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

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Answers to Questionnaire: Estonia



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The Protection of Legitimate Expectations in Administrative Law and EU Law

Estonia

I

Q1. In the Estonian legal order, legitimate expectation arises from the principle of legal certainty, which is one of the carrying principles of the Constitution of the Republic of Estonia.¹ One part of the principle of legal certainty is the principle of the protection of trust, the elements of which in turn are: first, the *nulla poena sine lege* principle; second, the prohibition of adverse retroactive effects; and third, the principle of legitimate expectations.²

Q2. The principle of legitimate expectations protects an individual's autonomy: for a person to be autonomous he or she must have the opportunity to plan, or at least to a reasonable extent foresee, the consequences of his or her actions. Certainty in the preservation of the law in force must always be protected, if before the complete arrival of the prescribed consequence the legal order changes in such a way that the consequence does not arrive or does not arrive to its full extent. At the same time, nobody can have an absolute right to the preservation of a legal situation. According to the principle of legitimate expectations, everyone must have the opportunity to design their life in the reasonable expectation that the rights given and the obligations set upon him or her by the legal order will remain stable and will not strikingly change in a direction that is unfavourable to the person. However, legitimate expectations do not mean that the restriction of a person's rights or the termination of their advantages is entirely prohibited. According to the principle of legitimate expectations, everyone has the right to operate in the reasonable expectation that the applied law will remain in force. Everyone must also be able to use the rights and freedoms given to him or her by the law at least during the term established in the law. Therefore, an amendment made to the law cannot break its word in relation to the subjects of the law.³

Q3. Although no piece of Estonian legislation directly refers to legitimate expectations, in the Estonian legal order this term has been derived from the fundamental principles of the Constitution. According to Section 10 of the Constitution, the rights, freedoms and duties set out in the chapter "Fundamental Rights, Freedoms and Duties" shall not preclude other rights, freedoms and duties which arise from the spirit of the Constitution, or are in accordance therewith, and which conform to the principles of human dignity and of a state based on social justice, democracy and the rule of law. Section 10 of the Constitution is a development clause of the fundamental rights, the function of which is to show that fundamental rights are not

¹ Available online in English: <https://www.riigiteataja.ee/en/eli/521052015001/consolide>.

² M. Ernits. Constitution of the Republic of Estonia. Commented Edition, Section 10 p. 3.4.3.2. Available online: <http://www.pohiseadus.ee/ptk-2/pg-10/>.

³ See, for example, the judgment of the Constitutional Review Chamber of the Supreme Court of 2 December 2004 in Case No. 3-4-1-20-04 and the judgment of the Supreme Court en banc of 16 March 2010 in Case No. 3-4-1-8-09, available online in English: <http://www.nc.ee/?id=396> and <http://www.nc.ee/?id=1122>.

something that is frozen and closed off, but they are open and continuously developing. In an international context this is a somewhat unique provision.⁴

In addition, for administrative proceedings, Section 67 of the Administrative Procedure Act⁵ contains provisions on the protection of trust: upon the resolution of a repeal of an administrative act to the detriment of a person, the administrative authority shall among other things take into account the person's certainty that the administrative act would remain in force, the public interest and the interest of the person who is encumbered by the administrative act should that administrative act be repealed. An administrative act shall not be repealed to the detriment of a person if the person, trusting that the administrative act will remain in force, has used the property acquired on the basis of this administrative act, performed a transaction to dispose of his or her property, or changed his or her way of life in any other manner, and his or her interest that the administrative act remains in force outweighs the public interest that the administrative act be repealed. Section 67 of the Administrative Procedure Act also prescribes compensation for damages, if due to the predominant public interest an administrative act is repealed to the detriment of a person. At the same time, this provision does not cover the entire scope of legitimate interests that may arise from administrative decisions.

Q4. In the Estonian legal order, the principle of legitimate expectations has been developed and interpreted by the courts. Such general principles of law as legality, the prohibition of (adverse) retroactive effects and the principle of legitimate expectations or the principle of legal certainty and legitimate expectations, as well as the principle of equal treatment have already been considered in the early practices of the Supreme Court. The term “principles of administrative law” has also been used – which includes legal certainty, legitimate expectations, proportionality, non-discrimination, the right to be heard in administrative proceedings, the right to proceedings within a reasonable time, and efficiency and effectiveness – but the Court distinguishes these from constitutional principles.⁶

The development of the principle of legitimate expectations resulted from the need to react to perfidious behaviour of the legislator. The most well-known case on legitimate expectations is an early 1994 decision, in which the Court derived legitimate expectations from the general principles of law. In this case, the law prescribed a five-year tax exemption, which was repealed before the expiry of the term. The court later declared the legislative amendment invalid because “an amendment made in the law cannot break its word towards the subject of the law”.⁷ Cases from 1998 and 1999 regarding ownership reform amendments must also be highlighted, where the principle of legitimate expectations was applied in relation to proceedings that had already been initiated for property compensation where, due to the amended legal order, the applicants lost their right to receive compensation.⁸ In a newer case, the Constitutional Review Chamber of the Supreme Court completely disregarded the right to engage in entrepreneurial activity, applying the principle of legitimate expectations as a

⁴ M. Ernits. Constitution of the Republic of Estonia. Commented Edition, Section 10 p. 1.

