Construction and Planning



Arne Maasik. NYC Shots 4162. Sublimation print on polyester fabric. 2016 (fragment of the work)

Decisions concerning construction and planning directly affect business activity, the living environment and people’s property. Cities and rural municipalities have considerable discretion in deciding how to shape spatial development within their territory. Discretionary power does not, however, mean that a municipality may impose restrictions and obligations that have no legal basis or make decisions without establishing all the relevant circumstances.

During the reporting year, the Chancellor had to deal with several complaints from property developers that municipalities had required them to construct and finance construction works intended for public use. On several occasions, cities and rural municipalities had to be reminded that planning, building permit and use and occupancy permit procedures must be conducted within a reasonable time and that only documents and actions necessary for resolving the matter may be required in the proceedings. The Chancellor was also asked to explain rights and obligations arising from spatial plans, and received questions about procedures for making environmental decisions and the accessibility of apartment buildings,

including parking arrangements and the installation of lifts.

Construction and planning decisions must be lawful and reasonable. Statutory requirements cannot be replaced by practical necessity or established practice. At the same time, compliance with the law does not mean that an authority should apply requirements mechanically or, as a precaution, impose as many conditions as possible on a person.

Good administration requires an authority to establish the relevant circumstances, weigh the different interests involved, give reasons for its requirements and make a decision within the time prescribed by law. This makes it possible to protect people’s rights while also shaping the living environment in a considered and sustainable manner.

Obligations Imposed on Developers

The construction of new residential and commercial premises may create a need to build roads, utility networks, kindergartens, schools and other construction works intended for public use. It is understandable that a city or rural municipality may wish developers to bear part of the costs arising from such development, but this can only be done in the manner provided for by law.

Section 131 of the Planning Act allows a local authority to agree with a property developer that the developer will construct the public roads, vegetation, street lighting, technical infrastructure and other civil engineering works provided for in the spatial plan and necessary for implementing it, or bear the costs of their construction. The Act allows a rural municipality or city to establish by regulation the procedure for entering into such agreements. This authorisation does not, however, entitle a local authority to impose duties that amount in substance to a tax levied on developers to build new kindergartens, schools and other buildings needed for the performance of municipal functions.

Nor may local authorities use the Planning Act to regulate procedures for design specifications, building permits or use and occupancy permits. At the Chancellor’s request, the Supreme Court declared the relevant provisions of a Tallinn regulation invalid in this respect (see Supreme Court judgment No. 5-25-6 of 18 December 2025).

Several local authorities have adopted regulations under the Planning Act laying down, within detailed spatial planning proceedings, the procedure for agreeing on the construction or financing of public civil engineering works connected with implementation of a spatial plan.

The Chancellor analysed the regulations of the cities of Tallinn, Loksa and Keila, and the rural municipalities of Viimsi and Jõelähtme, and proposed that these local authorities bring their regulations into conformity with the Constitution.

The main shortcoming of the regulations was that they went beyond what is permitted by law. Their scope had also been extended to buildings, and they had in substance introduced a tax payable by every developer. In this way, a local authority restricts the right to property and freedom of enterprise without a clear legal basis. All such obligations increase the costs borne by property buyers, because the developer's costs are passed on in the sale price of the property.

The Tallinn regulation provided that the city would calculate the fee payable by the developer according to a fixed formula. The fee was not directly linked to the additional costs that the spatial plan sought by the developer would impose on the city, or to whether a new public construction work was needed at all.

The Chancellor found that a fee imposed by the city in this way resembled a public-law fee or local tax. Under the Constitution, such a charge may only be imposed on the basis of an Act, but the Riigikogu has not currently authorised cities and rural municipalities to impose a general development fee or social infrastructure tax (see the proposal concerning the Tallinn regulation).

The situation is no different if the financial obligation is given the form of a contract. A local authority and a developer are not in an equal position in planning or permit proceedings. The local authority decides whether building rights are granted and on what conditions. A developer may feel compelled to accept the conditions imposed, because a dispute with the city could delay construction for years. In such circumstances, the voluntary nature of entering into the contract may be merely apparent (see the opinion in constitutional review case No. 5-25-6).

If implementing a particular spatial plan would significantly increase the obligations of a local authority and the authority does not have sufficient funds to meet them, it may consider declining to initiate or bring the spatial plan into effect. Instead of refusing the plan, however, the local authority may attach an ancillary condition to it or enter into an administrative contract with the developer. In that case, the obligation imposed on the developer must have a causal connection with the specific planning solution and must be proportionate, fair,

transparent and verifiable. A detailed calculation of the costs must also be provided, together with reasons explaining why new infrastructure is required specifically as a result of that development (see the memorandum concerning the social infrastructure fee in Kiili Rural Municipality).

Terms of an Administrative Contract

Pärnu required a party interested in the creation of a detailed spatial plan to ensure that the civil engineering works provided for in the plan were completed within 60 months and that performance of the obligation was secured by a bank guarantee.

