



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

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

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Answers to Questionnaire: Czech Republic



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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)?

The Constitutional Court stated in its case-law (i.a. IV. ÚS 814/06) that protection of legitimate expectations represents an *integral part of the rule of law*. It also concluded that it was duty of courts as well as other state authorities to support legal certainty of people through an interpretation and application of the law and therefore contribute to *fulfilment of their legitimate expectations*.

As foreign law systems also the Czech law distinguishes several kinds of legal expectations. At first it was recognized by the Constitutional Court in connection with *the property right*, next as the principle ruling the area of administrative law. The latter includes e.g. expectation of certain legal procedure. Another type of legal expectations represents expectation of *predictability and certainty of legal order*. There is also expectation of equality, i.e. expectation of individuals that *similar cases will be decided in the same way*.

It needs to be stressed that all mentioned kinds cannot be seen separately on the contrary they overlap each other. Therefore it is beyond doubt that principle of protection of legitimate expectations is connected with all of mentioned principles – the respect for human rights, the rule of law, legal certainty, good governance as well as good faith. It is so since all of these principles are linked and create part of the democratic state respecting the rule of law.

Q2. What is the principle of legitimate expectations essentially aimed at (promoting the trust in public authorities, ensuring legal stability, other)?

Answer to this question is closely connected to the previous one. In general we can say that principle of legitimate expectations aims at supporting *the principle of the democratic state respecting the rule of law*. As such and in relation to the topic of the administrative justice it aims unequivocally at trust of addressees of public authority that *similar cases will be decided in the same way* by the public authorities or (consequently) by the administrative courts. On the other hand it should be stressed (as e.g. the Metropolitan court of Prague has stated in the context of the length of time limit for bringing an action; resolution of 13th December 2013, No. 7 Af 51/2011-34) that “*the principle of legitimate expectations is not endless*”. As a result of this the principle of legitimate expectations definitely promotes *trust in public authorities, stability and predictability* of legal order however it cannot be perceived as absolute.

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?

At this point it should be differed between private and public law. Regarding the first area we can mention e.g. § 1729 of the Civil Code that states “[i]f contract negotiations between parties reach a point where the conclusion of the contract seems highly probable, the party which terminates the negotiations without a just cause despite **reasonable expectations of the other party** to conclude the contract acts unfairly” or its § 2056 “[a] promisor of a gift is not obliged to donate, but the promisee is entitled to be compensated by the promisor for the costs **reasonably incurred in anticipation** of the gift.” Therefore we can say that in

the area of *private law* there are provisions that *explicitly* include principle of legitimate expectations.

On the other hand the public law does not make *explicit* reference to the principle and therefore it is a general task for the national authorities and courts to protect or rather advance this general principle of law (e.g. the Constitutional Court often works with the principle – e.g. the Opinion of 1st November 2005, No. 13/2006 Sb.). On the other hand we can surely find the principle *implicitly* mentioned i.a. in § 2(4) of the Code of Administrative Procedure which expresses principle “*de similibus idem est indicandum*” i.e. the aspect of the principle of legitimate expectations that *similar cases shall be decided in the same way*.

In other words despite the absence of *explicit* references to this principle in the Czech legislation regulating the area of public law, it is included *implicitly* and therefore there are no doubts that it jointly form basis of the Czech legal order / culture.

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 judicature?

As mentioned above the principle is (mostly) not explicitly expressed in the Czech legislation. It is therefore crucial to focus on the case-law of the Czech courts and since it is general principle of law in particular on *the Constitutional Court case-law*.

The Constitutional Court (notice that it was *renewed* in 1993) mentioned the principle at first in the judgment of 31st March 2003, No. II. ÚS 341/99. Shortly after the case it was mentioned once again in the judgments of 24th June 2003 and 13th December 2000. In the judgment of 22nd October 2003, No. I. ÚS 360/03, the Constitutional Court discussed the principle of legitimate expectations of the expert witness for reward after (s)he has delivered his/her opinion according to the instructions of the public authority and within the settled time limit. The Constitutional Court stated that his / her right was of proprietary nature and as such it was protected by the Art. 1(1) of the Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “the Convention”). Nowadays we can say that the principle is common part of the case-law of the Czech courts.