⁵ Available online in English: <https://www.riigiteataja.ee/en/eli/530102013037/consolide>.

⁶ M. Ernits. Constitution of the Republic of Estonia. Commented Edition, Section 10 p. 3.

⁷ Judgment of the Constitutional Review Chamber of the Supreme Court of 30 September 1994 in Case No. III-4/A-5/94, available online in English: <http://www.nc.ee/?id=482>.

⁸ Judgments of the Constitutional Review Chamber of the Supreme Court of 30 September 1998 in Case No. 3-4-1-6-98 and of 17 March 1999 in Case No. 3-4-1-2-99, available online in English: <http://www.nc.ee/?id=459> and <http://www.nc.ee/?id=453>.

fundamental right when considering the constitutionality of a 100,000 euro deposit obligation for the sellers of liquid fuel with a 16 day advance notice.⁹

Q5. The legitimacy of restricting legitimate expectations for (socio)economic purposes has been considered in the decisions of the Constitutional Review Chamber of the Supreme Court.

One of the causes of legislative amendments that created disputes on the topic of legitimate expectations has been the (faster) completing of the ownership reform (the process of the restitution of property unlawfully expropriated due to the occupation to the owners has not yet been completed). Due to a legitimate interest, the Supreme Court did not consider justified the termination of compensation for unlawfully expropriated but destroyed property to the owners in 1997¹⁰, or the narrowing of the circle of people who are determined as entitled to get their property back¹¹. At the same time, the Court has considered justified that the legal norm concerning rent limits of the so-called “forced tenants” (persons that have, from the time of occupation, remained living in buildings returned to the owners) was declared invalid in 2004, as in the Court’s opinion, it should have been evident from the law that limiting the size of the rent in the returned residential buildings could only have been a temporary measure.¹² The Supreme Court also deemed justified a restriction set on local governments, declaring that the local government could transfer land that was given to them by the state for use as public land (municipalisation), and making other transactions with it, only with the consent of the Minister of the Environment or the Government of the Republic.¹³ The Court found that such a restriction infringed the principle of legitimate expectations, but was necessary in order for the land meant for public use not to be made publicly unusable or transferred with the aim of earning a profit. Therefore, the broader aim was to carry out the land reform in the public interest.

The second great reason for legislative amendments has been the recession, and the need arising from it to limit expenses and fill the state budget to ensure the state’s financial stability. The Supreme Court has considered these aims as legitimate, yet also has considered legitimate expectations, the equal treatment of persons and the proportionality of solutions as important. The Supreme Court has considered justified the setting of restrictions on local governments to undertake obligations in relation to the budget deficit¹⁴; however, it has not considered justified the proposal to establish a deposit obligation on fuel enterprises at a very short notice¹⁵ or to raise environmental charges previously established for a specified period¹⁶. In these cases, the court found that the infringement of legitimate expectations was

⁹ Judgment of the Constitutional Review Chamber of the Supreme Court of 31 January 2013 in Case No. 3-4-1-24-11.

¹⁰ Judgment of the Constitutional Review Chamber of the Supreme Court of 30 September 1998 in Case No. 3-4-1-6-98, available online in English: <http://www.nc.ee/?id=459>.

¹¹ Judgment of the Constitutional Review Chamber of the Supreme Court of 17 March 1999 in Case No. 3-4-1-2-99, available online in English: <http://www.nc.ee/?id=453>.

¹² Judgment of the Constitutional Review Chamber of the Supreme Court of 2 December 2004 in Case No. 3-4-1-20-04, available online in English: <http://www.nc.ee/?id=396>.

¹³ Judgment of the Constitutional Review Chamber of the Supreme Court of 19 January 2010 in Case No. 3-4-1-13-09.

¹⁴ Judgment of the Constitutional Review Chamber of the Supreme Court of 1 April 2010 in Case No. 3-4-1-7-09.

¹⁵ Judgment of the Constitutional Review Chamber of the Supreme Court of 31 January 2012 in Case No. 3-4-1-24-11.

