



**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: Lithuania



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The Protection of Legitimate Expectations in Lithuania

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PART I

The Development of the Principle of Legitimate Expectations

Q1. 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)?

Even though it is not directly expressed in the Constitution of the Republic of Lithuania, the protection of legitimate expectations is at the root of the constitutional principle of the rule of law. The rule of law is declared in the Preamble to the Constitution¹ but is not limited to it and reveals itself in various provisions of the Constitution. The constitutional principle of the state under the rule of law is especially capacious; it comprises a range of various interrelated imperatives, inter alia the protection of legitimate expectations. The Constitutional Court has held more than once that inseparable elements of the principle of the state under the rule of law are the protection of legitimate expectations, legal certainty and legal security². The constitutional principles of the protection of legitimate expectations, legal certainty and legal security imply the obligation of the state to secure the certainty and

¹ The Lithuanian nation – <...> striving for an open, just, and harmonious civil society and *State under the rule of law*, by the will of the citizens of the reborn State of Lithuania, adopts and proclaims this Constitution. The Constitution of the Republic of Lithuania adopted by citizens of the Republic of Lithuania in the Referendum of 25 October 1992.

² In the jurisprudence of the Constitutional Court of the Republic of Lithuania the terms ‘legal certainty’ and ‘legal security’ are not employed as synonyms even though the differences in their sub-aspects are not entirely clear. Nevertheless, together legal certainty and legal security may be linked to the concepts referred to as *sécurité juridique* in French, legal certainty in English, and *Rechtssicherheit* in German law.



stability of the legal regulation, to protect the rights of individuals, to respect the legitimate interests and legitimate expectations. These principles inter alia imply that the state must fulfil all its undertaken obligations to individuals. If the protection of legitimate expectations, legal certainty and legal security were not secured, the people's trust in the state and law would not be guaranteed³.

Q2. 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 is essentially aimed at strengthening the trust in the state, its institutions and the law. Thus, promoting the trust in institutions of public authorities is at the core of the relationships between individuals and both the legislator and public administration.

The protection of legitimate expectations is also aimed at ensuring legal certainty to private parties since the application of this principle requires that the public authorities would be bound by the obligations they undertake and any individual who has reasonably relied on them should not suffer disproportionate adverse repercussions.

Relating to the rule of law, the principles of legal certainty and equity, the principle of the protection of legitimate expectations also embodies the idea of respect for human dignity which is at the core of the protection of individual rights in general. In this regard, the principle of the protection of legitimate expectations is a key element of the protection of individual rights and legitimate interests and thus relates to the legal order and its values per se.

Q3. Does the national legislation make explicit reference to the principle of legitimate expectations? If so, does it specify how this principle should be applied?

In Lithuania, certain rules related to the protection of legitimate expectations can be found in the Law on Public Administration of the Republic of Lithuania. This law is a general legal act providing main rules for both administrative procedures at the state level and administrative procedures at municipal level. The law sets out the background for institutional administrative law and procedural administrative law. This act also provides a catalogue of principles of public administration. However, the principle of legitimate expectations is not expressly included in this catalogue. Nevertheless, respective provisions of the Law on Public Administration capture certain aspects of the principle of legitimate expectations. It establishes that the public authorities are bound by opinions, consultations, and explanations that are declared formally. In addition to this, the Law on Public Administration implicitly forbids the public authorities, in the absence of statutory provision, to revoke administrative decision.

³ The Constitutional Court of the Republic of Lithuania, Rulings of 6 February 2012, 14 February 2011, and 29 June 2010.



Meanwhile, the Law on the Legislative Procedure of the Republic of Lithuania sets out certain rules concerning the mandatory transitional period that has to be provided in order to enable the interested individuals to adapt to the changing circumstances. Under general rule, new legal provisions imposing new taxes shall come into force at least six months after the date of publication of these provisions. By the same token, new legal provisions affecting the right freely to exercise an economic activity shall come into force at least three months after the date of publication of these provisions.

In this context, it is also important to mention different provisions related to the protection of legitimate expectations which are set out in the specialized legal regulation. For example, the Law on the Approval of the Statute of the Internal Service explicitly declares the principle of legitimate expectations as a principle of civil service. Meanwhile, the Law on Tax Administration sets out legal rules on the individual consultations and formal explanations of the tax law. In this regard, public authorities are bound only by written consultations that are formally declared or approved by the institution. These consultations oblige the administration even in those cases where the subsequent consultation adopted by the superior body is declared as incompatible with the imperative legal norms. Moreover, no legal measures shall be applied to the economic operators for the failure to observe rules laid down in the legal acts where this failure is concerned with the faulty consultation. It leads naturally to conclude that under these circumstances the consultations of the public authorities are recognized as giving rise to legitimate expectations.

Q4. 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 judiciary?

The principle of legitimate expectations has been first developed in the jurisprudence of the Constitutional Court of the Republic of Lithuania in 2001⁴. The introduction of the principle was triggered by the drastic measures that the Lithuanian legislator had undertaken in order to change the social and economic policy. Gradually, the concept of legitimate expectations came up for considerations in a catena of rulings especially regarding the changes in social policy. For the sake of brevity we do not propose to refer to all these cases. Nevertheless, in order to appreciate the concept, we shall refer to few decisions.

While explaining the genesis of the doctrine of legitimate expectations in Lithuania one should refer to the rulings by the Constitutional Court wherein for the first time attempts were made to introduce the principle of legitimate expectations. In this regard, it should be noted that there were two attempts to introduce the term.

