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"Promoting Spatial Development by Creating COMmon MINdscapes - COMMIN"

ESTONIA

English language version

II Planning System of Estonia

1. The Overview of the Planning System

1.1 The History of the Planning System

The first Estonian legal act on spatial planning came into force in 1939. It was the Building Act, regulating city planning only. The Act remained effective for mere two years until Estonia was occupied by the Soviet Union during the summer of 1940. Yet the systematic planning of cities in Estonia began significantly earlier, during the time before the First World War when the rapid urbanisation and changes in economic life took place. The year of 1913 was a momentous landmark – comprehensive plan competition was held for Greater-Tallinn, won by the Finnish architect Eliel Saarinen. It was the first contemporary approach to a city's long term spatial planning in Estonia, and served as an example for all urban planning between the two wars, during Estonia's first independence. Within this period, only a few comprehensive plans for cities or city districts were prepared. The majority of planning efforts were focused on detailed planning, as it would be expressed in present-day terminology. In the mid-30ies, the projects dealing with spatial impact of major streets and squares in Tallinn were initiated. Their objective was to draft the aligned design of Tallinn's street and square front for the renovation of the streets and squares of the city centre. Content wise, these projects were similar to today's detailed plans. During the period of Estonia's first independence, quite a number of architectural competitions were held for planning and building new complete housing complexes. There were attempts to construct several of these complexes to set good examples to others.

During the occupation years, planning was carried out according to the rules that were in force in the Soviet Union. Although there was no Planning Act in the Soviet Union,

the rules and regulations were in place, providing instructions for the content and organisation of the preparation of plans. Mostly densely populated areas were planned, for which the general plans of cities and towns, projects for rural settlements planning and housing, project plans for industrial zones, schemes of general plans for groups of enterprises and projects of detailed plans were prepared. At the end of the Soviet era, various regional plans as well as those for the whole Estonian territory were prepared. However, these plans remained mostly academic exercise in their nature and never influenced the development of the actual settlement. The preparation of plans was centralised and carried out by the State Institutes for Design and Engineering. The role of local authorities was to implement the confirmed plans, while having little say in the development of their content. Local governments as defined by the western world were nonexistent. The state was the sole owner of the land. Planning documents were kept in secrecy or for official use. Making plans public was not provided by the norms, however towards the end of the period it was gaining increasingly wider practice. Looking back, it may be concluded that during the years before Estonia regained its independence, the level of the content of plans was fairly good and balanced, and comparable to the level of planning in other European countries of that time.

The preparations for the modern Planning and Building Act began already before Estonia became independent on August 20th, 1991. The Planning and Building Act (PBA) came into force on July 22nd1995 and remained in effect without major amendments for more than 7 years. During that time, National Spatial Plan Estonia 2010 (adopted in September 2000), county plans dealing with general territorial-economic development in all counties (adopted during the period 1998 - 2002) and a number of comprehensive plans and detailed plans of rural municipalities and cities were prepared. The preparation of the thematic county plan 'Environmental Preconditions for Settlement and Land Use' reached its final stage. The experience gained from the preparation of the aforementioned plans, planning debates and court judgements brought forth several shortcomings of the PBA and the necessity to specify and amend it.

The new Planning Act (PLA) that came into force on January 1st 2003 retained the structure and terminology of the previous Planning and Building Act as much as it was reasonable to ensure the continuity between the two acts. Amendments and supplements were introduced only if they were unavoidable. The most radical amendment compared to the PBA lies in dividing it into two separate acts: the Planning Act (issues related to planning) and the Building Act (issues pertaining to building and engineering). Both came into force on the same date. The main reason behind the separation was the transfer of building from the area of government of the Ministry of the Environment to that of the Ministry of Economic Affairs and Communication.

There has been hardly any further research into the history of planning in Estonia, therefore also the current attempt remains brief.

1.2 Main Principles

1.2.1 The planning system is hierarchical and interactive at the same time

There are four types of plans in the Estonian planning system: national spatial plan, county plan, comprehensive plan (of a rural municipality or a city) and detailed plan.

