

The above-mentioned legal rules refer to Article 34 of the same Law, where Paragraph 2 states that "the State supervision of territorial planning shall be carried out:

1) the State, the Government institutions, the institutions authorised by the Government, and county level general and special territorial planning (except for land-use schemes) and detailed planning of State border, national defence and territories of objects of strategic importance: by the institution authorised by the Ministry of the Environment;
2) documents of general, special territorial planning of the municipality level, detailed plans: by the County Governor's administration;
3) land use schemes, plans (projects) and landholding plans (projects): by the institutions authorised by the Government;
4) forest management schemes: by the institutions authorised by the Ministry of the Environment."

So, depending on what kind of the planning process is conducted the entity should select, to which the appeal regarding possible violations may be submitted in accordance with the pre-trial out-of-court procedure. However, the defined legal regulation does not allow to clearly identifying, to which entity a complaint should be filed. As it has been already mentioned, by naming the entities to which the rights are granted to implement the pre-trial procedure for dispute settlement out-of-court, the legislator is limited to denominating the institutions authorised by the Ministry of Environment and the institutions authorised by the Government. This means that a person (entity), who wishes to take advantage of the pre-trial procedure for dispute settlement out-of-court, should first find out which authority is competent to rule on the particular appeal.

A similar provision is provided in Item 37 of the Regulations of Public Awareness and Participation in the Process of Territorial Planning, which states that "persons, who received the reply that their proposals had not been taken into account in the territorial planning document, may appeal against such reply to the institution that carries out

the State supervision of territorial planning within one month from the date of receipt of the letter (reply to the proposal)." However, this legislative act, as well as the Law on Territorial Planning, does not refer to any specific authority, which should be addressed by a person to protect his/her rights out-of-court. In order to file a complaint to the competent authority it is required to follow another legislative act, namely the Description of the Procedure of the State Supervision of Territorial Planning (*hereinafter referred to as the Description*). Item 3 of the description states that the objects of the State supervision of the territorial planning are:

- the State Territorial Planning and Construction Inspectorate under the Ministry of Environment,
- the State Land Service under the Ministry of Agriculture,
- the State Forest Service.

Item 4 of the Description establishes the competence of the listed objects of the State supervision of the territorial planning in handling the complaints within the process of territorial planning. It should be noted that Item 5 of the Description refers to the Law on Territorial Planning of the Republic of Lithuania and to Regulations of Public Awareness and Participation in the Process of Territorial Planning, and states that the complaint shall be filed in accordance with the requirements of these legislative acts. Hence, in order a person could properly file a complaint and take advantage of the pre-trial procedure for dispute settlement out-of-court, he/she shall to follow several legislative acts.

In addition to the specific legislation regulating territorial planning, the institution that carries out the State supervision of territorial planning shall follow the Law on Public Administration[25] while handling complaints and reports on the administrative decisions adopted by a public administration entity in relation to territorial planning.

From this example it is clear that the existing legal regulation, establishing the pre-trial procedure for settlement of the disputes arising in the planning process of territorial planning out-of-court, is quite confusing. Attention should be drawn to the fact that currently there is no obligation to first settle a dispute out-of-court, there are no established requirements with regard to the submitted complaints, etc.; therefore, it can be concluded that the pre-trial procedure for settlement of the disputes arising in the planning process of territorial planning out-of-court is poorly regulated and does not allow efficient, cost-effective and quick handling of conflicts arising in the process of territorial planning.

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25 Article 35, Paragraph 4 of the Law on Territorial Planning states that the institution performing State supervision of territorial planning: "on the basis of the jurisdiction, within one year the administrative decision adopted by a public administration entity in relation to territorial planning, to examine and resolve the complaints and reports related to this administrative decision according to the procedure prescribed by this Law and the Law on Public Administration"; and Item 38 of the Regulations of Public Awareness and Participation in the Process of Territorial Planning indicates that "complaints and reports related to the administrative decision adopted by a public administration entity in relation to territorial planning shall be investigated on the basis of the jurisdiction by the institutions performing State supervision of territorial planning in accordance with the procedure established by the Law on Territorial Planning of the Republic of Lithuania and the Law on Public Administration of the Republic of Lithuania."

3. Key Provisions of the Reform of the Pre-trial Investigation Out-of-court of the Disputes Arising in the Area of Territorial Planning

On February 15, 2011 the Parliament of the Republic of Lithuania (Seimas) received the Draft Law on Amendments to the Law on Territorial Planning (new revision)[26] *(hereinafter referred to as the Draft Law)*. The authors of the Draft Law assume that the currently existing legal regulation is insufficient to achieve the efficient and high-quality pre-trial procedure for settlement of the disputes arising in the planning process of territorial planning. Therefore a separate chapter of the Draft Law deals with the pre-trial settlement of the disputes. Upon comparison of the existing legal regulation with the one established in the Draft Law, there are positive changes. Article 37, Paragraph 2 of the Draft Law suggests the institutions empowered to investigate complaints or reports on the decisions made by public administration bodies in relation to territorial planning, or inaction of these bodies. Although there are no changes made de facto with regard to the entities (institutions performing State supervision of territorial planning) or their competence, but a positive change is that everything will be established in one document, i.e., the Law on Territorial Planning.