Regarding the “*inspiration*” of the Czech courts in context of the principle there must be pointed out the *case-law*, related to the Art. 1 (Protection of property) of the Protocol No. 1 to the Convention, *of the European Court of Human Rights* or rather of the former Commission on Human Rights. It influenced e.g. the case-law of the Czech Constitutional Court related to restitutions. In the judgment of 11th November 2003, No. IV. ÚS 525/02, the Constitutional Court discussed the principle of legitimate expectations in the context of general principles of the administrative law, i.e. in the meaning of protection of expectations of *certain advancement of public authorities* that (expectations) had been grounded by their previous acts towards the public (or rather addressees of the public authority). The Constitutional Court mentioned as well the legitimate expectations regarding the correctness of the Land register records.

If the answers to the given questions should be formulated then it was definitely case-law (judicature) through which the principle had been developed. As the most important “*accelerators*” we can stress the case-law of the European Court on Human Rights and the right to protection of property which was heavily solved in the context of the principle i.a. by the Czech Constitutional Court.

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 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?

As it was already noted above the principle of legitimate expectations does not stand of its own. It is closely connected to other principles of the same importance like e.g. legal certainty, predictability of the law, prohibition of the arbitrariness (i.a. of decision-making activities of the public authorities) etc. Therefore it is necessary to sense these principles in their integrity. As such we can say that they in *certain extent* substitute each other.

As example of situation when these principles protect the rights and interest of individuals we can point to another related principle – the prohibition of the retroactivity of acts / law. Surely one of the most obvious results of changes in social and economical policies are modifications of legislation in context of which the question of retroactivity may arise. The Constitutional Court stressed in its famous judgment of 8th June 1995, No. IV. ÚS 215/94 that “*the principles of legal certainty and protection of the trust of citizens in law are **basic characteristics** of the principle of the democratic state respecting the rule of law. This process includes the **prohibition of retroactivity application** of acts as well as their **retroactivity interpretation**. Therefore if anyone acts within the trust in law he **shall not be disappointed** in his trust.*” This conclusion was stated in relation to the restitutions that usually represent quite sensitive topic and very often are somehow connected with adverse affects towards the rights of individuals. At the same time, as noted above, topic of restitutions, or rather property rights in general, has played very important role regarding the development of the principle of legitimate expectations within the case-law of the Czech Constitutional Court.

Regarding the topic of “*economic crisis*” we could mention cases solved by the Constitutional Court in context of production of energy from *renewable resources of energy* (hereinafter referred to as “RRE”). To sum up briefly the government had decided to support production of energy from RRE. However the fast development of this area led to fast growth of costs regarding financing of this policy. Therefore the state support of such production of energy was reconsidered i.e. *decreased*. The Complainants, contrary to the government, stated that the modification of the law affected their property rights and was contrary to the basic principles of democratic state respecting the rule of law since all of the challenged provisions were retroactive.

The Constitutional Court noted in its judgment of 19th April 2011, No. Pl. ÚS 53/10 that “*providing of subsidy from the state budget, following certain goal (support of RRE) and certain group of persons, always depends on to which extent the legislator found its purposefulness, or more precisely public interest on its providing. That is in particular in situation when such subsidy is only benefit from the legislator with no link to*

fulfilling of certain basic right or freedom. The affected subjects could not rely that the legislator would not eventually reconsider amount of subsidy. Also responsibility of the government and parliament regarding the public funds cannot be left out, which is connected to the authorization of the legislator to adapt expenditure of the state budget to its real capabilities through the modification of law provisions regulating its mandatory expenses.”

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?

Answer to this question can be deduced from the text above. From our point of view it cannot be said that the principle of legitimate expectations is not effective when applied independently. The principle is simply so closely connected with others abovementioned (e.g. legal certainty, predictability of legal order, prohibition of retroactivity etc.) that it could be hardly “cut off” from them. In other words we could also say that terms like legal certainty or legal expectations are quite *vague* therefore they sometimes merge in with each other.

At the same time it should be pointed out that these questions are in large measure also thing of theory. Depending on the point of view various answers to the question n. 6 can be given. For example one our academic author stipulated that “[i]f the principle of proportionality aims to find equilibrium between objectives and interests, then the principle of legitimate expectations balances between the certainty and constancy on one side and need of creation of new decisions with better proportionality of interests and goals on the other.”¹

Sources:

- <http://www.law.muni.cz/sborniky/dp08/files/pdf/ustavko/langasek.pdf>
- <http://www.epravo.cz/top/clanky/kratce-k-principu-pravni-jistoty-ve-svetle-aktualni-judikatury-93342.html>
- Pomahač, R. Právní principy dobré správy – imaginace či realita? In Právní principy. Pelhřimov: Vydavatelství 999, 1999.

