



## MODELLING A DISPUTE HEARING BETWEEN AN INVESTOR AND THE PUBLIC CONCERNED IN ADMINISTRATIVE COURTS OF THE REPUBLIC OF LITHUANIA

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**Abstract.** The article discusses possible effects on the success of an investment project when rights of the public concerned have been infringed during construction planning. The administrative proceedings defending the rights of the public concerned infringed during territorial planning have been analysed for that purpose. For any construction project, judicial dispute is an undesirable risk factor and can disrupt the entire project. The article, therefore, looks into an actual dispute that reached the court and took place between an investor and the public concerned. The negative effects of this judicial dispute, both on the investor and the public concerned, have been determined. The investor's blunders that prevented any chance of escaping the judicial dispute and led to several years of litigation have been also determined. The article looks into the behaviour of disputing parties at various stages of the judicial dispute. Based on the research, a conceptual model was crafted to enable analysis of formal model behaviour in future studies and to build a complex system that would facilitate any construction project with planning and application of preventive measures that would mitigate the risk of a judicial dispute as early as during the first project planning stage.

**Keywords:** construction investment project, defending rights of the public concerned in administrative courts, resolving judicial disputes, shaping the behaviour of parties, conceptual model.

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## Introduction

Development of national economy is impossible without construction: people use such construction products as various types of buildings to live, work and satisfy other social needs (Burinskienė *et al.* 2011). Construction investment contributes to national economic growth and development extensively (Zavadskas, Kaklauskas 2008; Zavadskas *et al.* 2010b). Many Lithuanian cities and towns undergo intense transformations related to commercialisation, land use and built territories. Some examples from European cities have shown that construction development can target internal urban areas (Erdis 2013). Lithuanian cities currently witness concentrated development as well. It facilitates the use of the existing infrastructure and the reuse of abandoned urban territories. Such planning cuts the amount of used land and creates a lasting environment with dense population able to function properly. On one hand, it is a natural phase related to the revival of the most valuable neglected urban areas. On the other hand, the course and outcomes of this process reveal gaps within the renewal process. The blame may be cast on the failings of laws governing urban planning and protection of visual identity (investors cannot always be expected to abandon their self-centred ends for the sake of urban values, etc.). Largely, this is determined by the confusing, inefficient system employed when constructions must be coordinated with state authorities and the public. Construction regulations are confusing, builders breach requirements, and officials often may choose which requirements to enforce at their own discretion. A range of problems spring from an inappropriate distribution of functions among national authorities and private entities. One outcome of inappropriate legal regulation of construction processes is infringements of third-party rights (these are parties with no direct involvement in a construction investment process: owners of neighbouring plots, users, communities of residential areas, etc.). Third parties are persons who become involved in a case because of their legal interest in the dispute outcome; they either join a procedure in progress themselves, or, in cases established by laws, may be included by any party or by court.

Third parties fall into two groups by the goal of their involvement in dispute resolution. The first group is third parties with claims of their own and the second – third parties without such claims. Third parties with claims of their own have all rights and duties of a plaintiff (CPC, Art. 46). Meanwhile, third parties without claims of their own toward the dispute's subject matter may join the case on the side of either the plaintiff or the defendant before the closing speeches, in cases the judgement might affect their rights or duties. They may also be included in a case under a motivated request of the parties or by court. The third parties without claims of their own have procedural rights and duties of a party, save for the right to change the grounds or the subject matter of the complaint, add new claims or remove some claims from the complaint, withdraw the complaint, accept the complaint, or reach an amicable settlement. They are also not entitled to demand enforcement of the court decision (CPC, Art. 47). To avoid confusion between third parties with claims of their own and third parties without claims of their own, the article refers to the former as the public concerned. The legislator defines the public concerned as the public affected or likely to be affected by the solutions of the territorial planning document being prepared or public with interest in

implementation of such solutions (Law on Territorial Planning, Art. 2(34); Mitkus, Šostak, 2008; Šostak, Vakračinienė 2011; Lietuvos Respublikos civilinio proceso kodeksas; Lietuvos Respublikos teritorijų planavimo įstatymas; Chou, Lin 2013).

The investment process in construction is long and complicated; it requires enormous financial, intellectual and other resources. If a judicial dispute occurs during this process, the investor may suffer an enormous loss, and the project implementation may be postponed for an indefinite term. The litigation may continue for several years (*SACL ruling in the administrative case, 26 January 2007, No. A<sup>14</sup>-110-07*; *SACL ruling in the administrative case, 19 January 2007, No. A<sup>3</sup>-64-07*; *SACL ruling in the administrative case, 20 February 2006, No. A<sup>11</sup>-792/2006*). Thus the investor is most concerned to avoid any legal disputes and should pay considerable attention to their prevention. Before starting a project, the investor must be ready for any *surprises*. Forecasting is the key part in any strategy, because actions recommended for certain situations stem from the forecasts of possible outcomes. The article makes use of a conceptual model, as a method of deliberation, to determine possible ways to organise two opposing systems (the investor and the public concerned) in order to achieve the goals defined. The conceptual model is used as a tool to design two opposing systems. The conceptual model analyses and defines the behaviour of two opposing parties in certain states and at certain times (stages of the detailed planning process, the stage of legal proceedings in an administrative court of first instance, the stage of proceedings in an administrative court of appeal, etc.). The conceptual model shows the activities to be performed and their interrelations (Urbanavičienė *et al.* 2009). The conceptual model facilitates proper estimation of the scope of conflict's possible negative effect and its outcomes on the construction project. The analysis of risks, done with the help of the conceptual model, should make an impact on further decision-making (Bao *et al.* 2012; Desierto 2013; Chamodrakas *et al.* 2011). Throughout the project lifecycle the investor must monitor risks and analyse decision-making, improve the development of its risk management strategies and risk management plan, make use of risk analysis methods and technologies, implement the mechanism of risk reports (Lakis 2008; Keršulienė *et al.* 2010; Zavadskas, Turskis 2011).

In a construction project, judicial disputes are an unwanted risk factor, which may disrupt the entire project. It is therefore necessary to plan and apply preventive measures for the mitigation of such risk at the initial planning stage of a construction project (Zavadskas *et al.* 2010a; Yang *et al.* 2009; Park *et al.* 2009; Yang *et al.* 2009; Pinter, Pšunder 2013). The article for that purpose analyses an actual judicial dispute between an investor and the public concerned heard in administrative courts of the Republic of Lithuania. The negative outcomes of this judicial dispute, both on the investor and the public concerned, have been determined. The investor's blunders that barred any chance to prevent this judicial dispute and led to several years of litigation, have also been determined. The article analyses the behaviour of the disputing parties at various stages of the judicial dispute. Based on the research, a conceptual model was crafted to enable analysis of formal model behaviour in future studies and to build a complex system that would facilitate any construction project with planning and application of preventive measures that would mitigate the risk of a judicial dispute as early as during the first project planning stage (Koziratskiy *et al.* 2008; Tettey, Marwala 2007; Lin *et al.* 2011; Yeh *et al.* 2012; Wang *et al.* 2012).

