



MODELLING THE PROCESS FOR DEFENCE OF THIRD PARTY RIGHTS INFRINGED WHILE IMPLEMENTING CONSTRUCTION INVESTMENT PROJECTS

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Abstract. The article analyses the influence of third party rights infringed during construction planning for implementation of an investment project. It analyses the process for defence of third party rights infringed during territorial planning. The focus in this process is on third party rights and opportunities to learn about possible infringement of such rights. An analysis of detailed territorial planning procedures is also provided. The model of the proceedings of a dispute on possibly infringed third party rights has been developed. Modelling a dispute between investors and third parties was performed along with creation of the tree of behaviour variants of dispute parties. The model has been developed considering possible behaviour of the parties.

Keywords: construction investment process, defence of third party rights, territorial planning, dispute settlement, judicial defence of rights, decision tree.

1. Introduction

Investment construction process is long and complicated; it requires a lot of financial, intellectual and other resources. In a large part it is influenced by confusing, ineffective system for the coordination of constructions with government institutions and the public. Regulation of constructions is confusing; the builders breach the introduced requirements; very often officials are provided with a right to easily choose, which requirements have to be applied. Inappropriate distribution of the functions among government institutions and private subjects raise a lot of problems.

Many parts of our cities and towns see intensive transformations related to commercialisation, as well as land use and construction (Zavadskas *et al.* 2007; Bardauskienė 2007; Turskis *et al.* 2006; Zavadskas *et al.* 2004; Daunora 2004). On the one hand, it is a natural phase related to refurbishment of the most valuable neglected parts of a city; on the other hand, the process and its outcomes display gaps of such refurbishment process. We believe that limitations of laws regulating urban planning and protection of the visual identity are

the reasons behind this (we should not expect investors to be always ready to abandon egoistic ends for the sake of urban values, etc.) (Dringelis 2005; Lo, Yu 2005; Vrubliauskas 2005; Jakaitis 2004; Petrušonis 2004; Livingstone *et al.* 2003).

One of the outcomes of an inappropriate legal regulation is violation of the third parties' rights (i.e. the parties, which are not directly related to the investment construction process, owners of neighbouring plots, users, communities of residential districts, etc.). For this reason, it is advisable for the participants of the investment construction process, as well as the third parties, to discuss the ways and the process for protecting the third parties' rights.

All solutions, violating the third parties' rights may be defended according to the order established by the Law on Public Administration, Territorial Planning, The Law on Legal Proceedings of Administrative Cases of the Republic of Lithuania and other legal acts. Basic solutions of construction investment projects are admitted during the detailed territorial planning. In order to avoid or significantly reduce violations of the third parties' rights in the process of detailed territorial planning, it is necessary:

- to analyse possible violations of the third parties' rights;
- to facilitate awareness of the third parties' about the possible violation of their rights;
- to manage (systematize, clearly define requirements for the construction solutions, etc.) legal regulation basis of investment construction process;
- to unify and form clear court practice, which would enable the establishment of rational protection ways of the third parties' rights.

2. The process for defence of third party rights during territorial planning

Defending process of violated third parties' rights in the territorial planning may be divided into the following main stages:

- 1) actions of the subjects of territorial planning (inaction, in some cases), according to which the interests of the third parties' are violated;
- 2) awareness of the third parties about their violated rights;
- 3) pre-trial defending violated rights;
- 4) judicial defending violated rights.

In order to find out and select rational ways for the protection of the third parties' rights, it is necessary to discuss each of the above-mentioned stages separately and determine their interrelations.

The first stage of violated third parties' rights in the territorial planning is actions of the subjects of territorial planning (inaction, in some cases), according to which the interests of the third parties' are violated. In order to determine possible actions of the subjects of territorial planning, according to which the interests of the third parties' may be violated, it is essential to analyse the process of detailed territorial planning. The third parties' rights during the detailed planning are violated by the determination of illegal solutions. Whereas the requirements for the solutions of detailed plans are included in many legal acts (technical regulations of constructions, etc.), in order to avoid violations in this stage, it is advisable to structure a classification of violation of possible third parties' rights.

The second stage of violated rights in the territorial planning is the awareness of the third parties about their violated rights. In order to defend your own rights, it is necessary

to know about it. The issue of awareness about violation of rights in territorial planning is extremely important; whereas violation of rights is evident only when the solutions of the detailed planning are being implemented, i.e. constructions are built or other territorial changes performed (trees are cut, etc.).

Acknowledgement of solutions of detailed planning as illegal when construction works have already been started, results in the fact that investors may experience a lot of damage. For these reasons all subjects, participating in territorial planning (including the third parties), are interested that solutions of the detailed planning and disputes are solved as soon as possible.

Timely information about possible violations of the third parties' rights may result in pre-trial defending by finding a compromise between all interested parties.

The Law on Legal proceedings of Administrative Cases of The Republic of Lithuania and the Law on Territorial Planning include ways of pre-trial dispute solutions; as well as the fact, that each interested subject has a right to plead to court according to the order established by law to protect his/her violated or disputed right, or interest protected by law. This shows that there are different methods for protecting violated third parties' rights; in order to select rational methods, it is necessary to perform the modelling and analysis of these methods.

3. The right of third parties to learn about possible infringement of their rights

In order to determine possible actions of persons involved in detailed planning, which could infringe third party rights, it is important to know who are the persons involved in territorial planning. The following persons participate in such a planning:

- planners;
- organisers of planning;
- territorial planning supervisory bodies;
- third parties.

The third parties are the most sensitive group, because they are not participating in territorial planning directly but their rights may be infringed at any phase of detailed planning. As a result, disputes may arise between persons participating in territorial planning; some of them may be brought to a court. Often, such disputes mean additional costs for both parties. Even the winning party in a legal dispute may often incur loss (construction suspension during the judicial dispute, lawyer fees, etc.) (Mitkus 2004a, 2004b, 2005).