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?

¹ Pomahač, R. Právní principy dobré správy – imaginace či realita? In Právní principy. Pelhřimov: Vydavatelství 999, 1999, p. 191.

When passing new legislation the legislator is bound by the principle of i.a. legal certainty, trust in law and legitimate expectations. In the case-law of the Constitutional Court these often take form of the prohibition of retroactivity. A law that interferes with the said principles can be annulled by the Constitutional Court. The Constitutional Court, however, intervenes only when there is interference with the constitutional order and act's inaccuracy, uncertainty and unpredictability extremely violate fundamental requirements imposed on a law under conditions of the rule of law². Such violation was found by the Constitutional Court in the amendment of the former Czech Civil Code (Act No. 40/1964 Coll.) by the Act No. 229/2001 Coll. which had annulled the transitional provision of § 879c of the former Civil Code stipulating acquisition of title to land property on the basis of its permanent use only a day before the addressees should have become the owners pursuant to the annulled provision. The Constitutional Court ruled that *“the legislator violated one of the fundamental principles of the rule of law i. e. principle of legal certainty and trust in law as implies Art. 1(1) of the Czech Constitution. By changing rules basically a day before the time limit set for the acquisition of the title the legislator resigned from its moral duty to set an example in respecting the law. The intervention of the legislator appears strongly arbitrary. Such procedure impairs the trust in law, which is one of the basic attributes of the rule of law. The proceeds of the legislator did not correspond to the fundamental principles of rule of law, among which the principle of predictability of the law, its clarity and its cohesion.”*³ The Constitutional Court declared violation of Art. 1 of the Protocol No. 1 to the Convention. The abovementioned amendment of the Civil Code introduced inequality among particular groups of addressees of the respective provision. *“This inequality does not correspond to any public interest. The interest in conferring advantage to a one group of subjects and disadvantage another in situation, when the subjects had stood at the same starting line set by the § 879c of the Civil Code, does not represent such public interest. This inequality is by the Constitutional Court considered as violation of the Art. 1 of the Czech Charter of fundamental rights and basic freedoms, which stipulates the principle of equality in rights.”*⁴

On the other hand the principle of legitimate expectations may not be understood as requirement of absolute stability of the legislation. In the Judgment of the Constitutional Court of 15th May 2012, No. Pl. ÚS 17/11, No. 102/2012 Court Reports of the Constitutional Court (hereinafter referred to as the “CC Reports”) the Constitutional Court assessed the amendment that had cut down the subventions to photovoltaic plants. The Constitutional Court stated that the legislation *“is subject to i. a. social-economic changes and requirements for stability of the state budget. [...]The Constitutional Court considers it legitimate if the legislator after objectively determined change of circumstances [...] proceeds to regulate subventions to production of energy from RRE so as to preserve the balance between the inputs and outputs [...]”*⁵

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?

It is desirable that institutions of public authority follow uniform interpretation practice where possible, so as to avoid interference with the principle at issue. Violation of that principle may

² Judgment of the Constitutional Court, No. Pl. ÚS 56/05, No. 60/2008 CC Reports.

³ Judgment of the Constitutional Court, No. Pl. ÚS 2/02, No. 278/2004 Coll.

⁴ Ibidem.

⁵ Judgment of the Constitutional Court, No. Pl. ÚS 17/11, No. 102/2012 CC Reports.

result in revocation of the individual legal act by the superior authority or further in judicial proceedings.

The Regional Court in České Budějovice in the judgment of 22nd June 2011, No. 10 A 24/2011-28 ruled that *“importance of following interpretation rules particularly of central administrative bodies, as well as the case-law of courts of higher resorts represents a non-negligible part of application practice of the administrative authorities particularly of lower instances.[...] It is the duty of the public authority to ensure uniformity and predictability of all its procedures in compliance with the principle of legitimate expectations. For this purpose the central authorities provide opinions, conclusions, recommendations, interpretations etc. whose utility value resides right in instructiveness of proposed procedures and finding the meaning of the respective legal provisions.”*

If the public authority, however, concludes that its practice has been contestable, it is entitled to change it. This change must affect all cases with the same or similar nature.⁶

“In case of contradictory case-law of courts of the same resort, the public authority is obliged to conclude, which of the expressed judicial opinions it will follow and such a conclusion properly justify. [...] It is precluded the public authority proceeded differently referring to parties appealing to concurring judgments.”⁷

On the other hand *“even in identical factual circumstances different procedure from a previous case may completely conform to law. The reasons for such a procedure of the administrative authority may reside in procedural provisions of law. This applies especially in international protection where the reasons for granting protection agreeing with one applicant may not agree with another.”⁸*

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?