## 1. Case study: a judicial dispute between an investor and the public concerned in administrative courts of the Republic of Lithuania

Infringements of rights of the public concerned are of benefit neither to the public concerned nor to the participants of a construction investment process. On one hand, such infringements might wrongfully cause deterioration of life and work conditions of the public concerned; while on the other hand, infringements of rights of the public concerned at the phase of construction planning may affect implementation of the investment project, because all solutions infringing rights of the public concerned at the same time violate the provisions of normative legal acts and can be disputed as stipulated by the Law on Administrative Proceedings (hereinafter LAP), the Law on Territorial Planning (hereinafter LTP) and other legal acts (Lietuvos Respublikos teritorijų planavimo įstatymas; Lietuvos Respublikos administracinių bylų teisenos įstatymas; Mitkus, Šostak 2009; Fig. 1). LAP defines the concept of administrative disputes as conflicts between persons and entities of public administration or conflicts between entities of public administration that are not subordinate to each other; it means conflicts between a municipality and the public concerned that is affected by detailed plans approved by the municipality and building permits issued on that basis.

The article will analyse the judicial practice. Figure 1 shows the defence process of infringed rights of the public concerned in administrative courts (the diagram is based on the data from an actual case: *SACL ruling in the administrative case, 21 February 2006, No. A<sup>7</sup>-850-06*; *SACL ruling in the administrative case, 26 January 2007, No. A<sup>14</sup>-110-07*). The article will analyse an actual judicial dispute between an investor and the public concerned, determine the negative effects of this judicial dispute on both the investor and the public concerned, and determine the investor's blunders that barred any chance to prevent this judicial dispute and led to three-year litigation (see Fig. 1).

The parties in this dispute are: natural persons (the occupiers of the apartment house standing in the plot adjacent to the territory of the intended construction investment project) as the plaintiffs, the Administration of Vilnius City Municipality as the defendant, and third persons without claims of their own on the side of the defendant (the association of garage owners, hereinafter – the investor, and the association of new residential construction, hereinafter – the investor).

The complaint submitted by the plaintiffs requested to revoke the order No. 30-1849 of 19 November 2004 issued by the director of the Administration of Vilnius City Municipality and approving the detailed plan of a territory in Vilnius, as well as to revoke the decision passed on 3 June 2005 by the Administration of Vilnius City Municipality to grant the investor the building permit No. NR/594/05-0666 for construction of an apartment house in Vilnius. The complaint of the plaintiffs pointed out the fact that, on 19 November 2004, the director of the Administration of Vilnius City Municipality approved the detailed plan of the territory in Vilnius by the order No. 30-1849. Then, on 3 June 2005, the Administration of Vilnius City Municipality made the decision to issue the building permit No. NR/594/05-0666 for construction of an apartment house in Vilnius. The said legal acts approved the solutions in the detailed plan and in the project documentation, while the plaintiffs believed these solutions contradicted legal norms governing territorial planning and construction and hence

violated their rights enjoyed as occupants. The plaintiffs laid out the following arguments to support their claims:

1) The plot is smaller than the normative minimum allowed. The minimum plot size is governed by Clause 11 of STR 2.02.01:2004 “Residential Buildings” (approved by the order No. 705 of Minister of Environment on 24 December 2003)(STR Gyvenamieji pastatai); the plot area of the designed building fails to comply with the requirements set forth in the said clause of the normative legal act.

2) The building foreseen in the detailed plan and designed in the respective design documentation fails to comply with the fire safety requirements. Clause 54 of STR 2.02.01:2004 “Residential Buildings” (approved by the order No. 705 of Minister of Environment on 24 December 2003) states that “access roads for fire engines to buildings of four storeys and above must be available along the two longest sides of the building with additional sites for fire engine ladders”. This requirement was not respected. Neither the detailed plan nor the design documentation foresees any site for fire engines to turn round. Clause 57 of STR 2.02.01:2004 “Residential Buildings” sets forth the requirements on access of fire engines to enclosed or semi-open yards. This clause stipulates that any access road ending in a cul-de-sac must have a site for fire engines to turn round with minimum dimensions of 12’12 m. Neither the detailed plan nor the design documentation foresees such site. Clause 58 of the said STR stipulates that these special sites must always be unoccupied.

3) The playing grounds foreseen in the solutions of the detailed plan and the design documentation would fail to comply with the requirements set forth in Clause 243 of STR 2.02.01:2004 “Residential Buildings”, which states that “the playing ground must be located on the site so as to be visible from at least one room of a flat or from shared premises and at least 10 m away from: the access road connecting with the street; the site with waste containers; the garage; and the residential building”. The new construction, which received the building permit, foresees the playing grounds at a distance of only 5 metres from the building and close to the car park.

4) The conditions of the plaintiffs to use the playing ground will suffer and will fail to meet the norms. Clause 243 of STR 2.02.01:2004 “Residential Buildings” sets the requirement that “the playing ground must be located on the site so as to be visible from at least one room of a flat or from shared premises”. Before the construction, the children of the plaintiffs used the playing ground visible from windows of all apartments. When the new building is ready, part of the new building will block the view to the playing ground. Article 6(4) of the Law on Construction states that “a construction works, during and after the construction, as well as the construction site, must be arranged in such a way that during the construction and use of a constructed construction works, living and working conditions of third parties which they enjoyed prior to the beginning of the construction, might be changed only in compliance with the provisions of normative technical construction documents”. The above provision of the Law on Construction suggests that construction of the building foreseen in the detailed plan would damage the living conditions of the plaintiffs (in particular the possibility to keep an eye on playing children) contrary to the provisions of normative technical construction documents.

