



**Seminar organized by the Supreme Administrative Court of Lithuania
and ACA-Europe**

**The Protection of Legitimate Expectations in Administrative Law and EU
Law**

Vilnius, 21–22 April 2016

Answers to Questionnaire: Bulgaria



Seminar co-funded by the “Justice” programme of the European Union

Seminar organized by the Supreme Administrative Court of Lithuania and ACA-Europe

The Protection of Legitimate Expectations in Administrative Law and EU Law

Vilnius, 21–22 April 2016

PART I

This principle is a specific reflection of the principle of legal certainty. According to the principle persons acting in good faith and on the basis of the law, should not be disappointed as a result of subsequent changes to this law. This principle applies primarily in terms of standards affecting individuals.

The principle of legitimate expectations is closely connected with the principle of legal certainty. In the absence of any express provision justifying and justifying the retroactive principle is that legal rule has no retroactive effect.

Recognition of legitimate expectations is not only about fairness to the individual and control of administrative power, it is also a powerful means to administrative efficacy. Administrative efficacy is an aspect of the wider notion of good administration, the enforcement of which is an important part of modern judicial review. The law should ensure that administrative action is based on a mix of short-term exigencies and more long-term considerations. Individual planning becomes difficult or impossible if law and policy are changed too often and too abruptly. Moreover, frequent changes may undermine individual rights by creating uncertainty about the boundaries of those rights. The legal protection of legitimate expectations by administrative law is a way of giving expression to the requirements of predictability, formal equality, and constancy inherent in the rule of law ...

In the Bulgarian legal system this principle is reflected in the art. 6 of the Law on Limiting Administrative Regulation and Administrative Control on Economic Activity and used for the purposes of proceedings under this special law. According to this principle, the administrative body should be disclosed policy that will follow when issuing administrative decisions and stick to it; any change to the consistent practice of the bodies should be motivated. Similar wording exists in art. 13 of Administrative Procedure Code under which the administrative authorities promptly make public the criteria, internal rules and practice in the exercise of its discretion in applying the law and achieve its objectives.

With the adoption of the Administrative Procedure Code in 2006, the system of administrative law in the Republic of Bulgaria received a independent procedural order for the issuance of administrative acts and their appeal before the Court. In the second chapter of the Code the principle of legitimate expectations is not explicitly formulated. He found a place as an aspect of the principle of legality. Its implementation into the Bulgarian legal system is determined by its implementation in practice of the ECHR and the CJEU. The criteria for its implementation is derived from the jurisprudence of the European Court of Human Rights and CJEU.

From a substantive perspective for the occurrence of a legitimate expectation there should have an action of the administrative authority by adopting affirmative face administrative act or by the constant practice information, statements or promises

In the case law are not observed factors of an economic nature that limit the application of the principle. More like limitation of the application follows from the fact that

this principle is not expressly formulated with such a definition in positive law, but it is derived from the explicit wording of other principles - legal certainty and the predictability and publicity. Moreover the plea of not applying is justified by lack of independent effect and it is used together with other principles and legal norms.

The application of this principle in this context requires unlawful administrative acts which create rights for individuals could not canceled even in the future if there is no explicit basis in the special law. Unlawful administrative acts can be revoked within a reasonable period. In case of retroactive cancellation the court must take into account any legitimate expectation of individuals and should compare it with the public interest in the annulment of the act. There is also the a position that such a comparison is necessary and should be made and in the annulment ex tunc of unlawful favorable acts, but here the courts are less inclined to protect the legitimate expectations on account of the public interest and to give priority to public interest due to the illegality of the administrative act. For declarative unlawful administrative acts in retroactive annulment the weighing of the opposing interests also takes place.. Generally court is recognizing a higher degree of protection to the expectations of individuals in case of annulment of an unlawful act which creates rights than in case of annulment of purely declaratory act.

