Strengthening Respect for Human Rights and Fundamental Freedoms Under the Doctrine of the Protection of Legitimate Expectations

Dr. Audronė Gedmintaitė

Abstract: This article reveals the path of consolidating the doctrine of the protection of legitimate expectations in the Lithuanian legal system and summarizes the latest trends of national case law in connection with the protection of legitimate expectations, including in the context of trends in European law. The subject of the article, which consists of the analysis of case law in the fields of protection of the right to property and the implementation of freedom of economic activity, contributes to a wider discussion about the processes of Europeanisation of administrative law. After analysing the development cycles of the doctrine of the protection of legitimate expectations, it is concluded that the doctrine of the protection of legitimate expectations reliably contributes to the development of modern administrative law in Lithuania and is one of its most important pillars aimed at consolidating the protection of subjective rights. As evident from the jurisprudence of the Supreme Administrative Court of Lithuania, which forms administrative case law, the application of the doctrine in question essentially notifies of the transition from traditional forms of review of public administration actions, such as compliance with procedural requirements, to the obligation, deriving from the principle of good governance, to take administrative decisions that would not be fundamentally unfair.

Keywords: *principle of the protection of legitimate expectations, principle of good administration, rectification of an administrative error, protection of rights to property, freedom of economic activities, administrative supervision.*

Introduction

The principle of the protection of legitimate expectations, recognized in the jurisprudence of the Constitutional Court of the Republic of Lithuania in 2001,[1] was con-

1 Ruling of the Constitutional Court of the Republic of Lithuania of 12 July 2001.

DOI: https://doi.org/10.15388/EULLAJ.2023.5

sistently developed in the Lithuanian legal system as a universal, general principle of law. The right to rely on the protection of legitimate expectations is guaranteed to anyone in a situation where actions of the State and its institutions have led to the emergence of one's reasonable expectations. In this context, it is no surprise that the principle of the protection of legitimate expectations has acquired fundamental significance in the Lithuanian legal system both in the regulatory law and for individually applicable legal acts. The pivotal development of the doctrine of the protection of legitimate expectations went almost hand in hand with the growth of the importance of the principle of good administration. The two principles contributed essentially to the development of modern administrative law in Lithuania – with the growing trust in the State, its institutions and law, respect for fundamental rights and the development of the standard of defence of subjective rights.

Given that the application of the principle of the protection of legitimate expectations can lead to ensuring of goals that are not easily compatible – stability and flexibility of law, the general picture of the application of the provisions of this doctrine in case law may seem confusing at first sight. However, in the longer term, through consistent approach to the goals of the principle of the protection of legitimate expectations, the elements (conditions) forming the content of the examination principle have become established in the case law and its application has become consistent. In this respect, the doctrine of the protection of legitimate expectations and its development have long been one of the most interesting areas of academic research,[2] especially in getting to know the trends of case law in so called "hard cases".

Since the content of the doctrine of the protection of legitimate expectations is largely filled by judicial jurisprudence, its application is a dynamic (changing) process and, therefore, a constantly relevant area that deserves more diligent academic research. In several recent judgments, the Supreme Administrative Court of Lithuania (hereinafter also referred to as the SACL) further clarified the conditions for the application of the doctrine of the protection of legitimate expec-

2 Egidijus Šileikis, *Teisėtų lūkesčių principas ir Lietuvos Respublikos Konstitucinio Teismo jurisprudencija*, *Konstitucinė jurisprudencija,* 3, (2010): 236–255; Birutė Pranevičienė, *Teisėtų lūkesčių principo esmė ir teisėtų lūkesčių apsaugos galimybės administraciniuose teismuose* from *Administraciniai teismai Lietuvoje: nūdienos iššūkiai*: *kolektyvinė monografija, skirta Lietuvos administracinių teismų dešimtmečiui*. Virgilijus Valančius (Vilnius: Supreme Administrative Court of Lithuania, 2010), 213–227; Birutė Pranevičienė, *Teisėtų lūkesčių principo samprata ir teisėtų lūkesčių apsaugos modeliai Europos Sąjungos administracinėje erdvėje*, *Jurisprudencija*, 6(96), (2007): 43–49; Aušra Kargaudienė, *Teisėtų lūkesčių (apsaugos) principas* from *Viešosios teisės tyrimai: de jure ir de facto problematika*: *mokslo studija*. Gediminas Mesonis (Vilnius: MES, 2013), 126–140; Audronė Gedmintaitė, *Teisėtų lūkesčių apsauga contra legem*, *Teisė*, 93, (2014): 157–175; Audronė Gedmintaitė, *Teisėtų lūkesčių apsauga Europos Žmogaus Teisių Teismo praktikoje*, *Teisė*, 91 (2014): 135–153; Audronė Gedmintaitė, *Teisėtų lūkesčių apsaugos principas viešojoje teisėje* (doctoral thesis, Vilnius University, 2016), 496, etc.

tations, referring to case law of the European Court of Human Rights (hereinafter also referred to as the ECtHR) and taking into account the relevant jurisprudence of the Court of Justice of the European Union (hereinafter also referred to as the CJEU). In this context, if we are to better understand the complexity of the problems accompanying the application of the protection of legitimate expectations and to anticipate trends that may hinder the effectiveness of this principle, it is necessary to analyse in greater depth how the essential conditions for the application of the principle of the protection of legitimate expectations are changing and how the jurisprudence of the European courts affects this, also to identify the scope of the doctrine application, in particular, the areas in which the protection of legitimate expectations remains undeveloped. In order to stress the relevance of the indicated aspects of the protection of legitimate expectations, which have been developed in recent case law, this article uses descriptive, systematic analysis and comparative research methods. Such analysis of the doctrine of the protection of legitimate expectations, as a whole, reveals the path of consolidation of this doctrine in the Lithuanian legal system and summarizes the latest trends of national case law including in the context of trends in European law.

1. Formation of the legitimate expectations protection doctrine in Lithuania

The recognition of the principle of the protection of legitimate expectations in Lithuania, as in the whole of Europe, has been a gradual process, the content of which was largely filled with the judicial jurisprudence. Unlike in the case law of European supranational courts or in the legal systems of other Member States, the significance of this principle in the Lithuanian legal system was, in the first place, confirmed in the assessment of the legality of regulatory legal acts and only later this principle was recognized as a criterion for reviewing individually applicable administrative decisions.

In legal literature,[3] the first attempt to establish the principle of the protection of legitimate expectations in constitutional jurisprudence is recognized to be the ruling of the Constitutional Court of 12 July 2001. In this ruling, legal provisions, which reduced the amount of salaries that judges used to receive until then, were admitted to be anti-constitutional legal regulation. The provisions of the ruling classified the protection of legitimate expectations as requirements of the principle of legal certainty, related to the validity of legal regulation. In this respect, the Constitutional Court emphasized that "the amendments to legal regulation cannot

3 Šileikis, *supra note*, 2:241; Pranevičienė, *supra note*, 2: 219.

deny legitimate interests and legitimate expectations of a person". Eventually, the principle of the protection of legitimate expectations has become established in the formal constitutional jurisprudence as an integral part of the rule of law principle. The doctrine provision that "integral elements of the principle of the rule of law are protection of legitimate expectations, legal certainty and legal security" has been reiterated in the established case law of the Constitutional Court for a number of times.[4] All the said legal imperatives have the same purpose, i.e. to ensure a person's trust in the State and in law.[5]

The doctrine of the protection of legitimate expectations began to be developed in decisions of the Supreme Administrative Court of Lithuania, which forms the uniform case law of administrative courts,[6] in 2002. The first attempt to establish the principle of the protection of legitimate expectations was surprisingly smooth and even very substantive. The decision adopted in 2002 in administrative case No. A[11]-291/2002[7] was primarily aimed at ensuring the protection of individual rights of a person and protecting individuals' property interests – investments in real estate, which the applicants were deprived of after a municipal authority decided to correct an error and cancel its previous decisions.[8] This SACL ruling is important for the development of the doctrine of the protection of legitimate expectations in several aspects, which have not lost their relevance today: (1) it addressed the problem of revocation of administrative decisions, which is recognized to be a classical area for application of the doctrine on the protection of legitimate expectations;[9] (2) provisions of the ruling prudently link a person's ex-

4 See, e.g., the ruling of the Constitutional Court of the Republic of 10 October 2013. In legal science, the combination of the said imperatives is also referred to as the "mini-system of three principles". Šileikis, *supra note*, 2:246.