As it was already said in the previous parts, the principle of legitimate expectations is not in general explicitly enacted in the Czech law, but a reference to it can be found in § 2(4) of the Code of Administrative Procedure that forces public authorities not to decide differently in similar cases. Indeed, public authorities have to act professionally throughout the administrative procedure and any wrong *“hint”* could be subject to a complaint of a participant of the given procedure (complaint pursuant to § 175 of the Code of Administrative Procedure). Moreover, § 139 of the Code of Administrative Procedure regulates *“Preliminary Information”*, i.e. that any person can ask a public authority for a piece of information before starting an administrative procedure or during the procedure. This request should aim at whether certain intention/project

⁶ Judgment of the Supreme Administrative Court of 13th August 2009, No. 7 As 43/2009-52.

⁷ Judgment of the Supreme Administrative Court of 7th February 2013, No. 9 Aps 10/2012-19.

⁸ Judgment of the Supreme Administrative Court of 21st February 2007, No. 1 Azs 105/2006.

(typically under construction law) is realizable only under condition that a decision or a conditional act is issued and how to reach the issue of a concerned act. The public authority is subsequently bound by this provided information.

Finally the Czech legal order counts with qualified passivity on many places, e.g. § 3a(3) of the Act No. 156/1998 Coll., on Fertilizers, stipulates that if the Central Institute for Supervising and Testing in Agriculture does not issue a permission to market a fertilizer in the delay of 30 days, the fertilizer can be marketed. As for the tolerance of the offence, certainly it cannot be perceived as legitimate expectations because there is a general principle “*nemo turpitudinem suam allegare potest*” (no one can be heard to invoke his own turpitude) that is respected under Czech law. There is also a decision of the Regional Court in Liberec of 19th February 2013, No. 59 A 15/2012-40, according to which *the principles of legal certainty, foreseeability and of legitimate expectations [§ 2(4) of the Code of Administrative Procedure] do not include any participant’s right not to be sanctioned by a public authority for their illegal conduct if a similar behaviour has not been penalised in the past.*

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?

In compliance with what said above, principles in general are very ambiguous notions that are permanently a subject of explanations mainly in judicial decisions and academic articles. However, we are not aware of the fact that legitimate expectations would be divided in other sub-notions in the Czech legal order. The term of legitimate expectations is rather stable and is applied along with other principles such as good faith for instance.

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.

In the Czech law, there is a general rule that acts of public authorities are correct and legal unless a difference is proved and they are revoked. Their correctness and lawfulness are *presumed*. Any individual can rely on them and if individuals suffer a harm caused by an unlawful act of a public authority, they can ask for damages according to the Act No. 82/1998 Coll., on Liability for Damage Incurred due to the Decision or the Incorrect Official Conduct of a Public Authority. As an example, we can mention the decision of the Supreme Administrative Court of 4th February 2009, No. 1 As 79/2008-128, according to which *if a building permit was issued when there was a final planning permit⁹, subsequent revocation of this planning permit cannot lead to revocation of the building permit. This follows from the presumption that acts of public authorities are correct and from the principle of good faith of their addressees.*

⁹ Under Czech law in principle a planning permit has to precede a building permit. Planning permit is, simply said, about localization of the building and building permit settles down conditions of its construction.

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?

The good faith is one of the basic features of legitimate expectations. On the contrary, neither *mala fides* nor abuse of rights enjoy any legal protection. The addressees cannot rely on good faith if they acted undoubtedly in apparent contradiction to law, not even in such a situation when the public authority had unlawfully approved the conduct by its individual legal act¹⁰. Furthermore, if the addressees simulate a certain legal act, although they do not want to conclude it, and they only want to conceal by such an act a different one, the administrative body considers this act according to its true subject-matter, i. e. “*if the contractual parties simulate a contract of donation, although they do not want it, and through it they conceal a different legal act, which they actually want, that is payment for education in secondary school, for tax purposes the true subject-matter of the act is considered, that is payment of scholarship*”¹¹.

