



**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: Latvia



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The principle of the protection of legitimate expectations has gained a fundamental importance in the sphere of administrative law in Europe and is often regarded as a legal category of equal standing to other legal imperatives such as the principles of proportionality, legality, legal certainty, the precept of reasonableness, and others. It is one of the frequently invoked criteria in regard of which the courts review the legality of the activities carried by the public administration. Given the fact that the principle of legitimate expectations is essentially aimed at strengthening the trust in public authorities, it is undoubtedly expedient to have a closer look at what solutions this principle may offer. Considering the above, the aim of the Questionnaire is to explore the objective, functions and the development of the principle of legitimate expectations, its relation to other principles of law, and the key requirements drawn from the principle at issue.

The questionnaire consists of questions based around the above themes. You are asked to answer the questions on behalf of your member institution, and as far as possible to base them on the judicial practice in your organisation. Where no information is available, you are welcome to give your own views and insights.

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 principle of legitimate expectations follows from Article 1 of the Constitution of the Republic of Latvia. In particular, the Article 1 of the Constitution of the Republic of Latvia provides that Latvia is an independent democratic republic. The Constitutional Court of the Republic of Latvia has recognised that it follows from the concept of a democratic



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republic included in Article 1 of the Constitution that the State in its action has the obligation to abide by a number of fundamental principles of a judicial state, inter alia, the principle of legal certainty (*see, judgement of the Constitutional Court of 12 June 2013, case No 2012-21-01, § 10*). Thus, the concept of legitimate expectations is included in the concept of “democracy” in Article 1 of the Constitution.

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

The purpose of the principle of legitimate expectations is to protect expectations of an individual. It is aimed at ensuring of legal safety (stability) and legal certainty, which, inter alia, helps to implement trust to state administration authorities.

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?

The principle of legitimate expectations is stipulated in Section 10 of the Administrative Procedure Law. Foregoing section provides that a private person may have confidence that the actions of an institution will be legal and consistent. An institution's error, for the occurrence of which a private person cannot be held at fault, may not cause unfavourable consequences for the private person.

The Administrative Procedure Law does not stipulate principles of how or in what manner the principle of legitimate expectations should be applied, however, it directly stipulates that the principle shall be applied in administrative procedure (Section 4, Paragraph one, of the Administrative Procedure Law) and provides that an administrative act and the actual actions of an authority must comply with the general principles of law, inter alia, the principle of legitimate expectations (Section 4, Paragraph three, of the Administrative Procedure Law).

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?

In Latvia, the general principles of law, inter alia, the principle of legitimate expectations, in its essence, is the unwritten source of primary law, which may be used in both substantiation and argumentation of rulings. The aid of the legal principles may also be used in interpretation of legal provisions. In Latvia, the legislator has laid down the principle of legitimate expectations in Section 10 of the Administrative Procedure Law, however, the





text of this provision, as it was recognised in Latvian law, must be perceived only and exclusively as guideline and as an indication to possible content of general principle of law, because general principles of law and content thereof change along with development of the legal system.

Development of the principle of legitimate expectations in Latvia is, to great extent, related to entering into force of the Administrative Procedure Law on 1 February 2004, as this principle is set forth in the law in writing, and the practice of administrative courts, which provides content to this principle gradually.

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?

First, in relation to observation of the principle of legitimate expectations in conditions of economic crisis, the Constitutional Court of the Republic of Latvia, when hearing the case on reduction of pensions during the economic crisis, held that the amount of social security granted by the State may vary depending on the amount of funds at the disposal of the State. However, the fundamental rights of persons established by the Constitution are binding to the legislator irrespective of the economic situation in the State (*Judgement of the Constitutional Court of 21 December 2009, case No 2009-43-01, §24*). Thus, it was actually recognised that individuals' expectations concerning certain social security may be affected. In particular case, however, the provision contested before the Constitutional Court was revoked, because the legislator, having passed contested provisions, did not assess alternatives thereof with sufficient thoroughness and did not envisage more lenient solution, and did not envisage differentiated approach to reduction of pensions, and set neither remuneration for deduction of pensions, nor corresponding transitional period (*Judgement of the Constitutional Court of 21 December 2009, case No 2009-43-01, §§ 30, 32*).

Second, the principle of legitimate expectations has been significantly restricted in case of receipt of unlawful state support, observing the case-law of the Court of Justice of the European Union. In particular, the recipient of the support may rely that action of the provider of state support, when providing the support, is lawful only if the recipient of the state support is completely convinced that the European Commission was informed about





the state support, in accordance with Article 108 (3) of the Treaty on the Functioning of the European Union (see *Judgement of the Court of Justice of the European Union of 20 March 1997, case No C-24/95 Alcan, §§ 39–54*).