5 Rulings of the Constitutional Court of the Republic of Lithuania of 30 May 2013, 16 May 2013, 15 February 2013.

6 Ruling of the Supreme Administrative Court of Lithuania of 2 January 2002 in administrative case No. A[11]-291/2002.

7 *Ibid.*

8 After the municipality initiated legal disputes regarding a building, which is a part of the architectural ensemble of the Chodkevičiai Palace and which was sought to be transferred to the Lithuanian National Museum of Art, the applicants lost their title to this building, therefore, they addressed the court for compensation of damages caused by the actions of the municipality. The applicants explained that the Vilnius City Board had taken decisions in 1993, which allowed them to design and reconstruct a utility building in the yard at their own expense, but two years later, the Vilnius City Board addressed the court for annulment of its own decisions. Consequently, on the basis of these decisions, they lost the money they had invested into the repairs of the building. In these circumstances, the SACL admitted that ignoring the applicants' rights and related expectations is a basis for compensation of moral damages of the applicants.

9 Walter Frenz, *Handbuch Europarecht – Band 4: Europäische Grundrechte* (Berlin – Heidelberg: Springer, 2009), 894; Jurgen Schwarze, J. *European Administrative Law* (London: Sweet & Maxwell; Luxembourg: Office for Official Publications of The European Communities, 2006), 942, 979.

pectations to the person's subjective rights, in this way accentuating that legitimate expectations are not an independent legal category; (3) both the objective and subjective aspects of the verification of good faith, which is a mandatory condition for the protection of legitimate expectations, were applied;[10] (4) decisions, invoked by the applicants as the basis for their legitimate expectations, had been revoked as illegal, however, this circumstance did not prevent the application of the compensatory protection of legitimate expectations – compensation for damage suffered by private individuals by reason of their reliance on decisions of the municipality was granted. Hence, the very first attempt to establish the principle of the protection of legitimate expectations allows for speaking even about the recognition of the protection of legitimate expectations *contra legem*.[11]

The later development of jurisprudence, which, presumably, was not that consistent due to the then novelty of the doctrine applied, shows that the "first thought" has nevertheless proved to be the most correct one. Indeed, the overviewed SACL ruling of 2002 summarizes all the main features to be noted in revealing elements of the currently applicable doctrine of the protection of legitimate expectations. In spite of that, it was for about another decade that case law often made references to the doctrine of acquired rights that unduly narrows the doctrine of the protection of legitimate expectations, the objective concept of good faith or the absolute primacy of legality. This phase of case law development can be linked to problematic attempts to find (or test) the limits of application of the doctrine of the protection of legitimate expectations. The European Court of Human Rights helped to finally define such limits and to bring uniformity to case law, admitting violations in cases against Lithuania concerning insufficient protection of legitimate expectations.[12]

10 In this respect, it is very interesting to note that the administrative courts, when deciding on compensation of damages, stated that "the applicants' seeking to acquire rights to the specified building and addressing, for this purpose, a municipal authority competent to take a decision on this issue cannot be considered and treated as unlawful actions or fault".

11 The purposeful motivation of the administrative court to provide persons with legal protection of compensatory character is to be noted, having in mind that courts of general competence, having examined a related civil dispute regarding the title to the building in dispute, directly emphasized for a number of times that "actions, which enable appearance of legal relationship of ownership, must be legitimate, as it is only the title created by legitimate actions that must be protected" (ruling of the Civil Cases Division of the Supreme Court of Lithuania of 7 November 2000 in civil case No. 3K-7-993).

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

It is also interesting to note that the first mention of the doctrine in question in the case law of the Supreme Administrative Court of Lithuania was relatively independent. No doubt, the principle of the protection of legitimate expectations was not forming in a legal vacuum, however, the influence and significance of the jurisprudence of the European courts can be confirmed only implicitly.[13] In this aspect, it should be noted that the context where the protection of legitimate expectations in the SACL case law began is somewhat closer to the ECtHR case law, where the beginning of the doctrine in question is linked to investment activities of persons concerned and protection of the rights to property.[14] Meanwhile, the influence of European Union law in the application of the principle of the protection of legitimate expectations in case law of national administrative courts has not been anyhow exceptional for a long time. The SACL usually referred to the interpretation of the principle of the protection of legitimate expectations formed in the European Union only in the areas already characterized by more intensive European Union legal regulation, for example, in areas of taxation or competition. The currently latest case law of the Supreme Administrative Court of Lithuania already allows for speaking about the clearer influence of European Union law on the development of national jurisprudence in the areas of freedom of economic activities – differences in positions of national courts and judicial authorities of the European Union in connection with the assessment of good faith are becoming increasingly visible. However, in order to have a better structured discussion on these issues, first of all, it is worth actualizing the constituent elements of the doctrine of the protection of legitimate expectations in the context of the most recent judgments and rulings of the Supreme Administrative Court of Lithuania.

13 The relevant decision was taken in a dispute over use of real estate. Meanwhile, it should be reminded that the beginning of the principle of the protection of legitimate expectations in constitutional jurisprudence is linked to issues of fair pay for work (rulings of the Constitutional Court of the Republic of Lithuania of 12 July 2001, 18 December 2001). Meanwhile, in the CJEU case law, the issue of the protection of legitimate expectations arose primarily in disputes concerning the status of the officials of the Community (judgment of the Court of Justice of European Union of 12 July 1957 in Algera and Others v. Common Assembly, 7/56, ECR 39).

14 Judgment of the European Court of Human Rights of 18 February 1991 in *Fredin v. Sweden* (No. 1) (application no. 12033/86), p. 54, judgment of 29 November 1991 in *Pine Valley Developments Ltd and Others v. Ireland* (application no. 12742/87), p. 51.

2. The content of the doctrine of the protection of legitimate expectations in the latest case law of the SACL

In the phase of formation of the doctrine in question,[15] the case law of the Supreme Administrative Court of Lithuania would usually accentuate the purpose of the principle of the protection of legitimate expectations formulated in constitutional jurisprudence or would note individual aspects of the application of the principle of the protection of legitimate expectations, linked to specific facts of each case. In the long run, the content elements of the principle in question have become a sufficiently consistent doctrine in the SACL case law and we can now reasonably distinguish two fundamental conditions for the recognition of legitimate expectations. First, a person, who refers to a violation of legitimate expectations, must state the legal basis for these expectations, i.e. the relevant obligations assumed or assurances given by a public authority. Second, a person, who refers to a violation of legitimate expectations, must be acting in good faith himself. Finally, the issue of the protection of legitimate expectations is resolved using a test of balance of competing values, along with a proportionality check.