On its first attempt the Constitutional Court brought up the principle of legitimate expectations as an intermediary principle, i.e. deriving from the principle of legal certainty which is one of the elements of the rule of law⁵. On this occasion the Court went on to state

⁴ The Constitutional Court of the Republic of Lithuania, Ruling of 12 July 2001.

⁵ The Constitutional Court of the Republic of Lithuania, Ruling of 12 July 2001.



that the principle of legal certainty means the duty of the state to ensure the certainty and stability of legal regulation, to protect the rights of entities of legal relations, including the acquired rights, and to respect legitimate interests and legitimate expectations.

The second attempt was slightly different since the Constitutional Court stated that the principle of legitimate expectations derived directly from the general rule of law⁶. What is more, the Constitutional Court observed that there are two sub-elements at the core of the principle. First of all, it means the protection of acquired rights, i.e. individuals have the right to reasonably expect that the rights acquired under the valid legal acts will be retained for the established period of time and will be implemented in reality. The second element concerns the obligations that the state undertakes to create respective expectations to individuals⁷.

Nevertheless, it is the ruling adopted in 2002 which determined the most common position of the principle of legitimate expectations in the constitutional jurisprudence. In this ruling the Constitutional Court stated that the inseparable elements of the rule of law were the protection of legitimate expectations, legal certainty and legal security. In case the protection of legitimate expectations, legal certainty and legal security were not ensured, the confidence of the person in the state and law would not be ensured⁸. This is so called a system of three mini principles⁹ which can be regarded as a hallmark of judicial practice in respect of legitimate expectations in Lithuania. The principle of legitimate expectations appears very rarely as separate and is usually followed by the closely related other two elements, i.e. legal certainty and legal security. This does not mean that the principle of legitimate expectations is not an autonomous one. Together with the protection of legitimate expectations, legal certainty and legal security concern linked concepts, and are therefore usually dealt with in the same breath. Nevertheless, one may still hesitate on holding the principle of legitimate expectations sufficiently independent since the resolutions of the rulings adopted by the Constitutional Court normally do not expressly include the statement that certain legal regulation is in conflict with the constitutional principle of legitimate expectations¹⁰. It is mostly the rule of law that certain legal acts are not compatible with even where the Court directly addresses the question of frustrated legitimate expectations.

The doctrine of legitimate expectations as developed by the Constitutional Court had a significant impact on the case-law of administrative courts. The principle of legitimate expectations gained its recognition in the case-law of administrative courts shortly after the

⁶ The Constitutional Court of the Republic of Lithuania, Ruling of 18 December 2001.

⁷ The Constitutional Court of the Republic of Lithuania, Rulings of 4 July 2003 and 3 December 2003.

⁸ The Constitutional Court of the Republic of Lithuania, Ruling of 25 November 2002.

⁹ The term was first introduced by professor E. Šileikis. E. Šileikis, Teisėtų lūkesčių principas ir Lietuvos Respublikos Konstitucinio Teismo jurisprudencija, *Konstitucinė jurisprudencija* no 3, Konstitucinis Teismas, Vilnius, 2010.

¹⁰ Even though the principle of legitimate expectations came up for consideration in a relatively large number of rulings of the Constitutional Court, it is only one single ruling which directly stated that the disputed legal regulation was in conflict with the principle of legitimate expectations (the Constitutional Court of the Republic of Lithuania. Ruling of 13 May 2005).



principle had been introduced to the constitutional jurisprudence. The Supreme Administrative Court of Lithuania referred to the principle of legitimate expectations for the first time in 2002¹¹ in respect of revocation of the decisions. It is true to say that the foundations for the application of the principle in the case-law of administrative courts have been laid down by the Constitutional Court. The rules on the constitutional principle of legitimate expectations, inter alia the system of three mini principles, are directly reflected in the cases heard by administrative courts. Nevertheless, currently the protection of legitimate expectations can be even regarded as wider one than the one developed by the Constitutional Court. This is due to the fact that administrative courts do not limit the protection within the ambit of formally acquired rights but also protect legitimate expectations related to the future situations (in other words, expectation to acquire the right). Ever since the scope of the principle in question has gradually expanded and now administrative courts regard the doctrine of legitimate expectations as one of the most significant criteria of judicial review.

In considering the significant factors for the development of the principle in Lithuania, special attention should be paid to the case-law of the European Court of Human Rights (hereinafter the ECtHR). In cases lodged against Lithuania the ECtHR has revealed a whole series of problematic issues arising from the failure to respect legitimate expectations and on numerous occasions has emphasised that the principle of good governance together with the legal imperative at issue may impose on the authorities an obligation to act promptly and consistently¹². The general standards, related to the duty on the part of the public bodies to act promptly in order to correct their mistakes and to guarantee a balanced sharing of burdens which arise in these situations, are now principal aspects of the protection of legitimate expectations in national legal order. This also served as a factor that led the national courts to extend the scope of the principle to the circumstances where the law protects and defends the legitimate expectations of bona fide individuals who had reasonably relied on the legal acts that were subsequently declared to be contrary to the law.

Q5. 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

¹¹ The Supreme Administrative Court of Lithuania, administrative case no A11-291/2002, 2 January 2002. The applicants brought up the question of legitimate expectations while challenging inconsistent actions of municipality. Applicants received reconstruction permit for certain premises. However, within two years the municipality successfully lodged a complaint before the courts in order to cancel its own decision regarding the reconstruction permit. Under these circumstances, the Supreme Administrative Court ruled that the applicants are entitled to receive non pecuniary compensation.