As mentioned before, the main solutions of a construction investment project are approved during the detailed territorial planning. In this case the infringement of third party rights occurs when illegal solutions are set. Judicial practice includes a number of cases when administrative courts cancelled decisions approving detailed plans after a construction process had been initiated already. Such situations are related to the fact that the complainants learn about preparation and approval of the detailed plan only after the start of the construction process. In order to avoid such situations, the latest edition of the Law on Territorial Planning of the Republic of Lithuania (hereinafter referred to as LTP) specifically focuses on issues of public relations.

Third parties can learn about the process of territorial planning and about its solutions following the provisions of LTP on transparency of territorial planning activities and the

Regulations on Participation of the Society in the Territorial Planning Process approved by the resolution No. 904 of 16 July 2004 of the Government of Lithuania.

Article 30 of LTP sets detailed territorial planning as a public activity. The organisers of planning are responsible for procedures granting transparency of territorial planning.

Article 31 of LTP sets the following procedures to inform the society about a detailed territorial planning:

- Municipalities and their executive organs must announce decisions on preparation of detailed plans in local press, in municipal websites and in neighbourhoods involved in the planning.
- The organisers of detailed planning must inform owners of real property neighbouring the territory covered by the planning in writing about initiated preparation of territorial planning documents related to a land plot or a group of land plots and about the aims of the planning.
- The organisers of planning must inform about completion of the territorial planning document, and about the manner, the place and the time for its viewing and discussion, in mass media.
- The society has a right to see the prepared detailed plans in the office of the organiser of planning, to get copies of territorial planning documents or parts thereof and of drawings for a fee, which is calculated on the basis of expenditures related to preparation of such documents (copying, publication, etc.).
- The organisers of planning must arrange public display of the prepared detailed plan.
- The organisers of planning must arrange public discussions of the detailed plan.

The Regulations on Participation of the Society in the Territorial Planning Process elaborate on these provisions of LTP.

In order to determine the third party rights to learn about the process of preparation of detailed plans and about their solutions, each procedure of public relations must be analysed separately. It must be noted that the Regulations on Participation of the Society in the Territorial Planning Process define the concept “procedure granting transparency” as follows: one or several actions, which are the responsibility of the organiser of planning or its authorised representative and which are related to participation of the society in preparation of a territorial planning document and to opportunities granted to the society to submit suggestions on solutions of the territorial planning document. Fig. 1 presents the procedures granting transparency.

The first procedure which grants transparency is announcement about the decision of municipalities and their executive organs on preparation of detailed plans. As specified in LTP, the information must be announced in local press, in the municipal website and in the neighbourhoods involved in planning. LTP establishes that the announcement must include information about initiated preparation of the detailed plan and about the aims of the detailed planning. The Regulations on Participation of the Society in the Territorial Planning Process supplement LTP and foresee additionally that the organisers of planning must announce the deadline for preparation of the detailed plan, the procedure for submission of suggestions, as well as addresses, phone numbers, e-mails and websites of the organiser of planning and the planners.