On one hand, the planning system is hierarchical. It means that a less general plan should be compliant with the more general plan in order to ensure the continuity of spatial development. On the other hand, **during the preparation of a less general plan, it is relatively easy to amend the more general plan in order to ensure timely reaction to changing needs**. While saying this, it should be clarified that a proposal to amend can be made only for the plan that is more general by one level, i.e. with a detailed plan a proposal could be made to amend a comprehensive plan, but not a county plan. The Planning Act has also been reproached for providing the possibility to amend a more general plan with a plan that is less general, saying that it makes it too easy for local governments to amend their comprehensive plans with detailed plans. However, the deployment of strict hierarchical locks would make the system too rigid and exclude the necessary and justified amendments, for example those proposed by detailed plans to comprehensive plans. The suggestions to 'lock' the system are the results of a few unjustified and inappropriate decisions by local governments, whereby public interests stated in comprehensive plans have been disregarded for meeting narrow private interests. It is not possible to prohibit inappropriate decisions by law. At the same time, 'locking' the system is likely to impede necessary and justified decisions. Inappropriate decisions can be avoided by thorough consideration and wider involvement of public in the consideration process.

1.2.2 The Choices for the Type of Plan and the Size of Planned Territories are Very Flexible

The law does not draw a very clear line between different types of plans. For example, for a territory that is comprised of several rural municipalities, it is possible to prepare a common comprehensive plan or a county plan for the respective part of the county. Also, it is possible to have two different kinds of plans for a smaller part of a city – it may be a comprehensive plan of a part of the city or a detailed plan. In such cases, the choice between the types of plans is determined by the objectives or legal aims that the plan is expected to achieve. If it is desired to establish binding conditions of land use and building for the owners of immovables in the areas where detailed planning is not mandatory, a common comprehensive plan for rural municipalities or the parts of several rural municipalities should be prepared. If the aim is to define common strategic objectives for the spatial development of several rural municipalities or parts thereof, it is more appropriate to prepare a county plan for that part of the county.

1.2.3 There are Two Clearly Distinguishable Boundaries in the Planning System

There are **two clearly distinguishable boundaries between different types of plans** – **a detailed plan is the only plan that deals with plots/registered immovables** and **a county plan is the last plan on the level of generalisation that deals with land use planning**. A national spatial plan is no more a classical land use plan; it sets the country's spatial development strategy. In detailed plans and comprehensive plans the land use plan on a map is the most important part of the plan; the text of the plan is the explanation of the map. In national spatial plan, the text carries the most important message, and the drawings are for its illustration.

1.2.4 Public Disclosure of Planning

The main task of planning is to reach the agreement regarding the principles and conditions of the development of the planning area. In the planning process, every time a smaller or greater primary contradiction has to be solved between preserving and changing – most of the disputes in planning concern the questions of what and how much to change or preserve. In order to ensure as wide and as balanced social agreement as possible, planning activities have to be public according to the Planning Act. *Public disclosure is mandatory in order to ensure the involvement of all interested persons and the timely provision of information to such persons and to enable such persons to defend their interests in the process of planning.*

1.2.5 The Allocation of Roles in the Preparation of Plans

The preparation of plan is initiated and organised and plans are adopted by the administration of the respective administrative unit, i.e. for the territory of the whole country it is done by the Government of the Republic, for a county – the county governor, and for the territory of a local government – the local government. Supervision of county plans, comprehensive plans and on certain conditions also of the preparation of detailed plans is mandatory before their adoption. The supervision of the preparation of county plans is carried out by the Ministry of Internal Affairs, while the county governor supervises the preparation of comprehensive plans and detailed plans.
Hereby it should be reminded that **in Estonia there is no regional local government and that the county governor is the representative of state in the county**.

1.2.6 For an Owner of Immovable, Only One Plan is Legally Binding

For an owner of immovable, **the most detailed plan that is mandatory to be prepared for a particular area is legally binding**, i.e. an adopted detailed plan is legally binding for an owner of immovable in an area and in cases where detailed planning is mandatory; adopted comprehensive plan is legally binding in those areas and cases where detailed planning is not mandatory.

