



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

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

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Answers to Questionnaire: Cyprus



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The Protection of Legitimate Expectations in Administrative Law and EU Law

PART I

The Development of the Principle of Legitimate Expectations

Question 1

What are the legal parameters (or fundamental legal values) that the principle of legitimate expectations is founded on (the respect for human rights, the rule of law, the principles of legal certainty, good governance, good faith, other

The principle of legitimate expectations is gradually becoming a cardinal principle of administrative law. Legitimate expectations are based on the rule of law which provides for regularity, and certainty in the actions and decisions of an administrative authority. It is also a method of exercising control over administrative decisions, in order to prevent arbitrariness or abuse of power.

Question 2

What is the principle of legitimate expectations essentially aimed at (promoting the trust in public authorities, ensuring legal stability, other)?

The principle of legitimate expectations aims to protect the trust and confidence that has been reposed in the Administration and to safeguard the citizens against abuse or misuse of power.

Question 3

Does the national legislation make explicit reference to the principle of legitimate expectations? If so, does it specify how this principle should be applied?

Legitimate Expectation is not a legal right in itself, stated in the law which can be directly applied. Although there is no explicit provision in the General Principles of Administration Law (Law 158(I)/99) safeguarding legitimate expectations, it is provided that the Administration will not act inconsistently, contradictory, in bad faith or in a way aimed at deceiving the citizen. It is also provided that it is not permissible for administrative acts to be contrary to representations or information provided by the competent authorities if the representations and the information is consistent with the law.

Question 4

Briefly describe the recognition of the principle of legitimate expectations and its principal stages of evolution in your national legal order. What are the factors that prompted the development of the legal imperative at issue? Is the development of the principle at issue mostly attributed to the judicature?

The *doctrine of 'legitimate expectation'* has been judicially recognised and it is still in an evolving stage. It is linked to the right to be treated fairly. Case law supports the proposition that where representations are made by an administrative body or by past practice or conduct, this can give rise to a basis for a legitimate expectation on the part of citizens that the Administrative authorities will not act inconsistently with those representations and it would be within its powers to fulfil them, unless there is some overriding public interest. A decision adverse to the legitimate expectations of a citizen entitles him to seek its review.

However, a person who invokes the doctrine of legitimate expectation, has to satisfy that he has relied on the representation and that the denial of that expectation has worked to his detriment. The Court can only interfere if the decision taken by the administration was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in the public interest. A mere reasonable expectation of a citizen, however, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary.

Question 5

Have there been any factors which led to the restriction of the scope of the protection of legitimate expectations, i.e. economic crisis? In case your jurisdiction does not formally recognize the principle of legitimate expectations, what are the objections to the acknowledgment of the principle? Are

there any other legal imperatives that substitute (at least in part) the principle of legitimate expectations, especially in those cases where individual rights and legal interests are adversely affected due to the changes in social or economic policy?

The courts recognise that the administration when pursuing the public interest in the constantly changing economic life of people should be allowed flexibility, adaptability and the ability to change course, whenever it deems necessary (Case no 1008/94 Karatzas v. Republic, 25.9.2000, Mousa v. Republic (2009)4 CLR 641). As stated above where there is a conflict between the public interest and legitimate expectations the former overrides the latter.

Question 6

What is the relation of the principle of legitimate expectations with other legal categories, such as the rules of the protection of acquired rights and *lex retro non agit*? Has the principle of legitimate expectations become an autonomous legal concept or has it proved its efficiency only when it is applied with other closely related legal imperatives such as the principles of equity, proportionality, legal certainty, and others?

As mentioned before, the principles of legitimate expectations is not treated as a legal right of its own. It is closely connected with the doctrine of good faith, which prevents the administrative

authority from deviating from its proclaimed policy or practice. The conduct of the administration must be consistent with the faith reposed in them by members of the public.

PART II

The Application of the Principle of Legitimate Expectations

Question 1

Please describe the situations in which the principle at issue binds the legislative bodies and the requirements drawn from that principle, i.e. what imperatives it presupposes to the legislator and other law-making bodies and what difficulties the compliance with these imperatives raises. Can (and to what extent) the principle of legitimate expectations preclude the public authority from acting in its legislative capacity and amending the legal regulation?

No one has a vested right in the non change of the law. Unless the right has crystallized under existing law and vested as such in the beneficiary, no right is acquired in law.

It is founded that there is no recognized right to indefinitely maintaining legislation. There is a mere expectation but this is subject to the general principle that there is a possibility of enactment of a new law that might affect this expectation. (Stavrou a.o. v. Republic (1987) 3 (A) C.L.R. 276)

Question 2

How does the principle of legitimate expectations bind the authorities of public administration in the sphere of individual legal acts? Is it essentially related to the revocation of administrative acts including the situations in which the administrative decisions are revoked for the purposes of correcting mistakes made by the institutions of public authority?