Third, the principle of legitimate expectations may be restricted, if it collides with the principle of rule of law, and the court believes that priority should be given to the principle of rule of law. In particular, legitimate expectations, although it is protected, is not absolute. Even in case of issue of an administrative act, an authority may come back to decided issue and revoke an administrative act in cases laid down in Sections 85 and 86 of the Administrative Procedure Law (see *Judgement of the Supreme Court of 22 October 2010, case No SKA-436/2010, § 13*).

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 is independent principle, and it has been interpreted as such in case-law. However, the principle, to great extent, is related also to principle of legal security and legal certainty or protection of legitimate expectations.

Doctrine of acquired right (*droits acquis*) in Latvia is related to adoption and application of retroactive provisions. In administrative law, the principle of legitimate expectations, however, is a principle of procedural law, and it is related to an administrative act issued by an authority and invariability or consistency of its factual actions, rather than to application of legal provisions in time. Although both categories are related to individual's expectations for consistency of situation, conditions of application of both categories differ.

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?

In respect of restrictions for the legislator, principle of legal security, which includes the





principle of legal certainty and the principle of legitimate expectations, is particularly highlighted in Latvian legal system. The principle of legal certainty refers to textual scope of legal regulation, namely, that each legal provision must be clear and comprehensive. However, the principle of legitimate expectations, for the purpose of constitutional law, refers to derogations to the legislator to affect previously established legal relations (*Onzevs M. Aspects of time of legal provisions in legal and democratic state [Tiesību normu laika aspekti tiesiskā un demokrātiskā valstī], University of Latvia, 2014, p. 66*). The Supreme Court has recognised that the principle of legitimate expectations does not exclude an opportunity for the state to alter existing legal regulation. When altering legal regulation, the state must observe rights, preservation or implementation of which the person might expect for. The principle of legitimate expectations demands that the state, when altering legal regulation, would observe reasonable balance between individual's expectations and interests, which are the reason for amending of regulation (*see judgement of the Supreme Court of 24 November 2011, case No SKA-708/2011; judgement of the Constitutional Court of 6 December 2010, case No 2010-25-01*).

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?

From the procedural aspect, the principle refers to an administrative act issued by an authority and invariability or consistency of its factual actions (including binding reference issued by an authority). Rights, which were previously granted to a person, and expressions provided by an authority must remain invariable in respect of a private person.

Protection of legitimate expectations is related to strict criteria stipulated in the law regarding the revocation of an administrative act. In particular, in accordance with Section 85, Paragraph two, of the Administrative Procedure Law, a lawful administrative act, which is favourable to the addressee, may be revoked upon existence of any of following circumstances: 1) the legal provision envisages revocation of an administrative act or an administrative act contains disclaimer on revocation thereof; 2) the administrative act has been issued under some other condition and such condition has generally not been fulfilled, has not been adequately fulfilled or has not been fulfilled in good time; 3) the actual or legal circumstances of the case have changed, such that had they so existed at the time the administrative act was issued, the institution may have not issued such administrative act. In such case, the administrative act may be revoked within a period of three months from the day the institution comes to know that it is possible to revoke it, but not later than within a





one-year period from the day it comes into effect; 4) the actual or legal circumstances of the case have changed such that had they so existed at the time the administrative act was issued, the institution may have not issued such administrative act, and the continuation of the administrative act being in effect affects significant interests of the public. However, in accordance with Section 86, Paragraph two, of the Administrative Procedure Law, an administrative act favourable to the addressee may be revoked if at least one of the following circumstances exist: 1) the addressee has not yet exercised his or her rights, which are confirmed or granted by such administrative act; 2) legal provision permits the revocation of the administrative act or the administrative act contains disclaimer on revocation thereof; 3) the continuation of the administrative act being in effect affects significant interests of the public. If the addressee on the basis of such administrative act has received money or other benefits, the administrative act shall cease to be in effect as of the day of revocation thereof; 4) the addressee has achieved the issue of the respective administrative act by knowingly providing false information, by bribery, duress, threats or other illegal actions. In such case, the institution shall assess the illegality of the actions carried out by the addressee and shall revoke the administrative act as of the day of issue thereof; 5) unlawfulness of the administrative act is so evident that the addressee of the administrative act could be and should be aware of it. Moreover, the revocation of the administrative act, in accordance with Clause 1, is permissible within a three-month period from the day when the institution comes to know that it is possible to revoke it, but not later than within a one-year period from the day it comes into effect (Section 86, Paragraph three, of the Administrative Procedure Law).

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?