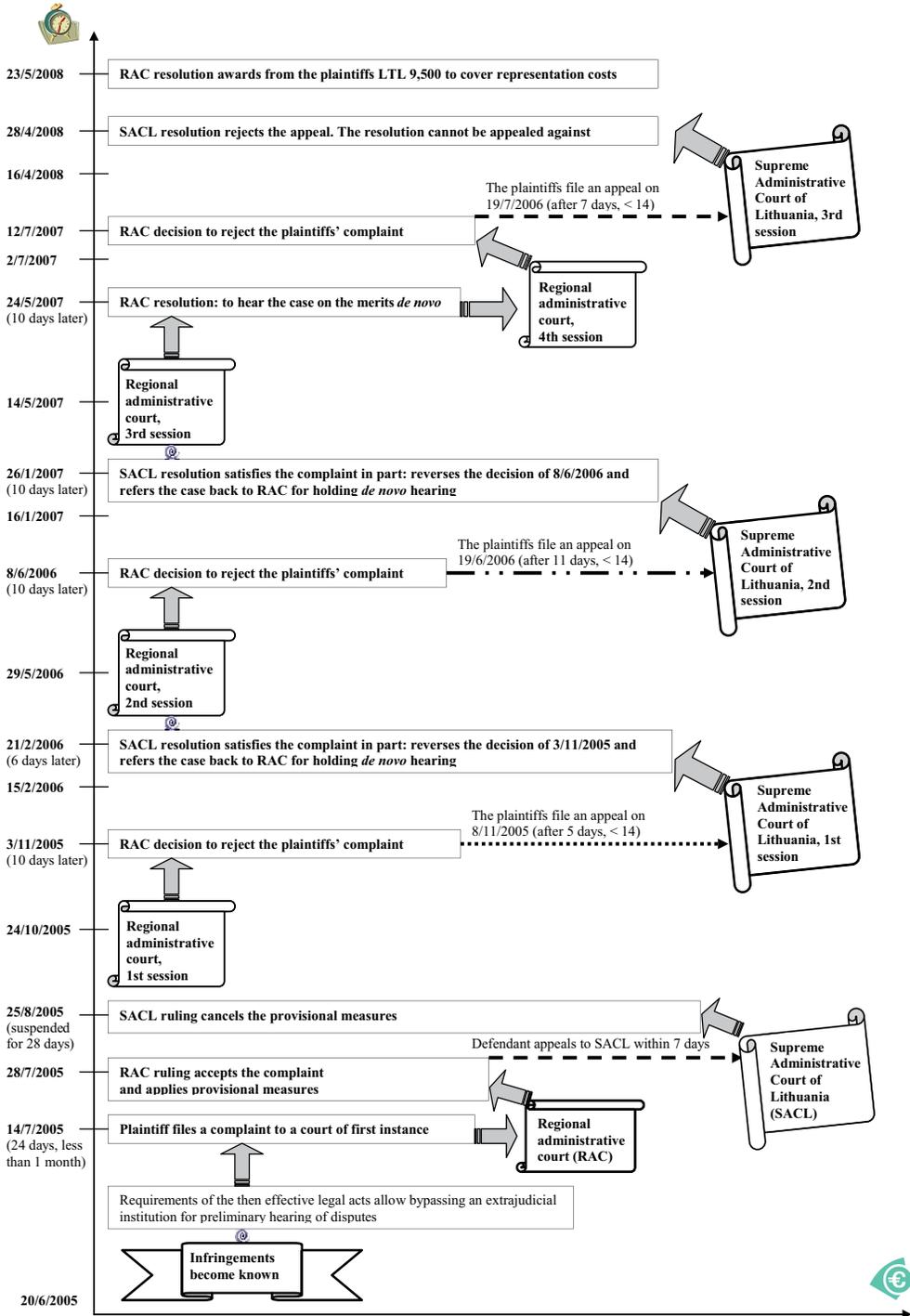


Fig. 1. Defence of infringed rights in an administrative court, an actual case (diagram compiled by the authors)

The said circumstances suggest that the building to be constructed close to the building of the plaintiffs will fail to comply with fire safety requirements, will stand on too small a plot with inadequate layout, and damage the possibilities for the plaintiffs to keep an eye on their children. The construction of such a building will make a negative impact on the residential environment of the plaintiffs and will violate their rights for proper use of their own homes (*SACL ruling in the administrative case, 21 February 2006, No. A<sup>7</sup>-850-06*).

The article moves on to the analysis of the judicial dispute proceedings between the investor and the public concerned in administrative courts of the Republic of Lithuania. The diagram of the proceedings related to the defence of infringed rights in administrative courts is shown in Fig. 1.

## **2. The analysis of the judicial dispute proceedings between the investor and the public concerned in administrative courts of the Republic of Lithuania**

The proceedings include the main stages specified below.

1. The public concerned learns its rights have been violated (infringement determined). The analysis of the case files revealed that the public concerned learned about the construction investment project on 20 June 2005, as its implementation started. The public concerned had not been notified about the approval of the detailed plan and the issue of the building permit (*SACL ruling in the administrative case, 21 February 2006, No. A<sup>7</sup>-850-06*; see Fig. 1). Any disputing parties are interested to handle all disputes as early as possible and prevent judicial litigation. But in this case, the conflict reached the court, which means the parties failed to manage the conflict and collaborate: both parties took no coordinated actions to arrive at mutually acceptable goals and the conflict took a destructive path. The investor failed to consider the interests of the public concerned and lost any chance to resolve the dispute out of court.

2. Before applying to an administrative court, separate legal acts or actions/omissions of public administration entities foreseen by laws can be, and in cases stipulated by laws must be, contested by applying to an extrajudicial institution for preliminary hearing. The proceedings related to extrajudicial defence of rights of the public concerned are discussed in Article 25 of LAP. Unless laws stipulate otherwise, extrajudicial hearings of administrative disputes are handled by municipal public commissions of administrative disputes and the Chief Administrative Disputes Commission (LAP, Art. 26). The public concerned must be an active party in detailed territorial planning and submit written proposals on territorial planning documents to the organiser of planning in the course of the entire period of preparation of territorial planning documents until and during the public meeting as well as during the consulting (LTP, Art. 32, Part 1). LTP defines a proposal as the statement of public opinion on supplementing the solutions of a territorial planning document, suggestion or amendment of their alternative. Having analysed the proposals submitted by the public, the organiser of planning prepares a summary concerning the adopted proposals and those rejected in a reasoned manner, which it submits together with prepared territorial planning documents to the institutions coordinating the territorial planning document. The organiser of planning must respond in writing in a reasoned manner to the persons who submitted the proposals. The response may be appealed against to the institution that carries out state supervision of

territorial planning within one month from receiving the appeal. The institution that carries out state supervision of territorial planning submits, within 20 working days from the day of receipt of the appeal, a reasoned response that may be appealed against to court according to the procedure established by law (LTP, Art. 32, Part 2).

In the case considered here, the complaint about allegedly infringed rights of the public concerned was never heard by an extrajudicial institution. There are several reasons. First, the then effective legal acts allowed directed application to an administrative court for the defence of infringed rights. Second, the organiser of planning failed to comply with publicity procedures: the public concerned received no proper notification about the detailed planning and had no opportunity to submit its suggestions to the organiser of planning (see Figs 1 and 2).