¹⁶ Judgment of the Constitutional Review Chamber of the Supreme Court of 16 December 2013 in Case No. 3-4-1-27-13, available online in English: <http://www.riigikohus.ee/?id=1495>

disproportionate, and that the amendments had been made with too short an advance planning time. The Supreme Court has also declared unconstitutional legislative amendments by which the system for calculating the pensions of police officers and judges was changed¹⁷. Here also, the Supreme Court deemed legitimate the aim that the state's money would be economically and purposefully used and for the pension system to be sustainable, but found that the proposed changes damaged the right to equality and were not proportionate.

Q6. The principle of legitimate expectations is one part of the principle of legal certainty. The principle of legal certainty involves, as subprinciples, the principles of: legal clarity, protection of trust and the prohibition of secret law. In turn, the protection of trust involves, as subprinciples, the principle of *nulla poena sine lege*, the prohibition of adverse retrospective effects and the principle of legitimate expectations.

Primarily, the principle of legitimate expectations differs from the prohibition of adverse retrospective effects in that, in the case of the latter, the establishment of a norm with a burdensome retrospective effect needs to be reasoned and in the absence of a dominant reason the norm is unconstitutional. When weighing the legitimate expectations, the legitimate expectations must be reasoned; and in case of doubt, the amendment is permitted.

The principles of proportionality and equal treatment are general principles of law, similarly to legal certainty. All of these should be taken into account when making a specific decision. For example, when declaring a valid administrative instrument as invalid, an administrative authority must assess whether the person had a legitimate expectation of the instrument remaining in force, as well as whether its repeal is proportionate, taking into account the possible damages that would be caused to the person (if the person did not have a legitimate expectation, no question of the proportionality will arise either). Also, the infringement may be deemed as proportionate if the damage caused is compensated to the person.

II

Q1. According to the principle of legitimate expectations, everyone must have the right to design their life in the reasonable expectation that the rights given and obligations set upon him or her by the legal order will remain stable and will not strikingly change in a direction that is adverse for the person. Everyone must be able to use the rights and freedoms that are given to him or her by law at least during the term established in the law. Legitimate interest does not extend to all possible legal positions, but protects the person's legitimate expectations and trust that the rights given by the state, which the person has begun to realise, will not be taken away from the person. Trust in the permanence of the law in force must always be protected, if before the complete arrival of the prescribed consequence the legal order changes in such a way that the consequence does not arrive or does not arrive to its full extent. At the same time, legitimate expectations do not mean that the restriction of the person's rights or the termination of their advantages is entirely prohibited. A person has a legitimate expectation if four conditions have been fulfilled: 1) the legislation gives the person a subjective right; 2) the person has started to realise this right, or the term that is the condition for a favourable legal consequence has started to run; 3) the amendment causes a disadvantage for the person; and 4) the person's reasonable expectation of the permanence of

¹⁷ Judgments of the Constitutional Review Chamber of the Supreme Court of 26 June 2014 in Case No. 3-4-1-1-14 (available online in English: <http://www.riigikohus.ee/?id=1516>) and of 06 January 2015 in Case No. 3-4-1-18-14.

the legal order outweighs the public interests for the reorganisation. The predictability, clarity of the legal situation, changed circumstances, and the consequences related to the amendment must be taken into account.¹⁸

For example, the Supreme Court declared unconstitutional the revoking of the five-year tax exemption prescribed by law before the expiry of its term. The Court found that the amendment made in the law could not break its word to the subjects of the law.¹⁹ The Supreme Court has also declared a legislative amendment as unconstitutional in a case where fuel sellers, who had already been registered with a longer term, were obligated to submit a new registration application within 2.5 months from the entry into force of the legislative amendment, and to pay a significantly larger deposit than before (in the case of a small enterprise complainant it was 81 times greater than before). For the Supreme Court, the short *vacatio legis* became decisive – in addition, the Court found that for the enterprise to be able to reorganise its economic activities for the purpose of continuing its business, the *vacatio legis* must also take into account that the enterprise should be able to leave the market in normal conditions if it wanted. Thereby, the situation must also be considered where the enterprise tries to first find opportunities to comply with the new requirements (e.g. it could apply for a reduction of the deposit from the tax administrator, try to get a bank's surety, or find another additional deposit), but decides to leave the market upon failing to find such opportunities. 2.5 months was an unreasonably short time for this process.²⁰