¹² The European Court of Human Rights. *Judgment of 12 November 2013 in the case of Pyrantienė v. Lithuania*, application No. 45092/07; *Judgment of 10 December 2013 in the case of Nekvedavičius v. Lithuania*, application No. 1471/05; *Judgment of 6 March 2003 in the case of Jasiūnienė v. Lithuania*, application No. 41510/98; *Judgment of 27 May 2014 in the case of Albergas and Arlauskas v. Lithuania*, application No. 17978/05; *Judgment of 14 October 2014 in the case of Paplauskienė v. Lithuania*, application No. 31102/06; *Judgment of 21 October of 2014 in the case of Digrytė Klibavičienė v. Lithuania*, application No. 34911/06.



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?

Under general rule, before introducing respective amendments to the legal regulation the legislator must make sure that the legitimate expectations of those affected are respected. Nevertheless, this does not mean that the protection of legitimate expectations takes priority in all cases. One should note that according to the jurisprudence of the Constitutional Court and administrative courts legitimate expectations can be disregarded if there is clearly a public interest in overturning particular legislation or administrative decision where other more important considerations outweigh what would otherwise have been the legitimate expectation of the individual. It is the cases concerning the amendments of the legal regulation on the remuneration of civil servants and judges that developed this area of the rules most fully¹³. The constitutional principle of legitimate expectations means that in cases where certain remuneration for work has been established for a person by legal acts, this remuneration must be paid throughout the established time. However, the Constitutional Court has held that the constitutional principle of legitimate expectations does not mean that the remuneration for work paid to the civil servants from the funds of the state budget or municipal budget may not be reduced at all. The Court has observed that the reduction of remunerations of civil servants is possible, however, only in exceptional cases and only if it is necessary in order to protect other values consolidated in the Constitution. One of those exceptional cases when the remuneration of civil servants may be reduced is an especially grave economic and financial situation in the state. Nevertheless, in such cases the legislator must keep the balance between the rights and legitimate interests of the individual, to whom the less favourable legal regulation is established and the interests of the society and the state, i.e. the legislator must follow the principle of proportionality. This approach is demonstrated by the ruling of the Constitutional Court adopted on 1 July 2013. The applicants disputed the legal regulation on remuneration of judges and civil servants claiming that the reductions enforced during the crisis were not justified and disregarded their legitimate expectations. Salaries of senior civil servants were reduced by a higher percentage; meanwhile different, i.e. smaller reductions were applied to the rest of the officials. The Constitutional Court upheld the position of the applicants. In this regard, it noted that the principle of proportionality means that the amount of the remuneration of a person with high qualification, who performs complex work, must not be approximated or even equalised to the remuneration of a person with lower qualification, who performs less complicated work¹⁴. Thus, even though the principle of legitimate expectation did not prevent the reductions of the remuneration, it was confirmed that the

¹³ The Constitutional Court of the Republic of Lithuania, Decision of 15 January 2009 and Ruling of 11 December 2009.

¹⁴ The Constitutional Court of the Republic of Lithuania, Ruling of 1 July 2013.



petitioners could reasonably expect that the reductions in payments will be carried out in compliance with the proportionality principle.

Q6. 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?

*The principle of legitimate expectations may be efficiently pleaded in the context of retroactive application of national legal regulation. The Constitutional Court has held more than once that the persons who have acquired certain rights under the law, have the right to reasonably expect that these rights shall be maintained and implemented for the established period, therefore, when changing the legal regulation one must follow the norms and principles of the Constitution, inter alia the principle *lex retro non agit* (the Constitutional Court of the Republic of Lithuania, Rulings of 2 September 2009 and 3 December 2003). However, the *lex retro non agit* rule has not yet gained practical importance in disputing certain amendments to legal regulation. The combination of the principle of protection of legitimate expectations and non-retroactivity rules is particularly rarely invoked by the petitioners. In cases where respective amendments to legal regulations are challenged it is more likely for the petitioners to solely rely on the protection of legitimate expectations.*

*The relationship between legitimate expectations and the principle of *lex retro non agit* has also proved its efficiency in the case-law of administrative courts. It is regarded that under general rule one should apply the legal regulation that is in effect when the legal relationships are formed. Thus, the acquired rights or situations shall be protected against the application of new requirements. For example, in its case-law the Supreme Administrative Court has ruled that the new prohibition regarding the construction of fences near water bodies shall not be applied to the situations where these fences had been built before the new prohibition came into effect.¹⁵*

The relationship between legitimate expectations and acquired rights shall also be discussed. According to the Constitutional Court, one of the elements of legitimate expectations is acquired rights (the second – undertakings of the state). Thus, it is required to protect and defend not the future situations and the expectation (aspiration) to acquire certain right but the rights which have been already acquired. It should be noted that administrative courts have adopted a position towards legitimate expectations that can be regarded as rather broader than the one declared by the Constitutional Court. Administrative courts allow some protection of not yet formally acquired rights in those cases¹⁶. Meanwhile, the Constitutional Court strictly adheres to the principle of acquired rights in this respect.

¹⁵ The Supreme Administrative Court of Lithuania, Decision of 14 November 2011 in administrative case No A261-1960/2012.

¹⁶ See the Supreme Administrative Court of Lithuania, administrative case no A-575-2188/2011, 13 September 2011; administrative case no A-62-1119/2011, 15 December 2011. One may argue that this conclusion is



For further details regarding the relationship between legal certainty and legitimate expectations please see the answer to Question 4.