A significant peculiarity of the doctrine in question, which is favourable for the protection of subjective rights, is that the Supreme Administrative Court of Lithuania in its case law has adopted a broad concept of the source of formation of legitimate expectations – recognising both formal obligations of the state and less formal assurances given to private individuals. The form of the source of legitimate expectations as such is, therefore, a secondary issue. While formal obligations of the State, such as individually applicable administrative decisions, are a more substantial form of a basis for legitimate expectations, established administrative practices and the tolerance of the settled actual situation can, in certain circumstances, also be recognised as a source of legitimate expectations. In the national legal system, the latter basically even acquired significance equivalent to that of formal obligations of the State. Recognition of informal sources of legitimate expectations was directly influenced by the case law of the European Court of Human Rights. As we will see from further analysis, this is also repeatedly stated directly in the case law of the Supreme Administrative Court of Lithuania, especially in cases concerning the restoration of ownership rights.

15 Given that the protection of legitimate expectations was first recognised in the SACL case law in 2002 and taking into account that formation of consistent application of the doctrine was affected by guidance presented in the ECtHR case law in cases against Lithuania (in this regard, see, for example, the said judgment in *Pyrantienė v. Lithuania, supra note,* 12), it can be conditionally regarded that the years 2002–2013 are the formation stage of the doctrine of the protection of legitimate expectations in the case law of Lithuanian administrative courts.

Currently, it is no longer surprising that administrative case law recognises a long-standing systemic situation, which is tolerated by public authorities, to be a source of legitimate expectations, no matter whether or not such a situation is in line with established legal regulation (protection *contra legem*). The Supreme Administrative Court of Lithuania has noted for a number of times that time, which has lapsed from the moment when a private individual acquired ownership rights until the moment of defence of public interest to get back real property illegally transferred to the ownership of a private individual, is significant for assessing the balance of competing interests when there are no circumstances denying the good faith of persons, whose ownership rights were restored unlawfully. Such a position of the court is based on the jurisprudence of the ECtHR, which admits that in such circumstances persons have acquired legitimate expectations of peaceful enjoyment of their possessions and their rights are protected according to the provisions of Article 1 of Protocol No. 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the ECHR, the Convention).[16] What is more, unlike in regular circumstances of the formation of legitimate expectations, in such cases the case law does not require establishing that legitimate expectations have developed on the basis of quality provisions of law, i.e. provisions that meet requirements of legal certainty, are unambiguous, clear and stable.[17]

The influence of the case law of the European Court of Human Rights is even more evident in relation to the second condition for the protection of legitimate expectations – the good faith of a person who relies on the doctrine of the protection of legitimate expectations. In this regard, ruling in administrative case No. eA-3910-662/2020, published in the bulletin of the Supreme Administra-

16 For example, in administrative case No. eA-25-415/2018, the SACL indicated that, in spite of the fact that the ownership title of private individuals was restored partially unlawfully, the possession of the property, which took 15 years is certainly to be recognised as very long. In these circumstances, it was held that the private individuals had acquired a legitimate expectation that could be defended in court (the ruling of the Supreme Administrative Court of Lithuania of 4 April 2018 in administrative case No. eA-25-415/2018).

17 For example, in administrative case No. eA-1120-415/2020, the SACL noted that legal acts intended to regulate the granting of land under the land reform procedures failed to regulate all legal aspects significant for this process, therefore, their application was rather complicated, often requiring interpretation by courts. In these circumstances, the SACL indicated that despite the fact that the land in dispute was transferred to a private individual because public authorities confused the procedures of the land reform and the ownership restoration procedures and, for this reason, the private person actually did not have the right to acquire the property in dispute, the applicant had used the property in good faith for a long time (almost for 10 years). Hence, the applicant acquired a legitimate expectation of peaceful enjoyment of the property in dispute and these rights are protected by Article 1 of Protocol No. 1 of the Convention (ruling of the Supreme Administrative Court of Lithuania of 13 May 2020 in administrative case No. eA-1120-415/2020).

tive Court of Lithuania, should be specifically pointed out as forming the administrative case law. In this case, the Supreme Administrative Court of Lithuania, referring to the case law of the European Court of Human Rights, noted that the standard of prudence applied to private individuals, who do not perform any investment activities, is lower than requirements applicable to economic entities. However, neither of the above are required to be knowledgeable about the application of the legal acts better than the public authorities themselves. Knowledge and information at the disposal of the persons concerned, which are or were to be accessible to these persons, as well as circumstances, which due to their character may be treated as obvious, are admitted to be a circumstance significant in determining whether a person acted in good faith. However, this does not mean that private individuals may be subject to a stricter standard of knowledge than competent public authorities, provided that the person submits all the required data.[18]

The overviewed case law examples should not give the impression that according to the provisions on the protection of legitimate expectations formulated in national case law, the public authorities cannot take any adequate measures to correct the errors made. Referring to the judgment of the European Court of Human Rights in *Moskal v. Poland*,[19] the Supreme Administrative Court of Lithuania has pointed out for a number of times that, according to the principle of good governance, public authorities should not be prevented from correcting their errors, even those resulting from their own negligence. The SACL case law has also adopted the jurisprudential provision (general principle) of the European Court of Human Rights that the principle of good administration requires that the public authorities act quickly, properly and, above all, consistently when deciding on a public interest, especially in relation to fundamental human rights such as the right of ownership. Equally as the European Court of Human Rights in its case law, national courts also emphasize in their decisions that the risk of errors made by public authorities must be borne by the State itself, and errors should not be corrected by putting a private individual in a worse situation.[20]

In addition to the above-mentioned administrative disputes in connection with land related legal relationships, the best illustration of aspects of error correction assessment in administrative case law most probably is the most recent

18 Ruling of the Supreme Administrative Court of Lithuania of 27 May 2020 in administrative case No. eA-3910-662/2020, *Administracinė jurisprudencija,* 39, (2020): 163–199.

19 Judgment of the European Court of Human Rights of 15 September 2009 in *Moskal v. Poland* (application no. 10373/05), p. 73.

20 For example, ruling of the Supreme Administrative Court of Lithuania of 23 October 2019 in administrative case No. A-1134-575/2019. See also the judgment of the European Court of Human Rights of 13 October 2017 in *Činga v. Lithuania* (application no. 69419/13) and the court jurisprudence referred to therein.

SACL jurisprudence in cases on issues of social security, first of all, in cases of deciding on recovery of overpaid social security benefits. In 2015–2018, a number of cases were started in administrative courts in connection with the statutory duty of the pensions authority to recover unduly paid widows' (widowers') pensions from pensioners.[21] In this context, the extended panel of judges of the SACL noted in administrative case No. eA-1324-502/2015[22] that the proportionality check must go along with the assessment of the actions of the authorised public authority in the aspect of the requirement to act quickly, arising from the principle of good administration. In cases where the overpayment of certain amounts is determined after a considerable period of time following the date of the granting and payment of these benefits, it must be assessed in detail whether this has not been due to the insufficiently diligent and careful performance of duties assigned the authorized public authority, absence of controls, etc., by reason of which, the transfer of the entire burden onto a person in a given situation could be seen as not in line with the principles of social justice and proportionality. Meanwhile, the existence of a person's fault must be assessed with particular care and due consideration not only of the objective circumstances, which led to the existence of the relevant overpayment of benefits, or objective characteristics of the person's behaviour, but also of the subjective context of the person's behaviour, which, *inter alia*, includes such individual characteristics of a person as age, education, experience, etc. Finally, the administrative case law adopted a principled approach that in cases when it is found that in taking a decision to grant a social benefit, the presented documents were not checked properly or there was no control over payment of such benefits, the whole burden of correcting administrative errors cannot be borne by benefit recipients only, and recovery of benefits was limited to the general limitation period of five years in such cases.[23] Thus, the administrative case law remains strict for the revocation of administrative decisions, especially for retroactive annulment, even in cases where the obligation of competent public authorities to correct an error is enshrined in provisions of specific legal regulation.