At the same time, the Supreme Court did not find a conflict with the principle of legitimate expectations in a case where a local government challenged a legislative amendment made due to the economic crisis, which restricted issuing bonds, taking loans and other obligations, which require the payment of money in the future, for local governments. The stability of the financing system of local governments cannot mean preserving the regulation valid at a moment, and together with it ensuring the level of funding at that time, forever – the state has the right to redesign the legislation regulating such financing if necessary. Also, because the making of such investments, the funding of which the local governments had already taken into account and for which they had taken binding steps before the restrictions entering into force, was not made impossible by the establishment of the restrictions, the Supreme Court considered the provision constitutional.²¹

Q2. The principle of legitimate expectations, as a general principle of law, has been derived from the Constitution, which of course also binds administrative authorities in the entirety of their activities. The Supreme Court has expressed the position that, in a situation where a person's right to benefits has been ascertained by an individual administrative act, the person's certainty must be protected even more strongly than in the case of a benefit arising from the law, because with an individual act the state has expressed its position regarding a specific question, and not just abstractly.²²

¹⁸ M. Ernits. Constitution of the Republic of Estonia. Commented Edition, Section 10, p. 3.4.3.2.

¹⁹ Judgment of the Constitutional Review Chamber of the Supreme Court of 30 September 1994 in Case No. III-4/A-5/94, available online in English: <http://www.nc.ee/?id=482>.

²⁰ Judgment of the Constitutional Review Chamber of the Supreme Court of 31 January 2012 in Case No. 3-4-1-24-11.

²¹ Judgment of the Constitutional Review Chamber of the Supreme Court of 1 April 2010 in Case No. 3-4-1-7-09.

²² Judgment of the Administrative Law Chamber of the Supreme Court of 7 December 2001 in Case No. 3-3-1-51-01, p. 2.

More specifically, the Administrative Procedure Act regulates the consideration of legitimate expectations when repealing administrative acts, incl. for rectifying the earlier mistakes of an administrative authority. This is also the main field where the administrative authorities must take into account the principle of legitimate expectations. According to Subsection 67 (1) of the Administrative Procedure Act, upon the resolution of a repeal of an administrative act to the detriment of a person, the administrative authority shall take into account, among other things, the person's certainty that the administrative act would remain in force. Subsection 67 (2) of the Administrative Procedure Act establishes that an administrative act shall not be repealed to the detriment of a person if the person, trusting that the administrative act will remain in force, has used the property acquired on the basis of this administrative act, performed a transaction to dispose of his or her property, or changed his or her way of life in any other manner, and his or her interest that the administrative act remains in force outweighs the public interest that the administrative act be repealed. If the public interest outweighs the person's legitimate expectations, or proprietary damage is caused or will certainly be caused to the person due to the person's certainty in the administrative act, then this shall be compensated to the person (Administrative Procedure Act Subsection 67 (3)). However, certainty cannot be used as the basis, if: 1) the term for filing an action over an administrative act (generally 30 days) has not yet expired, or court proceedings are ongoing; 2) the possibility for a repeal is prescribed by law or a possibility for the repeal exists in the administrative act; 3) the person has not performed the additional duties related to the administrative act; 4) the person has not used the money or item transferred on the basis of the administrative act for its intended purpose; 5) the person was aware of the unlawfulness of the administrative act, or was unaware thereof due to his or her own fault; or 6) the administrative act was issued on the basis of false or incomplete information submitted by the person, or by fraud or a threat, or as a result of an exercise of unlawful influence on the administrative authority in any other manner (Administrative Procedure Act Subsection 67 (4)).

Regardless of Clause 67 (4) 2) of the Administrative Procedure Act, the Administrative Law Chamber of the Supreme Court has also considered unlawful reserving the possibility of repealing an administrative act (permit) prescribed with a secondary condition before the term of the permission, if the purpose of such a repeal in substance precludes the arising of legitimate expectations.²³ The Court also used as a basis for its decision the fact that the arrival of the circumstance causing the repeal was mainly under the control of the administrative authority itself.

Q3.

3.1. The legal basis of the principle of legitimate expectations, as written above (Part I Q3 and Q4, Part II Q2), are the general principles derived from the Constitution and from case law; more specifically, this principle has been regulated in the context of repealing administrative acts in the Administrative Procedure Act.

In addition to valid administrative acts, the principle of legitimate expectations has in the case law been derived from the less formalised behaviour of the administration. However, this applies only to a limited extent. The Administrative Law Chamber of the Supreme Court has emphasised that a legitimate expectation for the satisfaction of a person's application can only

²³ Judgment of the Administrative Law Chamber of the Supreme Court of 24 April 2014 in Case No. 3-3-1-15-14, p. 22.

be based on a clear promise, on the basis of which there are grounds to believe that it will not be changed.²⁴

On a few occasions it has arisen that in an agreement concluded in the course of court proceedings the applicant and the local government have agreed on the content of a spatial plan, and in return the applicant has surrendered his or her complaint.²⁵ However, the Supreme Court has not yet taken a position in its case law about whether, and how strong, a legitimate expectation may arise for a person from such an agreement.