The article now proceeds on to all circumstances surrounding the preparation and approval of the disputed detailed plan. The preparation of the disputed detailed plan started following the order of the director of the municipal administration issued on 16 December 2003 “On the Permission to Prepare a Detailed Plan of the Territory Next to the Land Plot in Vilnius”. The specifics related to the process of detailed territorial planning are set forth in Article 25 of LTP. It specifies the following stages of detailed territorial planning:

- the preparatory stage;
- the stage of the preparation of the territorial planning document and
- the final stage.

The preparatory stage of detailed territorial planning includes: setting the objectives of planning; preparing and approving the programme of planning; carrying out investigations, as necessary; public announcement of the decision to start preparing territorial planning documents and of planning objectives.

In the case analysed here, the intentions to start detailed planning were announced on 1 October 2003 in the daily *Lietuvos Aidas*, with the place for viewing and the place and time for discussion of this plan specified. The discussion held on 10 October 2003 approved the preparation of the detailed plan and design documentation. The said circumstances suggest that first announcement of the intentions to start detailed planning were not published in a local newspaper, despite such requirement set forth in Clause 9 of the then effective Regulations on Public Participation in the Territorial Planning Procedures. This was a breach of the regulations governing public discussion of drafted territorial planning documents; the public concerned was also improperly notified about the detailed plan and did not take part in public discussions. The newest version of the Regulations on Informing the General Public and Public Participation in the Territorial Planning Procedures tightened this requirement and the organiser of planning now must notify in writing the owners of property in the vicinity of the territory to be planned about the intentions to start detailed planning of the land plot (*Regulations on Informing the General Public and Public Participation in the Territorial Planning Procedures, approved by the resolution No. 33-1190 of the Government of the Republic of Lithuania on 21 March 2007*) (Lietuvos Respublikos visuomenės informavimo ir dalyvavimo teritorijų planavimo procese nuostatai). Hence, the organiser of planning must complete both first and second publicity procedures (1, 2 PP; see Fig. 2). In the case analysed here, the organiser of planning failed to comply with these requirements properly and, thus, a breach of the detailed territorial planning proceedings has been determined (P1; see Fig. 2).

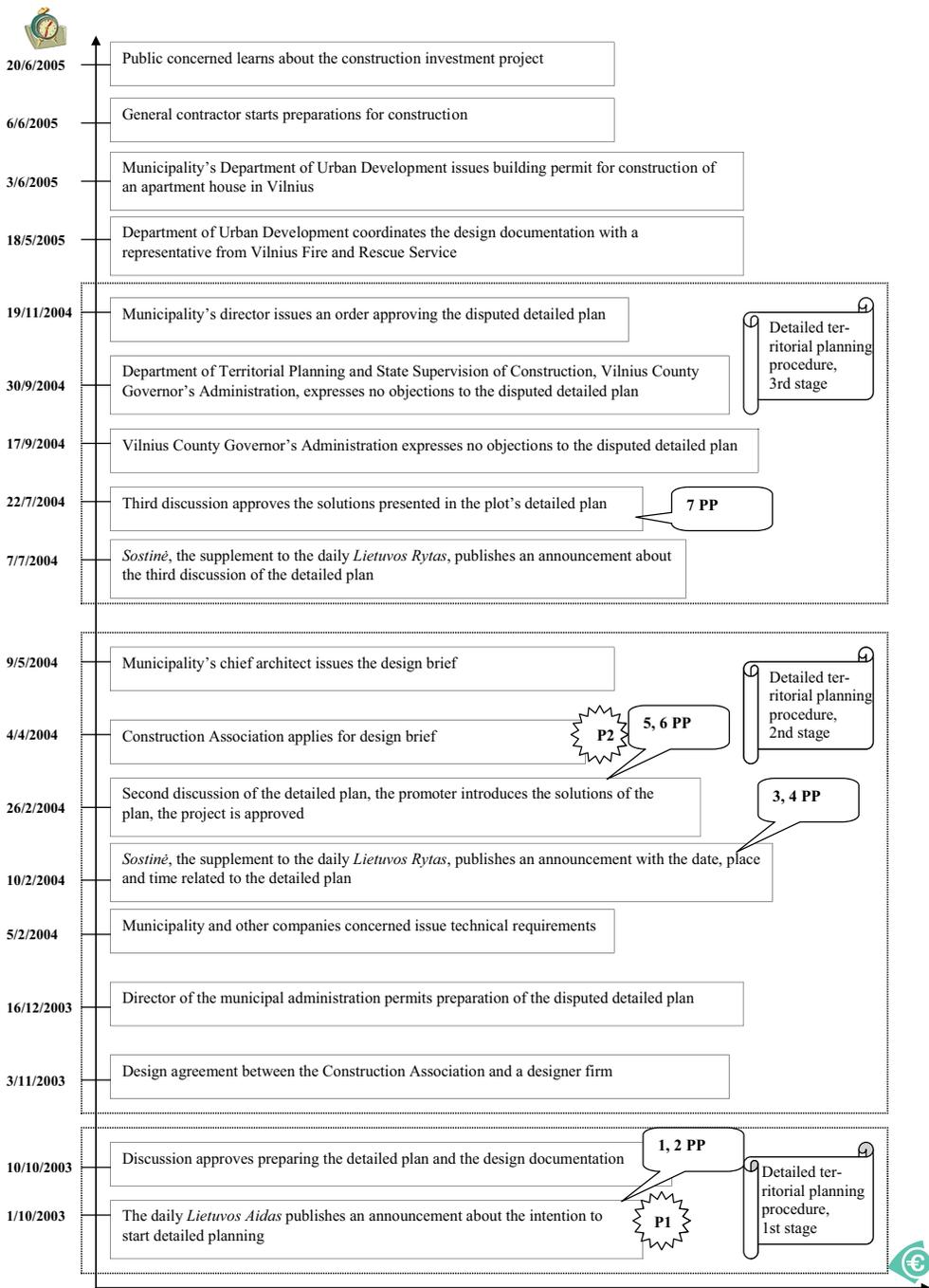


Fig. 2. Defence of infringed rights in an administrative court, an actual case (diagram compiled by the authors)

Analysis of the case files revealed that the Construction Association submitted its application for the design brief on 4 April 2004 and received the brief on 9 May 2004. Interestingly, the conditions of planning must have been issued before announcing the intentions to start detailed planning – before 1 October 2003. Here we see a breach of detailed territorial planning procedures P2 (*SACL ruling in the administrative case, 21 February 2006, No. A<sup>7</sup>-850-06*; see Fig. 2).