21 The said overpayments were found when the competent public authority checked documents of a long period (at least for ten years) and found a number of changes in circumstances, e.g. it was often a case that pensioners would not inform about a new marriage in due time. In view of the fact that the public authority questioned the effects of what happened long ago and covered a long period, the established amounts of overpayments represented a significant proportion of the cost of living for these pensioners and it was decided to recover such amounts from other benefits received by these persons.

22 Ruling of the extended panel of judges of the Supreme Administrative Court of Lithuania of 7 September 2015 in administrative case No. eA-1324-502/2015, *Administracinė jurisprudencija,* 30, (2015).

23 Ruling of the Supreme Administrative Court of Lithuania of 30 May 2018 in administrative case No. A-4107-552/2018.

In the absence of specific legal regulation governing the issues of revocation of administrative decisions, amendment or repeal of administrative decisions is much more problematic. Until 2020, the law governing general issues of administrative procedure[24] did not provide for a right of a public administration authority to repeal or amend its decisions even if an error is found. The SACL, referring to the principle "everything which is not allowed by law is forbidden" applicable to the activities of public administration entities, interpreted that as an implicit prohibition for public authorities to amend or repeal an adopted administrative decision. It has been consistently argued that, as the legislator did not provide for the right of a public administration entity to repeal its own decision,[25] it simply does not have such a right, and that it constitutes a basis for cancelling an administrative decision revoking a previous administrative decision.

In the long run, this administrative case law was supplemented with significant solutions to legal problems related to the revocation of administrative decisions: the position of courts, allowing to address the issue of the power of public administration entities to revoke a decision taken previously, when no such right is established by law, has been developed. In 2016, the extended panel of judges of the SACL in administrative case No. A-2458-525/2016,[26] when ruling on the termination of payment of state pensions to officers in case it turned out that an officer had been dismissed through his own fault, held that the right of competent public authorities to revoke an administrative decision on granting a pension derives from statutory provisions regulating the right of this authority to take an administrative decision, which is later sought to be cancelled in order to correct an error. The extended panel of judges noted in that respect that powers given by law to a public administration entity to take a relevant decision include the right of such an entity and, in certain cases, also the duty, to modify the decision taken. Having in mind that neither general nor specific legal regulation provided for the right of public administration entities to change their decisions at that time and with regard to the administrative case law, providing for an implicit prohibition to change decisions taken, as consistently developed until then, it is worth having a closer look at the reasons indicated in the overviewed court decision to substantiate such a turn in case law. Such reasons, *inter alia*, were the case law of the Court of Justice of the European Union in the area of civil service, which, in the case in question,

24 Law of the Republic of Lithuania on Public Administration. *Valstybės žinios*, 1999, No. 60-1945; 2006, No. 77-2975.

25 In cases where an applicable legal act has no express provision giving the right to repeal a decision.

26 Ruling of the extended panel of judges of the Supreme Administrative Court of Lithuania of 13 May 2016 in administrative case No. A-2458-525/2016, *Administracinė jurisprudencija*, 31, (2016): 169–187.

was referred to as an additional source of application and interpretation of law. Based on the CJEU cases *Simon*[27] and *Herpels*,[28] the approach was followed that amendment or cancellation of administrative acts is in general possible provided that the specific circumstances are duly taken into account. Such convergence is surprising, as the influence of European Union law on the development and application of the doctrine of the protection of legitimate expectations had not been clearly seen in the national case law until then. On the contrary, as mentioned above, we can name a number of fundamental differences in the content of the doctrine in question.

However, the fact that the expressed position concerning the influence of European Union law on solution of the decisions revocation issue was not an isolated case of application of law, was confirmed by the SACL in 2021, when, sitting as the extended panel of judges, it again quoted the said judgments of the Court of Justice of the European Union. This influence of European Union law in the current stage of the case law development is important to the extent it allows substantiating (consolidating) the case law approach that a public administration entity has the right to modify its decisions even in those cases when the applicable legal acts as such contain no provision, expressly providing for the right to cancel or amend a decision, but issues of the protection of the legitimate expectations of a person continue to be solved according to criteria established in national case law.[29]

The criteria for the protection of legitimate expectations formed in case law are more important than ever, given that, in 2020, a new version of the Law

27 Judgment of the Court of Justice of European Union of 1 June 1961 in *Gabriel Simon v. Court of Justice of the European Communities*, 15/60, (EU:C:1961:11).

28 Judgment of the Court of Justice of European Union of 9 March 1978 in *Antoon Herpels v. Commission*, 54/77, (EU:C:1978:45).

29 In the case under review, the dispute was about the length of service calculated for the applicant in 1997 for the purpose of compensation for special working conditions, unreasonably including the childcare leave into this period. In view of the fact that the payment of the compensation to the applicant had not been started yet, the correction of the error was in fact related to the adjustment of the situation in the future. In this context, however, the view of the European Union judicial authorities that an illegal decision can in principle always be revoked as regards the future was not transposed into national case law. In the case in question, the SACL ruled that the individually applicable legal act favourable for the applicant, taken by a competent public entity in 1997, due to legal regulation that lacked clarity and due to insufficient diligence of the public administration entity, with regard to the circumstances of the actual situation, referring to the constitutional principles of rule of law and reasonableness, constitutes a basis for satisfaction of the applicant's claim. Thus, the case law continues to follow the approach related to very strict conditions under which an administrative act can be revoked and which arise from setting the balance between the principle of legality and the principle of legal certainty, formed with the aim to protect legitimate expectations of persons (judgment of the extended panel of judges of the Supreme Administrative Court of Lithuania of 28 April 2021 in administrative case No. A-297-1062/2021).

on Public Administration came into effect[30], regulating the right of a public administration entity to repeal its own administrative decisions. With regard to the abstract content of the new provisions, the case law faces a complicated but not totally new task[31] – to answer the question whether these provisions are to be automatically considered as entitling a public administration entity to modify its earlier decisions even in cases where no relevant provisions have been adopted in the specific legal regulation. In the light of the established administrative case law and the persuasiveness of arguments in it, the application of the method of gradual case law formation ("case after case") is more likely, where the right to change an adopted decision would be opened up for public administration in stages and, in particular, coordinating it with the provisions of specific legal regulation. In fact, an overly liberal approach to the revocation of an administrative decision may not be appropriate for reasons of legal certainty.

3. Developing the protection of legitimate expectations in areas currently lacking its full application

As evident from the review of the latest SACL case law, the principle of the protection of legitimate expectations in the areas of social security and protection of private ownership can be a very effective legal instrument to ensure the protection of subjective rights of a person. At the same time, it is expedient to pay due attention to areas where the doctrine of the protection of legitimate expectations has been developed slowest or, in other words, was applied less intensively. This is actually the case in most areas of economic activities, such as energy, tax and customs administration or the European Union financial assistance.

