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## Territorial Planning In Lithuania: The Issues of Security of Society and Interests of Investors

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### ABSTRACT

Territorial planning is a complex process which includes the formation of the directions of the development of the whole country and of a particular territory, the setting of priorities of the usage of a territory, limitations, the level and development of urbanization, and the establishment of the limits of the development of the activity of natural and legal persons. This article aims to analyse the theoretical and legal premises for the implementation of individual interest, for the defence of public interest, the assurance of public safety and the alignment of the interests of investors in the process of territorial planning. To reach the abovementioned aim such tasks for this article were set: to define the relationship between the individual interest and public interest during the process of territorial planning; to reveal the possibilities to ensure the security of society in the process of territorial planning; to provide insights for the alignment of the interests of investors, public interest and society interests in the process of territorial planning. The research was focused on Lithuanian territorial planning. In the course of reaching the objective of the research the methods of systemic, analytical-critical, and comparative analysis were employed. In addition, the methods of documentary analysis and generalization were used.

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### INTRODUCTION

Territorial planning is a complex process which includes the formation of the directions of the development of the whole country and of a particular territory, the setting of priorities of the usage of a territory, limitations, the level and development of urbanization, and the establishment of the limits of the development of the activity of natural and legal persons.

Territorial planning has as a central objective the “development of collaborative practices among governance stakeholders including state, semi-state, private sector and civil society stakeholders” (Walsh, 2014). Walsh defines the territorial (or, in his words, spatial) planning as a state-led interventionist activity that seeks to pursue particular objectives for society through a focus on the diversity and specific qualities of individual places and social relations across space.” (Walsh, 2014). Jauhiainen refers to spatial planning as to “an ensemble of territorial governing arrangements to shape patterns of spatial development and their material outcomes in particular places. The result of this complex economic and political development is a territorial-administrative structure that concretizes in the formation of regions.” (Jauhiainen, 2014).

The main document regulating the territorial planning process in Lithuania is the Law on Territorial Planning of the Republic of Lithuania (Seimas of the Republic of Lithuania, 1995), enacted in 1995. In view of the dynamics of public life, changes conditioned by the interests of the state, society and private persons, this legal act was amended and supplemented 33 times<sup>1</sup>. However, even such an abundance of legal regulation amendments could not solve the problems arising out of the territorial planning process: the complex territorial planning system, redundancy of public administration institution functions, abuse or misuse of the discretion granted to public administration subjects, long procedural terms, planned excess of documents required from person, etc. The abovementioned reasons cause the insufficient level of investment in Lithuania (Statulevičius, 2017) and mistrust in the state and its institutions and the absence of legal security. “*The policy stream is composed of a variety of actors, interests and policy communities who have an interest in the issues associated with a particular sector*”. (Sykes, 2008). The sector of territorial planning is an activity which collides the interest of natural and legal persons to use the territory for the satisfaction of particular needs with the interest of the society which needs to be protected and secured by the subjects of public administration. This particular aim to balance individual, public and private interests causes conflicts between the state governing institutions and natural and legal persons who have their interests limited by the setting of a particular purpose of the use of land, the parameters of the building percentage on a piece of land, the establishment of protected territories.

Public establishment “Investuok Lietuvoje” (Invest in Lithuania) carried out a comprehensive investigation of investment environment in Lithuania and distinguished the main reasons deterring investment in our country. One of them is the difficulty and length of the procedures of territorial planning (Invest Lithuania, 2016). The Supreme Administrative Court of Lithuania has noted that the general planning of the territory in Lithuania is a difficult time consuming complex planning process. This process encompasses the alignment of the public needs, the peculiarities of the landscape of the planned territory, geographic position, geologic conditions, the requirements of urbanistic, architecture, technical, environmental, heritage, agriculture nature applied to the land use, the rights of the owners of the land and other immovable property and third persons, state security and defence needs. (Supreme Administrative Court of Lithuania, 2008).

The future of the entire society and quality of residential environment depends on the capabilities to use the national territory, natural resources, develop cities, economy and infrastructure, to protect landscape and cultural heritage (Venckus, 2007). Therefore, the territorial planning process has recently received high focus and has been actively analyzed in respect of various aspects that are mainly oriented to the following specific areas: general spatial concept of territorial development, land usage priorities, establishment of environment protection, monument protection and other conditions, formation of land, forest, water use, residential areas, production and infrastructure systems. As Adzic et al. (2012) note, the activities of territorial planning include “the promotion of projects for establishing new export industries and businesses”, development of physical infrastructure, strengthening business infrastructure, and, among other aims, activities regarding “*strategies for improving the quality of life, increase personal safety and reduce crime and the like*”. (Adzic, et al., 2012).