The article moves on to the analysis of the disputed detailed plan during the second stage of the detailed territorial planning procedure. The preparatory stage of the territorial planning document includes preparation of all solutions, which also included those infringing the rights of the public concerned. Although the solutions planned at this stage are mostly determined by the solutions from previous stages, this particular stage ends with final solutions of the detailed plan and these solutions may infringe the rights of the public concerned directly. The solutions introduced at this stage are therefore the most frequent cause of disputes between the public concerned and the organisers of detailed planning.

It has been determined that the designing agreement between the investor and a designer firm was concluded on 3 November 2003. On 16 December 2003, the director of municipal administration issued the order “On the Permission to Prepare a Detailed Plan of the Territory Next to a Land Plot in Vilnius” allowing the preparation of the disputed detailed plan. The municipality and other companies concerned issued their technical requirements between 29 January and 5 February 2004. The main drawing with the chief specifications of the disputed detailed plan was agreed upon (between the investor and the designer firm) on 9 February 2004. Importantly, the design brief was issued only on 9 May 2004 (*SACL ruling in the administrative case, 21 February 2006, No. A<sup>7</sup>-850-06*; *SACL ruling in the administrative case, 26 January 2007, No. A<sup>14</sup>-110-07*; see Fig. 2).

The Regulations on Informing the General Public and Public Participation in the Territorial Planning Procedures stipulate that the organiser of planning must announce in mass media that the territorial planning document is ready and specify the procedure, place and time for its viewing and discussion. The organiser of planning must also notify in writing the owners of the property in the vicinity of the territory about the detailed planning document. This makes sure the third and fourth publicity procedures are complied with (3, 4 PP; see Fig. 2). In the case analysed here, the date, place and time related to the detailed plan were announced in the *Sostinė*, the supplement to the daily *Lietuvos Rytas*, on 10 February 2004. On the day specified in the announcement (26 February 2004), the local government unit (*seniūnija*) held the second discussion of the detailed plan, in which the promoter introduced the intended solutions of the plan and the project was accepted. The public concerned, however, was not present in the discussion and all solutions were accepted without public consent. But the Regulations on Informing the General Public and Public Participation in the Territorial Planning Procedure state that at least 20 business days must be allocated for viewing any detailed plans when they are ready. The organiser of planning must also arrange public exposure of the detailed plan for at least 10 business days. These arrangements would ensure the fifth and sixth publicity procedures (5, 6 PP; see Fig. 2).

- The final stage of the detailed territorial planning procedure includes the following steps:
- the step of considering and coordinating the solutions of the territorial planning document: public hearing, coordinating with institutions, examination of disputes and
  - the step of approving the territorial planning document: inspection in the institution supervising state territorial planning, approval and recording in the register of territorial planning.

The Regulations on Informing the General Public and Public Participation in the Territorial Planning Procedure provide for the seventh, and the last, publicity procedure, which is a public discussion of the detailed plan once it is ready (7 PP; see Fig. 2). LTP defines public discussion as a procedure to ensure publicity of territorial planning by introducing the prepared territorial plan to the public in the manner prescribed. This procedure provides the public concerned with information about the full set of the solutions of the detailed plan. In the case analysed here, plans to hold a third discussion of the detailed plan were announced in the *Sostinė*, the supplement to the daily *Lietuvos Rytas*, on 7 July 2004. The discussion held on 22 July 2004 approved the solutions of the detailed plan. No representatives of the public concerned were present in the public discussion. The data of the case suggest that the organiser of planning had no interest in collaboration with the public concerned, also made no attempts to explain the solutions of the construction investment project to the public and to handle the dispute through negotiations. Thus, the investor's blunders, done while preparing the disputed detailed plan, led to painful outcomes when the implementation of the solutions of the construction investment project started.

The disputed detailed plan was agreed with relevant authorities. On 17 September 2004, Vilnius County Governor's Administration issued the document No. (30)-12-2930 stating there were no substantial objections to the preparation of the disputed detailed plan. On 30 September 2004 the Department of Territorial Planning and State Supervision of Construction (Vilnius County Governor's Administration) issued the document No. 474 expressing its approval. On 19 April 2004 the director of the municipal administration issued the order No. 30-1849 "On Approval of the Detailed Plan of a Territory in Vilnius" approving the disputed detailed plan, which served as a basis to register the plan with the register of territorial planning documents.

Legal acts governing territorial planning stipulate that the permission to construct can only be issued having verified whether or not the design documentation corresponds to the design brief; on 18 May 2005 the Municipality's Department of Urban Development agreed this project with a representative of Vilnius Fire and Rescue Service. On 3 June 2005 the Municipality's Department of Urban Development issued the building permit No. 594/05-0666 for construction of an apartment house in Vilnius. On 6 June 2005 the general contractor started its preparations for the construction (building a bypass to the construction site, erecting pylons for provisional power supply line from a power substation, delivering building materials for fencing of the construction site, etc.) (*SACL ruling in the administrative case, 21 February 2006, No. A<sup>7</sup>-850-06; SACL ruling in the administrative case, 26 January 2007, No. A<sup>14</sup>-110-07; see Fig. 2).*

3. Judicial defence of infringed rights. LAP stipulates that the decision of an appropriate administrative disputes commission or any other institution for preliminary extrajudicial dispute hearing, adopted after investigating an administrative dispute in line with the extrajudicial procedure, may be appealed against to the administrative court by any of the parties to the dispute, contesting the decision of the administrative disputes commission or any other institution for preliminary extrajudicial dispute hearing. In such an event the administrative court may be appealed to within 20 days from the day of receipt of the decision (LAP, Art. 32). Persons as well as other entities of public administration, including state and municipal public administration employees, officers and agency heads are entitled to file a complaint/petition against an administrative act adopted by an entity of public administration or against the act/omission of the above entities if they believe that their rights or interests protected by law have been infringed (LAP, Art. 22). LAP defines such complaint/petition as the form of appeal to the authorised institution requesting the resolution of an administrative dispute. Complaints are lodged with the authorised institution by private persons, whereas state and municipal institutions, their representatives or public servants file petitions (LAP, Art. 28). LAP stipulates that a complaint/petition may be filed with the administrative court within one month from the day of publication of the contested act, or the day of delivery of the individual act to the party concerned or the notification of the party concerned of the act/omission (LAP, Art. 33). The claimant is entitled to withdraw the complaint/petition before it is found to be receivable, also to specify and change the grounds or subject matter of the complaint/petition, or to withdraw the complaint/petition at any stage of the case investigation before the court retires to the conference room (LAP, Art. 52). The plaintiff and defendant can also arrive at an amicable settlement and terminate their litigation at any stage of the court proceedings (see Fig. 1).