The Draft Law sets out the requirements for complaints or reports submitted to the authority responsible for the pre-trial settlement of disputes (the existing legal regulation does not include this). According to the provisions of Article 38, Paragraph 2 of the Draft Law, the complaint (application) shall include: 1) the name of authority responsible for the pre-trial settlement of disputes, to which the complaint or report is filed; 2) the applicant‘s personal name (name), address (office address), as well as the name and address of a representative, if any, 3) the name and position of an officer, or the name and address of an authority (administrative entity), whose actions (omission of action) are appealed against, if known; 4) the personal names (names) and addresses (office addresses) of the third interested parties; 5) the specific action (inaction) or decision under appeal, and the date of its implementation (adoption); 6) the circumstances by which a person bases his/her claim, and supporting documents; 7) the personal rights or legitimate interests that are infringed by the action (inaction) or decision under appeal; 8) the person’s claim; 9) the list of the attached documents; 10) the date and location of issuance of the complaint or report. Basically, these requirements (except Item 7) are identical to the requirements established in Article 23 of the Law on Administrative Proceedings of the Republic of Lithuania[27] (hereinafter referred to as the Law on Administrative Proceedings), which apply to complaints (applications) filed at the Commission of Administrative Disputes or the Administrative Court. Based on the specific requirements for the complaints it may be difficult to formulate the “person’s claim” as provided for in Article 38, Paragraph 2, Item 8 of the

26 Draft Law on Amendments to the Law on Territorial Planning [interactive]. [accessed 2011-07-27]. <http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=392581>.

27 Law on Administrative Proceedings of the Republic of Lithuania. *Official Gazette*. 1999, No. 13-308.

Draft Law. It is obvious that a person can formulate his/her own claim within the limits of jurisdiction and empowerment assigned to the institution. According to the Law on Administrative Proceedings, the courts, in the course of investigation of the complaints, are granted the opportunity to withdraw the contested act (or part thereof), or may require the adequate administration entity to eliminate the infringement or execute other arrangements of the court, and require the municipal administration entity to implement the law, the decision by the Government or any other legal act[28]. The Commission of Administrative Disputes, among other things, may require the administration entity to eliminate the infringement or execute other arrangements of the Commission order, and require the administrative entity to make a decision on the subject of refusal or delay in carrying out its activities within the competence of within the period laid down by the Commission.[29] The jurisdiction of the institutions performing the State supervision of territorial planning is described in the regulation thereof.[30] However, none of these institutions are empowered to eliminate the decisions taken by other authorities; hence the question arises whether there will be legal presumption to satisfy a request and resolve the disputes, when people complain about the decisions adopted by public administration bodies.

Article 39, Paragraph 11 of the Draft Law provides that the decisions of the institution investigating a pre-trial dispute are binding on the public administration bodies, the decisions or inaction of which has caused the complaint or report proceedings. The Draft Law does not provide an obligatory mechanism for enforcing such a decision or reference to another legal act, which should be followed in implementing the decision. It is assumed that only upon appropriate establishment of a legal opportunity to ensure implementation of the decisions adopted by the institutions investigating a pre-trial dispute it will be possible to guarantee a comprehensive protection of the infringed rights of individuals.

As it has been already mentioned, the quasi-judicial settlement of disputes is not only the resolution of the conflict, but also verification of legality of the action of public administration. The institutions that implement a pre-trial procedure for dispute settlement out-of-court adopt certain decisions. These decisions of the institutions are nothing more than acts of law, i.e., the decisions by the competent state bodies, officials and private business leaders, taken in accordance with the law and following

28 Law on Administrative Proceedings of the Republic of Lithuania. *Official Gazette*. 1999, No. 13-308.

29 Decision of the Government of the Republic of Lithuania "On Approval of Work Regulations of the Commission of Administrative Disputes" No. 533 dated May 4, 1999. *Official Gazette.* 1999, No. 41-1288.

30 Order No. 349 of the Minister of Environment of the Republic of Lithuania "On Approval of Regulations of the State Territorial Planning and Construction Inspectorate under the Ministry of Environment", dated July 9, 2003. *Official Gazette*. 2003, No. 76-3499; Decree No. 1138 of the Government of the Republic of Lithuania "On Approval of Regulations of the Ministry of Environment of the Republic of Lithuania," dated September 22, 1998. *Official Gazette.* 1998, No. 84-2353; Decree No. 3D-187 of the Government of the Republic of Lithuania "On Approval of Regulations of the State Land Service under the Ministry of Agriculture," dated May 5, 2003. *Official Gazette.* 2003, No. 45-2033; Regulations of the State Forest Service approved by the order No. D1-464 of the Minister of Environment, dated August 3, 2009. *Official Gazette.* 2009, No. 96-4075.

the law.[31] In accordance with the provisions of the Draft Law the decisions of the institution investigating a pre-trial dispute will be binding on the public administration bodies, which will result in legal consequences. Therefore it is extremely important that such a decision is made by competent persons. The Draft Law does not establish the requirements for a person (persons), who will investigate the disputes according to the pre-trial procedure. It is assumed that the situation is false. Considering the fact that the application of the law is not merely the State's assistance for a person in utilizing the rights given or acquired by the positive law, but also judicature;[32] thus the education and competency requirements should be established for persons who investigate disputes in the pre-trial procedure.