The Czech courts do not differentiate between natural or legal persons in terms of the principle at issue. To qualify a certain conduct of a legal person as acting in *bona fide*, the public authorities “*must assess declarations of will of the respective natural persons made in the position of authorized representative*”¹².

Last but not least administrative body is obliged in the course of review proceedings “*examine rights acquired in good faith, in particular, where the administrative body alters a decision issued contrary to legal regulations or if it determines when the legal effects of the decision issued in the review proceedings should commence*” [§ 94(5) of the Act No. 500/2004 Coll., Code of Administrative Procedure]. “*Nevertheless, even in the case of contradiction of the reviewed decision to legal regulations the reviewing body must take care to maintain the proportionality between the rights of the participant acquired in good faith and legal certainty on one hand and the requirement of legality on the other hand*”¹³.

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?

Concerning this question we refer to the answers given above.

PART III

The Infringements of the Principle of Legitimate Expectations

¹⁰ Judgment of the Supreme Administrative Court of 12th February 2015, No. 2 As 241/2014-36.

¹¹ Judgment of the Supreme Administrative Court of 13th May 2010, No. 1 Afs 11/2010-94.

¹² Judgment of the Supreme Administrative Court of 21st November 2013, No. 2 As 125/2012-77.

¹³ Judgment of the Supreme Administrative Court of 21st January 2010, No. 6 As 36/2009-162.

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.

There is no specific “*formal test of infringement of the legitimate expectations*” in the Czech Republic, however “*the concept of the legitimate expectation is not endless, it is necessary to take into account **the circumstances of the case***” (resolution of the Metropolitan court of Prague of 13th December 2013, No. 7 Af 51/2011-34). Therefore in each case the individual aspects of the case must be considered. Nevertheless there are of course some certain points of the case that are in particular important.

At first there must be of course reasons that settle the legitimate expectations of the individual. Most often it is **wording of certain provision** – e.g. “*if the regional court shall review the contested statements of the decision within the scope of counts of charge [§ 75(2) of the Code of Administrative Justice] then the plaintiff has legitimate expectations, that by settling the counts of charge he / she set the referential framework of the court review*” (judgment of the SAC of 29th November 2011, No. 2 Afs 16/2011-78). However the important aspect of the legislation is also the level of its **concreteness**. As the Constitutional Court stated “*in situation when the legislator is ‘silent’ regarding both whether the entitlement according to the previous legislation has been preserved and applicability of the new legislation, **it is necessary to accept such interpretation that spare the purpose and essence of basic right, in this case the right to protection of legitimate expectations***” (the judgment of the Constitutional Court of 26th January 2005, No. IV. ÚS 178/04).

Another possibility of settling the legitimate expectations of an individual is surely **practice of administrative authorities**. However also this aspect must be considered in each individual case as follows from the judgment of the Regional Court of Brno – “*it is questionable whether the practice in question **had been qualified to grounded trust and legitimate expectations of the plaintiff***” (judgment of the Regional Court of Brno of 19th August 2015, No. 30 Af 59/2013-48).

Also influence of the participant himself / herself towards his / her legitimate expectations has to be taken into account – e.g. in one case the Constitutional Court stated regarding the legitimate expectations of the complainant of respecting her future married life that “*the complainant **through her own activities / steps has brought the administrative authorities to necessity to prefer legitimate public interest on observance of legal provisions, regarding the residence of foreigners, instead of respect to her future married life***” (the judgment of 6th September 2007, No. II. ÚS 482/04).

These are only examples of important aspects that should be considered by the courts, when considering legitimate expectations, as of course specific ones may arise in individual cases.

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.

Whether the principle really affects their practice, or rather to which *extent*, is probably question that should have been asked directly to the administrative authorities. From our point of view is however definitely reflected by the administrative courts. As the Supreme Administrative Court stated in its judgment of 21st July 2009, No. 8 Afs 85/2007-54, “*even when executing administrative discretion the administrative authority is **bound by the principles** typical of modern democratic state respecting the rule of law, **in particular in respect of the principle of legitimate expectations**, which despite no explicitly expressed in legislation is traditionally considered as **part of the Czech legal order**; after all it can be deduced from basic principles of administrative proceeding*”.