In the case analysed here, the complaint was filed to an administrative court on 14 July 2005: 24 days after learning about the infringed rights (see Fig. 1). It means the relevant requirement was complied with, as the term for filing of a complaint was respected. On 28 July 2005 the Regional Administrative Court (hereinafter RAC) recognised the complaint submitted by the applicants to be receivable.

4. RAC is the court of first instance for administrative cases concerning legitimacy of legal acts or actions of state (or municipal) administrative entities, also legitimacy or validity of their refusal to perform, or protraction of, actions within their competence when the complainant or the defendant are entities of state or municipal administration. RAC, as a court of first instance, also investigates complaints/petitions against the decisions of municipal administrative dispute commissions and, in cases provided for by law, against the decisions adopted by other institutions for preliminary extrajudicial investigation of disputes (LAP, Art. 18 and Art.15). The case hearing proceedings at court of first instance. Article 68 of LAP stipulates that the chairman or judge of the court who by virtue of an order recognised the appeal to be receivable, determine, as necessary, the following mandatory issues relating to the preparation for the hearing of the case in the court:

- take measures to secure the claim;
- decide on the summoning of specialists or on expert examination;
- perform other actions necessary when preparing for the hearing of the case; etc.

The court or the judge may, upon a motivated petition of the participants in the proceedings or upon its own initiative, take measures with a view to securing a claim. The claim may be secured at any stage of the proceedings if failure to take provisional measures to secure a claim may impede the enforcement of the court decision or render the decision unenforceable. Provisional measures may be as follows:

- granting an injunction restraining the defendant from certain actions;
- stay of execution under the writ of execution;
- suspension of validity of a contested act.

The judge or the court hears the petition for securing the claim within one day from the receipt thereof, without notifying the defendant and other participants in the proceedings. If such a petition is filed together with the complaint/petition, it will be heard within one day from the acceptance of the complaint/petition. The court or the judge makes an order on securing the claim, in which the procedure and manner of the execution thereof is indicated. A separate appeal may be filed against the court order on the issues regarding the securing of claims. The filing of a separate appeal against the order to secure the claim will not stay the execution of the order or suspend the hearing of the case. The court order to secure the claim will be executed without delay. The order to replace a measure securing a claim or to cancel the measure aimed at securing a claim are executed upon the expiry of the time limit for filing an appeal against such orders and, where the complaint has been filed, upon making an order to reject the appeal. Where the injunctions are not complied with, the guilty persons are imposed a fine by a court order in the amount of up to LTL 1,000 (LAP, Art. 71).

On 28 July 2005, RAC issued a ruling satisfying in part the request on provisional measures laid out in the plaintiffs' complaint and suspended the building permit No. NR/594/05-0666 issued by the Administration of Vilnius City Municipality on 3 June 2005 to the investor for the construction of an apartment house in Vilnius until the court judgement in this case becomes effective, but rejected the request to suspend the order No. 30-1849 "On Approval of the Detailed Plan of a Territory in Vilnius" issued by the director of the Administration of Vilnius City Municipality on 19 November 2004. The ruling stated that the defendant was entitled to file a separate appeal against the provisional measures to the Supreme Administrative Court of Lithuania (hereinafter SACL), within 7 days upon receiving a copy of the ruling. The defendant used its right of appeal and, on 25 August 2005, SACL issued a ruling satisfying the defendant's appeal. The request of the plaintiffs to apply provisional measures was rejected. Thus, in the case analysed here, the construction operations were suspended for 28 days (20 business days) between 28 July 2005 and 25 August 2005 (see Fig. 1).

The defence of infringed rights in administrative courts raises issues with application of provision measures. On one hand, failure to suspend construction may impede the enforcement of a court decision, or render the decision unenforceable, when the litigation (which may take several years) is over. On the other hand, suspended construction may translate into huge financial losses to the investor and failure to complete the construction investment project. Should the defendant prevail in the litigation, the entity to reimburse the loss is unclear. Judicial practise has seen cases when the non-prevailing party, the public concerned, had to reimburse the defendant any loss incurred due to the suspension of construction (*SACL ruling in the administrative case, 20 February 2006, No. A<sup>11</sup>-792/2006*). It may be an unbearable burden to

the public concerned and such scenario restricts the right of the public concerned to defend its allegedly infringed rights (*SACL ruling in the administrative case, 19 January 2007, No. A<sup>3</sup>-64-07*). This issue is yet to be finally resolved in judicial practice. Below is the estimation of the investor's losses for July 2005 due to the suspended construction (see Table 1).

Table 1. Investor's losses due to the suspended construction

| The name of the costs  | Calculations, LTL                     | Total, LTL |
|--|---------------------------------------|------------|
| Daily maintenance costs of the construction site:  |                                       |            |
| Object's security:   | 48 hours x 9.5 = 456 + VAT = 538.08   |            |
| Facilities for rest, etc.:   | 16.44 + VAT = 19.40                   |            |
| Bio toilet:  | 5.74 + VAT = 6.77                     |            |
| Electricity costs:   | 50 kW × 0.264 = 15.84 + VAT = 18.69   |            |
| Land lease:  | 429.06 + VAT = 506.29                 |            |
| Costs of auxiliary staff:  | LTL 1,048 / 31 days = 33.80           |            |
|  |                                       | 1,123.03   |
| Daily costs for the staff of the association of residential construction hired specifically for this object: |                                       |            |
| Engineer for technical supervision of construction:  | LTL 2,059.84 / 31 days = 66.45        |            |
| Project manager:   | LTL 1,574.40 / 31 days = 50.79        |            |
|  |                                       | 117.24     |
| Amounts invested by the association of residential construction (per day):                                   |                                       |            |
|  | LTL 815,000 × 6 % / 365 days = 133.97 |            |
|  |                                       | 133.97     |
| Daily costs for staff and workers, working on the object, during the downtime:                               |                                       |            |
|  | LTL 41,909.64 / 31 days = 1,351.92    |            |
|  |                                       | 1,351.92   |
| The maintenance costs of the object per one calendar day amount  |                                       | 2,726.16   |

The investor specifies that on top of the above costs other costs and losses are possible, such as the cost of object's conservation, the loss of skilled workforce, the growing cost of the property under construction, the failure to fulfil obligations toward the banks financing the construction and the subcontractors working on the object, the delay of all financing and work schedules for an indefinite term with the schedule also affected by weather conditions in the future. The amounts estimated above show that in the reviewed case, the suspension of construction for 20 business days might have cost the investor at least  $LTL 2,726.16 \times 20 = LTL 54,523.20$  (*RAC ruling in the administrative case, 28 July 2005, No. AS<sup>5</sup>-375/2005*; *SACL ruling in the administrative case, 25 August 2005, No. AS<sup>5</sup>-375/2005*).