The principle of legitimate expectations imposes a duty on an administrative authority to act fairly taking into consideration all relevant factors before effecting a change in its policies which would affect a person who had been a beneficiary of that policy. A change of policy should not violate the substantive legitimate expectation and if it does so it must be a change of policy which is necessary and which is not irrational or perverse. But such policy can be changed by invoking the public interest. The choice of policy is for the decision-maker. No administrative authority can evolve policies in breach of the provisions of the law.

Question 3

Briefly describe the core characteristics of the protection of legitimate expectations in the national legal order, i.e.:

3.1. What is the normative legal source of legitimate expectation? What precise acts of the institutions of public

authority create legitimate expectations to the person concerned? Are public authorities bound not only by the formal final individual administrative decisions but also by other acts such as the interlocutory administrative decision, guidelines, consultations, and informal communication (e.g. verbal promises, intentions, correspondence etc.)? Does your national legal order recognize the qualified passivity (derived from the principle *qui tacet consentire videtur si loqui debuisset ac potuisset* [He who keeps silent is held to consent if he must and can speak]) and the tolerance of the offence by the authorities as sources of legitimate expectations?

3.2. Given the fact that in some cases the judicial application of the principle of legitimate expectations is regarded as ambiguous, does your jurisdiction attach some importance to the interpretation of particular notions accompanying the principle, such as hope, expectation, reasonable expectation, legitimate expectation? How are they interpreted and distinguished in the judicial practice?

3.3. Is the legitimacy of the expectation in question and its legal protection determined by the legitimacy of its source, i.e. can unlawful legal acts create legitimate expectations to the individual who has reasonably relied on these acts? If the answer is affirmative, could you set out the arguments justifying the recognition of the protection of legitimate expectations *contra legem*. Please provide certain examples from the case-law where applicable.

3.4. Is the good faith of the individual concerned regarded as a core feature in the formation and protection of legitimate expectations? Describe briefly how the good conduct of the individual concerned and the ability to foresee the impugned conduct is related to the application of the principle of legitimate expectations. Are there any other criteria of good behaviour developed by the judicature in application of the principle? Do the domestic courts differentiate two kinds of situations depending on the fact whether the matter concerns the natural person or private undertaking?

3.5. Are there any other key elements of the protection of legitimate expectations that have gained the importance in application of the principle in your national legal order?

Legitimate expectation is an expectation that ordinarily flows from an established practice, or consistent and regular conduct of activity of the administrative authority and it is based on the requirement of fairness in administrative actions. They are expectations of benefits and give locus standi to a person to seek judicial review of an administrative action or decision which is arbitrary, discriminatory, unfair, and violates the principles of natural justice.

Our courts accept the principle that acceptance of an act can be inferred from conduct and that silence may amount to acceptance. However when the administrative authority has acted unlawfully in the past, that does not allow a person to recall the principle of legitimate expectations, unless his expectations are legal. People

will normally formulate expectations to the extent that such expectations are recognized and protected by the law. As it is a well established principle there is no equality in unlawfulness. There is no distinction between legitimate expectations of a natural person and a private undertaking, the same criteria are applied.

If legitimate expectations are to arise, the decision of the administrative authority must alter the rights or obligations of person or deprive him of some benefit or advantage he enjoyed in the past and legitimately expects that he will continue to enjoy or he has been assured that his benefits will not be withdrawn, without first giving him the opportunity to contest the revocation. Legitimate expectation is not considered to be the same thing as anticipation. It is distinct and different from a mere desire or hope.

PART III

The Infringements of the Principle of Legitimate Expectations

Question 1

Is there a test (methodology) applied by the domestic courts for establishing the infringements of legitimate expectations? Are there any concerns regarding its reliability? Could you please list the main factors which are taken into account as regards the determination whether the legitimate expectations are infringed and require the application of judicial measures of particular nature.

The court will examine if the infringement of the principle of legitimate expectations amounts to a denial of a right guaranteed or is arbitrary, discriminatory, unfair or biased or amounts to gross abuse of power or violation of principles of natural justice. The Courts could only interfere, if the decision was the result of one of the above. A lot depends on the facts which are subjected to the general principles of administrative law.

Question 2

Does the application of the principle of legitimate expectations affect the approach of the public authorities to the protection of individual rights? Has the principle proved to be efficient where the rights and legal interests of individuals collide with the general interest? Please provide certain examples from the case-law where applicable.