In the case of privatising land, in the Supreme Court's assessment the orders given as part of the preliminary acts for privatisation (e.g. ascertaining the size of the plot of land) do not as a rule give the entitled subject a legitimate expectation that the purchase-sale agreement for the land will be concluded with him or her, but a legitimate expectation may arise from the fact if the payment of the price for the privatisation has been required from the person. A long-term failure to act by the decision-maker may also give grounds for a legitimate expectation that the orders given by another administrative authority as preliminary acts for the privatisation remain in force and the person can privatise the land determined by the orders. The protection of trust is not absolute, but it is an important principle which the administrative authority must take into account.²⁶ The Supreme Court has also found that if the administrative authority keeps the persons believing that it plans to make a decision which corresponds to the wishes of the persons, but instead makes a decision which does not correspond to the wishes of the persons, then such an activity may breach the legitimate expectations of the persons. Additionally, if the administrative authority sees that the behaviour of the persons will not lead to the desired result, it is obligated to notify the persons of this and to enable them to change their behaviour.²⁷ Also, the substantive processing of an application by an administrative authority in a situation where the term of the submission of the application has actually expired, may according to case law give grounds for the arising of legitimate expectations, but still does not mean the restoration of the term by default.²⁸

In addition, the permanent practice of the administrative authority may give grounds for legitimate expectations to arise, but the protection of trust cannot be applied for the purpose of continuing an incorrect administrative practice.²⁹

3.2. As is also shown by the above examples of case law that have been submitted, the principle of legitimate expectations is often considered as intertwined with the principle of the protection of trust³⁰. Considering that, in the Estonian legal order, the principle of legitimate expectations is considered as one subprinciple of the protection of trust (see also Part I Q1),

²⁴ Judgment of the Administrative Law Chamber of the Supreme Court of 27 January 2010 in Case No. 3-3-1-79-09, p. 15.

²⁵ See, for example, the judgment of the Tallinn Circuit Court of 24 September 2015 in Case No. 3-14-235.

²⁶ Judgment of the Administrative Law Chamber of the Supreme Court of 29 March 2006 in Case No. 3-3-1-81-05, p. 14.

²⁷ Judgment of the Administrative Law Chamber of the Supreme Court of 27 March 2002 in Case No. 3-3-1-17-02, p. 18.

²⁸ Judgment of the Administrative Law Chamber of the Supreme Court of 7 December 2001 in Case No. 3-3-1-51-01, p. 4.

²⁹ Judgment of the Administrative Law Chamber of the Supreme Court of 6 December 2004 in Case No. 3-3-1-53-04, p. 13. According to this judgment, the continuing of incorrect administrative practices can also not be required on the basis of the principle of equal treatment.

³⁰ Also translated as "protection of certainty" in the Administrative Procedure Act.

this is understandable and reasonable. In case law, these two principles are often not even distinguished. It must also be noted that only the term “protection of certainty” is used in the text of Section 67 of the Administrative Procedure Act, but in case law legitimate expectations have also been spoken about when interpreting this provision. In the context of administrative activities, legitimate expectations is definitely a broader term than the protected certainty of the administrative act remaining in force, considered in Section 67 of the Administrative Procedure Act (see also the response to the previous question).

The more colloquial term “perfidious” is sometimes also used for the breach of legitimate expectations, which may help the lay reader to understand the nature of the principle. In addition, the expressions “reasonable expectation” and “justified hope” are also encountered. However, their use is not widespread enough to enable us to make generalisations about the various connotations of the meaning of these terms.

3.3. The position has been taken, in Estonian case law, that even though the established practices of an administrative authority may give grounds for a legitimate expectation to arise, the principle of the protection of trust cannot be applied for the purpose of continuing incorrect (unlawful) administrative practices.³¹

An unlawful administrative act issued in relation to a specific person may still cause a legitimate expectation. Even an unlawful administrative act may not be repealed to the detriment of a person if that person, trusting that the administrative act will remain in force, has used the property acquired on the basis of this administrative act, performed a transaction to dispose of his or her property, or changed his or her way of life in any other manner, and his or her interest that the administrative act remain in force outweighs the public interest that the administrative act be repealed (Administrative Procedure Act Subsection 67 (2)). However, certainty cannot be relied on if the person is aware of the unlawfulness of the administrative act, or is unaware of the unlawfulness due to his or her own fault (Administrative Procedure Act Clause 67 (4) 5)), or if the administrative act has been issued on the basis of false or incomplete information submitted by the person, or by fraud or a threat, or as a result of exercising an unlawful influence on the administrative authority in any other manner (Administrative Procedure Act Clause 67 (4) 6)). An exception has in turn been made of the latter in Subsection 67 (5) of the Administrative Procedure Act: the submission of false information does not preclude the consideration of certainty if the submission of such false or incomplete information is caused by an administrative authority, and the person was not and need not have been aware of the unlawfulness of the administrative act.