PART II

The Application of the Principle of Legitimate Expectations

Q1. 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?

*As a legal imperative binding the law-making bodies, the principle of the protection of legitimate expectations is applied in situations where the legal provisions introduced to the established legal regulation have features of retroactivity of law and bring about an adverse change in the legal position of persons in respect of whom the public authorities have undertaken certain obligations. The constitutional legal imperative at issue is not absolute and therefore it cannot preclude the public authority acting in its legislative capacity and amending the legal regulation in general. However, it can restrict the ways in which this right shall be exercised. In the constitutional jurisprudence special attention has been given to the legal imperatives deriving from the principle such as setting out certain transitional provisions or *vacatio legis*, protecting legitimate expectations in natura, and establishing the mechanism of compensation.*

*The imperatives of the principle presuppose that under certain circumstances it is incumbent on the legislator to establish a sufficient transitional period (or *vacatio legis*) once it decides to amend the legal regulation. The locus classicus of this approach is demonstrated by the ruling of 16 May 2013 of the Constitutional Court¹⁷. Petitioner claimed that after the legal regulation had reduced the amounts of the maternity (paternity) benefits to be awarded as from 1 July 2010, the legitimate expectation of the persons to whom those benefits had not been awarded and/or paid, however, they would have been awarded as from 1 July 2010, to receive the benefits in the amounts established in the valid legal acts, was violated. The Court pointed out that the changes in the legal regulation must be made in a manner so that*

premature since in the cited cases the Supreme Administrative Court of Lithuania did not attempt to explain further as to why expectations were protected if they did not concern the formally acquired right. However, the tendency to employ the doctrine of legitimate expectations more often under the circumstances of this kind is growing strong. It is undeniable that the number of references by the national courts to the principle of legitimate expectations has increased dramatically since it was first introduced. At this point there is nothing to suggest that administrative courts will shift their attitude towards a more restricted approach as regards the protection of legitimate expectations.

¹⁷ The Constitutional Court of the Republic of Lithuania, Ruling of 16 May 2013.



*the persons whose legal status is affected by those changes would have a real opportunity to adapt to a new legal situation. It was established that the application of amended legal regulation would start after nine months from its official publishing (entry into force). The Court held that such a *vacatio legis* should be assessed as a sufficient one, since it created preconditions for the persons for an appropriate preparation for the planned changes.*

In this context, it is also appropriate to point out that under certain circumstances in order to comply with the principle of legitimate expectations it is incumbent on the legislator to provide for a mechanism of compensation. Mostly the compensation mechanism for frustrated legitimate expectations is required where the legislator amends the legal regulation in a way which restricts or denies the rights of individuals who have acquired them under the previous legal regulation. In this regard one should mention the Ruling of 13 May 2005 of the Constitutional Court¹⁸. The Court stated that individuals who had implemented previously valid legal regulation and acquired the right to form and rent land plots for hunting had certain expectations to use those plots. The Court held that where these acquired rights were adversely affected by the legislative amendments, the legislator should have provided for a compensatory mechanism. Having established that the law did not provide for the compensation, the Court stated that the legal regulation in question breached the principle of the legitimate expectations.

The compensation aspect for frustrated legitimate expectations may be also well analysed in the context of cases concerning the reductions in social allowances. The widespread recession due to the economic crisis in 2008 caused the Lithuania's government to reduce old age pensions, parental leave allowances and many other benefits paid from the state budget. Most of those decisions established by the laws were challenged before the Constitutional Court¹⁹. The Constitutional Court reached a similar conclusion to the one formulated in the cases concerning the reduced remuneration of civil servants and judges (for further details see Answer to Question 5, Part I). It stated that when there is a particularly difficult economic and financial situation in the state and when due to this there is a necessity to temporarily reduce the awarded and paid pensions in order to secure vitally important interests of the society and the state, the legislator is entitled to reduce respective benefits. In regard of old age pensions the Constitutional Court has noted that the parliament is under obligation to establish a uniform and non-discriminatory scale of reduction of pensions whereby the pensions would be reduced in a manner not violating the principle of proportionality²⁰. The Constitutional Court emphasized that such reduction must be temporary and grounded upon the circumstances of the extremely difficult economic and financial situation in the state, as, for instance, the state is unable to collect the state budget revenue and such situation in the state is not short-termed. What is more, the Constitutional

¹⁸ The Constitutional Court of the Republic of Lithuania, Ruling of 13 May 2005.

¹⁹ Ruling of 6 February 2012 of the Constitutional Court concerned the reductions in old age pensions and state pensions paid to officers, Ruling of 29 June 2010 – state pensions granted to judges. Meanwhile, Ruling of 5 March 2013 of the Constitutional Court dealt with the amendments of the legal regulation on parental leave allowances.

²⁰ The Constitutional Court of the Republic of Lithuania, Ruling of 6 February 2012.



Court stated that in these cases the legislator must provide for a mechanism of compensation for incurred losses to the persons to whom such pensions were awarded and paid before the reduction.

It should be noted that the case is treated differently where maternity (paternity) benefits are concerned. According to the Constitutional Court, legitimate expectations are not disregarded where no compensation for the reduced parental leave allowances is available to their recipients. The different approach was justified by the specific nature of parental leave allowances. The Constitutional Court has emphasized that these allowances are time barred and have a very definite objective, i.e. to support financially the individuals concerned for raising and bringing up a child at home during the specified period of time²¹.