Legitimate expectation has no role to play where the act is based on of public policy or is taken in the public interest unless the action taken amounts to an abuse of power. The principle is not considered an effective and efficient toll in the hands of individuals when they are to confront decision taken in the public interest or for policy reforms

Question 3

Briefly describe the remedies provided under your national legal order to the individuals whose legitimate expectations were frustrated. How is the choice for the type of the protection of legitimate expectations (*in natura*, compensatory or other) determined?

In its administrative jurisdiction, the Supreme Court may confirm an administrative act or decision or declare it as null and void. The administrative jurisdiction of the Supreme Court is limited only to the review of the legality of the challenged act or decision and it does not extend to the merits of the case. According to Article 146.6 of the constitution any person aggrieved by any decision declared to be void shall be entitled to institute legal proceedings in a court for the recovery of damages. The district courts are vested with the power to decide on the state liability for damages in such a case. This was the remedy given in the pilot cases that relate to the recent bank bail in, which came about as a rescue of the 2013 economic crisis in Cyprus (case no.551/13 a.o, Myrto Christodoulou v. Central Bank of Cyprus, 7.6.13)

Part IV

Other Dimensions of the Application of the Principle

Question 1

How do European Union law and national law complement one another in application of the principle of legitimate expectations? In some cases, does the national law allow the European Union law to resolve the questions regarding the protection of legitimate expectations with regard to the approaches developed domestically, e.g. the rules on the revocation of individual administrative decisions? Conversely, does European Union law provide the national court with instruments enabling it to better handle the disputes relating to the violations of legitimate expectations?

How is the evaluation of compatibility between national law and EU approach solved?

Following our accession to the European Union, EU Law was given supremacy over national law. However in the case of **A-G v. Constantinou (2005)1 CLR1356** the Supreme court did not permit the extradition of a Cypriot national on the basis that the Framework Decision on EAW could not prevail over Article 11 of the Constitution. As a result of that decision the Constitution was amended so that European law has supremacy over the Constitution and national legislation. EU law takes precedence over any conflicting constitutional or legal provisions.

Article 1A of the Constitution provides that:

"No provision of this constitution shall be considered as invalidating laws enacted, acts done or measures adopted by the Republic necessitated by its obligations as a Member State of the European Union or shall prevent Regulations, directives or other Acts or binding measures of a legislative character adopted by the European Union or by the European communities or by their institutions or by their competent bodies under the provisions of the Treaties founding the European communities or the European Union having legal effect in the Republic."

EU law does not complement national law.

In the **Civil Appeal 221/13 Michaelides v. AG, 2.September 2013** the court stressed the supremacy of EU law over the Constitution.

In relation to the compatibility of a law with EU Law, a preliminary reference to the CJEU can be made.

Question 2

When reviewing the lawfulness of decisions where the individual relies on the principle of legitimate expectations, do administrative courts refer to the provisions of the EU Charter? What consequences does it have for the application of the principle by your national administrative courts?

The supremacy of EU law and the EU Charter is recognised in the jurisprudence of our courts. Reference to the provisions of the EU Charter is made by the Supreme Court and other first instance courts in their judgments. The provisions of the charter have a decisive role on national administrative courts.

Question 3

Does the case-law of the European Court of Human Rights play a role in the application of the principle of legitimate expectations in your jurisdiction? If so, how? Please provide examples from your case-law.

Decisions of the European Court of Human Rights are a helpful source of guidance in the interpretation of the Constitution and the convention. The Supreme Court is not bound by the case law of the European Court of Human Rights. However it considers that such case-law is of high persuasive authority and it constantly applies it in cases concerning the application of Human Rights. Invariably it makes sure that national case law complies with the jurisprudence of the European Court of Human Rights. For instance in the judgment of the Full Bench of the Supreme Court in the case 1480/11 **Charalambous v. Republic**, dated 11.6.14, reference was made to the case of ***K.M. v. Hungary Appl. No. 66529/11, 14.5.2013*** where the ECHR stated that:

«For the Court, such long-term expectations, reinforced by many years of unchanged statutory guarantees, cannot be lightly disregarded. The justification for the protection of legitimate expectations originating in a statutory undertaking is that the law should protect the trust that has been reposed in the undertaking made by legislation. For the Court, good government depends upon trust between the governed and the governor (see, *mutatis mutandis*, in the context of statutorily due subsidies, *Plalam S.P.A. v. Italy, no. 16021/02*, §§ 35 to 42, 18 May 2010). Unless that trust is sustained and protected, governments will not be believed and civil servants will not order their affairs on that assumption as required by their heightened loyalty.»