The Supreme Court has explained that a person cannot rely on the principle of legitimate expectations in any case, if he or she should have been aware of the unlawfulness of the administrative act that is being repealed, or if the person did not actually rely on the administrative act remaining in force.³²

At the same time, in several cases the Supreme Court has deemed the repealing of an unlawful administrative act to be in conflict with the principle of legitimate expectations if its consequences include reclaiming the benefits given by the act from the person receiving such

³¹ Judgment of the Administrative Law Chamber of the Supreme Court of 6 December 2004 in Case No. 3-3-1-53-04, p. 13.

³² Judgment of the Administrative Law Chamber of the Supreme Court of 7 December 2001 in Case No. 3-3-1-51-01, p. 3.

benefits. For example, in a case where a dispute arose over the reclaiming of an unemployment insurance benefit, the Supreme Court considered the following circumstances as important: the complainant had used the benefit in good faith for coping with the unemployment; the complainant did not and was not supposed to understand the unlawfulness of the administrative act, as it was a complex legal situation and the complainant could trust in the competence of the official from the Unemployment Insurance Fund; and the complainant had, on the basis of the Unemployment Insurance Fund's promises about the receipt of the unemployment insurance benefit, waived challenging the grounds of his dismissal^{33, 34}. Furthermore, in a case where a dispute arose over whether damage to the health of the complainant, who was a rescue servant, was caused by his or her work (i.e. whether it was an occupational accident), and the different authorities had taken different positions on this issue, the Supreme Court considered reclaiming the benefits prescribed for an occupational accident to be in conflict with Subsection 67 (2) of the Administrative Procedure Act.³⁵

In a case concerning the privatisation of land to the building belonging to the person, a preliminary administrative act was previously issued addressing how much land would be privatised to the complainant, but the size of this plot of land was significantly reduced by a later administrative act. In this instance, the Supreme Court considered it necessary to take into account the complainant's legitimate expectations about the original preliminary administrative act remaining in force, as the complainant had already paid the selling price for the land to be privatised, and also paid land tax for years considering it as a larger registered immovable, and had built a boundary fence and carriageway on the land. The Court also considered it relevant that such important public interests or rights of third parties, which would be damaged by the earlier act remaining in force, were not highlighted in the case.³⁶

3.4. As explained in the responses to the previous questions, a legitimate expectation will not arise for a person if he or she is aware of the unlawfulness of the administrative act, or is unaware thereof due to his or her own fault, has knowingly submitted false information to the administrative authorities, has not performed the additional duties related to the administrative act, or has not used the money or item transferred on the basis of the administrative act for its intended purpose, according to Administrative Procedure Act Subsection 67 (4)). In this issue, natural and legal persons have not been distinguished in case law. However, it may be presumed that awareness of the unlawfulness of an administrative act is significantly more likely in the case of a large enterprise operating within the related field, than for a natural person inexperienced in legal issues.

3.5. No, all of the important elements have been reflected in the previous responses (in addition to Part II, see also Part I Q6).

III

³³ The receipt of the unemployment insurance benefit is only prescribed in the case of some grounds for dismissal.

³⁴ Judgment of the Administrative Law Chamber of the Supreme Court of 24 November 2011 in Case No. 3-3-1-74-11, p. 17.

³⁵ Judgment of the Administrative Law Chamber of the Supreme Court of 27 November 2014 in Case No. 3-3-1-66-14, p. 28.

³⁶ Judgment of the Administrative Law Chamber of the Supreme Court of 12 October 2006 in Case No. 3-3-1-48-06, p. 12–13.

Q1. The person shall be deemed to have a legitimate expectation if four conditions have been fulfilled: 1) the legislation (general or individual act) gives the person a subjective right; 2) the person has already started to realise this right, or the term that is the condition for a favourable legal consequence has started to run; 3) the amendment would cause a disadvantage to the person; and 4) the person's reasonable expectation of the permanence of the legal order outweighs the public interests for the reorganisation. The legitimate expectations must be reasoned; in cases of doubt restricting them is permitted.³⁷

To assess whether the infringement of a person's rights is permissible, the court will primarily look at the proportionality of the infringement, but also the compliance with the principle of equal treatment and other legal principles. The infringement of legitimate expectations may not necessarily make the measure unlawful, but it is an important consideration which must be taken into account when reaching a decision.³⁸

Q2. The principle of legitimate expectations is one of the principles that the public authorities must follow when making (administrative) decisions, or a legislator in making legislative drafts. The Constitutional Review Chamber of the Supreme Court has made several judgments about legislative amendments, by which the legitimate expectations of individuals were infringed.