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<sup>1</sup> Information from the registry of legal acts of Lithuania [www.tar.lt](http://www.tar.lt).

Without denying the importance of the before mentioned areas, it shall be noted that quite often when the respective rights and obligations of legal relations subjects granted in the territorial planning process are entrenched in legal norms, it is not evaluated gratuitously, whether the Law establishes a suitable mechanism for persons to use these rights properly and to align and defend on the same level individual interests, public security, safety of society and the interests of investors.

This article aims to analyse the theoretical and legal premises for the implementation of individual interest, for the defence of public interest, the assurance of public safety and the alignment of the interests of investors in the process of territorial planning.

To reach the abovementioned aim such tasks for this article are set:

- To define the relationship between the individual interest and public interest during the process of territorial planning;
- To reveal the possibilities to ensure the security of society in the process of territorial planning;
- To provide insights for the alignment of the interests of investors, public interest and society interests in the process of territorial planning.

In the course of reaching the objective of the research the methods of systemic, analytical-critical, and comparative analysis were employed. In addition, the methods of documentary analysis and generalization were used. Meta-analysis was carried out by analysing the data from various research of National Audit office of Lithuania, Public Entity “Investuok Lietuvoje” (Invest in Lithuania), association “Investuotojų forumas” (Investors’ forum) and other entities.

## **1. INDIVIDUAL INTEREST AND PUBLIC INTEREST IN THE TERRITORIAL PLANNING SPHERE**

A person owning a particular plot of land may build buildings or carry out any activity may only according to the mandatory requirements of a particular territory such as permissible height of buildings, permitted intensity of buildings in a particular plot etc. Therefore for the execution of any activity in a particular plot of land the person must obtain the documents of territorial planning which set out in detail the conditions of the usage of particular territory.

The process of territorial planning is regulated by the Law on Territorial Planning, and the main aim of this law is “to ensure sustainable territorial development and rational urbanisation by establishing requirements for systematic solutions in the process of territorial planning and compatibility and interaction between different levels of documents, to facilitate the sustainable natural and anthropogenic environment and the quality of urban development by preserving valuable landscape, biodiversity and natural and cultural heritage values” (Seimas of the Republic of Lithuania, 1995).

Therefore we can state that this law is firstly aimed at the sustainable territorial development and the priority for the ownership of land is not expressed. However it is natural that a person (natural or legal) considers firstly what activity he could carry out that would be useful to him in the first place and therefore the society interest or public interest is of less importance for such owner.

The concept of “public interest” contains in itself a certain contradiction. The concept of “interest” includes individualistic element, because an “interest” defines what is sought by various people. On the other hand, the concept “public” orientates to the collective whole (Lane, 2001). Therefore it is not so easy to define what public interests are and what private or individual interest is as it could seem from the first sight. The analysis of the legal regulation of territorial planning and of its implementation process reveals that the concept of “public interest” is not defined clearly. The theoreticians who analyse the regulation of territorial planning use concepts such as “public interest”, “societal interest”, “societal good”, “common good”, “common prosperity”. F. A. von Hay-

ek states that “the indeterminacy of these terms allows to depict almost any interest as public interest and thus allows to force many people to serve interests not concerning them the least”. (Von Hayek, 1998). The discussions regarding the delineation of what is public and what is private are still taking place nowadays. It may be noted that the concepts of “public interest” or “common good” are still not defined strictly, therefore they may be attributed almost with any content depending on the groups in power. (Friedrich, 1962).

L. A. Hart also envisions many problems arising due to the indeterminacy of the concept of public interest: “Societal good or common good – what do those phrases mean, it is not clear, because there are not such scales which could weigh the input of various alternatives into the common good and could establish which of the input is larger” (Hart, 1997).

R. A. Dahl raises a question: “Do the citizens of a country have any common good in general and even if it exists, how can we reveal it and aim for it?” (Dahl, 1994). As we can see it is very difficult to find at least somewhat clearer definition of „common good” or „public interest“.