1.2.7 Local Government May Not Delegate Carrying Out Proceedings

According to the Planning Act, **all proceedings during the preparation of a plan have to be carried out by the local government, county governor or the ministry**; they cannot be carried out by a consultant who may assist them in the preparation of a plan. As a rule, the appropriate state institutions prepare national spatial plan or county plan themselves, local governments, however, often order the preparation of plans from planning companies. **The aforementioned statement expresses one of the most important ground principles of the Planning Act – a local government that organises the planning is fully responsible for the content of the plan, the proceedings and planning decisions**. The institution adopting a plan has to make a well-considered decision that takes into account all information gathered during the preparation of the decision. Local governments can have such information only if they themselves are involved in the proceedings and presenting and defending the plan in different institutions and in front of the public. Carrying out proceedings also ensures greater continuity and professionalism in local governments. It is emphasised in the PLA that **even if a local**

government enables an interested person to order the preparation of detailed plan, the local authority remains the organiser of the preparation of the plan and the one who carries out all proceedings.

1.2.8 The Requirements for the Proceedings of Detailed Plans are More Strict in Certain Cases

The requirements for the proceedings of detailed plan are more stringent in four cases:

- In case the detailed plan is prepared for areas which are of significant public/general interest and value (areas under conservation or areas concerning which a corresponding proposal has been made, regions of significant urban development potential);
- In case the detailed plan is prepared for such area where the general development principles and interests are not defined with a comprehensive plan (in cities with official city districts, with a comprehensive plan of the city district);
- In case the detailed plan is intended to amend the basic content of the comprehensive plan;
- In case there are unsolved objections.

The requirements are more stringent in order to ensure a better balance of different interests – especially public/general and private interests and values – in the development of a certain area. The existence of significant public interest/significant value in the planning area:

- Elicits the need for more extensive disclosure during the preparation of the plan (§ 16 subsection 3),
- Excludes the possibility to make an exception to the requirement to prepare a detailed plan (§ 9 subsection 10),
- Excludes the possibility to enter into a contract for the preparation of a detailed plan with a person in private law interested in the preparation of a plan (§ 10 subsection 6).

The absence of comprehensive plan or the proposal to amend it:

- Elicits the obligation to present the detailed plan to the supervisor (§ 23 subsection 2),
- Excludes the possibility to enter into a contract for the preparation of a detailed plan with a person in private law interested in the preparation of a plan (§ 10 subsection 6).

The clearer and stricter presentation of these requirements serve the purpose of emphasising the importance to follow the general development principles of a city/rural municipality and take into account general public interest and values.

1.2.9 The Obligation of Discretion During the Preparation of a Plan

The experience gathered by the time of preparing the PLA made it necessary to put **stronger emphasis on the discretionary nature** of planning. Therefore, in various provisions the expression *'in the event of justified need'* is used in the PLA to communicate the requirement of clarifying the reasons why certain decisions have been made in or about a plan and what is intended to be achieved by such decisions. By the time of preparing the PLA, many significant decisions of the Supreme Court regarding discretion had not been made yet. Based on these decisions and further experience until now, the PLA is likely to need further amendments so that the discretionary nature of planning would be highlighted and reflected more accurately.

Sufficient and reasoned **discretion of the content of the plan ensures also the assessment of the likely effects of the implementation of the plan**, which is required by the respective Act and the Euro-directive. This helps to **extend the constricted requirement of the Directive that provides the assessment of environmental impact to assessing the impact on all components of the environment** listed in the European Spatial Planning Charter.

1.2.10 The Obligation to Inform Personally is Rather Limited

The PLA stipulates personal notification, by way of registered letter, to the owners of immovables related to the preparation of plan only on three occasions:

1. If at the initiation or preparation of a plan it is known that there might be a need for the transfer of immovables as a result of the implementation of the plan (§ 12 subsection 4, § 18 subsection 5).
2. If a temporary building ban has been established for the time of the preparation of the plan (§ 15 subsections 4 and 5).
3. If a person has submitted proposals or objections during the time the plan has been on display (§ 20 subsection 2, § 23 subsection 4, § 25 subsection 7).