5. The court of the first instance makes orders on separate issues that are not decided on the merits during the proceedings. The court makes orders in the conference room. The orders are signed by all judges who participated in the hearing (LAP, Art. 105). The decision in the case heard on the merits is rendered by the administrative court in the conference room by a majority vote of the judges. Where oral hearing of the case is held, after the closing statements by the participants in the proceedings the court retires to the conference room to adopt the decision or make an order. Having adopted the decision or made an order, the court returns

to the courtroom and the chairman of the chamber or the judge rapporteur reads out the introduction and substantive provisions of the decision or order and briefly orally presents the motives of the decision or order. By way of exception, having regard to the complexity and scope of the case, the chamber of judges hearing the case on appeal may, by virtue of a motivated order, defer the adopting and pronouncement of the decision or order for not longer than a ten-day period. The decision or order, the adopting and pronouncement whereof was deferred, may be pronounced by one of the judges who heard the case, in the absence of other judges of the chamber (LAP, Art. 139). Upon hearing the case, the administrative court adopts one of the following decisions:

- to reject the complaint/petition as unfounded;
- to meet the complaint/petition and revoke the contested act (part thereof) or to obligate the appropriate entity of administration to remedy the committed violation or carry out other orders of the court;
- to meet the complaint/petition and to obligate the entity of municipal administration to implement the law, the Government resolution or another legal act accordingly;
- to meet the complaint and settle the dispute in any other manner provided for by law;
- to meet the complaint/petition and to award damages caused by unlawful acts of entities of public administration (Civil Code, Art. 6.271; LAP, Art. 88) (Lietuvos Respublikos Civilinis kodeksas).

In the reviewed case, RAC accepted the complaint of the plaintiffs on 28 July 2005 and held its first session on 24 October 2005. On 3 November 2005 (10 days after the first session) RAC pronounced its decision to reject the complaint (*RAC decision in the administrative case, 3 November 2005, No. I-1874-18/05*; see Fig. 1).

6. Hearing of a case in a court of appeal. To ensure expedience of the proceedings, protect the interests of the prevailing party and ensure definite relations between the parties, the law sets a time limit for the party dissatisfied with the court decision, or another person taking part in the proceedings, to execute its right of appeal. The decisions of RAC as a court of first instance can be appealed against to SACL within fourteen days upon pronouncement of the decision (LAP, Art. 127). An appeal hearing is similar to the court proceedings in a court of first instance. Having heard the case, the court of appeal has a right:

- uphold the decision of the court of first instance and reject the appeal;
- reverse the decision of the court of first instance and adopt a new decision;
- amend the decision of the court of first instance;
- reverse the decision of the court of first instance and dismiss the case or leave the appeal unconsidered;
- reverse the decision of the court of first instance fully or in part and refer the case to the court of first instance for holding a *de novo* hearing (see Fig. 1).

The case specified in point 2 means the court makes a decision; other points are instances of a motivated court order (LAP, Art. 140). Having reversed the challenged court decision, the court of appeal has a right to refer the case to the court of first instance for *de novo* hearing if:

- a large amount of new evidence has to be collected in order to disclose the circumstances of the case;
- not all claims have been investigated by the court of first instance (LAP, Art. 141).

The decision, ruling or order of the appellate court becomes effective on the day it is made and is not subject to appeal by cassation (LAP). The person who has filed an appeal is entitled to withdraw the appeal before the closing statements. A written petition by the appellant whereby the appeal is withdrawn is attached to the case file while the oral statement will be recorded in the minutes of the court hearing and signed by the appellant. The court terminates the appeal proceedings by virtue of an order, unless the decision has been appealed against by other persons. The court notifies other participants in the appeal proceedings of the withdrawal of the appeal. The person who withdraws the appeal has no right to file the appeal *de novo* (LAP, Art. 132).

On 8 November 2005, five days after pronouncement of the RAC decision (less than 14 days), the plaintiffs filed an appeal to the SACL. On 15 February 2006, the first session in the court of appeal was held. On 21 February 2006 (six days after the first session in the court of appeal), the ruling of SACL satisfied part of the plaintiffs' complaint: the decision of Vilnius RAC pronounced on 3 November 2005 was reversed and the case referred to the same court for holding *de novo* hearing (*SACL ruling in the administrative case, 21 February 2006, No. A<sup>7</sup>-850-06*; see Fig. 1).

On 29 May 2006 RAC held its second session. On 8 June 2006 (10 days after the second session) RAC pronounced its decision to dismiss the part of the administrative case dealing with the demand of the plaintiffs to revoke the order No. 30-1849 "On Approval of the Detailed Plan of a Territory in Vilnius" issued by the director of the Administration of Vilnius City Municipality on 19 November 2004 and to reject the other part of the complaint (*RAC ruling in the administrative case, 8 June 2006, No. I-1479-19/06*; see Fig. 1).

On 19 June 2006, 11 days after pronouncement of the RAC decision (less than 14 days), the plaintiffs filed an appeal to the SACL. On 16 January 2007, the court of appeal gathered for its second session. On 26 January 2007 (10 days after the second session in the court of appeal), SACL passed its resolution satisfying part of the plaintiffs' complaint: the decision of Vilnius RAC pronounced on 8 June 2006 was reversed and the case referred to the court of first instance for holding *de novo* hearing (*SACL ruling in the administrative case, 26 January 2007, No. A<sup>14</sup>-110-07*; see Fig. 1).

7. It is not always possible to hear a case on the merits and adopt a court decision during the first and only session, although the court makes all efforts to hear a case in one session if it does not translate into improper case hearing. But it is complicated, and sometimes impossible, even with proper preparation for judicial hearing, although this stage attempts to ensure hearing the case on merits during the first court session. Unexpected impediments often emerge and the judicial hearing takes one, two, three and sometimes even ten or more sessions. The chairman or judge of the court who by virtue of an order recognised the appeal/petition to be receivable, decides, as necessary, on the summoning of specialists or on the conduct of an expert examination. Specialists are invited where special knowledge is required in the court in the course of the investigation of the case for examining and evaluating documents, articles or actions. The explanations of the specialist are recorded in a separate document and signed by the specialist or recorded in the minutes of the court hearing. In the latter case the specialist has the right of access to the minutes and is entitled to present his comments in writing under his signature (LAP, Art. 61). If questions arise in the administrative case that require special knowledge in the area of science, art, technology and crafts, the court or the judge appoints an

expert or charges an appropriate expert institution to carry out the expert examination. The questions, on which the opinion of an expert is requested may be put to the court by each participant in the proceedings, however, the questions will be finally determined by the court or the judge. The expert's opinion is presented in writing in the report of the expert examination. Where there are several experts appointed to the case, their joint opinion is signed by those of them who approve the opinion. The experts who disagree with them draw up their opinion separately. The expert's opinion is not binding on the court. However, the court must motivate its disagreement with the expert's opinion (LAP, Art. 62).