3.1. The ability of economic entities to adjust their property interests and the prospects of economic activities to changes in legal regulation

In recent cases relating to the freedom of economic activity, the importance of the principle of the protection of legitimate expectations is most evident when deal-

30 Law on Amending Law No. VIII-1234 of the Republic of Lithuania on Public Administration. Register of Legal Acts, 11 June 2020, No. 2020-12819.

31 A similar problem was already addressed in the case law when provisions of the Law of the Republic of Lithuania on Local self-Government were applied. See the ruling of the Supreme Administrative Court of Lithuania of 19 February 2014 in administrative case No. A^{525}-560/2014, judgment of 15 May 2014 in administrative case No. A^{502}-1017/2014.

ing with *vacatio legis* and the introduction of transitional provisions as an integral part of the protection of legitimate expectations. The principle of the protection of legitimate expectations is applied particularly strictly when changes to legal provisions, without giving a real possibility to adapt to a change in the legal regime, can have clear financial consequences, in particular, with regard to compliance with tax obligations.

In the constitutional jurisprudence, the importance of the imperative in question was upheld in 2013,[32] when addressing the issues of legality of the so-called "overnight tax reform".[33] The Constitutional Court emphasized that in certain cases the legislator must provide for sufficient *vacatio legis* and there is no absolute discretion to decide whether to postpone the date of entry into force of a law (the beginning of its application). When amendments to tax law are introduced (new taxes are imposed, taxes are increased, etc.), proper *vacatio legis* is an important guarantee that persons (first of all, taxpayers) would be able not only to get familiar with new requirements of tax law in advance but also to adjust their property interests and the prospects of their economic activities to them. However, it was also taken into account that the Seimas adopted the laws in dispute in response to the situation arisen in the State as a result of the economic crisis and seeking to secure an important public interest – to guarantee the stability of public finances and prevent appearance of an excessive budget deficit. In these circumstances, it was held that this constitutionally important objective justified the derogation from the constitutional requirement to provide for adequate *vacatio legis*.

These provisions were subsequently supplemented in detail when the Constitutional Court announced a ruling of 13 May 2021 on the urgent entry into force of tax laws. The ruling clarifies that the need to draw up and approve the state budget alone is not a constitutionally justifiable special, objective circumstance which allows for justification of the urgent entry into force of tax laws. In this context, it was held that the provisions of the legislative package, which entered into force immediately or in less than three months, resulted in economic entities not only having been unable to familiarize themselves in advance with the new legal requirements but also to adjust their property interests and prospects of their economic activities to them and this was in violation of their legitimate interests and legitimate expectations and the stability of tax legal regulation failed to be ensured.

The latest constitutional jurisprudence relating to the legislator's intervention into legal relations which started but were not brought to the end is to be speci-

32 Ruling of the Constitutional Court of the Republic of Lithuania of 15 February 2013.

33 The Seimas adopted laws relating to the Law on the State Budget for 2009 in response to the situation arisen due to the economic crisis in the State and in order to secure an important public interest – to guarantee the stability of public finances and prevent appearance of an excessive budget deficit.

fied as consolidating the *identity* (irreplaceability) of the doctrine of the protection of legitimate expectations in the area of review of regulatory legal acts governing economic activities. The Law on Waste Management assessed in the ruling of the Constitutional Court of 18 February 2020 established that the Government of the Republic of Lithuania shall take decisions on *further implementation of projects* of waste incineration plants, *started* before the entry into force of this law, taking into account public health interests. It was stated that such regulation created preconditions for the application of the Government decisions not only to the facts and consequences which arose after the entry into force of this law but also to those which arose before its entry into force, thus intervening in the legal relationship of the waste incineration economic activities already carried out or planned to be carried out. It was held that, if the Government decided to limit the further implementation of projects of waste management plants already started to be implemented or to terminate such implementation altogether, it would make it possible, among other things, to deny the legitimate expectations of the project developers that the projects of waste incineration plants, which started to be implemented, would be able to be really implemented according to documents permitting such economic activity. In the context of the overview of this ruling, it should be noted that the previous constitutional jurisprudence would usually link restrictions for intervening in the legal relationship of started economic activity to the application of the principle of *lex retro non agit*.[34] However, it is namely the links between the protection of legal relationship of a started period and the principle of the protection of legitimate expectations, indicated in the ruling of 18 February 2020, an important and welcome step, giving clarity to cases of application of the principle of the protection of legitimate expectations and giving this principle an appropriate place in the combination of the imperatives implied by the principle of rule of law. This creates preconditions for the consistent future application of the doctrine in question. In this respect, this confirms that the doctrine of the protection of legitimate expectations, when applied in national law, has already acquired a specific character – it does not rely on the concepts of actual and apparent retroactivity applied in EU law as this place has been reliably and usefully taken by the principle of the protection of legitimate expectations.

The same trends, intended to assess urgent changes in the regulation of economic activities, are observed in the SACL case law – the emphasis is both on the importance of the transitional period and the restrictions to regulate the legal relationships that have already begun. For example, it was ruled in administrative

34 Ruling of the Constitutional Court of the Republic of Lithuania of 19 December 2014, ruling of 29 June 2012.

case No. I-1-756/2017[35] that a provision in an order of the Minister for Agriculture, which came into force within two days, basically providing for a new essential requirement for economic entities importing used tractors, did not give enough time for these economic entities to adapt to the changes and thus violated the legitimate expectations of the persons concerned. It was held in another administrative case No. eI-13-822/2018[36] that the prices of electricity transmission services announced by the National Commission for Energy Control and Prices, which came into force in two days, did not respect the legitimate expectations of the persons concerned in the absence of an important public interest calling for urgent entry into force of the amendments.

However, we should not think that the reliance on the doctrine of the protection of legitimate expectations can only be useful to the extent that this doctrine requires to give an economic entity sufficient time to adapt to changes in regulation of economic activities. This doctrine may also be invoked to protect legitimate expectations of economic entities that material property claims will be satisfied in the future even in those cases when the conditions for their activities have been amended or even cancelled to take into account the evolution of certain circumstances.

3.2. Protection of the legitimate expectations of economic entities in the review of temporary investment measures by public authorities

The limits for the application of the principle of the protection of legitimate expectations in relation to the continuity of investments are not very clear in the administrative case law. On the one hand, it is to be recognized that the business community is to be given long-term stability that it needs to ensure sustainable investment in order to keep investors' confidence, especially in cases of projects already launched.[37] On the other hand, competent public authorities are also given some discretion to review the measures they have taken to promote investment in a given sector and economic entities are required to be prudent, i.e. to anticipate, to a certain extent, possible legislative changes as a probable risk inherent in economic activities.

35 Judgment of the extended panel of judges of the Supreme Administrative Court of Lithuania of 6 November 2017 in administrative case No. I-1-756/2017.

36 Judgment of the extended panel of judges of the Supreme Administrative Court of Lithuania of 20 September 2018 in administrative case No. eI-13-822/2018.