It can be concluded that **there is the obligation to give personal notification only in those cases where the plan decisions affect personal property rights or if a person has expressed her/his views about the plan during the public display of the plan.** There are two aspects which provide the basis for such arrangement. The preparation of the Act has followed the understanding that participating in the public processes of the preparation of plans is not merely a right of a citizen; instead, the participation in community life and in the planning of the physical and social environment is the responsibility of a citizen. Therefore, it is citizens' duty to follow what is happening in this field and express their opinion when it is necessary. In order to have people receiving timely information, the law provides how and when the notifying should take place. Secondly, the expediency and the administrative capability of the local governments have been taken into account. Based on the abovementioned first or second occasion, the need for personal informing is relatively small; for the majority of the plans, such need will not occur. Most of the personal notifications are sent as replies to the proposals or objections that have been received during the time of public displays of the plans. At the same time, it should be stressed that **the Act has to be interpreted as the minimum standard for (mandatory) informing, which means that during preparation of every plan local governments should consider how much communication and informing they should provide additionally to minimum requirements in order to ensure that *the interests of interested persons are taken into consideration in a balanced manner, which is a prerequisite for adoption of a plan* (§ 4 subsection 2)**.

1.3 The Scope of Application and Purpose of the Planning Act

PLA regulates the relations between the state, local governments and other persons in the preparation of plans. The purpose of this act is to ensure conditions which take into account the needs and interests of the widest possible range of members of society for balanced and sustainable spatial development, spatial planning, land use and

building. The Planning Act defines *spatial planning as democratic and functional long-term planning for spatial development which co-ordinates and integrates the development plans of various fields and which, in a balanced manner, takes into account the long-term directions in and needs for the development of the economic, social, cultural and natural environment (§1 subsection 3).* The definition is based on that of the European Regional/Spatial Planning Charter, adopted in 1983.

1.4 The Importance of International and Cross-border Aspects

Estonia is a small country. Therefore, the success of Estonia's integration with Europe and its economic cooperation within the EU is significantly more dependent on the success of spatial integration than it is in bigger countries. That is why in the national spatial plan Estonia 2010 great attention is paid to Estonia's better spatial integration with the rest of Europe. One of the five main objectives of Estonia 2010 has been worded as follows:
'Balanced and solid binding of Estonia through transport connections and power networks both to Eastern and Western Europe will improve the position of Estonia in the international employment system and speed up economic growth. Good physical connections will support and accelerate economic and social integration into the European Union'.
In order to ensure that Estonia's spatial development needs are taken into account in international context, Estonia is actively participating in spatial planning related cooperation within the European Union as well as Baltic Sea countries.

1.5 Necessary Amendments and Tasks in the Near Future

As the PLA came into force only a few years ago, there is no need for large-scale amendments. The only amendment that is currently prepared is related to the full inclusion of all impact assessment regulations in the Planning Act and excluding them from the act dealing with impact assessment. The need for this amendment derives from the fact that regulating planning with two acts creates confusion and only hinders reaching the objective – achieving better and more thorough consideration of environment in spatial planning.

2. Planning Related Legislation

2.1 Acts and Legislation

2.1.1 Acts

In addition to the Planning Act, **Environmental Impact Assessment and Environmental Management System Act** regulates the assessment of the likely effects of the implementation of plans. Today (April 2006), work is in progress to fully include all impact assessment regulations in the Planning Act.

2.1.2 Regulations Based on Planning Act

In the Planning Act, **a delegation norm[1] has been granted for issuing a regulation** of the Government of the Republic, which **establishes the list of objects of significant spatial impact**.

In the Planning Act, another delegation norm has been granted, according to which the **local governments may establish the Building Regulation of the city or rural municipality**. The Building Regulation of a rural municipality or city is established in order to provide *the general principles and rules for planning and building in the rural municipality or city or parts thereof and to determine the division of the internal functions of the local government in administration in the field of planning and building.* In general words, the PLA states that all proceedings and decisions during the preparation of a plan will be carried out by *the local government*; the role of the Building Regulation is to designate, **based on the content/weight of the decision**:

- Whether the decision is carried out by the city/rural municipality government, council or department;
- Which are the deadlines for the proceedings within the city/rural municipality;
- What are the detailed rules for the proceedings of preparation of comprehensive plan and detailed plan;
- How are the procedures related to the design and building of construction works organized.