The Chancellor explained that the law does not prescribe a uniform time limit or require the use of a bank guarantee in every case. The city must take into account the scale of the particular development, the expected time required for its implementation, and the possibility of using forms of security that are less costly for the developer.

The Authority is Responsible for the Proceedings

The Chancellor also received several petitions concerning delays in planning and construction proceedings.

The Chancellor reminded local authorities that procedural time limits are not merely a formality. They enable a person to assess when a decision by the local authority can be expected and when, if necessary, they need to take steps to protect their rights.

Tallinn had been processing one detailed spatial plan since 2017, even though under the Planning Act a detailed spatial plan must generally be brought into effect, or a decision made not to bring it into effect, within three years at the latest. During the proceedings, the city had imposed new requirements and referred to development documents adopted in the meantime.

The Chancellor emphasised that the city must actively manage the proceedings and coordinate cooperation between its own departments. A development strategy does not constitute an independent legal basis for imposing new obligations on an owner. Nor is it necessary for a detailed spatial plan to resolve definitively matters that will be decided later, when preparing the building design documentation or during building permit proceedings.

Kose Rural Municipality took 96 days to adjudicate a challenge concerning design specifications, and the decision on the challenge was sent to the person a further 31 days later. The municipality also failed to respond to a request for information and a request for explanation within the prescribed time limits. The Chancellor explained that a person must be informed in good time of any extension of a time limit and the extension must be justified. Difficulties in the internal organisation of an authority's work cannot be allowed to prejudice the person concerned.

Proceedings Must Not Be Used as Punishment

In proceedings for a use and occupancy permit, a local authority verifies whether a construction work meets the applicable requirements and can be used safely. It is clear that use and occupancy permit proceedings must not be used to compel a person to fulfil other obligations or to punish them for an earlier violation.

In Harku Rural Municipality, more trees had been felled during the construction of a residential building than permitted by the building permit and felling permit, and the replacement planting obligation had not been properly fulfilled. These were serious violations and the municipality had to respond to them. Nevertheless, it is not appropriate for the municipality to leave the application for a use and occupancy permit for the residential building unresolved indefinitely for that reason.

The Chancellor explained that if the construction work itself meets the requirements and can be used safely, it may be disproportionate to refuse a use and occupancy permit solely because trees were felled without authorisation or the replacement planting obligation was breached. To remedy such a violation, the municipality can issue a precept, impose a penalty payment or apply other supervisory measures.

In Kiili Rural Municipality, an application for a use and occupancy permit remained in the Register of Construction Works for months with the status "Being supplemented", while the municipality had not responded to the applicant's questions or to the explanations provided concerning the audit.

The Chancellor found that if a municipality considers an audit or another document to be deficient, it must clearly identify the deficiencies, indicate the legal basis for the requirement and, where necessary, set a time limit for remedying them. A status entry in the Register of Construction Works does not replace a substantive response to the applicant.

Rae Rural Municipality required applicants for use and occupancy permits to submit various photographs and documents on the basis of a standard checklist, including photographs of the electrical panel, ventilation unit, waste container, letterbox and other items. The Chancellor pointed out that a local authority may require only such evidence as is necessary in the particular proceedings. Particular care must be taken when requesting photographs showing living spaces.

Tallinn refused to accept a use and occupancy notice for an apartment because not all the work specified in the building notice covering the apartment building as a whole had yet been completed. The Chancellor explained that a building may be reconstructed in stages and in parts. If the work in one apartment has been completed and the apartment can be used independently, a use and occupancy notice may be filed for that apartment. It is not reasonable to require the apartment owner to file a new building notice that would substantially duplicate the previous one. If the city does not accept the use and occupancy notice, it must make a reasoned decision that the person can challenge.

A Valid Administrative Act Must Be Respected

The new comprehensive plan of the City of Haapsalu stated that parts of detailed spatial plans previously brought into effect that covered residential plots located within a building exclusion zone would become invalid.

Such an arrangement is not permissible. A comprehensive plan cannot be used to repeal previously adopted detailed spatial plans in a general manner. Amending or repealing each detailed spatial plan requires separate proceedings in which the people affected are involved and their legitimate expectations are taken into account (see “The New Comprehensive Plan of the City of Haapsalu and the Validity of Previously Adopted Detailed Spatial Plans”).

A change in the law, a new comprehensive plan or a new interpretation by an authority does not automatically invalidate an administrative act issued previously. The Chancellor explained that a legal instrument or a comprehensive plan as an administrative act remains binding until it is amended or repealed, its period of validity expires, or the right or obligation conferred by it is exhausted. An administrative authority must also observe this principle.

The Chancellor drew the attention of the Environmental Board to the fact that an amendment to the law does not alter the content of a valid administrative act, such as a detailed spatial plan. If a change in the law or circumstances requires an administrative act to be amended, the prescribed proceedings must be initiated and the person's legitimate expectations must also be taken into account. Until the administrative act has been amended or repealed, it must be complied with.