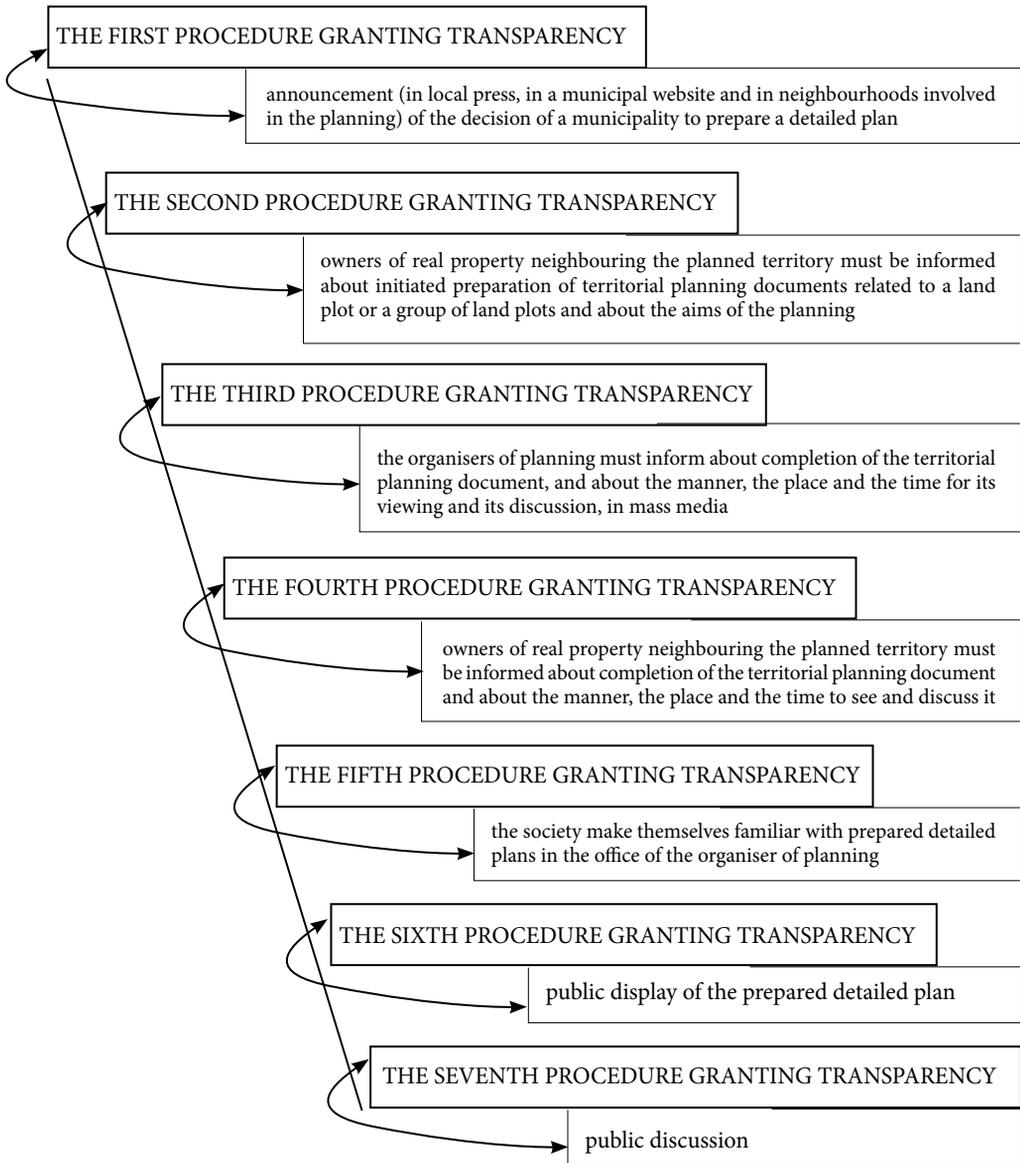


Fig. 1. Procedures which grant transparency

Thus, after such procedure, third parties learn about initiation of a specific detailed plan, about the aims of the planning and about the organiser of planning and the planner and get other information provided in the announcement.

It must be noted that the planning conditions must be submitted prior to such announcement. However, nobody is obliged to inform the society (third parties) about this fact. It means that third parties can learn about this fact from other sources only and accidentally most often.

The second procedure which grants transparency is informing the owners of real property neighbouring the planned territory about initiated preparation of planning documents for a land plot or a group of land plots and the aims of planning.

It means that the organiser of planning is obliged to inform owners of land plots neighbouring the planned territory and owners of buildings in such land plots. The organiser of planning must inform all co-owners of such real property as well. The Regulations on Participation of the Society in the Territorial Planning Process foresee an exception for multi-apartment houses located in a neighbouring land plot. In such case, the organiser of planning must inform the association of apartment house owners or the representative authorised by an agreement on joint activities of apartment house owners, or the administrator of joint property of owners of apartments and other premises.

This exception assumes that the chairman of an association of apartment house owners, the representative authorised by an agreement on joint activities of apartment house owners, or the administrator of joint property of owners of apartments and other premises must inform all owners of apartments and other premises in the multi-apartment house about the received notification.

The Regulations on Participation of the Society in the Territorial Planning Process also explain the concept of informing: information must be provided in writing. Whereas the organiser of planning would have to prove that the persons had been informed, the most suitable form of informing are a registered letter or delivery of the notification directly or through a courier.

The Regulations foresee that if the owners of the real property cannot be found at the addresses specified in the Real Property Register or the number of such owners exceeds ten, the organiser of planning can announce such information in a national daily or in the local press.

This procedure of transparency provides third parties with the same information as the first procedure above.

The third procedure which grants transparency is announcement about completion of the territorial planning document and about the manner, the place and the time for viewing and discussing such document placed by the organiser of planning in mass media. This procedure is elaborated in the Regulations on Participation of the Society in the Territorial Planning Process. The Regulations foresee that such information must be announced in local press, in the municipal website and in the billboard of the neighbourhood involved in the planning.

This procedure informs third parties about:

- the fact of completion of the detailed plan;
- the manner for viewing of the detailed plan (the time, the procedures and the address).

The fourth procedure which grants transparency is informing owners of real property neighbouring the planned territory about the completion of the territorial planning document and about the manner, the time and the place for viewing and discussing the document. It must be noted that LTP does not foresee such procedure; it is defined only in the attending Regulations on Participation of the Society in the Territorial Planning Process. This procedure is similar to the second procedure which grants transparency, and third parties get the same information as during the third procedure which grants transparency.

The fifth procedure which grants transparency is presentation of the prepared detailed plans to the society in the office of the planning organiser. LTP also foresees that any person can get copies of territorial planning documents or parts thereof and of drawings for a fee, which is calculated on the basis of expenditures related to preparation of such documents (copying, publication, etc.).

It must be noted that the Regulations on Participation of the Society in the Territorial Planning Process define the concept of presentation as follows: a procedure granting transparency, which gives the society a chance to familiarise themselves with the territorial planning document and which explains the solutions while seeking opinion and suggestions of the society on solutions of a territorial planning document.

This definition allows the conclusion that the duties of the planning organiser in this procedure are not limited to provision of an opportunity to view the detailed plan and to get its copies. The regulations also establish a duty of the organiser of planning to explain the detailed solutions plan and to seek suggestions of the society on these solutions.

During this procedure, third parties can get information about any solution of the detailed plan. It is related to the fact that a complete detailed plan is introduced. Although the detailed plan is completed, it may be amended considering the provided suggestions. The detailed plan amended considering the suggestions must be presented at a public meeting. However, rationality and honesty as legal principles require providing the same version of the detailed plan to all third parties who want to view the plan. It means that only two variants of a detailed plan can be presented publicly during this procedure: the first variant as it was during this procedure and the second as presented at the public meeting. Of course, the same variant can be presented in both cases (if suggestions have not been made or the planner decided to discount the suggestions). At least 20 days must be allocated for viewing the prepared detailed plans.

The sixth procedure which grants transparency is public display of the prepared detailed plan. The Regulations on Participation of the Society in the Territorial Planning Process define the concept of public display as follows: display of prepared solutions of the territorial planning document and of the explanatory documents (explanatory note, reports on assessment of solutions, drawings, etc.). The Regulations do not provide a complete list of documents which must be displayed publicly. It is possible to conclude that the main documents (not necessarily all of them), which would introduce solutions of the detailed plan, must be displayed. Such explanation of legal norms does not mean that third party rights to view the complete detailed plan are restricted. It does not eliminate the right of third parties to view the complete detailed plan at the address specified by the organiser of planning (most often in the planner's office). The Regulations also recommend arranging the display in premises of the neighbourhood or the municipality.