2.1.3 The Structure of Planning Act

The structure of the Planning Act gives a relatively good overview of what and to which extent is regulated in the Planning Act. Presenting the structure of the Act by paragraphs would be too voluminous, therefore it is hereby presented by chapters:

Chapter 1. General Provisions (§1 - 5)
Chapter 2. Types of Plan (§6 - 9)
Chapter 3. Preparation of Plan and Public Participation (§10 - 22)
Chapter 4. Supervision of Preparation of Plans. Adoption and Repeal of Plans (§23 - 29)
Chapter 5. Transfer of Immovables to Implement Adopted Plans (§30, 31)
Chapter 6. Specifications for Planning of Objects of National Importance (§ 32 - 34)
Chapter 7. Implementation of Act (i.e. amendment of other acts related to planning and the deadlines of the tasks and entry into force) (§ 35 - 47)

2.2 Legally Binding Effect

According to the PLA, an adopted national spatial plan, county plan and comprehensive plan of a built-up territory form the mandatory basis for preparation of a more detailed type of plan, but they do not have direct legally binding effect to the owners

[1] Estonian legal system has a principle that for the specification of regulations established in an act the state government, a ministry or a local government may issue orders, regulations, by-laws only if the act prescribes respective warrant denoted as "*delegatsiooninorm*" (delegation norm) in Estonian.

of immovables. The administration of the respective territory has to ensure that the plans are followed and implemented. Therefore, the aforementioned plans are legally binding only to the administrations that organised the preparation of the plans and to those who prepare the more detailed plan. *Land use provisions, building provisions and restrictions arising from law may be established for immovable property on the basis of the following plans:*

- *On the basis of an adopted detailed plan where preparation of a detailed plan is mandatory;*
- *On the basis of an adopted comprehensive plan where preparation of a detailed plan is not mandatory* (§ 3 subsection 3).

2.3 Possibilities for Contestation

2.3.1 Contestation During the Preparation of Plan

Everyone has the right to present proposals and objections concerning a plan during the time the plan is on display to the public. An objection is the presentation of a disagreeing opinion concerning a planning solution or a claim that the requirements of law have not been met in the processing of the plan. The need to differentiate proposals and objections in the Act derived from the past planning practice. During the plan display, often proposals were made recommending one or another solution, including also such proposals which say that the plan is good, and suggest continuing the same way in the future. Burdening the supervisors with the proceedings of the ones like the latter is not necessary.

The Act also differentiates between proposals and objections because during the final stage of the preparation of the plan objections, especially those which are not taken into consideration during the preparation of the plan, elicit more rigorous requirements for proceedings. According to the PLA, **everyone has the right to present proposals and objections concerning a plan, not depending on whether she/he is settled on or owns property on the planning area.**

People may also present proposals and objections concerning a plan also at other times than public display. The proceedings of these proposals are not regulated by the Planning Act – they are treated as citizens' applications and their proceeding is carried out according to the general rules for proceeding citizens' applications. The proposals presented at other times do not impact the order of the proceedings of a plan.

The Act also provides that *a person who presents written proposals or objections concerning a plan during the public display thereof may withdraw those proposals and objections*. *A written notice thereof has to be sent to the local government or county governor administering preparation of the plan within at least two weeks as of the date on which the public discussion regarding the plan is held*.

2.3.2 Contestation of the Decision to Adopt a Plan

Every person, irrespective of whether she/he is settled on or owns property on the planning area, has the right to contest the decision of the adoption of a plan in court or before the administrative authority which adopted the plan.

2.3.2.1 Contestation in Court

Every person who finds that a decision to adopt a plan is in conflict with an Act or other legislation or that his or her rights have been violated or freedoms restricted by the decision has the right to contest the decision in court within one month as of the day on which he or she became or should have become aware of the adoption of the plan (§ 26 subsection 1). It becomes evident that according to the PLA, additionally to those people whose rights have been violated or freedoms restricted, the decision to adopt a plan may also be contested by people who are not settled on or owning property on the planning area, but who find that the decision is in conflict with legislation. Such extended right of contestation in the PLA is exceptional in Estonian legislation and derives from the specific character of planning.