The encyclopaedia of sociology states that “‘public interest’ – is what is objectively significant, needed for a collective, nation, society” (Leonavičius, 1993). Such concept of public interest allows to state, that the contents of public interest is dynamic and it can change depending on the objective circumstances which condition the abovementioned significance and necessity.

J. E. Lane, speaking about the public interests, raises an opportunity for objectiveness: “The interests are public not because the majority thinks so but because that everyone would want that the state would guide itself by such interests as they are rational or recognized by all” (Lane, 2001). The unified opinion was not yet reached by the scientists (philosophers, political scientists, lawyers) on the concepts of public interest. The society and its members as if understand intuitively what those “public interests” are, but it is quite difficult to identify exactly the values named as public interest. However, some of the values are practically not questioned and do not raise any doubts, such example is, for example, human rights and their protection.

Already in Antique times Aristotle was speaking about the relationship of human rights and public interest. “Public interest is the aim of the state to reach common welfare, happiness and justice” (Aristotelis, 1990). And this aim may be reached only when the human rights are recognized, the human dignity, inviolability of his person and property is respected, etc. Therefore the question of the protection of the public interest may not be dissociated from the protection of human rights.

Therefore we can state that the state may be very strongly orientated to the individuals who created it. “The foundation of the state is based on the consent of its citizens to be ruled and the actions of a state may be evaluated according to their impact on the interests of citizens.” (Buzan, 1997). It should be noted that the state carrying out its mission – to ensure common good, peace, order etc., on one hand, defends human rights, on the other hand it may pose a threat to those same human rights.

As we see the first danger is the possibility to infringe innate rights on the level of statutes. Even in the democratic countries the inappropriate administrative legal regulation may violate human rights, if the public interest is understood decoupled from human rights’ protection. In another case the protection of public order or other public interest may be sought but in the process the innate human rights are violated.

Nowadays in an enlarged Europe the importance of the territory rises in the context of “the challenges of territorial cohesion coupled with the search for competitiveness and sustainability”. The spatial planning becomes more necessary than ever. “This endeavour requires, in fact, more effective linkages among different government levels and among diverse sectors, as it takes place in a redefined framework of roles and competencies.” (Zanon, 2010). The process of territorial planning has various facets, it is important to know who makes the decisions (that is, the subject of the planning), what is being governed (object of planning) and how it is governed (practices of

special planning). (Tóth, 2015).

Speaking about Lithuania, The analysis of the Law on Territorial Planning allows to note that the main objectives of the territorial planning are:

*“1) to facilitate sustainable territorial development of the State, the implementation of consistent functional and spatial integration policy, territorial cohesion, comprehensive solutions to social, economic and environmental challenges;*

*2) to establish guidelines for the development and implementation of residential areas’ engineering and social infrastructure and other areas of social and economic activities important to the State and to envisage territories required for development;*

*3) to facilitate rational use and restoration of the State’s natural, subsoil and energy resources;*

*4) to provide for the preservation, targeted use and knowledge of the State’s unique natural and cultural landscape, natural and immovable cultural heritage and for the formation of the nature frame necessary for the ecological balance;*

*5) to create a healthy, safe and sustainable living environment and complete living conditions in residential areas;*

*6) to facilitate private investment which creates social and economic well-being and living conditions of appropriate quality;*

*7) to balance the interests of natural and legal persons or groups thereof, municipalities and the State regarding the use of a territory and conditions for developing activities therein;*

*8) to facilitate rational use of land and promotion of agricultural activities.”* (Seimas of the Republic of Lithuania, 1995).

It can be concluded that the realisation of the right to property is not the question of priority. Even though the law foresees as one of the aims of the territorial planning to create conditions for private investments, not all cases of actual practice of territorial planning comply with such requirements.