An examination of the afore-noted few decisions shows that the principle of legitimate expectations is well-established within the legislative procedures. Thus, at this point it is safe to say that the protection of legitimate expectations extends to any individual and the principle of legitimate expectations must be followed by all public authorities and the legislator itself.

Q2. 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 impact of the principle is fundamental when the public body decides to correct its mistakes, inter alia to revoke final administrative decisions. Final administrative decision naturally leads the individual concerned to reasonably expect that the initial legal decision will not be amended by the subsequent decision. This is a central aspect of the doctrine of legitimate expectations which is also known as a principle of irrevocability. In Lithuania, the scope of this principle is a wide one. Indeed, neither the legislator nor administrative courts have ever recognized the position that the public authorities have an inherent power to amend or withdraw a formal decision. In the Law on Public Administration the Lithuanian legislator implicitly has established that the public authorities do not hold the power to revoke formal administrative decision they adopt. This general rule applies to all types of decisions immaterial of their legal consequences, i.e. lawful and unlawful, favourable, declarative and other formal decisions are all irrevocable in the absence of express statutory power. The single exception to the rule set out in the Law on Public Administration provides that a formal decision may be amended only to the extent necessary to correct clerical errors.

The exceptions to the aforementioned rule of irrevocability are only found in the special legal regulation which expressly provides that respective public authorities are entitled to amend

²¹ The Constitutional Court of the Republic of Lithuania, Ruling of 20 November 2013.



or revoke their final decisions. The statutory intervention into the final administrative decision can be initiated by both the parties concerned and the public authorities themselves. In most of the cases the provisions of the special legal regulation entitle the administration to amend the final decision if it was obtained in bad will (by fraud, false information etc.) or the factual circumstances which were the ground to adopt the respective decision change. In this regard, it is in any event important to distinguish between the different types of situations: first, the public authority amends or withdraws the decision that is legal, however, in the view of the administration shall be amended because of the factual circumstances that have changed, and second, the public authority revokes illegal decision since it contains error of law or other grounds for the annulment of the decision in question. The legal regulation and the case-law seem to suggest that the public administration has little chance to revoke the adopted decision retroactively even in the case where the decision is illegal²². The cases where this is possible are mainly concerned with the integrated administration and control system for certain aid schemes received from the European Union²³. However, prospective revocation of illegal decision is always possible, e.g. competent body is entitled to withdraw the residency permit obtained by fraud. One may assume that stricter criteria would be applied in the case concerning the prospective revocation of lawful decision; however, the case-law on the matter still has to be developed.

Q3. 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?

²² In this regard, the national practice is comparable to the one formulated by the Court of Justice of European Union. According to the case-law of the Court of Justice, the administration may withdraw with retroactive effect an advantageous administrative act vitiated by illegality, provided that it does not infringe either the principle of legal certainty or that of the protection of legitimate expectations (judgments in Joined Cases 7/56 and 3/57 to 7/57 *Algera and Others v Common Assembly of the ECSC* [1957] ECR 81, para. 116; Case 14/81 *Alpha Steel v Commission* [1982] ECR 749, para. 10–12; Case 15/85 *Consorzio Cooperative d'Abruzzo v Commission* [1987] ECR 1005, para. 12–17 and Case C-90/95 P *De Compte v Parliament* [1997] ECR I-1999, para. 35).

²³ The Supreme Administrative Court of Lithuania, administrative case no A-556-2134/2012, 26 September 2012.



The source of legitimate expectations varies on a case-by-case basis. So far it has been recognized by administrative courts that the legal regulation (a loophole of the regulation) per se²⁴, final administrative decisions²⁵, consultations²⁶, and well-established practice of public authorities²⁷ may give rise to legitimate expectations. Meanwhile, the national jurisprudence is quite controversial as the interim decisions are concerned²⁸. Passivity or the

²⁴ In this regard, one should note the *L. v Lithuania* case heard by the ECtHR. Lithuanian Civil Code recognises transsexuals' right to change their gender and their civil status. However, there is a gap in the legislation in that there is no law regulating full gender-reassignment surgery. Until that law is adopted there is no suitable medical facilities reasonably accessible or available in Lithuania. Subsequently, there was a case brought before the ECtHR regarding the failure to introduce implementing legislation to enable a transsexual to undergo gender-reassignment surgery and change respective gender identification in official documents. The applicant was in the intermediate position of a pre-operative transsexual, having undergone partial surgery, with certain important civil-status documents having been changed. Until he underwent the full surgery, his personal code would not be amended and he therefore remained a woman in significant aspects of his private life, such as employment and overseas travel. Under these circumstances, the ECtHR ruled that the legislative gap had left the applicant in a situation of *distressing uncertainty* with regard to his private life and the recognition of his true identity. According to the ECtHR, budgetary restraints in the public-health service might have justified some initial delays in implementing the rights of transsexuals under the Civil Code but not a delay of over four years. Given the limited number of people involved, the budgetary burden would not have been unduly heavy. It was concluded that Lithuania had therefore failed to strike a fair balance between the public interest and the applicant's rights (ECtHR *L. v Lithuania*, no 27527/03, ECHR 2007-IV). There followed a few more cases concerning similar factual circumstances which were decided by national administrative courts. The national courts adhered to the decision adopted by the ECtHR and granted respective compensation to the claimants (The Supreme Administrative Court of Lithuania, administrative case no A-858-1452/2010, 29 November 2010; administrative case no A-502-1255/2012, 26 April 2012). Even though in these cases the principle of legitimate expectations was not expressly referred to, it may be suggested that the claims were successful because the individuals concerned entertained legitimate expectations. These legitimate expectations were directly attached to the right to change their gender and their civil status that was clearly recognized by the Civil Code.