For example, the Court considered the establishment of a deposit obligation for fuel enterprises on very short notice, and the increasing of environmental charges previously established for a determined period, as unconstitutional. In these cases, the Supreme Court found that the infringement of the legitimate expectations of the individuals was disproportionate, as the amendments had been made with an advance planning period that was too short.³⁹

The Supreme Court also declared unconstitutional the legislative amendments by which the system for the calculation of the pensions for police officers and judges was changed. The Supreme Court did consider as legitimate the aim that the state's money would be used economically and purposefully and the pension system would be sustainable, but found that the amendments damaged the fundamental right of ownership in conjunction with the principle of legitimate expectations and the right to equality, and that the amendments were not proportionate.⁴⁰

There has also been a case in administrative practice, where a restriction was set on an enterprise that wished to establish a windfarm on a phosphorite deposit, that if a mining permit were given for the deposit that had been unused so far, the windfarm would need to be dismantled and carried away within two years. The Supreme Court found that such a restriction was disproportionate, as it put the enterprise in a very uncertain situation, and therefore infringed the person's reasonable expectation that the rights given and the

³⁷ M. Ernits. Constitution of the Republic of Estonia. Commented Edition, Section 10, p. 3.4.3.2.

³⁸ Judgments of the Administrative Law Chamber of the Supreme Court of 29 March 2006 in Case No. 3-3-1-81-05, p. 14, and of 8 May 2014 in Case No. 3-3-1-9-14.

³⁹ Judgments of the Constitutional Review Chamber of the Supreme Court of 31 January 2012 in Case No. 3-4-1-24-11 and of 16 December 2013 in Case No. 3-4-1-27-13 (available online in English: <http://www.riigikohus.ee/?id=1495>).

⁴⁰ Judgments of the Constitutional Review Chamber of the Supreme Court of 26 June 2014 in Case No. 3-4-1-1-14 (available online in English: <http://www.riigikohus.ee/?id=1516>) and of 6 January 2015 in Case No. 3-4-1-18-14.

obligations set on it by the legal order would remain stable and would not strikingly change in an adverse direction.⁴¹ A second important case concerns the establishment of an extensive addition to the Viru Hotel, located in Tallinn city centre. The required detailed plan had already been established in 1999, but the company only applied for a building permit in 2005. The Tallinn City Council declared the detailed plan invalid in respect to the addition, as it found that during the years that passed from the time of the establishment of the plan, the public interests had changed and the addition was unsuitable in terms of heritage conservation and in terms of environmental and urban constructions. The courts left the decision of the city council in force, but the Supreme Court decided that the damage caused due to the breach of legitimate expectations must be compensated to the enterprise. The Supreme Court found that, even though the law allowed for declaring the plan invalid, if the local government wished to dispense with implementing it then the person would still have a legitimate expectation that, at least during the next few years following the establishment of the detailed plan, he or she would have a reasonable opportunity to realise the construction right for the plot established in the detailed plan.⁴²

It has been shown by Supreme Court case law that the principle of legitimate expectations (though in conjunction with other principles) has been applied fairly strictly, and that extensive public or general interests have not been a sufficient reason to disproportionately restrict the rights (incl. the legitimate expectations) of an individual. Therefore, the principle may be considered as an efficient measure for protecting the rights of persons.

Q3. The primary legal remedy against an administrative act that breaches a person's legitimate interests is a challenge or a complaint to repeal the respective administrative act. If necessary, declaring the piece of legislation that is the basis of the administrative act as unconstitutional may also be applied for, as part of this court action (incl. due to a breach of legitimate expectations). In addition, Subsection 67 (3) of the Administrative Procedure Act establishes that if an administrative act is repealed to the detriment of a person due to predominant public interests, then the proprietary damage which is caused, or will certainly be caused, to the person due to that person's certainty in the administrative act shall be compensated to the person.

The Supreme Court has found that not any proprietary damages, which are caused to the person due to the administrative act being repealed, should be compensated pursuant to this provision, but has primarily found that the expenses, which the person invested trusting the administrative act and realising the rights arising from the administrative act, and which have lost their value as an investment due to the administrative act being repealed because they cannot be recouped, should be compensated.⁴³ In such cases, the extent and manner for which the damage is to be compensated is still legally not very clearly regulated, and there have been few court cases.