We think that the optimal solution could be a duty (instead of a right) for the institution investigating disputes in the pre-trial procedure to establish a collegial body for such complaints, including an obligatory requirement for at least one member of the collegial body to hold a university degree in law.

Conclusions

1. The administrative disputes arising in the area of territorial planning may be settled in court, or at the pre-trial level, in other words—in quasi-courts. The disputes arising in the area of territorial planning are specific and differ from other administrative disputes. Usually the needs of people who think that their rights or legitimate interests are offended intersect with the public interest. Persons, who are unable to properly implement their owners' rights to property, and unable to implement the desired processes of territorial planning, often feel unduly constrained. Therefore, in order to ensure the effective legal protection of citizens' interests, quasi-courts may perform a special role, while addressing the administrative disputes arising in specific areas of administration. Settlement of the disputes in the pre-trial institutions is cheaper not only for citizens but also for the State.

2. The currently existing legal regulation is inadequate and quite complex for implementation of efficient and high-quality resolution of disputes arising in the process of territorial planning. There is no obligation to settle a dispute out-of-court first, there are no established requirements with regard to the submitted complaints, etc.; therefore, it can be concluded that the pre-trial procedure for settlement of the disputes arising in the planning process of territorial planning out-of-court is poorly regulated and does not allow efficient, cost-effective and quick handling of conflicts arising in the process of territorial planning.

3. The Draft Law more intensely focuses on the pre-trial settlement of disputes complaints than the current legal enactments; however, there is a lack of clear regulation of the decisions adopted by the institution investigating disputes in pre-trial procedure;

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31 Vaišvila, A. *Teisės* teorija [Theory of Law]. Vilnius: Justitia, 2009, p. 404.

32 *Ibid.*, p. 394−395.

there is no rule whether complaints (applications) in the pre-trial procedure shall and may be investigated by the officers or employees of a respective institution individually, or such decisions should be adopted by a collegial body.

4. The Draft Law stipulates that the decisions of the institution investigating a pre-trial dispute are binding on the public administration bodies, the decisions or inaction of which has caused the complaint or report proceedings, but there is no procedure set in order to ensure the execution of such decisions. Hence, due to absence of legal regulation of enforcement of the decisions, it is desirable to provide the opportunity to follow the norms established in the Law on Administrative Proceedings and governing the implementation of the decisions adopted by the Commission of Administrative Disputes.

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TEISINIŲ GINČŲ TERITORIJŲ PLANAVIMO SRITYJE IKITEISMINIO NAGRINĖJIMO PROBLEMOS

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Santrauka. *Kiekvienos valstybės tikslas – užtikrinti darnią, kryptingą ir nuoseklią visos valstybės teritorijos plėtrą. Vienas svarbiausių ir pagrindinių instrumentų, sudarančių prielaidą šiam tikslui pasiekti, – tinkamas ir efektyvus teritorijų planavimas.*

Teritorijų planavimo procesas yra sudėtingas ir komplikuotas, nes nuolat susiduriama su skirtingais fizinių ir juridinių asmenų poreikiais ir interesais atitinkamų teritorijų naudojimo atžvilgiu. Neretai privačių asmenų siekis teritorijų planavimo dokumentuose numatyti tik jiems palankias teritorijos naudojimo ir tvarkymo sąlygas neatitinka visuomenės intereso. Akivaizdu, kad susidūrus priešingiems interesams, tarp šalių kyla teisinis ginčas.

Dažniausiai kilusius ginčus šalys, pateikdamos skundus (*prašymus*), *perduoda spręsti teismui. Tačiau kreipimasis į teismą praktiškai visada reiškia ilgą bylinėjimosi procesą ir dideles proceso šalių išlaidas. Todėl optimaliausia tokio pobūdžio administracinius ginčus yra spręsti kreipiantis į ikiteismines ginčus nagrinėjančias institucijas.*

Galiojantis teisinis reguliavimas neišsamiai reglamentuoja galimybę ginčus, kylančius teritorijų planavimo procese, išspręsti kreipiantis į ikiteismines institucijas. Naujai parengtame Teritorijų planavimo įstatymo projekte nustatoma privaloma ikiteisminė tokio pobūdžio ginčų nagrinėjimo procedūra. Atlikus galiojančių teisės aktų, reglamentuojančių teisinius santykius teritorijų planavimo srityje ir Teritorijų planavimo įstatymo projekto analizę, nustatyta, kad nei galiojantis, nei rengiamas teisinis reglamentavimas neužtikrina asmens teisės į greitą, rezultatyvų, efektyvų ir kokybišką ikiteisminį administracinio ginčo išsprendimą.

Reikšminiai žodžiai: *teritorijų planavimas, ikiteisminis ginčų nagrinėjimas, visuomenės interesas.*

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