This procedure provides the same information to third parties as the previous one. The difference is that such process of presentation may be more convenient for third parties in some cases.

The seventh procedure which grants transparency is public discussion. LTP provides the following definition of public discussion: a procedure granting transparency of territorial planning, during which the prepared territorial planning document is presented to the society

and a public meeting is organised to discuss solutions of the territorial planning document, their alternatives and the provided suggestions.

The Regulations on Participation of the Society in the Territorial Planning Process regulate the procedure of public discussions in a rather detailed manner. The organiser of planning presides the public meeting. At the public meeting:

- the territorial planning document will be presented;
- information will be provided on assessment of the effect of solutions;
- information will be provided about strategic assessment of effect on environment and about the influence of the assessment on solutions;
- the assessment of the effect of the planned economic activities on the environment (if the strategic assessment of effect on environment and the assessment of the effect of the planned economic activities on the environment was performed as established);
- the amendments will be discussed and the reason for discarding some suggestions explained;
- possible amendments will be discussed in light of the suggestions received during the public meeting.

During this procedure, third parties get information about all solutions of the detailed plan, including those that have been changed.

It is the last detailed planning procedure which grants transparency. Alas, the organiser of planning may consider the suggestions and can amend the solutions of the detailed plan after the public meeting. Only the person who submitted the suggestion will be informed about these amendments. Alas, other persons will not be informed about such amendments and this can be considered a gap in LTP.

The Regulations on Participation of the Society in the Territorial Planning Process foresee cases for application of simplified procedures related to participation of the society in the territorial planning process. The simplified procedures related to the society participation in the territorial planning mean a reduced duration of the procedures which grant transparency and also mean that only some of the procedures are applicable (announcements in local press, a public display and a public meeting are excluded).

The simplified procedures related to participation of the society in the territorial planning process are applicable in cases defined in LTP, when the solutions of detailed plans can have influence on owners of neighbouring land plots only (e.g. in case land plots are divided, separated or joined).

4. Modelling a dispute on possibly infringed third party rights

Modelling a dispute between investors and third parties on possibly infringed third party rights was performed by creating a tree of behaviour variants of dispute parties. Sigitas Mitkus applied the tree of behaviour variants in many of his scientific works, when he tried to determine how distribution of risk related to unforeseen additional tasks in contraction agreements depends on actions of the contractor and the client (Mitkus 2005, 2004a, 2004b; Ward *et al.* 1991). This method helps overcome uncertainties. It is considerably easier to

make correct decisions in a graphic form – all interrelations are clear and the processes structured. Besides, the tree of variants helps find mistakes made afterwards and to correct them (Nollke 2007; Ross 1993).

Here is an analysis of the aforementioned tree of variants:

During implementation of a construction investment project, violations (i.e. infringement of third party rights) can happen even at the phase of the detailed plan preparation. Before the start of preparation of the detailed planning documents, the organiser of planning must address a public officer of the municipal administration – the senior architect of the municipality – asking him/her to give planning conditions. These are mandatory requirements to the planners. All planning conditions can be classified as follows: prohibitive, obligatory and authorising. Planning conditions of any type can infringe third party rights. A real situation can occur when a senior architect of the municipality issues planning conditions, which would infringe these rights after implementation. The decision to issue such planning conditions is illegal and can be disputed as established by the Law on Administrative Proceedings (hereinafter referred to as LAP), because any solution infringing these rights infringes the provisions of normative legislation as well (Mitkus 2007; STR 2.02.01:2004; Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of the United Nations Economic Commission for Europe; The Directive 2003/4/EC of the European Parliament and Council of 28 January 2003 on Public Access to Environmental Information; The Directive 2003/35/EC of the European Parliament and Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment). Besides, persons involved in a detailed planning can take actions which could infringe third party rights during detailed territorial planning. The process of such a planning is elaborated in Article 25 of LTP. It foresees the following phases of this planning: the preparatory phase; the phase of preparation of the territorial planning document; the phase of evaluation of the solutions effects; the conclusive phase. Third party rights can be infringed at any phase. If such infringements are absent or third parties do not submit any claims against existing infringements (see Fig. 2, 1–2), the organiser of planning gets the maximum profit P after implementing the investment project.

If infringements are determined when the detailed plan is already prepared by the organiser of planning (or at any phase of detailed planning) (see Fig. 2, 1–3), the Regulations on Participation of the Society in the Territorial Planning Process and LTP foresee a right of the society to submit suggestions on the draft of the territorial planning document to the organiser of planning in writing during the whole period of the territorial planning document preparation prior to the public meeting and during the meeting itself, as well as during consultations. The organiser of planning must register the submitted suggestions. This organiser, together with the planner, will analyse, discuss, assess and either accept (see Fig. 2, 3–4) or reject (see Fig. 2, 3–6) all suggestions. If the organiser of planning accepts the received suggestions (see Fig. 2, 3–4), the profit received after implementation of the project will be P_1 , and it will be smaller than the foreseen maximum profit P . Consideration of suggestions of the society usually means a reduced scale of the investment project. Here is an example of a possible real infringement: the detailed plan foresees improper height of buildings and the society brings a suggestion to reduce the height. Accepting such suggestion means that