²⁵ See, among many others, the Supreme Administrative Court of Lithuania, administrative case no A-248-1874/2005, 21 December 2005. The Supreme Administrative Court of Lithuania concluded that the principle of legitimate expectations was disrespected where the public authority failed to follow the decision it had adopted on the land planning procedure initiated by the claimant.

²⁶ For example, pursuant to the Law on Tax Administration the erroneous tax advice or tax explanation may be a ground for the exemption of fines. See the Supreme Administrative Court of Lithuania, administrative case no A-575-13/2012, 3 February 2012.

²⁷ In Lithuania, the cases on the administrative contracts concluded in the sphere of health protection are the core examples in the area. These contracts are usually concluded for a period of one year and then being extended on repeated occasions. Under these circumstances it is quite common for the economic operators to challenge the refusal to extend respective contract in question with regard to the protection of legitimate expectations. The settled practice of the administration to extend certain contracts may be regarded as a claim of a kind that is sufficiently established to constitute a legitimate expectation, provided there are no new circumstances in respect of the trader in question or legal framework (see the Supreme Administrative Court of Lithuania, administrative case no A-756-34/2011, 6 June 2011).

²⁸ First of all, it should be noted that the interim administrative decisions as a source of legitimate expectation sit uneasily alongside the principle of acquired rights which is a constituent part of the doctrine of legitimate expectations under the constitutional jurisprudence. Nevertheless, administrative courts have recognized that the claimants deserve some protection even if the principal decision in a multi-stage procedure is not yet adopted. For example, the Supreme Administrative Court of Lithuania has granted some protection (in a form of compensation) to the trader who obtained a few decisions in a more than one stage procedure relating to



tolerance of the offence by the authorities as a source of legitimate expectations is not a clear-cut issue either under national jurisprudence. The tolerance of certain offence by national authorities could result in keeping the status quo. The national jurisprudence recognizes the protection of legitimate expectations where a considerable period of time has elapsed since the situation in question had developed and on condition that the good faith of the claimant is established²⁹. However, in regard to alleged anti-competitive practice the national courts present a similar approach adopted by the European Court of Justice where the fact that anti-competitive conduct was fostered or encouraged by the authorities has in itself no bearing on the applicability of respective sanctions³⁰. Lastly, it is unlikely that informal representations (e.g. verbal promises, intentions, correspondence etc.) bind public authorities and thus generate some 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?

National legal order attaches certain significance to the terms ‘rights’, ‘legitimate interests’, and ‘legitimate expectations’. According to the Constitutional Court, they are not the same. Legitimate expectation is not an autonomous right or interest. Instead, a legitimate expectation is related to a right or interest that already exists or it is reasonable to expect of obtaining effective enjoyment of it. In this regard, national jurisprudence is somewhat similar to the approach formulated by the ECtHR. According to the ECtHR, legitimate expectation must be of a nature more concrete than a mere hope (see ECtHR Gratzinger and Gratzingerova v the Czech Republic [GC], no 39794/98, para. 73, ECHR 2002-VII; Kopecký v Slovakia [GC], no 44912/98, para. 49, ECHR 2004-IX; and Anheuser-Busch Inc. v Portugal [GC], no 73049/01, para. 64, ECHR 2007-I). In addition, the ECtHR has ruled that a legitimate expectation has no independent existence; it must be attached to a proprietary interest which must itself be sufficiently established (see Kopecký, cited above, para. 45–53).

the issue of building permit, however, failed to receive the principal decision. Obtaining the principal decision was not consistent with the national law which clearly stated that no building was permitted in the areas of conservation (The Supreme Administrative Court of Lithuania, administrative case no A-62-1119/2011, 15 December 2011). Meanwhile, in administrative case no A-662-2718/2012 the Supreme Administrative Court of Lithuania ruled that the claimant could not reasonably have any legitimate expectations until the moment the administrative contract regarding certain EU financial aid scheme was concluded even though the claimant was successful in receiving positive decisions in a multi-stage procedure relating to the principal decision (see the Supreme Administrative Court of Lithuania, administrative case no A-662-2718/2012, 31 August 2012).

²⁹ The Supreme Administrative Court of Lithuania, administrative case no A-575-1576/2008, 26 September 2008.

³⁰ The Supreme Administrative Court of Lithuania, administrative case no A-502-1301/2012, 17 May 2012. See, among many others, ECJ Case 229/83 *Leclerc v Au blé vert* [1985] ECR 1 and ECJ Case 231/83 *Cullet v Leclerc* [1985] ECR 305.



Nevertheless, it is quite common view to assume that even though legitimate expectation is not a right, it may equal to legitimate interest.

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.

Even though the basis of legitimate expectations is generally the legal acts compatible with the law, under exceptional circumstances the national legal order protects and defends the legitimate expectations of bona fide individuals who had reasonably relied on the legal acts that were subsequently declared to be contrary to the law.