Another example represents the judgment of the SAC of 29th November 2011, No. 2 Afs 16/2011-78, in which it supported the right of the plaintiff to fair trial – “*if the regional court shall review the contested statements of the decision within the scope of counts of charge [§ 75(2) of the Code of Administrative Justice] then the plaintiff has **legitimate expectations**, that by settling the counts of charge he / she set the referential framework of the court review. The judgment dismissing the action, which has its basis in different argumentation than decision and the action, is surprising and **breaches the right of the plaintiff to fair trial***.”

As a third example may serves judgment of the Regional Court of 24th April 2013, No. 61 A 1/2013-44. It has been stated that “*through the calling the policeman to witness, the administrative authority of the first instance **settled the legitimate expectations** of the accused person that the policeman would be (as witness) properly heard and consequently the administrative authority would evaluate evidentiary value of his statement, while the accused would have **opportunity to express himself** both to the course of evidence and to witness statement and consequently, under the condition that the right to appeal would be applied, he (accused) would have an opportunity to **express himself** to the evaluation carried out by the administrative authority of the first instance regarding the evidentiary value of the witness statement*”.

Therefore in general we may say that the administrative courts are surely aware of the principle of legitimate expectations as well as related principles (see above). However without doubts it will always also depends on argumentation of participants to which extent the court will in individual case deal with the principle(s). On the other hand in the light of the fact that the principle of legitimate expectations jointly forms the basis of the Czech legal order, as well as the most probably the basis of other democratic law orders, it simply *cannot* be overlooked by the (administrative) courts. Even in such very unlikely situation there is always the Constitutional Court to interfere in favour of protection of the fundamental basis of the democratic state respecting the rule of law.

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?

Since the argumentation through the principle of legitimate expectations usually creates only part of the overall argument of the plaintiff or complainant then the “*form of remedy*” depends on the “*type of action*” filed by the plaintiff, or more precisely on demand for relief. Therefore there are no specific remedies focused on “*compensation*” of frustrated expectations.

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?

The principle of legitimate expectations is one of the general principles of law that represent one of the sources of EU law. It is so, since it is a principle being common to all Member States. From this point of view, EU law only copies national laws. As we will see in the following questions (answers), very often the EU law and national law go hand in hand when it comes to the application of the principle of legitimate expectations. The EU law stands for a strengthening argument when deciding on legitimate expectations in domestic cases.

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?

We can find administrative court decisions in which legitimate expectations are connected with the reference to the EU Charter. In majority of found cases, the principle of legitimate expectations was linked with the freedom to conduct a business (Article 16 of the EU Charter) and with the right to property (Article 17 of the EU Charter). This is valid also for the case of 24th February 2015, No. 6 As 285/2014, in which the Supreme Administrative Court dealt with legitimate expectations of video-lottery terminal keeper. At first, the Ministry of finance awarded the keeper with the license to run the cited terminals. Later on, this license was cancelled as unlawful because the terminals were situated nearby a school. The school was at the same place since the beginning, even sooner than the terminals, however the Ministry at first permitted the lottery business. Only later, after intervention of the Constitutional Court and legislative changes, it was made clear that the Ministry had not applied the act on lotteries correctly. Thus the keeper could not have, according to the Supreme Administrative Court, any legitimate expectations about his right to run his lottery business after this clarification and the cancellation of the license had to be expected.

Such references to the provisions of the EU Charter make decisions more convincing and it broadens the use of the principle of legitimate expectations.

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.

Of course our courts seek to respect the case-law of international jurisdictions especially of the European Court of Justice and the European Court of Human Rights following the international obligations of the Czech Republic. It is not rare that a reasoning of a Czech court decision contains references to several judgments of abovementioned European courts. As it was mentioned in previous parts it is not otherwise in the case of legitimate expectations. For instance, in the cited decision No. IV.ÚS 525/02, the Constitutional Court emphasized that in compliance with the European Court of Human Rights case-law, the term “*property*” must be interpreted autonomously and no amendment of national legislation can have an impact on this. As a result of this the individuals can have legitimate expectations about how state authorities will decide and the latter ones cannot argue with legislative changes. Similarly see the Constitutional Court judgment of 1st September 2010, No. I.ÚS 125/10.