2.3.2.2 Contestation before the Administrative Authority which Adopted the Plan

Every person who finds that an adopted detailed plan or comprehensive plan is in conflict with an Act or other legislation or the decision to adopt the plan is in conflict with an Act has the right to make a proposal to the authority which adopted the comprehensive plan or detailed plan to bring the adopted plan or the decision to adopt the plan into compliance with the Act or other legislation. The county governor or local government who adopted the plan shall make a decision concerning the proposal and, if the proposal is found to be justified, bring the plan or the decision to adopt the plan into compliance with the Act or other legislation and, by way of registered letter, inform the person who made the proposal of the decision and of the reasons for accepting or rejecting the proposal within one month after the date on which the proposal is received (§ 26 subsection 2). This clearly indicates that at any time, any person may draw the attention of the administrative authority which adopted the plan to conflicts between the plan and an act or other legislation. Such provision has been included in the Act with the main objective of ensuring public control of the decisions to adopt a plan and through it achieving greater legal certainty.

2.4 Mandatory Preparation of a Plan

2.4.1 General Plans

The general obligation to prepare national spatial plan, county plan and comprehensive plan **has not been provided** in the PLA. At the same time, deadlines are given in the implementing provisions of the PBA and PLA for completing the preparation of different types of plans. The implementing provisions of the PBA provide that county governments should ensure the completion of county plans within three years after the PBA has entered into force, i.e. before July 22nd 1998. The implementing provisions of the PLA provide that all cities should have adopted comprehensive plans by January 1st 2006 in the latest and all municipalities by July 1st 2007.

2.4.2 Detailed Plan

The PLA provides the obligation to prepare a detailed plan only on certain cases – **as the basis for land areas' division into plots and the construction of buildings**. According to the PLA, *the preparation of detailed plan is mandatory for areas located in*

cities and towns and for existing or planned, clearly delimited built-up parts of small towns and villages in the following cases:

- *As the basis for the preparation of building design documentation for new buildings, except for outbuildings of detached houses, outbuildings of summer-houses, outbuildings of garden houses and other small buildings with an area occupied by buildings of up to 20 m^2, and as the basis for the erection of such new buildings;*
- *As the basis for the expansion of the cubature above ground of existing buildings, except for detached houses, summer-houses and garden houses and their outbuildings, by more than 33 per cent and for the preparation of building design documentation for such work;*
- *In the event of land areas being divided into plots. (§3 subsection 2)*

A city/municipality may make exceptions to this general rule (§ 9 subsection 10) and decide that the preparation of a detailed plan is not necessary. *Local governments may, except in areas placed under state protection and built-up areas of cultural and environmental value, permit the following without the requirement to prepare a detailed plan:*

- *Extension of an existing industrial building located on the plot of an industrial undertaking, erection of outbuildings connected thereto and preparation of building design documentation for such purpose;*
- *Preparation of building design documentation for and erection of a detached house on an empty plot in an existing built-up area provided that, upon the design and erection of the detached house, the style of building and principles of planning applied in the area are taken into consideration and that concertation is sought for the building design documentation from the owners of the neighbouring registered immovables;*
- *Preparation of building design documentation for and erection of an apartment building on an empty plot in an existing built-up area provided that the number of storeys of the new apartment building and the area occupied by the buildings is in correspondence with the corresponding parameters of the existing buildings and that concertation is sought for the building design documentation from the owners of the neighbouring registered immovables;*
- *Division of a plot occupied by several buildings into several plots between the owners of the buildings, provided that the request for division of the registered immovable does not include an application by the owners for permission to erect buildings for which the preparation of a detailed plan is mandatory;*
- *Relocation of the boundaries of neighbouring plots, provided that such relocation does not result in the alteration of the existing building rights of the plots, except for the area occupied by the buildings, or in the alteration of the existing land use provisions and provided that it is carried out in agreement between the owners of the neighbouring plots.*

It should be emphasised that a **local government may make such alleviations, but does not have to make them**, if it is found that the preparation of detailed plan together with its accompanying public disclosure and proceedings is substantively necessary.