37 Ruling of the Constitutional Court of the Republic of Lithuania, dated 21 December 2018, *on the exercise of the legitimately acquired right to develop the capacity of electricity generation*, also see the ruling of the Constitutional Court of the Republic of Lithuania, dated 18 February 2020, *on further implementation of the launched projects of waste incineration plants.*

Some of the most significant decisions in the SACL case law forming the doctrine of the protection of legitimate expectations were taken in the so-called *solar energy* cases. The dispute in administrative case No. A[143]-2834/2013[38] heard by the extended panel of judges of the SACL was over the terms and conditions of the electricity generation permit issued to the applicant, which set lower electricity purchase tariffs than the ones in effect when he lodged a request for the permit. The extended panel of judges admitted that the regulation, which was in effect before the relevant amendments, allowed and guaranteed to the producers, who obtained a permit to develop the generation capacities, a possibility to implement the project by making relevant investments into the power plant construction without fear that due to subsequent amendments in legal regulation (e.g. change of tariffs) the investments started and already performed by them would not actually pay back and they will suffer significant losses. It was, however, noted at the same time that economic entities, whose economic activities *per se* carry an element of risk, cannot have legitimate expectations that use by the legislator of its discretion will not bring any changes to the current situation at all and that the legislator will not adopt such amendments to legal acts, which could have negative (e.g. financial) consequences for a person. It was acknowledged in the case that the applicant's right to engage in generation of electricity under the changed terms and conditions (reduced tariffs) did not basically lose its economic sense and was not contrary to the principle of proportionality. Therefore, the applicant's claim to obligate the Ministry of Energy to issue a permit for generation of electricity according to the provisions of legal regulation that were in force prior to the amendments was not upheld.

Subsequent related administrative disputes on compensation for damages[39] enabled to test the effectiveness not only of the substantive but also of the compensatory model of the protection of legitimate expectations. The emphasis was once again on the fact that the legislator has a very wide discretion to regulate giving of incentives and adopt amendments to reflect changes in public interest. The SACL held that even after the change in the regulation relevant for the dispute, application of the measures of the incentives systems had not been fully cancelled as the set fixed tariff was to be continuously applied for a period of 12 years and the applicants failed to demonstrate in their specific case that further performance of their activities had lost any economic sense.

Now, we are already in a position to assess the cases reviewed in the light of the relevant interpretation by the Court of Justice of the European Union. It was

38 Ruling of the extended panel of judges of the Supreme Administrative Court of Lithuania of 23 December 2013 in administrative case No. A[143]-2834/2013.

39 See, for example, the ruling of the Supreme Administrative Court of Lithuania of 12 February 2018 in administrative case No. eA-2-822/2018.

asked in joined cases No. C-798/18 and C-799/18[40] whether the European Union legislation precludes national legislation which provides for the reduction or delay of the payment of incentives for energy produced by solar photovoltaic installations which were previously granted by administrative decisions and confirmed by special agreements concluded between the operators of those installations and a public company. Similarly to national courts, the CJEU first of all indicated that regulation which alters a support scheme by reducing the tariffs is not precluded, provided that the legislation is in line with the principles of legal certainty and the protection of legitimate expectations. The fundamental differences in the positions of the courts are seen in assessing whether economic entities can effectively rely on the protection of rights to property. The CJEU indicated in this respect that the agreements concluded between the operators of the photovoltaic installations concerned and the public company were signed on the basis of standard form contracts, that they did not grant, as such, incentives to those installations but defined only the arrangements for the payment of those incentives and that the public company reserved its right to alter unilaterally the terms of those agreements as a result of possible legislative developments, as it was expressly indicated in those agreements. Hence, according to the CJEU, those elements, therefore, constituted a sufficiently clear indication to the economic operators that the incentives concerned might be altered or withdrawn. The CJEU arrived at the conclusion that the right claimed by the relevant photovoltaic installation operators to enjoy the incentives with no changes for the entire duration of the agreements that they concluded is not an established legal position and does not fall within the scope of the protection provided for in Article 17 of the Charter of Fundamental Rights of the European Union, which recognises the right to property. The CJEU held that this case was related only to incentives granted but not yet due and those operators could not rely on a legitimate expectation so as to benefit from such incentives with no changes.

In this context, it can be said that the Lithuanian legal system applies provisions more favourably for economic entities. Administrative courts are more inclined to recognize that public authorities, by encouraging investment in a particular sector, give specific guarantees to meet future claims as regard to property. The SACL took note of the fact that the State met its obligations by determining that the relevant tariff will apply for 12 years. Nor had the SACL any doubt that the violation of rights claimed by the applicant was related to his right to property. The procedural outcome of the dispute was actually determined by the fact that the applicant did not prove the substantial extent of the losses, but the important thing is

40 Judgment of the Court of Justice of the European Union of 15 April 2021 in joined cases *Federazione nazionale delle imprese elettrotecniche ed elettroniche (Anie) and Others*, C-798/18 and C-799/18, (EU:C:2020:876).

that the SACL in fact acknowledged that property interests could be protected in accordance with Article 23 of the Constitution of the Republic of Lithuania.

In these circumstances, it seems unlikely that the above-mentioned CJEU judgment could in itself become a reason to limit the application of the protection of legitimate expectations in national law. Member States have considerable discretion in choosing measures to encourage investment in the relevant sectors.[41] And while the principle of the protection of legitimate expectations does not in principle preclude a public authority from altering an incentive before the end of its term initially provided for in the legislation, the position developed in national law, which is more flexible than in the case law of the CJEU, concerning the prudence required from economic entities, may be justified by reasons of the protection of subjective rights.

3.3. Protection of legitimate expectations during the supervision of the activities of economic entities

Reliance on the principle of the protection of legitimate expectations in the course of administrative supervision[42] may seem unpromising at the first sight. Indeed, there is neither a general right to object to administrative inspections, nor a possibility to reasonably expect that breaches of legal acts will not lead to the imposition of sanctions provided for therein. However, it is the principle of the protection of legitimate expectations, which focuses on the protection of subjective rights, that allows taking into account the individual circumstances of each specific case, and the area of supervision of the economic entities' activities should not become an exception.

In the area of administrative liability, the principle of the protection of legitimate expectations has become an increasingly prominent instrument in recent cases, strengthening the legal certainty for economic entities. For example, administrative case law on monitoring by supervisory authorities is coherently complemented by administrative case No. eA-663-822/2021,[43] which gives a more detailed clarification of the issues of liability associated with compliance with guidelines based on soft law. The extended panel of judges of the SACL held that the address-

41 Judgment of the Court of Justice of the European Union of 10 September 2009 in *Plantanol GmbH & Co KG v. Hauptzollamt Darmstadt*, C-201/08, (EU:C:2009:539).

42 Without any claims to a universal definition of the concept, in this section, "administrative supervision" should mean such activities of administrative authorities as monitoring and investigation of circumstances, problem solving, application of sanctions and other related measures.

43 Ruling of the extended panel of judges of the Supreme Administrative Court of Lithuania of 14 April 2021 in administrative case No. eA-663-822/2021.

ees of the obligation to take account of the ESMA guidelines could not reasonably expect that the supervisory authority, in fact, required absolute compliance and failure to meet this requirement would result in severe and dissuasive sanctions. In this respect, it was stressed that according to the established jurisprudence, economic entities should know what conduct is expected, required from them and must be sure that they will not be made subject to legal measures of impact for their conduct which is in compliance with legal acts. An economic entity may also reasonably expect that the administrative liability associated with the implementation of an administrative decision will not become stricter compared to that determined at the time respective applications are submitted to a competent public authority. In this regard, it was ruled in administrative case No. A-9-968/2020[44] that an interpretation to the contrary would be in conflict with the principle of *lex retro non agit* and would violate a legitimate expectation of a person that only those measures of impact that were envisaged at the time of addressing the authority can be imposed.