One such example is the case of an old stadium Zalgiris in Vilnius, the capital of Lithuania. The stadium was not working for almost two decades. It was owned by a now-bankrupt bank Ūkio bankas, was sold by the bankruptcy administrator in a public tender procedure. The company who had bought the stadium by all the procedures wanted to demolish the old non-working stadium and to build living houses and a four star hotel “Marriott”. (Karsokaitė, 2017). But their plans encountered obstacles as the National Land Service under the Ministry of Agriculture of the Republic of Lithuania declared that it will be obliged to terminate the contract for the lease of the plot of land underneath the stadium (which belonged to the state), as the common plan of the territory indicates that the purpose of the plot of land is for the stadium and as the land was not rented in the auction it should retain its purpose. (Karsokaitė, 2017). Now the situation is frozen as the question regarding lease of land is open and not decided. The city itself did not have the funds to reconstruct the stadium and was planning to build a new stadium in another place. The investor claims that the company investing in this territory has carried out all the procedures according to all requirements of territorial planning. Therefore a question arises what is the public interest in this case. Is the public interest the strict adherence to the letter of the law or is it in the interest of the society that this territory would be arranged and used and would attract tourists and create new working places? Furthermore, looking also in the perspective of the safety of the society in the process of territorial planning which will be discussed below – would not it be safer for the neighbouring inhabitants and passers-by if living houses and a hotel were erected in the place instead of an old stadium which cannot be properly taken care of by the state? Such questions indicate that this field is very complicated and it is not easy to align the interests of the state, of the individual and of the society as a whole.

## 2. THE POSSIBILITIES TO ENSURE THE SAFETY OF THE SOCIETY IN THE PROCESS OF THE TERRITORIAL PLANNING

One of the main aims of the economic policy of any state is the assurance of public welfare, and this point does not raise questions. However, lately the discussions are intensifying about the higher quality of life and they induce to evaluate the actions of the institutions of a state more critically, aiming to evaluate the measures of economic policy of a particular country in order to see whether such measures contribute to the welfare of its people or reduce it. Therefore more attention is paid nowadays to the nonorthodox conceptions of the economic development, which view the field of economics in wider manner. Unlike the views of neoliberal theory promulgate, most leading states in European Union orientate the development of their economy to serve the interests of the whole society or of most social layers. The social aims, welfare of society and the quality of life are considered priorities and main evaluation criteria and namely they are employed in order to increase the competitiveness of the state, to stimulate the growth of economy. This helps to ensure the constant source of income for the state budget and to overcome such contemporary problems such as unemployment, emigration, social-economic inequality, regional differences. (Servetkienė, 2013). "Housing, healthcare, education, tourism are studied as an integral part of the prerequisites for the quality of life, human capital reproduction. Social infrastructure is aimed at meeting the specific needs of society." (Ulyanova, Yaschenko, 2014).

Alongside other criteria of welfare, security is one of the most important ones. Physical, social and legal safety is indissoluble from the welfare of the whole society. Even though the assurance of the public safety is mostly related to the activity of police and other law enforcement institutions, but it should be noted that some aspects of safety are as well related to the process of territorial planning.

The importance of territorial planning to the safety and security of the society is stressed in the European level. The Territorial Agenda of the European Union 2020 (European Union, 2011) pinpoints that the exclusion in the planning process of some territories from socio-economic circuit influences the fact that the integration especially of vulnerable groups and ethnic minorities is hindered, as they end up concentrated in certain urban and rural areas. Furthermore, the Agenda encourages to pay special attention to the "peripheral rural and sparsely populated areas where disadvantaged social groups often suffer from segregation." (European Union, 2011). The above-mentioned factors have direct influence on the security and safety of the society as a whole.

The Law on Territorial Planning stipulates that one of the aims of the territorial planning is to create a healthy, safe and sustainable living environment and complete living conditions in residential areas. In the process of the establishment of the aims of territorial planning of the particular territory, state and public security needs have to be taken into account (Seimas of the Republic of Lithuania, 1995).

Therefore we can see that the legal regulation foresees not only the legal prerequisites, but also an imperative obligation for all the institutions participating in the process of territorial planning to evaluate factors and circumstances influencing public security in the course of their duties and actions. It can be stated that the problems of security may be resolved not only by the police forces, but also by the means of the coherent development and fostering of the social order and by the planning of the territories.

Often improper territory planning may contribute to the increase of social exclusion, the non-implementation of the expectations of the society, the infringement of its interests, and thus increase in criminal behaviour and the reduction of safety of the society.

Some states in the world include the criteria for safety as priority in the process of territorial planning. As Crowe notices, "Countries throughout the world, such as Australia, Canada, Great Britain, Japan, and the Netherlands have used architectural design techniques to prevent crime."

(Crove, 2000). However only the formal inclusion of such requirement cannot be considered as a solution. Having a requirement for safety in the documents of territorial planning, the following action should be the cooperation between the persons deciding in the territorial planning and police officers. The latter should participate actively in this process, provide propositions and recommendations related to territory planning. Furthermore, in order to increase the possibilities to ensure the safety of the society in the process of territorial planning, the coherent cooperation between all state institutions is needed, the institutions should carry out their duties without the excess of power, they also should be honest, operative and economic in the execution of the state functions.