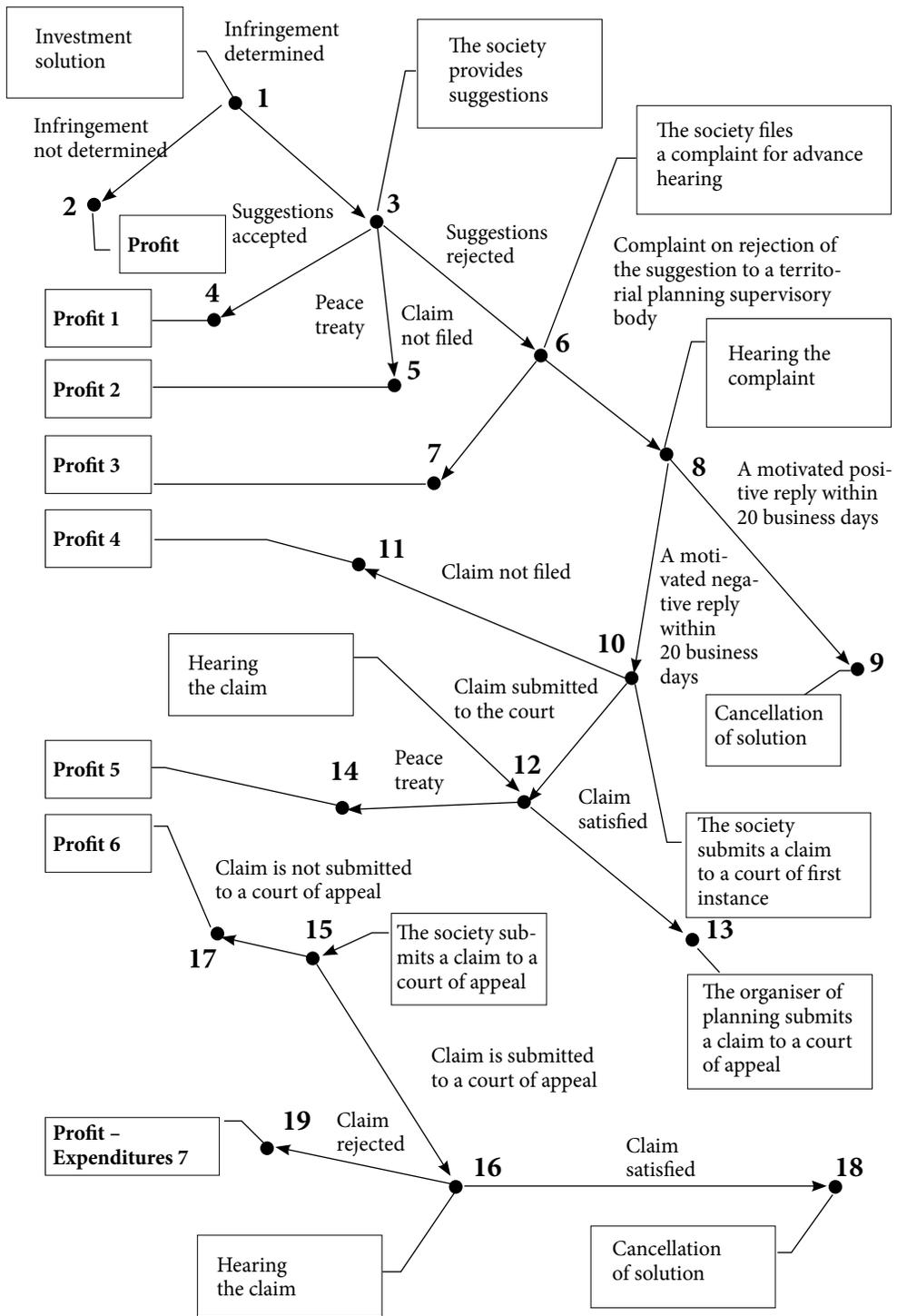


Fig. 2. Tree of behaviour variants of dispute parties

the planning organiser will have to reduce the building height. If such suggestion is accepted during detailed planning, the organiser of planning will be forced to change the project solutions and, after reduction of the building's height, will lose the planned profit, which would have been received from realization of the apartments or other premises in the discarded storeys. On the other hand, litigation will start if the planning organiser ignores suggestions provided by the society; it can continue for a long time (and if the court does not use claim guarantee measures, the investment project can be implemented prior to completion of the proceedings). If the organiser of planning loses the case in a court of appeal, which cannot be appealed against, then the solutions will have to be cancelled and the height reduced, i.e. the top storeys will have to be demolished (see Fig. 2, 16–18). Many similar situations occur in reality (The Judgement of the Supreme Administrative Court of Lithuania of 23 Jan 2004 in the administrative case; The resolution of the Supreme Administrative Court of Lithuania of 20 Febr 2006 in the administrative case; The judgement of the Supreme Administrative Court of Lithuania of 5 Sept 2006 in the administrative case; The judgement of the Supreme Administrative Court of Lithuania of 19 Jan 2007 in the administrative case; The judgement of the Lithuanian Court of Appeal of 4 Aug 2003 in the civil case).

The Regulations on Participation of the Society in the Territorial Planning Process and LTP foresee that, having analysed the suggestions of the society, the organiser of planning must prepare a summary of accepted and reasonably rejected suggestions, which must be submitted, together with the prepared territorial planning documents, to the bodies approving the territorial planning document. The organiser of planning must submit motivated replies in writing to the persons who submitted suggestions on local level detailed plans within 20 business days. The organiser of planning makes decisions on approval or rejection of the suggestions. If a suggestion is rejected, the planning organiser must specify the reason.

Third parties can appeal against a reply that their suggestions will not be considered in the prepared territorial planning document to a territorial planning supervisory body within a month after the day of delivery of the letter (reply to the provided suggestion; see Fig. 2, 6-8). If third parties do not make an appeal within the specified period (see Fig. 2, 6–7), the organiser of planning can continue with implementation of its project and receive the profit P3, which will be smaller than the planned maximum profit P. Claims against solutions of territorial planning documents can be submitted to a competent territorial planning supervisory body, as specified in the Regulations on State Supervision of Territorial Planning and Construction.