In the Act, it is not possible to list all the cases where the preparation of a detailed plan is substantively and legally necessary. Therefore, a city/municipality has to

be given the freedom to initiate the preparation of detailed plan also in those areas and cases where as a general rule the preparation of detailed plan is not mandatory. Therefore, the PLA includes the opportunity that *in the event of justified need, a local government council may initiate the preparation of a detailed plan for areas and in the cases where, the preparation of a detailed plan is not mandatory.* In a publication by the Ministry of Environment 'Recommendations for the Preparation of Detailed Plan' (2003), a list of objects and cases is given, where the initiation of the preparation of detailed plan is recommended even though it is not mandatory. Taking into account these recommendations and the substantive need, the municipal council should consider the preparation of detailed plans in low density areas, if it is desired to construct or establish the following:

- A group of detached houses, garden houses or summer-houses that consists of more than five buildings;
- A detached terraced house or a multi-storey building or a group of them;
- A detached industrial building or storehouse with more than 1000 m² of area occupied by construction works;
- Camping site, motel, holiday village or camp;
- Sports complex or bathing area;
- Port, airport, car service station or gas station

Or if the plan is prepared for

- A manor house complex area (including its accompanying park).

The preparation of detailed plans in cities, rural municipalities and other built-up areas may be substantively necessary, additionally to the general rule, as the basis for the design and construction of various civil engineering works – roads, utility structures, liquid fuel tanks, parks, larger green areas etc. If local government considers detailed planning necessary in those cases where it is not mandatory according to the Act, it should provide reasoned explanation for the decision regarding the initiation of the preparation of detailed plan indicating why it is substantively and/or legally necessary.

The explanation of the obligation to prepare a detailed plan could be concluded as follows. For cities and towns, the Act has defined the size/scope of the area which is subject to the preparation of detailed plans – it is the administrative territory of cities and towns, where the preparation of detailed plans is mandatory in the three cases which are provided in the Act. For small towns, villages and rural areas it is not clearly defined for which areas the detailed plans should be prepared in those three cases. According to the Act, for small towns, villages and rural areas the size/scope of the areas that are subject to the preparation of detailed plans is defined by the local government with comprehensive plan. Additionally, the obligation to prepare detailed plan may be imposed by way of decision in those cases where as a general rule there is no mandatory preparation of detailed plan required, or where it is not prescribed by the comprehensive plan.

3. Types of Plan and Their Proceeding

3.1 Administrative Organisation of Planning

According to the Act, *administration and supervision of planning activities at national level is within the competence of the Ministry of Internal Affairs, while administration and supervision of planning activities in a county is within the competence of the county governor.* Hereby it is important to note that in Estonian law, **county governor is indicated as an institution** instead of county government.

In Estonia, planning is in the area of the Ministry of Internal Affairs since May 2004. Before that time it was overseen by the Ministry of Environment. The Ministry of Internal Affairs is the only ministry in Estonia which has two ministers. Police, border guards and rescue issues are handled by the Minister of Internal Affairs. Population census issues, local government administration, regional development and spatial planning are lead by the Minister of Regional Affairs.

Administration of planning activities within the administrative territory of a rural municipality or city is within the competence of the local government. The local government shall:

- *Ensure that there are plans which serve as the basis for land use and building;*
- *Ensure, as a prerequisite for adoption of a plan, that the interests of interested persons are taken into consideration in a balanced manner;*
- *Ensure that adopted plans are adhered to.*

During the cooperation for the preparation of a plan, a ministry, county governor or local government that is in charge of the preparation of the plan has to involve state authorities whose interests may be affected by the plan. The plan will be concerted with state authorities. Before the adoption of a plan, the supervision of the preparation of a county plan will be carried out by the Ministry of Internal Affairs and the county governor supervises the preparation of a local plan. The role of local governments and state authorities during the preparation of plan is given in detail in the descriptions of the proceedings for each type of a plan.

3.2 Types of Plan

According to the PLA, a *plan prepared in the process of planning is a document which consists of a text and maps. The types of plan are as follows:*

- *National spatial plan, which is prepared with the aim of defining the prospective development of the territory of the state and the settlement systems located therein in a generalised and strategic manner;*
- *County plan, which is prepared with the aim of defining the prospective development of the territory of a county in a generalised manner and determining the conditions for the development of settlement systems and the location of the principal infrastructure facilities;*
- *Comprehensive plan, which is prepared with the aim of determining the general directions in and conditions for the development of the territory of a rural municipality or city, and of setting out the bases for the preparation of detailed plans for areas and in*

the cases where detailed planning is mandatory and for the establishment of land use provisions and building provisions for areas where detailed planning is not mandatory;