The National program of the fight against corruption of Lithuania states that public governance should both effective and allowing to act. It is important to change the culture of governance, the decisions taken should be grounded and the consensus should be sought. The needs for safety and human dignity should be fulfilled but also the public services should be of good quality. The state institutions should be able to acts strategically and purposefully in the process of territorial planning, the main attention should be paid to main priorities. (Seimas of the Republic of Lithuania, 2015). Corruption is often an obstacle to such course of action and it is a pity that it was very resilient in the process of territorial planning and it is not clear whether its scale is diminishing<sup>2</sup>.

The sector of territorial planning in Lithuania is not transparent due to the complicated regulation and intricate procedure of the alignment of projects. The risk of corruption in the field of territorial planning and constructions may manifest itself in illegal payment for the acceleration of the process of the establishment of the conditions for detailed plans, in the process of the confirmation of the conceptions of the detailed plans and the confirmation of the plans themselves in the municipalities; in the provision of the permissions in contravention of the procedure set by legal acts; illegally reimbursing for the change in the purpose of particular plot of land allowing to increase the height of possible buildings; the legalisation of illegal buildings, the non-cessation of the construction carried out without permissions or projects, etc.

All these actions diminish the trust in state institutions, reduce the sense of security and increase the possibilities to infringe the individual, economic or social interests of natural and legal persons.

## CONCLUSIONS

After the analysis of legal acts, of various research data on the topic of investment and of the public information, it can be concluded that at present:

a) either the legal acts in place do not create the premises to ensure that interests of individuals, public interest, the need for safety of the society and the interests of investors would be aligned properly;

b) or the subjects of public administration which have to act in the name of the state and to enact decisions in the field of territorial planning, do not act in accordance with the principles of good public administration. To make a unilateral conclusion regarding the non-competence or corruption of the officers of public administration, and the improper decisions resulting thereof, a more comprehensive research is needed.

Legal acts provide only vague definitions of public interest and its correlation with individual interest. Theoretical conceptions do not always have an effective influence on the decisions of the subjects of public administration, as well as on the motivation of the prosecutors who ought to defend public interest in the courts. The analysis of the publicly available information about the

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<sup>2</sup> The sphere of territorial planning is listed in the National program of the fight against corruption (2015) as the priority field where corruption is most widespread.

conflicts of interest in the field of territorial planning, one can conclude that in every case “public” and “private” interest may be understood differently, and that the change in society causes a change of the content of interests. Nowadays in Lithuania which is facing a demographic and economic crisis, the attraction of investments is of utmost importance and in this sense namely the interest of investors may be considered as public interest.

It may be noted that in Lithuania the public interest is “fetishized”, and is dissociated from the real needs of society. It is defended sometimes in contravention of the right to property of some individuals, their legal expectations and legal certainty. These actions in turn influence the increase in the economic insecurity in Lithuania.

Improper territory planning (the overly-long processes or unjust and unlawful decisions of subjects of public administration in the field of territorial planning) may contribute to the increase of social exclusion, the non-implementation of the expectations of the society, the infringement of its interests, and thus increase in criminal behaviour and the reduction of safety of the society.

The criteria for safety as priority in the process of territorial planning should not remain only the formal requirement, but it should lead to the real cooperation between the persons deciding in the territorial planning and police officers. The coherent cooperation between all state institutions is needed, the institutions should carry out their duties without the excess of power, they also should be honest, operative and economic in the execution of the state functions.

The sector of territorial planning in Lithuania is not transparent due to the complicated regulation and intricate procedure of the alignment of projects. Quite often the decisions of the National Land Service are not rational, raising the outrage of the investors, the institutions seeking to attract investments (for example, of mayors of municipalities) and of the general public. Such decisions influence in the negative way the economic situation and lessens the trust of investors, furthermore, they influence the feeling of security of its citizens and the trust in the state and its institutions. On the other hand, the territorial planning, having its specifics as in many other states, is able to exhaust the inexhaustible resources of Lithuania to attract investments and to develop business in Lithuania, if the cooperation between the concerned persons, society, business subjects and governmental institutions becomes active and productive.

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