In accordance with understanding of principle of legitimate expectations existing in Latvia, inter alia, explanation of the principle of legitimate expectations laid down in Section 10 of the Administrative Procedure Law, the form of action or a decision establishing the





expectations does not play crucial role. Significance is granted to circumstances whether 1) the person had something to rely on (expectation was created by clear expression of will of an institution) and 2) whether a person reacted, i.e., relied on it. Therefore, the act establishing the legal expectations may be a decision or an administrative act (Section 1, Paragraph three, of the Administrative Procedure Law), actual action of an institution (Section 89 of the Administrative Procedure Law), reference provided to a person on his or her rights (Section 98 of the Administrative Procedure Law), promises and indications, and other acts of an institution.

At the same time, it must be pointed out that, regarding interpretation and application of the Law on Personal Income Tax, the Supreme Court recognised that erroneous interpretation of legal provision may not prohibit the state to correct its mistakes, and state institutions may recede from incorrect praxis. In particular, receipt of particular taxes has been interest of the entire society, therefore, even incorrect position of the state concerning application of the tax may not prohibit the state to collect the tax later (*Judgement of the Supreme Court of 4 June 2012, case No SKA-28/2012, § 12*).

In respect of application of the principle of *qui tacet consentire videtur si loqui debuisset ac potuisset*, one must point out that, first, the opinion exists in Latvian administrative law that clear expression of will of an institution may create expectations to a person. Second, even if Latvian administrative courts accepted the conclusion expressed in German administrative law, namely, that terms on expression of private law will were correspondingly applicable to expressions of administrative legal will, which did not possess the nature of an administrative act (*Paine F.J. German general administrative law. The Administrative Procedure Law of Germany. [Vācijas vispārīgās administratīvās tiesības. Vācijas Administratīvā procesa likums] Rīga: Courthouse Agency, 2002, p. 260*), Section 1430 of the Civil Law would stipulate that the silence as complete inaction does not have legal significance, except for particular cases laid down in the law.

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?

Such principles as hope, expectation and reasonable expectation are used only to explain the notion of the principle of legitimate expectations, which is the sole principle ensuring the legal expectations of persons. There is no need to interpret hope, expectations and





reasonable expectation as such and to distinguish them each from other.

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.

The administrative act, which is favourable to the addressee, but is unlawful, may also create legitimate expectations to a person (Section 86, Paragraph two, Clause 3, of the Administrative Procedure Law). For example, such administrative act, which is favourable to a person, may be revoked, if continuation of being in effect thereof significantly affects interests of public. If the addressee on the basis of such administrative act has received money or other benefits, the administrative act shall cease to be in effect as of the day of revocation thereof. The relevant public law legal person must, in accordance with Chapter 8 of this Law, compensate the addressee for loses or personal harm caused him or her as a result of revocation of the administrative act (Section 86, Paragraph two, Clause 3, of the Administrative Procedure Law).

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 of an individual has been observed, having assessed whether the individual's expectations is worth of protection (Clause 3 of the Scheme of Assessment of Expectations) (see PART III Q1 of this questionnaire). Usually, the person acts in good faith, if he or she had not achieved issue of the administrative act by unlawful or, at least, unfair actions. Expectations are not legitimate and, therefore, fair, if the respective person knew or should have known that the respective act was unlawful, or, if the person provided false or incomplete information, counterfeited documents, gave a bribe or performed other actions in bad faith (Section 86, Paragraph two, Clauses 4 and 5, of the Administrative Procedure Law). Domestic courts do not differentiate situations depending on the fact whether the case concerns the natural person or private undertaking.

3.5. Are there any other key elements of the protection of legitimate expectations that have





gained the importance in application of the principle in your national legal order?

There are no any other key elements of the protection of legitimate expectations that would be worth mentioning.

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.

Administrative courts in Latvia, when determining whether the legitimate expectations should or should not be observed in particular case, stick to the following test: 1) whether there was the thing to rely on (clear expression of will of an institution); 2) whether the respective person actually relied on it; 3) whether expectations are worth of protection (judgement of the Supreme Court of 9 July 2013, case No SKA-204/2013, § 8; judgement of 7 June 2007, case No SKA-238/2007, § 13.1). Such approach complies with a handbook on administrative procedure published by the Council of Europe (*Administration and You: Principles of Administrative Law Concerning the Relations Between Administrative Authorities and Private Persons - A Handbook by Council of Europe*).

The question whether the expression of will of an institution the person could rely on, existed, has been specified, by assessing the circumstances of the case. However, the fact whether the person relied on such expression of an institution, has been determined, by assessing the action of this person, namely, whether the person acted in accordance with this expression. When assessing whether the expectations were worth of protection, legitimacy of expectations has been observed and considerations of proportionality have been carried out. The expectation has been recognised as legitimate only when the person has not achieved the issue of the administrative act by his or her unlawful or unfair action.

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.