The territorial planning supervisory body must provide a motivated reply within 20 business days after the day the claim is received; such reply can be appealed again before a court as established by laws (see Fig. 2, 8–10), if the answer is negative. If the answer is positive (see Fig. 2, 8–9), cancellation of the solutions of the detailed planning documents must be initiated.

If interested society members (third parties) receive a negative reply from the territorial planning supervisory body (see Fig. 2, phase 10), two following variants of behaviour of third parties are possible:

- 1) A claim to the court is not submitted (see Fig. 2, 10–11). Implementation of the project gives the organiser of planning the profit P4, which is smaller than the planned maximum profit P.

2) A claim to the court is submitted (see Fig. 2, 10–12). The Law on Administrative Proceedings of the Republic of Lithuania establishes that a decision of a relevant commission for administrative disputes or another institution for advance hearing of disputes out of court made after hearing an administrative dispute out of court can be appealed against to an administrative court by the dispute party not satisfied with the decision of such commission for administrative disputes or another institution for advance hearing of disputes out of court. When the claim is submitted to the court, the proceedings at a court of first instance start. LAP foresees that the chairman of the court or the judge who made the decision to accepted the claim, if necessary, take care of the following important aspects of preparation for the trial: 1) prepare claim guarantee measures; 2) make a decision on invitation of specialists or on an inspection; 3) perform other actions required for preparation for the trial; etc. It is not always possible to complete a trial fully and to make a judgment at the first and a single court session, although the court attempts to complete a trial within one session if it does not impair proper settlement. However, it is rather difficult, and sometimes impossible, even if the proceedings are prepared properly, though it is the aim of such preparation to guarantee full completion of a trial at the first session already. Unforeseen obstacles are rather often; therefore, the proceedings continue for one, two, three and sometimes even ten or more sessions (the Law on Administrative Proceedings). The trial at the court of first instance (see Fig. 2, phase 12) may reject (see Fig. 2, 12–15) or satisfy (see Fig. 2, 12–13) the claim. In such case, the losing party (organiser of planning or third parties) file an appeal to the court of appeal (see Fig. 2, phases 13 and 15). (If third parties lost the case and, for some reasons, failed to file a complaint (see Fig. 2, 15–17), implementation of the investment project will give the organiser of planning the profit P6, which will be smaller than the planned maximum profit P. If the organiser of planning loses, it is highly doubtful that it will not file a complaint.). When the appeal is filed, the proceedings in the court of appeal start. In order to guarantee expedition of the process, to protect the interests of the winning party in the case and to guarantee definite relations between the parties, the law specifies a period for the party discontent with the court decision or for another person participating in the case to exercise their right of appeal. Judgements of county administrative courts announced after a trial in the court of first instance can be appealed against to the Supreme Administrative Court of Lithuania within fourteen days after announcement of the judgement. The proceedings of an appeal are similar to the proceedings at the court of first instance. After the trial, the court of appeal has a right: 1) to confirm the judgement of the court of first instance and to reject the appeal; 2) to supersede the judgement of the court of first instance and to announce a new judgement; 3) to supersede the judgement of the court of first instance; 4) to void the judgement of the court of first instance and to cancel the case or to leave the claim untried; and 5) to void the judgement of the court of first instance or a part thereof and to return the case to the court of first instance for retrial. A judgement, a resolution or a rule of the court of appeal comes into force on the day of its announcement and cannot be appealed against in cassation (the Law on Administrative Proceedings).

If the organiser of planning wins the legal case (see Fig. 2, 16–19), most often it still incurs serious loss (construction work is suspended during the legal dispute, lawyer fees, etc.: Expenditures 7). After implementation of the project, the organiser of planning will get

the profit P7, i.e. $P7 = P - \text{Expenditures } 7$. If the organiser of planning loses the legal case (see Fig. 2, 16–18), the solutions of the detailed planning must be cancelled. It means a huge loss to the organiser of planning. Litigation can continue for a long time (and if the court does not use claim guarantee measures, the investment project can be implemented prior to completion of the proceedings). Then, if the organiser of planning loses at the court of appeal, which cannot be appealed against, cancellation of the solutions will be initiated, i.e. the investment project will be deemed illegal construction. Imperative provisions of Part 1 of Article 4.103 of the Civil Code of the Republic of Lithuania specify that persons who have constructed or are constructing illegal buildings do not have a right to use or dispose of such building. If the court admits that construction is illegal, the organiser of planning will have to restore the previous condition of the land plot, for instance, to reduce the height, to demolish a completed building, etc. Many similar situations occur in practice. For example, the case No. A² - 1372 - 05 was related to litigation on constructed wind power stations. Wind power stations are considered a source of pollution; therefore, they must have a sanitary protection zone (SPZ) around them; the organiser of planning failed to consider this requirement and SPZ extended into neighbouring land plots. During the trial, the main argument of the organiser of planning was that the power stations had been already completed; however, the court voided the detailed plan and based its decision on the fact that the organiser of planning had known about the legal proceedings and had constructed the wind power stations at own risk (The judgement of the Supreme Administrative Court of Lithuania of 14 October 2005 in the administrative case).

A peace treaty can be signed at any stage during defence of any infringed rights at court (or out of court; see Fig. 2, 3–5, 12–14). A compromise is achieved in such case and further litigation is avoided. The organiser of planning can expect profits P2 or P5, but the profit will be smaller than the planned maximum profit P in any case (see Fig. 2).

5. Conclusions

1. When implementing construction investment projects, third party rights can be infringed during preparation of detailed territory plans already.
2. The article determines and analyses phases of third party rights during territorial planning. Seven main procedures which guarantee transparency of detailed territorial planning and which are established by normative legislation are specified as well. The article describes each of these procedures.
3. Investors may incur and do incur huge losses when solving disputes on infringement of third party rights.
4. In order to optimise relations between investors and third parties, the model of a dispute on possibly infringed third party rights has been developed.
5. Further research is needed on the basis of disputes on possibly infringed third party rights; it would be used as foundation to develop strategies for rational behaviour of dispute parties (investors and third parties).