On 14 May 2007 RAC held its third session. On 24 May 2007 (10 days after the third session) RAC pronounced its decision to hear the case on the merits *de novo*. All persons (natural and legal) with ownership rights to any individual properties (apartments, premises) in the residential house in Vilnius were invited to take part in the case. The case hearing was postponed until 2 July 2007. The State Enterprise Centre of Registers was charged with a duty to provide the court with data about all persons with ownership rights to individual properties (apartments, premises) in the said residential house by 8 June 2007. The court decided to summon a fire safety professional to the court session. On 2 July 2007, RAC held its fourth session. On 12 July 2007 (10 days after the fourth session), RAC pronounced its decision to reject the plaintiffs' complaint as ungrounded (*RAC ruling in the administrative case, 24 May 2007, No. I-6027-14/07; RAC ruling in the administrative case, 12 July 2007, No. I-6027-14/07, see Fig. 1*).

8. Appeals can be filed either directly with the appellate court or through the court the decision, ruling or order whereof is appealed against. Having received the appeal, the appellate court compels the presentation of the administrative case file and determines the issue of admissibility of the appeal. As necessary, the appellate court may refer the issue of admissibility of appeal to the court of the first instance the decision, ruling or order whereof is appealed from (LAP, Art. 129). All parties to the proceedings are entitled to file an appeal. Claims that were not filed when the case was heard at the court of the first instance are not allowable in the appeal. Claims that are inextricably connected to the filed claims are not deemed to be new claims (LAP, Art. 130). While hearing the case on appeal, the court reviews the legality and validity of both the contested and uncontested parts of the decision as well as the legality and validity of the decision in respect of the persons who did not file the appeal. The court is not bound by the arguments of the appeal and must review the case in full (LAP, Art. 136)

On 19 July 2007, seven days after pronouncement of the RAC decision (less than 14 days), the plaintiffs filed an appeal to the SACL. On 16 April 2008 the court of appeal held its third session. On 28 April 2008 (10 days after the third session in the court of appeal) SACL pronounced its ruling upholding the decision of Vilnius RAC pronounced on 12 July 2007 and rejecting the plaintiffs' appeal. This ruling was not subject to appeal (*SACL ruling in the administrative case, 28 April 2008, No. A-438-679/2008; see Fig. 1*).

9. The prevailing party to the proceedings is entitled to recover costs from the non-prevailing adverse party (LAP, Art. 44). The party interested in the recovery of costs files with the court a written petition with the calculation and substantiation of the costs incurred. Petitions for the recovery of costs that have not been filed with the court by the termination of the hearing of the case on the merits must be filed with the court within 14 days after the

coming into effect of the decision. The court hears the petitions filed with the court before the termination of the hearing of the case on the merits by adopting a decision on the administrative case. In other cases, the court as a rule disposes of the petition for the recovery of costs by making an order in a written proceeding. The order made by the court of the first instance on the recovery of costs may be appealed to the Supreme Administrative Court of Lithuania within seven days from its pronouncement (LAP, Art. 45)

On 20 May 2008, Vilnius RAC pronounced its ruling to satisfy part of the request by the third party, the 690th association of residential construction, to recover the costs and awarded the 690th association of residential construction the amount of LTL 9,500 to cover representation costs, for which the plaintiffs were jointly and severally liable (*RAC ruling in the administrative case, 20 May 2008, No. I-6027-14/2007*; see Fig. 1). The court in this case did not award to the defendant loss recovery from the plaintiffs for the suspended construction (the provisional measures were effective for 28 days).

## Conclusions

1. A successful implementation of a construction investment project demands for determining and sorting out all potential problems related to stakeholder groups as early as the procedure of detailed territorial planning. Open, patient attempts to determine the needs of the public concerned are necessary. An open dialogue requires collaboration and sometimes negotiations. Thus, the disputing parties must accept and understand different, often opposite, needs and interests and search for possible solutions through joint efforts. In the case analysed here, the public concerned was not informed about the approval of the detailed plan and the issuing of the building permit, which means the investor failed to consider the interests of the public concerned and lost any chance to resolve the dispute out of court.

2. Handling of disputes related to the infringement of rights of the public concerned might lead, and actually do lead, to huge losses suffered by both the investors and the public concerned. It happens because such disputes usually take lengthy periods for resolving. In the case analysed here, the litigation took three years. It is not always possible to hear a case on the merits and adopt a court decision during the first and only session, although the court makes all efforts to hear a case in one session. But it is complicated, and sometimes impossible, even with proper preparation for judicial hearing. Unexpected impediments often emerge and the judicial hearing takes one, two, three and sometimes even ten or more sessions. A case in point is the conflict analysed here, which took five sessions in the court of first instance and four sessions in the court of appeal, with a total of nine sessions. Thus, the plaintiffs were obliged to pay to their lawyers for three years and, on top of that, to reimburse LTL 9,500 to the defendant of lawyer costs as the non-prevailing party; they were lucky not to be liable for the reimbursement of about LTL 50,000 for the provisional measures. Also, no expert examinations were required. The investor, although completed the project, was forced to reduce the height of the new residential building with a considerable drop in expected profits. The construction was suspended for a month, but the project was implemented before the litigation was over and the building failed to receive the certificate of occupancy for a long time.

3. The defence of infringed rights in administrative courts raises issues with application of provision measures. On one hand, failure to suspend construction may impede the enforcement of the court decision, or render the decision unenforceable, when the litigation (which may take several years) is over. On the other hand, suspended construction may translate into enormous financial losses to the investor and failure to complete the construction investment project. Besides, should the defendant prevail in the litigation, the entity to reimburse the loss is unclear. Judicial practise has seen cases when the non-prevailing party, the public concerned, had to reimburse the defendant any loss incurred due to the suspension of construction. It may be an unbearable burden to the public concerned and such scenario restricts the right of the public concerned to defend its allegedly infringed rights. This issue is yet to be finally resolved in judicial practice.

4. Based on the research, a conceptual model was crafted to enable analysis of formal model behaviour in future studies and to build up a complex system which would facilitate any construction project to plan and apply preventive measures mitigating the risk of a judicial dispute as early as the first project planning stage.

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