The principle of legitimate expectations is the law and as such is laid down in the Administrative Procedure Law; therefore, the application of the principle has the same results as the application of law. The Supreme Court has given preference to the principle of legitimate expectations in following cases:

1) Police junior officer, who was convicted to suspended sentence for commitment of intentional criminal offence prior to starting of service in the police, was dismissed from the service, after the legislator passed the amendments to the law, stipulating that a person, who has not been convicted for commitment of an intentional crime, may be employed in service. The Supreme Court recognised that the persons, who lawfully entered the service after extinguishment or setting aside of the criminal record, and have decently discharged service duties for long time, inter alia, the applicant, had legitimate expectations regarding the right to continue the service (Judgement of the Supreme Court of 24 November 2011, case No SKA-708/2011).

2) In 2004, the State Revenue Service imposed an obligation to a person to pay a tax and a penalty to the state budget, and commenced undisputed recovery of a debt, but, having established that there are only essential articles at the person's place of residence the recovery of the debt may not be directed at, composed the act on lack of property. In 2008, the foregoing person filed an application to the State Revenue Service regarding the extinguishment of personal income tax debt. The Service recognised the decision of 2004 on undisputed recovery of debt to be invalid and refused to extinguish the tax debt of the person, passing the decision on recovery of delayed tax payments. The Supreme Court recognised that actual situation, which existed between 3 December 2004 and 23 May 2008, when the decision of 3 December 2004 was recognised as invalid, had to be observed in the particular case. The court had to assess the legitimate expectations of the applicant regarding the decision of the State Revenue Service of 3 December 2004 (Judgement of the Supreme Court of 12 December 2011, case No SKA-849/2011).

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?

If the lawful administrative act, which is favourable to the addressee, has been revoked under condition that 1) the legal provision envisages revocation of an administrative act or an administrative act contains disclaimer on revocation thereof, or 2) the administrative act has been issued under some other condition and such condition has generally not been fulfilled, has not been adequately fulfilled or has not been fulfilled in good time (Section 85, Paragraph two, Clauses 1 and 2, of the Administrative Procedure Law), then the person is not entitled to compensation. It has been believed that in such cases the addressee must





take account of possible revocation of the administrative act. However, if the lawful act, which is favourable to the addressee, has been revoked under the condition that 3) the actual or legal circumstances of the case have changed, such that had they so existed at the time the administrative act was issued, the institution may have not issued such administrative act, or 4) the actual or legal circumstances of the case have changed such that had they so existed at the time the administrative act was issued, the institution may have not issued such administrative act, and the continuation of the administrative act being in effect affects significant interests of the public (Section 85, Paragraph two, Clauses 3 and 4, of the Administrative Procedure Law), the relevant public law legal person shall, in accordance with Chapter 8 of this Law, compensate the addressee for losses and personal harm caused him or her as a result of revocation of the administrative act (Section 85, Paragraph three, of the Administrative Procedure Law). Also in case, when the unlawful administrative act, which is favourable to an addressee, is revoked under the condition that the continuation of the administrative act being in effect affects significant interests of the public (Section 86, Paragraph two, Clause 3, of the Administrative Procedure Law), the public law legal person shall compensate the addressee for losses or personal harm caused him or her as a result of revocation of the administrative act.

It is possible to compensate losses not only in terms of money or property, but also by restoration of previous situation, or by avoiding or compensating unfavourable consequences in other way.

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?

In accordance with Section 1, Paragraph five, of the Administrative Procedure Law, external regulatory enactments include the Constitution, laws, regulations by the Cabinet of Ministers and binding regulations of local municipalities, as well as international treaties and





fundamental treaties of the European Union and regulatory enactments issued on the basis thereof. However, in accordance with Section 15, Paragraph four, of the Administrative Procedure Law, legal norms of the European Union have been applied in accordance with their place in the hierarchy of legal force of external regulatory enactments.

Latvian courts, when adjudicating cases related to application of law of the European Union, observe the equivalence of the law of the European Union and domestic law and the fact that application of legal norms of the European Union may not make these norms inefficient or inexpedient. Latvian courts also observe the conclusions of the Court of Justice of the European Union. Foregoing conclusion also refers to application of the principle of legitimate expectations.

Legal provisions of the European Union are superior over the domestic legal norms.

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?

The Charter of Fundamental Rights of the European Union has been applied, when the case related to application of legal norms of the European Union has been adjudicated. Previously, there was no case-law, when the court would refer to the Charter of Fundamental Rights of the European Union in connection with legitimate expectations. However, the Charter would be applied as a binding regulatory enactment, in accordance with Article 6 (1) of the Treaty on the European Union, in any case.

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.

When adjudicating the cases related to human rights, Latvian courts observe conclusions of the European Court of Human Rights. The conclusions have been applied to protect legitimate expectations of a person, as far as those are referable and comparable with the case being adjudicated.