References

- Bardauskienė, D. 2007. Ekspertinių vertinimų taikymas rengiant miesto bendrąjį planą [The expert's estimates application the preparation of city general plan], *Ūkio technologinis ir ekonominis vystymas* [Technological and Economic Development of Economy] 13(3): 223–236.
- Daunora, Z. J. 2004. Istorinių miestų vizualinio įvaizdžio plėtojimo klausimu [Issues of Visual Image Development in Historical Cities], *Urbanistika ir architektūra* [Town Planning and Architecture] 28(4): 144–150.
- Dringelis, L. 2005. Miesto viešosios erdvės: pokyčių tendencijos ir savitumo išsaugojimas [Public urban areas: trends of changes and preservation of peculiar features], *Urbanistika ir architektūra* [Town Planning and Architecture] 29(1): 50–53.
- Jakaitis, J. 2004. Neformalaus veikimo veiksnių įtaka urbanistinei raidai [Influence of factors of informal activities on urban development], *Urbanistika ir architektūra* [Town Planning and Architecture] 18(3): 132–143.
- Jungtinių Tautų Europos Ekonominės Komisijos Konvencija dėl teisės gauti informaciją, visuomenės dalyvavimo priimant sprendimus ir teisės kreiptis į teismus aplinkosaugos klausimais [Convention on access to information, Public participation in decision-making and access to justice in environmental matters of the United Nations Economic Commission for Europe]. 2000 [cited 21-02-2007]. Available from Internet: <<http://www.am.lt/LSP/files/Orhus-internet.doc>>.
- Lietuvos Respublikos administracinių bylų teisenos įstatymas [The Law on administrative proceedings of the Republic of Lithuania], *Valstybės žinios*, 2000 10 11, Nr. 85-2566.
- Lietuvos Respublikos teritorijų planavimo įstatymas [The law on territorial planning of the Republic of Lithuania], *Valstybės žinios*, 2004 02 07, Nr. 21-617.
- Lietuvos Respublikos civilinis kodeksas [The Civil Code of the Republic of Lithuania], *Valstybės žinios*, 2000 07 18, Nr. VIII-1864.
- Lietuvos vyriausiojo administracinio teismo 2004 m. sausio 23 d. nutartis administracinėje byloje „Visuomeninė organizacija „Žvėryno bendruomenė“ prieš Vilniaus m. savivaldybės administracijos miesto plėtros departamentą“, Nr. A-03-11-04 [The Judgement of the Supreme Administrative Court of Lithuania of 23 January 2004 in the administrative case The public organisation “Žvėryno Bendruomenė” vs. the Department for Urban Development of the Administration of Vilnius City Municipality, No. A-03-11-04] [cited 26-09-2007]. Available from Internet: <<http://www.lvat.lt/Default.aspx?item=nutart&lang=1>>.
- Lietuvos vyriausiojo administracinio teismo 2006 m. vasario 20 d. sprendimas administracinėje byloje „Pareiškėjai A. S., B. S. ir T. Z. prieš Vilniaus m. savivaldybės administraciją“, Nr. A11-792/2006 [The resolution of the Supreme Administrative Court of Lithuania of 20 February 2006 in the administrative case the Applicants A. S., B. S. and T. Z. vs. the Administration of Vilnius City Municipality, No. A11-792/2006] [cited 25-09-2007]. Available from Internet: <<http://www.lvat.lt/Default.aspx?item=nutart&lang=1>>.
- Lietuvos vyriausiojo administracinio teismo 2006 m. rugsėjo 5 d. nutartis administracinėje byloje „Kazokiškių bendruomenė ir G. G. prieš Vilniaus m. RAAD“, Nr. RAAD [The judgement of the Supreme Administrative Court of Lithuania of 5 September 2006 in the administrative case The Community of Kazokiškės and G.G. vs. RAAD of the City of Vilnius] [cited 07-09-2007]. Available from Internet: <<http://www.lvat.lt/Default.aspx?item= nutart&lang=1>>.
- Lietuvos vyriausiojo administracinio teismo 2007 m. sausio 19 d. nutartis administracinėje byloje „Pareiškėjai T. Z. prieš Vilniaus m. savivaldybės administraciją“, Nr. A³-64-07 [The judgement of the Supreme Administrative Court of Lithuania of 19 January 2007 in the administrative case The Applicant T. Z. vs. the Administration of Vilnius City Municipality, No. A³-64-07] [cited 25-09-2007]. Available from Internet: <<http://www.lvat.lt/Default.aspx?item=nutart&lang=1>>.