Taking Noise into Account in Planning Proceedings

The law requires the preparation of a spatial plan to take account of its impact on human health and the natural environment, as well as property rights and spatial development objectives. None of these interests can automatically be regarded as more important than the others. A decision requires the relevant circumstances to be established and the different solutions to be substantively weighed against one another.

The Chancellor's attention was drawn to the fact that the Health Board had refused to approve some detailed spatial plans because the planning areas were exposed to excessive traffic noise.

The Chancellor found that the Health Board cannot automatically prevent new residential or other noise-sensitive buildings from being planned in a noisy area solely because of a high noise level. A detailed spatial plan can lay down conditions that make it possible to ensure sufficient protection against noise at the design stage. The precise location of the building, the design of the façade and the layout of rooms often become clear only when the building design documentation is prepared. It is therefore not appropriate to refuse to approve a detailed spatial plan merely because it does not already contain all the technical solutions that will be developed later during the design process.

A distinction must also be made between the obligations of the party interested in the spatial plan and those of the possessor of the noise source. If traffic noise exceeds the normative level, it is primarily the possessor of the noise source who must take measures to reduce the noise. Refusing to approve a spatial plan places responsibility for solving the noise problem on a person who does not cause the noise and has no control over the noise source (see

“Taking Noise Levels into Account When Approving a Detailed Spatial Plan”). This is not an appropriate solution.

Building Exclusion Zone

A draft amendment to the Nature Conservation Act proposed changing the reference point used to determine the shoreline. The Chancellor drew the Riigikogu’s attention to the need to explain the actual impact of the amendment clearly in the explanatory memorandum to the Bill. If changing the reference point could substantially widen the building exclusion zone in low-lying coastal areas or on islands, the amendment cannot be presented merely as a technical clarification.

The extent of a restriction on property and the reasons for it must be clear during the legislative process. The Chancellor has been dealing with this issue for ten years.

Apartment Buildings and Accessibility

Residents of an apartment building contacted the Chancellor because cars parked on the pavement around the building were obstructing the movement of people with mobility impairments. Although traffic signs prohibiting parking had been installed and improperly parked vehicles had been fined, the situation had not improved over the years.

The Chancellor found that parking enforcement alone may not be sufficient. Where necessary, the city must redesign the street space, install barriers and provide residents with lawful parking options. This is not merely a matter of convenience for car owners. Pavements must also be accessible to people using wheelchairs or other mobility aids and to people with pushchairs, and emergency vehicles must be able to reach apartment buildings.

The Chancellor was also asked to explain what majority is required for an apartment association to decide to install a lift. A lift improves accessibility for older people and people with mobility impairments, but installing one usually requires extensive and costly reconstruction work.

Depending on the particular circumstances, the installation of a lift may be regarded as modernisation of the apartment building and may therefore be decided by a qualified majority. Such a decision must not, however, excessively harm the legitimate interests of any

apartment owner. Both the cost of construction and the subsequent costs of maintenance and use must be taken into account. It may, for example, be justified to distribute the costs differently according to the floor on which an apartment is located or the possibility of using the lift, since the owner of a ground-floor apartment is likely to have less need for a lift than a person living on a higher floor. If the alteration excessively harms the rights of an owner, the agreement of all apartment owners may be required.

Questions also arose concerning a condition imposed by the City of Tallinn under which an apartment association is eligible for support only if at least 80 per cent of the apartment ownerships in the residential building belong to natural persons. By imposing this restriction, the city sought primarily to support improvements to residents' living conditions and to avoid granting prohibited state aid to undertakings. The Chancellor found that this condition was not contrary to the Constitution.

At the same time, the Chancellor noted that the city had applied the condition incorrectly because it had counted as separate apartment ownerships parking spaces, storage rooms and basement storage units that had been registered separately as apartment ownerships before 2018. Under current law, such spaces generally form part of a dwelling or non-residential premises rather than constituting separate apartment ownerships. As a result of the incorrect method of calculation, apartment associations could have been denied support even though the majority of the residential and non-residential premises in their buildings were in fact owned by natural persons.

The Chancellor asked the city, when deciding applications for support from apartment associations, to proceed from the law currently in force and to count as apartment ownerships only premises that meet the definition laid down in the applicable Act.

Electric Car Charging Infrastructure

The Chancellor was asked to assess a provision of the Building Code under which, when a building with more than ten parking spaces undergoes major renovation, cabling infrastructure for charging electric cars must be installed. The wording of the provision could give the impression that cabling infrastructure must also be installed where the renovation does not concern the car park or the electrical system.

The Chancellor found that the provision can be interpreted in conformity with the Constitution and European Union law. Electric car cabling infrastructure does not have to be installed in the car park if the major renovation does not extend to the car park or to the electrical system of the building or car park. Such an interpretation avoids imposing disproportionate costs unrelated to the renovation project on the owners of older apartment buildings.

There are no grounds for considering the provision unconstitutional if it can be applied reasonably and in conformity with the Constitution.