The problematic aspects of the application of the doctrine in question in the area of economic activities are probably best illustrated by the case law relating to the protection of legitimate expectations based on continuous administrative practices. In general, examples of case law favourable for economic entities, showing that expectations based on continuous administrative practices can also be protected, are still very few in the recent SACL case law.[45] A certain dynamics of the protection of legitimate expectations in this respect is evident from administrative disputes settled by the SACL, which have arisen in the area of supervision of economic activities, *inter alia*, in the field of imposition of administrative liability. Despite their small number, their impact on the development of the doctrine of the protection of legitimate expectations is not negligible.

The ruling of the Supreme Administrative Court of Lithuania in administrative case No. eA-1537-858/2017[46] (*RIMI* case) should be the first to be mentioned as forming case law in this area. It was admitted in the said case that the economic entity, which relied on consistent and public practices of a supervisory authority, normally can reasonably expect not to be punished for this. In 2011–2013, the Competition Council, performing systematic monitoring of the retail sector on

44 Ruling of the extended panel of judges of the Supreme Administrative Court of Lithuania of 20 July 2020 in administrative case No. A-9-968/2020.

45 In a case heard by the SACL in 2013, economic entities managed to prove for the first time that continuity of consistent administrative practices is a significant criterion for economic entities in planning of their activities (ruling of the Supreme Administrative Court of Lithuania of 26 August 2013 in administrative case No. A^{146}-379/2013).

46 Ruling of the Supreme Administrative Court of Lithuania of 27 September 2017 in administrative case No. eA-1537-858/2017, *Administracinė jurisprudencija*, 34, (2017): 227–261.

the basis of law, would consistently indicate in public every year that it had analysed the wholesale supply contracts with major retail chains presented by the applicant for monitoring purposes and that it had not identified any actions contrary to fair practices of economic activity in its relations with suppliers. However, in 2015, the Competition Council, when re-assessing the contracts for the period of 2010–2015, changed its position and decided that certain provisions of the contracts did not comply with the requirements of law. In these circumstances, the SACL acknowledged that on the basis of consistent and unambiguous public statements of the Competition Council, the applicant could reasonably believe that the typical contracts used by it, that the applicant kept submitting to the Competition Council and that, as indicated in the certificates, were analysed in the preparation of the certificates, were in line with requirements of law. The legal expectation of the applicant arising from the consistent position of the Competition Council, which was kept publicly announced in 2010–2013, was protected in court by cancelling the fine imposed on the applicant.

In these circumstances favourable for economic entities, which are in fact rare, it is equally important to ask what an economic entity *should not* reasonably expect relying on the doctrine of the protection of legitimate expectations. While the application of the principle of the protection of legitimate expectations in case law is largely determined by objective social changes and the meaning of this principle only becomes apparent over a longer period of time, it is already now that the administrative case law gives at least a part of this significant answer.

First of all, the expectations given to economic entities, as in other areas of application of the doctrine in question, normally have to acquire *ad personam* character, must be individually related to the economic entity, the rights and obligations of which are the subject-matter of a decision of a public administration entity. This aspect is illustrated by administrative case No. A-109-556/2021 heard by the SACL.[47] Referring to the previous SACL case law and the CJEU interpretations, the panel of judges noted that the fact that in the past the Competition Council imposed fines of a certain level for violations of certain types does not mean that it is precluded from raising this level within the limits allowed by legal acts if that is necessary in order to ensure the implementation of the competition policy. At the same time, it was emphasized that economic entities cannot have legitimate expectations that the Competition Council will not exceed the level of fines imposed previously.

Second, no economic entity normally should expect that *illegal* administrative practices of the authorities will be continued. Indeed, in the aforementioned

47 Ruling of the Supreme Administrative Court of Lithuania of 24 March 2021 in administrative case No. A-109-556/2021, see also the ruling of 9 September 2021 in administrative case No. eA-1150-520/2021.

RIMI case (No. eA-1537-858/2017), the obligation to terminate the typical contracts, which were not compliant with legal requirements, remained unchanged. The consistency of this trend in case law is also confirmed by administrative case No. eA-1502-662/2020[48] (case *Skonis ir kvapas*). In that case it was, *inter alia*, to be decided whether an economic entity can have legitimate expectations as to the lower scope of its tax obligation when in earlier tax periods the tax administrator, as it turned out upon receipt of a preliminary ruling of the CJEU, followed administrative practices concerning this tax obligation that were not in line with tax law, i.e. it would unreasonably tax not the whole smoking tobacco mixture but only that part of it which was tobacco. In this context, the panel of judges noted that such essential elements of tax, as the tax object and the tax base, are determined only by law, not by administrative practices of public authorities. Therefore, the economic entity's arguments regarding the long-term practices of the tax administrator and change of such practices were not significant in deciding on the tax obligation as such. In the opinion of the panel of judges, the circumstance that the tax administrator (probably) also failed to properly apply provisions of tax laws previously in no way can give rise to the taxpayer's expectation that it will not have to perform relevant tax obligations (set in the law). Meanwhile, the issue of release from the fine imposed on the applicant was left unexamined with regard to the fact that the minimum condition for exemption from the fine was not met – it was not shown that the imposed fine was already paid. With regard to the interpretations in the said *RIMI* case, there are good reasons to believe that the application of the doctrine of the protection of legitimate expectations in the *Skonis ir kvapas* circumstances would be an argument for cancellation of the fine imposed.

As one can see from the examples presented, an economic entity, relying on the practices of administrative authorities, however regrettable, is far from always being able to reliably predict the change in its activities, as required by the standard of prudence. In this context, it is necessary to recall the axiom of the application of the protection of legitimate expectations, according to which the legitimate expectation becomes stronger with the increasing number of obligations and more specific obligations assumed by a public administration entity to a person concerned. Hence, an insightful economic entity may rely on the protection of legitimate expectations more effectively after obtaining or at least attempting to obtain an express prior assurance as to the assessment of future aspects of its activities. In terms of legal certainty and the protection of legitimate expectations, cases where such a possibility of prior assurance is enshrined in specific legal regulation are to be held particularly promising. In this respect, the rules on advising taxpayers es-

48 Ruling of the Supreme Administrative Court of Lithuania of 16 December 2020 in administrative case No. eA-1502-662/2020, *Administracinė jurisprudencija*, 40, (2020): 149–165.

tablished in the Law of the Republic of Lithuania on Tax Administration[49] and the provisions on the prior commitment of the tax administrator to the application of the tax legislation provisions are worthy of a special mention.[50] For example, in the administrative case settled in 2021, the extended panel of judges of the SACL clarified that a formal obligation of a competent state authority specified in the law [approval of the way of application of the tax legislation provisions proposed by the economic entity to a future transaction] essentially and primarily aims at ensuring the legal certainty for the taxpayer and, accordingly, forming its legitimate expectations regarding the tax legal implications of future transactions. The above-discussed decision of the tax administrator to approve of the way of application of the tax legislation provisions indicated in the taxpayer's request ensures that the taxpayer would be certain about tax obligations arising out of the future transaction and would not face unexpected tax implications (additional amounts of taxes, default interest, fines).[51] The fact that obtaining a clear assurance from the competent national tax authority regarding the transaction taxation can be a significant consideration in judging on the protection of legitimate expectations is also recognized in the CJEU case law.[52]

Finally, the protection of legitimate expectations is not generally interpreted in case law in such a way that it gives economic entities the right to object to administrative supervision, *inter alia*, repeated inspections of the activities of an economic entity. The most illustrative example of this case law trend is administrative disputes over the granting of financial assistance by the European Union. Since the right to object to inspections may prevent the recovery of unlawfully received or used assistance and may therefore jeopardize the protection of the financial interests of the Union, the administrative courts in their case law consistently take the position that the persons concerned cannot reasonably expect that they will not be subject to the sanctions provided for in the agreement in the event they breach the terms of the assistance agreement.[53] Nor can the persons concerned reasonably expect that upon implementation of the assistance project, its compliance

49 Law of the Republic of Lithuania on Tax Administration. Official Gazette *Valstybės žinios*, 2004, No. 63-2243.

50 See the judgment of the extended panel of judges of the Supreme Administrative Court of Lithuania of 2 July 2004 in administrative case No. A^{5}-367/2004 regarding the protection of legitimate expectations related to a consultation received.