- Lietuvos apeliacinio teismo 2003 m. rugpjūčio 4 d. nutartis civilinėje byloje „BĮ UAB „Bayerperibalita“ prieš Vilniaus teritorinę muitinę“, Nr.2-335/2004 [The judgement of the Lithuanian Court of Appeal of 4 August 2003 in the civil case *Bayerperibalita* BĮ UAB vs. Vilnius Territorial Customs Office, No. 2-335/2004] [cited 07-09-2007]. Available from Internet: <<http://www.vtr.lt/lit.php?cid=41>>.
- Lietuvos vyriausiojo administracinio teismo 2005 m. spalio 14 d. nutartis administracinėje byloje „Klaipėdos apskrities viršininko administracija prieš Klaipėdos rajono savivaldybės administraciją“, Nr. A²-1372-05 [The judgement of the Supreme Administrative Court of Lithuania of 14 October 2005 in the administrative case *The Administration of Klaipėda County Governor vs. the Administration of Klaipėda District Municipality*. No. A²-1372-05] [cited 26-09-2007]. Available from Internet: <<http://www.lvat.lt/Default.aspx?item=nutart&lang=1>>.
- Livingstone, K. and Rogers, R. 2003. *Housing for a Compact City*. Greater London authority.
- Lo, S. S. and Yu, W. D. 2005. Time-dependent construction social costs model, *Construction Management and Economics*.
- Mitkus, S. 2004a. Statybos dalyvių rizika ir atsakomybė už statybos produktų defektus [Risk and liability of parties in the construction process for defects of construction products], *Ūkio technologinis ir ekonominis vystymas* [Technological and Economic Development of Economy] 10(3): 109–115.
- Mitkus, S. 2004b. Rizikos dėl papildomų nenumatytų darbų atsiradimo paskirstymas statybos rangos sutartyse [Allocation of risk of additional unforeseen tasks in construction contracts], *Business, Management and Education*, 108–118.
- Mitkus, S. 2005. Graphical risk and liability allocation models in construction contracts, *Foundations of Civil and Environmental Engineering* 6: 129–144.
- Mitkus, S. 2007. *Statybos teisė 2007: norminių teisės aktų rinkinys*: Antroji pataisyta ir papildyta laida [Construction Law 2007: selection of normative legislation. The 2nd amended and supplemented edition]. Vilnius: Eugrimas, 703.
- Nollke, M. 2007. *Kaip iverkti neapibrėžtumą: optimalių sprendimų priėmimo būdai* [How to Overcome Uncertainty: methods for optimal decisions] [žiūrėta 2008 03 02]. Prieiga per internetą: <http://www.elitarium.ru/2007/01/09/tehniki_vyrobotki_optimalnykh_reshenijj.html>.
- Petrušonis, V. 2004. Aukštybinės statybos reguliavimas mieste [Regulation of High-rise Building in Urban Areas], *Urbanistika ir architektūra* [Town Planning and Architecture] 29(1): 74–81.
- Ross Quinlan, J. 1993. *Programs for machine learning*. Morgan Kaufmann Publishers.
- STR 2.02.01:2004 Gyvenamieji pastatai [Construction Technical Regulation STR 2.02.01:2004 Residential Buildings. Approved by the order No. 705 of 24/12/2003 of the Minister of Environment of the Republic of Lithuania], *Valstybės žinios*, 2004 02 12, Nr. 23-721.
- Teritorijų planavimo ir statybos valstybinės priežiūros bei statinių naudojimo priežiūros nuostatai [Regulations for state supervision of territorial planning and construction and for supervision of use of buildings], *Valstybės žinios*, 2004 07 12, Nr. 867.
- Turskis, Z.; Zavadskas, E. K.; Zagorskas, J. 2006. Sustainable city compactness evaluation on the basis of gis and bayes rule, *International Journal of Strategic Property Management* 10(3): 185–207.
- Visuomenės dalyvavimo teritorijų planavimo procese nuostatai [The regulations on participation of the society in the territorial planning process], *Valstybės žinios*, 2007 03 20, Nr. 33-1190.
- Vrubliauskas, D. 2005. Miesto bendruomenių vaidmuo tausojant istorinės aplinkos savitumą [The role of urban communities in preservation of distinctive features of historical environment], *Urbanistika ir architektūra* [Town Planning and Architecture] 29(1): 33–36.
- Ward, S. C; Chapman, C. B; Curtis, B. 1991. On the allocation of risk in construction projects, *International Journal of Project Management*, 140–147.
- Zavadskas, E. K.; Viteikienė, M. 2007. Evaluating the sustainability of Vilnius city residential areas, *Journal of Civil Engineering and Management* 8(2): 149–155.
- Zavadskas, E. K.; Kaklauskas, A.; Vainiūnas, P.; Šaparauskas, J. A. 2004. A model of sustainable urban

development formation, *International Journal of Strategic Property Management* 8(4): 219–229.

2003 m. sausio 28 d. Europos Parlamento ir Tarybos direktyva 2003/4/EB dėl visuomenės teisės gauti informaciją apie aplinką [The Directive 2003/4/EC of the European Parliament and Council of 28 January 2003 on public access to environmental information] [cited 22-10-2007] Available from Internet: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0004:LT:HTML>>.

2003m. gegužės 26 d. Europos Parlamento ir Tarybos direktyva 2003/35/EB, nustatanti visuomenės dalyvavimą rengiant tam tikrus su aplinka susijusius planus ir programas [The Directive 2003/35/EC of the European Parliament and Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment] [cited 22-10-2007] Available from Internet: <<http://eur-lex.europa.eu/LexUriServ.do?uri=CELEX:32003L0035:LT:HTML>>.

PAŽEISTŲ TREČIŪJŲ ASMENŲ TEISIŲ GYNIMO PROCESO, ĮGYVENDINANT INVESTICINIUS STATYBOS PROJEKTUS, MODELIAVIMAS

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Santrauka

Nagrinėjama, kaip trečiųjų asmenų teisių pažeidimai, planuojant statybas, gali daryti įtaką investicinio projekto įgyvendinimui. Išnagrinėtas trečiųjų asmenų teisių pažeidimo, planuojant teritorijas, gynimo procesas. Ypatingas dėmesys šiame procese skiriamas trečiųjų asmenų teisėms ir galimybėms sužinoti apie galimus jų teisių pažeidimus. Išnagrinėtos detaliojo teritorijų planavimo procedūros. Sudarytas ginčo dėl galimai pažeistų trečiųjų asmenų teisių proceso modelis. Ginčo tarp investuotojų ir trečiųjų asmenų dėl galimai pažeistų trečiųjų asmenų teisių modeliavimas atliktas sudarant ginčo šalių elgsenos variantų formavimo medį. Modelis sudarytas atsižvelgiant į galimą šalių elgseną.

Reikšminiai žodžiai: investicinis statybos procesas, trečiųjų asmenų teisių gynimas, teritorijų planavimas, ginčų sprendimas, teisminis teisių gynimas, sprendimų medis.

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