If the legitimate expectations have been infringed because of a legislative amendment (issuing legislation, or also failure to issue legislation), the damaged person has the right to claim

⁴¹ Judgment of the Administrative Law Chamber of the Supreme Court of 24 April 2014 in Case No. 3-3-1-15-14.

⁴² Judgment of the Administrative Law Chamber of the Supreme Court of 8 May 2014 in Case No. 3-3-1-9-14.

⁴³ Judgment of the Administrative Law Chamber of the Supreme Court of 8 May 2014 in Case No. 3-3-1-9-14, p. 32-34.

compensation for the damage pursuant to Subsection 14 (1) of the State Liability Act⁴⁴. Still, compensation for such damages may only be required if the damage was caused by a significant violation of the obligations of a public authority, the legal provision forming the basis for the violated obligation is directly applicable, and the person belongs to a group of persons who have been specially injured due to the legislation for the general application, or by the failure to issue legislation for the general application.

IV

Q1. As can be seen from the response to the next question, the Estonian courts have not based their considerations on the principle of legitimate expectations on the Charter of Fundamental Rights. However, when deriving the principle of legitimate expectations from the Constitution, where it was not explicitly established, the Supreme Court did also use the general principles of EU law as their basis (see also Part IV Q3).

Even though the criteria for the control of violations of the principle of legitimate expectations do not fully overlap, the content of the principle of legitimate expectations is very similar in Estonian and in EU law even though, in the assessment of the author of the response, the implemented practice of the principle of legitimate expectations derived from the Estonian Constitution is a little stricter towards public authorities than in the case law of the European Court of Justice. Even though, as a rule, the Estonian courts use the Constitution as the source for the principle of legitimate expectations, in matters which are related to EU law the practice of the European Court of Justice is used as the basis, and the Constitution is generally left aside. Namely, the Supreme Court has taken the position that a constitutional review of Estonian law provided under the EU law may take place primarily in those parts of Estonian law which do not arise from European Union laws, or as an exception, if the EU law enables a right of discretion to the Member State when transposing and implementing the EU law, in exercises of which the Member State is bound by its Constitution and the principles arising from it.⁴⁵ In relation to the implementation of Section 67 of the Administrative Procedure Act (see Part II Q2), in repealing an administrative act in fields related to an EU law, then even though there are no examples in case law, it may be presumed that the doctrine of interpretation in conformity will be used as the basis, and in a case of conflict the Administrative Procedure Act provision will not be applied. It is also noteworthy that in specific Estonian laws the opportunity to repeal an administrative act may be regulated differently than in the Administrative Procedure Act – so, for example, the EU Common Agricultural Policy Implementation Act establishes a special regulation for reclaiming grants, referring to the relevant EU regulations.

Q2. No, the Estonian administrative courts have not referred to the European Union's Charter of Fundamental Rights when considering the principle of legitimate expectation.

Q3. The Supreme Court has played an important role in shaping the practice of implementing the principle of legitimate expectations in Estonia. The Supreme Court has not referred to the case law of the European Court of Human Rights when considering this principle. Instead,

⁴⁴ Available online in English: <https://www.riigiteataja.ee/en/eli/515112013007/consolide>.

⁴⁵ Ruling of the Administrative Law Chamber of the Supreme Court of 7 May 2008 in Case No. 3-3-1-85-07, p. 39; summary available on JuriFast: http://www.aca-europe.eu/WWJURIFAST_WEB/DOCS/EE01/EE01000021.pdf.

when considering the principle of legitimate expectations, the Supreme Court has based its decisions on the Constitution of the Republic of Estonia and the general principles of law.

In 1994, the Supreme Court explained that, in democratic states, legislative drafting and implementing of the law, including administering justice, is guided by the laws and the general principles of law that are developed historically. The Supreme Court added that when shaping the general principles of Estonian law, the general principles of law which are shaped by the institutions of the European Council and the European Union must also be taken into account, next to the Constitution.⁴⁶

The general principles of law apply in Estonia pursuant to the principles of a democratic and social state, based on the rule of law established in Section 10 of the Constitution and the preamble of the Constitution, according to which the Estonian state is founded on liberty, justice and the rule of law. The Supreme Court has explained that the validity of the principles of a democratic and social state, based on the rule of law, means that those general principles of law which are recognised in the European legal space also apply in Estonia.

⁴⁶ Judgment of the Constitutional Review Chamber of the Supreme Court of 30 September 1994 in Case No. III-4/A-5/94, available online in English: <http://www.nc.ee/?id=482>.