51 Ruling of the extended panel of judges of the Supreme Administrative Court of Lithuania of 24 February 2021 in administrative case No. eA-665-575/2021.

52 Judgment of the Court of Justice of the European Union of 9 July 2015 in *Salomie and Oltean*, C-183/14, (EU:C:2015:454).

53 Ruling of the Supreme Administrative Court of Lithuania of 17 December 2007 in administrative case No. A^{756}-1141/2007, ruling of 20 February 2006 in administrative case No. A^{248}-687/2006, ruling of 14 February 2011 in administrative case No. A^{662}-16/2011.

with the legal requirements will not be checked, all the more so when such a possibility is provided for in the assistance agreement.[54] In this respect, national case law basically builds on the interpretations by the CJEU that statutory inspections concern economic entities that voluntarily joined the European Union financing system and that, in order to receive assistance, agreed to undergo checks to make certain that the Union resources are used lawfully. Therefore, these entities cannot legitimately challenge the legality of such inspection on the sole ground that inspections continue.

It would seem that the case law both of the European Union judicial authorities and of national courts on this matter is well established, but the argument of the protection of legitimate expectations remains very often invoked by applicants in challenging repeated procedures of administrative supervision. In this context, we cannot reasonably expect that this line of argumentation by applicants is due to a mere lack of knowledge of the prevailing case law. Furthermore, the legal certainty for economic entities during inspections by public authorities and, where appropriate, during the application of the measures of impact, does not appear to be ensured solely by application of the limitation period. The latest case law of the SACL, which has recently started to be developed, *inter alia*, prudently referring to the CJEU judgments, allows for making though an early but sufficiently reasonable assumption that the principle of protection of legitimate expectations can effectively ensure legal certainty that the persons concerned lack during long-term financing projects and their inspections. In this regard, it is worth noting administrative case No. eA-1710-822/2021 settled by the SACL in 2021.[55] In the said case, the decision of the National Paying Agency of February 2020, which in fact annulled a previous decision of the same authority, which had been taken a month ago, and which assigned amounts to be paid and imposed sanctions (assistance reduction), was contested. The Agency based its decision to annul its previous decision on the fact that, at the time the first decision was taken, it did not have relevant certification documents, which were issued in December 2019. The panel of judges held that such a period of time could not be justified by having no possibility to see documents which are important for adoption of administrative decisions. In the opinion of the panel of judges, the said certification document could not be treated as a newly received document. Reasoning for the given interpretation took account of minor (narrowly interpreted) exceptions indicated by

54 See also ruling of the Supreme Administrative Court of Lithuania of 4 July 2013 in administrative case No. A^{858}-205/2013, ruling of 18 December 2012 in administrative case No. A^{552}-3164/2012.

55 Judgment of the Supreme Administrative Court of Lithuania of 27 October 2021 in administrative case No. eA-1710-822/2021. Cf. also the ruling of 1 December 2021 in administrative case No. eA-3230-968/2021.

the CJEU, implied by the principle of protection of legitimate expectations. In this respect, it was noted that the right of the competent authority to review a decision is linked to the fact that the authority has new information and also to the condition of obviousness that the authority, when taking the decision currently sought to be annulled, did not know or did not have to know this new information.[56]

Thus, according to the approach being developed in the case law, prudent economic entities must take the necessary measures to protect themselves from the risk of being held in breach of legal requirements. However, in cases when it is obvious that a competent public authority knew or had to know that activities of an economic entity are not compliant with the required conditions, the principle of the protection of legitimate expectations can effectively protect the persons concerned, at least against the risk of being punished. Meanwhile, the argument of systematic practices of administrative authorities is sufficient to protect a prudent economic entity from the risk of being punished, but it is not enough *a priori*, unless there are special circumstances, in order that a normally careful and insightful economic entity would reasonably be sure that it will not be recognised in breach of requirements of legal acts.

Conclusions

The doctrine of the protection of legitimate expectations reliably contributes to the development of modern administrative law in Lithuania and is one of its most important pillars aimed at consolidating the protection of subjective rights. As evident from the jurisprudence of the Supreme Administrative Court of Lithuania, which forms administrative case law, the application of the doctrine in question essentially notifies of the transition from traditional forms of review of public administration actions, such as compliance with procedural requirements, to the requirements deriving from the principle of good governance, *inter alia*, the obligation to take administrative decisions that would not be fundamentally unfair.

The openness of administrative courts to trends in European law contributes to strengthening legal certainty and respect for fundamental rights. Indeed, the content of the doctrine of the protection of legitimate expectations and the consistency of its application have been reinforced by the case law of the European Court of Human Rights. The ECtHR decisions on the protection of rights to property had decisive influence on the legal criteria, applied to verification of good

56 Judgment of the Court of Justice of the European Union of 16 March 2017 in *Veloserviss*, C-47/16, (EU:C:2017:220), see also the judgment of 10 December 2015 in *Veloserviss*, C-427/14, (EU:C:2015:803).

faith of a person, as formed in the jurisprudence of administrative courts. The ECtHR case law has also led to positive developments in the process of correcting errors made by the public administration entities. The SACL decisions now keep consistently emphasizing, where a person's legitimate expectations are not properly taken into account, that the transfer of the entire burden of correction of the error onto the person is not in line with the principles of justice and proportionality. In this respect, the SACL case law also reveals the increasingly strong links between the protection of legitimate expectations and the principle of good administration. In the context of the combination of these imperatives, specific requirements for public administration which are not directly based on ordinary law are being developed, while at the doctrine formation stage the courts were mainly seeking to ensure the principle of fairness for a person.

The protection of legitimate expectations has been significantly strengthened in the recent case law of national courts, in terms of setting a transitional period for changes in legal regulation, in order that economic entities could adjust the prospects of their economic activities. Unfortunately, the current provisions of administrative justice still do not provide a sufficient level of the protection of legitimate expectations in the field of economic activities. Positive developments could be brought about not only by a closer judicial review whether a competent public authority knew or should have known that conditions of the economic entity's activities are not in line with the required conditions but also by the assessment of prudence of the economic entity, based on clearer criteria. In this respect, the dividing line between the positions of national courts and of the CJEU on the currently developed standard of the insightful legal entity, is increasingly noticeable, where a more favourable legal regime applies in national law, both in terms of the protection of investments of economic entities and in terms of the supervision of economic activities. Bound by the duty to ensure the balance between competing values, reinforced by the ECtHR case law, national courts are particularly careful not to create too strict rules that could adversely affect legal certainty and, thus, general trust in the State.