PART II

Retroactivity of the administrative act can be attributed only if the normative act of higher degree, which is the basis of it has a similar effect. When the administrative authority shall issue an act or acts, it can be bound by its constant practice.

Such cases take place where the administrative act is a part of a series of administrative acts or similarity is in respect of the same person. Another case is in case of binding the administrative body on existing internal act, guide rules or instructions. Internal rules are even more important where the bodies deal with a large number of cases.

Although internal instruction are not legal norm that the administrative authority must always be comply with, it still is a rule of conduct indicating the practice to be followed and body can not derogate it without giving reasons as otherwise it will breach the principle of equality of treatment. However, the court should make an assessment how the internal act can create a legitimate expectation. Deviation from internal rule can be made depending on the question whether there is discretion for the administrative authority. In the practice do not occur cases that would recognize that information or statements of authority may create legitimate expectations. Regarding assurances and promises of administrative bodies - they can generate legitimate expectations if there is a clear commitment, ie the authority is bound himself to act in a certain way and not just promised to solve the problem.

The promise must be issued by a competent authority, it have to be lawful, it have not be based on factual error, which the person knew or should have known.

Even with legal semblance this situation could create a legitimate expectation.

When legitimate expectation are established by the legislative acts it should be taken into account that it is difficult to prove legitimate expectation where the change relates to the common policy incorporated in legislation.

The exceptions to this are related to the existence of an individual agreement between the person and the administrative body or if there is a permanent practice that has contributed to the creating of legitimate expectations. However, the courts tend to give protection of legitimate expectations arising from the favorable administrative act, rather than the actions of the administration. It is justified in terms of enhanced stability of the legal consequences of the administrative act. When checking whether the administrative act is fit to generate legitimate expectations, the court examines some question as to whether the expectation is concrete and does it have an objective character.

The court shall assess whether the person has acted lawfully.

In this regard, not only fraud or deception, but even error leads to the rejection of the claim.

The court shall assess whether the change is predictable or whether it is jointly caused by the behavior of the person. Even if a person has not done anything objectionable, legitimate expectations might not be justified. Court may find that there are legitimate expectations even without examining the subjective side, where the change is caused by the annulment of retroactive affirmative and lawful act. Generally there are three criteria for protection of legitimate expectations - an objective criterion - an act of administrative authority, a subjective criterion - formed good faith belief in the existence of certain rights and obligations, and a causal link between them.

If the Court finds that there exists a legitimate expectation it seeks to provide protection. This does not become necessarily by canceling the act which had changed the legal position, but through the way of awarding of damages. In assessing whether to issue the annulment the court examines whether there is a significant public value.

Burden of proof to the public interest lies on administrative authority. Indemnification is carried out when the rights have been acquired by third parties.

There is a practice that legitimate expectations do not preclude reimbursement of wrongly paid amounts as European funds, as in this case there is an explicit statutory basis in the relevant regulations.

Regarding the actions of the administrative body, which may give rise to any legitimate expectation both laws governing the application of this principle, put emphasis on the announced practice and internal regulations of administrative bodies. In a review of the jurisprudence of the Supreme Administrative Court is noticeable that people refer to art. 13 APC when it is not publicized procedure and criteria for specific administrative procedure before administrative body as in tender or a competition, not in the sense of generalized practice a type of production.

No obstacles to assume that unmotivated deviation practice is a violation, as the principle has substantive nature.

In the jurisprudence of the Bulgarian administrative courts does not practice to repeal acts because they contradict the information, statements and promises, but they eventually could be used as a basis for awarding damages.

Both Bulgarian normative acts assumes that this principle applies only in areas where the administrative authorities exercise discretionary power.

There are no cases of recognition of the legitimate expectations when the affection of the rights occurs by lawful administrative act or unmotivated change of the interpretation of the law made by the administrative authority. Under Bulgarian law only unlawful administrative acts is a subject to cancellation and they are the basis for the award of damages.