The foundations for this approach has been first laid down by the Constitutional Court. In this regard, the Constitutional Court relying on the principle of justice has ruled that even the legal acts which are later recognized as being in conflict with the Constitution may give rise to such expectations³¹. For example, the Constitutional Court has recognized that individuals have legitimate expectations to hold a master degree in law even in the cases where the law programme they attended in order to receive the degree did not comply with the requirements set by law. These expectations shall be protected and defended since the state authorities failed to supervise the education system efficiently³². On the point, the Constitutional Court has stated that the legislator bears the constitutional duty to establish such legal regulation which would provide an opportunity in the extraordinary cases to fully or partially protect and defend the acquired rights. It is required to protect and defend only the rights acquired by the persons who obeyed law which was later recognised as being in conflict with the Constitution, so that the principle of justice would not be breached³³. It should once again be noted that administrative courts have adopted a position towards legitimate expectations that can be regarded as rather broader than the one declared by the Constitutional Court. Even though both jurisdictions recognize that even unlawful legal acts or decisions generate legitimate expectations; however, it is only the administrative courts that allow some protection of not yet formally acquired rights in those cases³⁴.

The recognition of the protection of legitimate expectations even contra legem has been further strengthened by the case-law of the ECtHR. The national jurisprudence adopted this

³¹ The Constitutional Court of the Republic of Lithuania, Rulings of 13 December 2004 and 20 February 2008.

³² The Constitutional Court of the Republic of Lithuania, Ruling of 20 February 2008.

³³ The Constitutional Court of the Republic of Lithuania, Ruling of 13 December 2004.

³⁴ See the Supreme Administrative Court of Lithuania, administrative case no A-575-2188/2011, 13 September 2011; administrative case no A-62-1119/2011, 15 December 2011.



position in pursue of the high standard of the protection of legitimate expectations granted by the ECtHR. Both the national administrative courts and the ECtHR express the view that even in the cases of expectations arising from public authorities' actions contrary to the law, it is necessary to identify clearly the aims pursued, the individuals affected and the measures to secure proportionality³⁵.

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?

It is clear from the jurisprudence of administrative courts that the extent of the protection of legitimate expectations is directly related to the conduct of a private party. The domestic courts tend to be in favour of the idea that the conduct of the administration that could have been foreseen by the prudent individual does not give rise to the protection of legitimate expectations. Thus, the protection of legitimate expectations at a large part depends on two criteria – the good conduct of the individual concerned and the ability to foresee the impugned conduct. In addition to this, it is established that the domestic courts differentiate two kinds of situations depending on the fact whether the matter concerns the natural person or private undertaking. In the latter case, stricter criteria of the good behaviour are applied.

According to the most recent case-law of national courts, the shift of the financial burden essentially on the private entities is regarded as unfair even in cases where the established legal situation is not compatible with legal acts in force. This approach at a larger part is being developed to pursue further efforts on the compatibility of national legal order with the case-law of the ECtHR. The later tendency has developed with regard to the cases heard by the ECtHR where it was stated that Lithuanian courts do not examine the conduct of private parties who allege the infringement of legitimate expectations sufficiently and consistently (for further details please see the Answer to Question 4, Part I).

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?

³⁵ The ECtHR recognizes that legitimate expectations are also protected in situations that may be regarded as *contra legem* under national law (see, e.g., *Yildirim v Turkey*, no 21482/03, 24 November 2009; *N.A. and Others v Turkey*, no 37451/97, ECHR 2005-X; *Fedorenko v Ukraine*, no 25921/02, 1 June 2006).



PART III

The Infringements of the Principle of Legitimate Expectations

Q1. 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.

In Lithuania the judicial mechanism in deciding on the protection of legitimate expectations involves a legal test of three steps:

a) First of all, the court assesses whether there is a legitimate expectation. The doctrine of legitimate expectations requires the individual concerned to prove the existence of a reasonable expectation when it comes to the factual circumstances of the case. The source of legitimate expectations varies. So far it has been recognized by administrative courts that the legal regulation (a loophole of the regulation) per se, final administrative decisions, consultations, and well-established practice of public authorities may give rise to legitimate expectations and other.

b) On the second step the court evaluates whether the individual in question acted as a prudent person. It is clear from the jurisprudence of administrative courts that the extent of the protection of legitimate expectations is related to the conduct of the individual concerned. Whether the expectations are protected depends on the good faith of the applicant. When the alleged violation of expectations is related to the contribution of the claimant (in the case the individual concerned did not act as a prudent person) the court usually does not grant any protection. However, if the applicant has acted in good faith as a diligent person and the unlawfulness of the decision is related to the acts of the administration, the principle of legitimate expectations is applied to its fullest extent.

c) Finally, the court assesses whether there is a public interest which could trump individual expectations. The public authority may plead that there is an overriding public interest that can justify the adoption of respective administrative decision or piece of legislation. However, the protection of legitimate expectations may be restricted only in accordance with the principle of proportionality. Thus, the court will engage into the balancing test where the equilibrium between the public interest against that of the individuals claiming the legitimate expectations is set.



The structure of this test is inspired by approach of the ECtHR. The ECtHR expresses the view that even in the cases of expectations arising from public authorities' actions contrary to the law; it is necessary to identify clearly the aims pursued, the individuals affected and the measures to secure proportionality. The requisite balance between the demands of the general interest of the community and the requirements of fundamental rights will be upset if the person concerned has had to bear an individual and excessive burden³⁶.

Q2. 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.

Following a formal recognition of the principle of the protection of legitimate expectations in the case-law of the Constitutional Court of the Republic of Lithuania in 2001³⁷, its forthcoming impact on the activities of public institutions and on the extent of protection of individual rights could not be predicted at a time with certainty. In 2001 – 2005³⁸ the initial application of the principle of the protection of legitimate expectations in the case-law was rather limited and cautious. However, recently the doctrine has been developing rapidly and now is one of the most important criteria for the review of legality of both regulatory acts and administrative decisions³⁹. As it appears from the case-law, the parties to the dispute allege the violation of legitimate expectations more and more frequently. This principle has become a fundamental legal measure for the individuals in a situation in which their rights and legal interests are affected due to the changes of social or economic policy. Moreover, the courts also rely on the principle as a useful tool for interpretation of the law ex officio.

This great importance of the protection of legitimate expectations may be explained by the special characteristics of the doctrine. The principle of legitimate expectations may ensure two goals that may appear divergent, i.e. the stability and dynamism of law. The principle of legitimate expectations has proved to be a fundamental instrument in interpretation of law

³⁶ ECtHR *Yordanova and others v Bulgaria*, no 25446/06, 24 April 2012; also see ECtHR *Fedorenko v Ukraine*, no 25921/02, 1 June 2006.

³⁷ The Constitutional Court of the Republic of Lithuania. *Ruling of 12 July 2001. Valstybės žinios*, 2001, No. 62-2276; amendment – 2001, No. 80.

³⁸ The start of the period under the review has been set with regard to the introduction of the principle at issue by the Constitutional Court of the Republic of Lithuania in 2001 and the first references to the principle of legitimate expectations in the case-law of other domestic courts (Data of Judicial Information System of Lithuania LITEKO. Online at <http://liteko.teismai.lt/viasasprendimupaieska/detalipaieska.aspx>).

³⁹ For example, in 2002–2005 the Supreme Administrative Court of Lithuania has relied on the principle of legitimate expectations in average fifteen times per year. Meanwhile, in the following years the references to the principle of the protection of legitimate expectations have increased more than seven times in average (Data of Judicial Information System of Lithuania LITEKO. Online at <http://liteko.teismai.lt/viasasprendimupaieska/detalipaieska.aspx>).



in order to preserve the respect for the established legal relationships or to remedy certain deficiencies in the legal regulation (e.g. protection contra legem). In the latter case the principle of the usually is effective if applied with other constitutional legal imperatives such as the equity or proportionality.

Q3. 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?

Lithuanian law provides substantive and compensatory judicial remedies for the protection of legitimate expectations.

Under Lithuanian law the violation of the principle of legitimate expectations may result in the annulment of the decision. The annulment of the contested decision shall signify the restoration of the status quo which has existed before the adoption of the contested decision, i.e. the rights or legitimate interests of the individual are restored. The rationale for the wide scope of the principle of legitimate expectations is based on the idea that the state should take the risk of mistakes carried out by its officials and these mistakes should not be remedied at the expense of private parties⁴⁰.

The actions for annulment of respective administrative decisions are not always a sufficient judicial remedy which could restore the status quo existing before the violation of legitimate expectations had occurred. With regard to this, it is common for the individual whose expectations were induced and then frustrated by the administration to submit before a court an action for injunctive relief. The individuals concerned are entitled to ask the court to issue an order granting specific performance on the administration. Indeed, the case-law of administrative courts strongly suggests that the order granting specific performance is the adequate judicial measure in protecting frustrated legitimate expectations⁴¹.

Lithuanian law recognizes the state liability for the damages caused by the state institutions and their officials where they fail to act in accordance with law. The duty to remedy the damage as a constitutional principle also establishes the obligation to remedy the loss

⁴⁰ This approach adopted by the national courts is somewhat similar to the one developed by the ECtHR. The ECtHR also considers that the mistakes or errors of the State authorities should serve to the benefit of the persons affected, especially where no other conflicting private interest is at stake (see ECtHR *Gashi v Croatia*, no 32457/05, 13 December 2007).

⁴¹ This was established in administrative case no A-525-1411/2010 concerning the procedure for preparing specific land-use plans. The Supreme Administrative Court of Lithuania noted that the individual concerned had a legitimate expectation that the property he possessed would be individually planned in accordance with the land-use development plan. With regard to that, the Court ordered the planning authorities to adopt an individual planning decision in accordance with the land-use plans of superior power within one month. The Supreme Administrative Court of Lithuania, administrative case no A-525-1411/2010, 22 November 2010.



caused by the administration for disappointed legitimate expectations. State and municipality institutions are held liable for inducing and then frustrating legitimate expectations and shall make good any damage where the conditions of state liability are established.

Part IV

Other Dimensions of the Application of the Principle

Q1. 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?

Q3. 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.

While applying the principal criteria for protection of legitimate expectations developed in the case-law of supranational courts, the national legal order is progressively developing towards a better protection of individual rights; however, currently the extent of the protection is not the same. On the one hand, the extent of the protection of individuals who rely on the principle of the protection of legitimate expectations has been narrower comparing it to the one developed in the case-law of the ECtHR. This is in part due to insufficient attention to the protection of individuals acting in good faith when between the competing interests of the individual and of the community as a whole the priority is given to the public interest. However, in this regard, one can already note a positive shift in the national case-law in pursue of the high standard of the protection of legitimate expectations granted by the ECtHR. On the other hand, in application of the protection for the legitimate expectations deriving from interlocutory administrative decisions and, where appropriate, the protection of legitimate expectations contra legem, the national legal order ensures a more favourable legal status to the private parties comparing it to the legal regime applied in the case-law of the CJEU.

Q2. 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?

No references to the provisions of the Charter with respect to the principle are known to have had legal significance for the development of legitimate expectations in national legal order.