- *Detailed plan, which is prepared with the aim of establishing land use provisions and building provisions for cities and towns and for other areas and in other cases where detailed planning is mandatory.*

3.2.1 National Spatial Plan (§ 6)

The national spatial plan is prepared for the entire territory of the state. The objectives of the national spatial plan are to:

1) *Define the principles of and directions in sustainable and balanced spatial development;*
2) *Create the spatial bases for the regional development of the state;*
3) *Direct the development of settlement systems;*
4) *Direct the creation of a national transport network and the development of technical infrastructures;*
5) *Create the basis for a system ensuring the preservation of various types of ecosystems and landscapes and balancing the impact of settlement systems and economic activities which is comprised of natural and semi-natural biotic communities (hereinafter green network);*
6) *Establish objectives for county plans.*

According to the Act, a national spatial plan cannot be prepared for a part of the territory of the state, nor can there exist a thematic plan of the national spatial plan. The paragraph of the PLA describing the content of the national spatial plan is one of the few ones that has been completely amended compared to the Act that was in force previously. The amendments are based on the experience of Estonia and other countries in preparing national spatial plans and the understanding that national spatial plan is not a classical land use plan that defines the locations of certain objects. It is a strategy which sets the objectives of balanced and sustainable spatial development of the state.

3.2.2 County Plan

A county plan is prepared either for the whole territory of a county or for a part thereof. A county plan may be prepared:

- For the territories or parts of the territories of several counties if there is mutual agreement between the county governments concerned;

- As a thematic plan to specify a certain objective of county plan*.*

According to the Act, **a thematic plan can be prepared only if the county has an adopted county plan**. A thematic plan is prepared for *specifying or amending the county plan in force.* Irrespective of whether the county plan is prepared for the whole county or a part of it or as a thematic plan, the requirements for proceeding the plan are the same.

The objectives of a county plan are to:

1) *Define the principles for and directions in the spatial development of the county;*
2) *Balance state and local needs and interests with regard to spatial development;*
3) *Create the bases for sustainable and balanced development and involve them in spatial development, taking balanced account of the needs for development of the economic, social, cultural and natural environment in the preparation of the plan;*

4) Direct the development of settlement systems;
5) Designate the areas and cases outside cities and towns where preparation of a detailed plan is mandatory, unless they have been designated by an adopted comprehensive plan;
6) Designate densely populated areas within the meaning of the Land Reform Act unless they have been designated by an adopted comprehensive plan;
7) Plan measures to ensure the preservation of natural resources, valuable arable land, landscapes and natural biotic communities, and the functioning of the green network;
8) Define general provisions for the use of land and water areas;
9) Define the land use provisions for areas influenced by the mining of mineral resources or earth material;
10) Determine the location of roads, railway lines, waterways, utility network routes, airports, ports, sites for the final disposal of waste and other technical infrastructure;
11) Take account, in planning, of protected areas and of the provisions for their use and, where necessary, to make proposals for the amendment of such provisions, the establishment of new protected areas or termination of the protection regime;
12) Designate recreation areas and define the provisions for their use;
13) Designate national defence areas of national importance.

An adopted county plan serves as the basis for the preparation of comprehensive plans for rural municipalities and cities and, in the absence of an adopted comprehensive plan, for the preparation of detailed plans and the issue of design provisions for rural municipalities and cities. Upon preparation of a county plan, adopted comprehensive plans shall be taken into account or, upon agreement with the local governments, a proposal shall be made to amend the comprehensive plans. The latter is important to avoid the situations where for the same territory there would be different land use regulations set with two different plans. In case a plan that is prepared later amends the land use rules that had been established with an earlier prepared plan for the same territory, these rules also need to be included in the earlier adopted plan.

3.2.3 Comprehensive Plan

A comprehensive plan is prepared for the whole territory of the rural municipality or city or for parts thereof. A comprehensive plan may be prepared:
- For the territories or parts of the territories of several rural municipalities or cities if there is mutual agreement between the local governments concerned;
- As a thematic plan to specify or amend the comprehensive plan in force.

Similarly to the case of county plans, a thematic plan can only be prepared for a comprehensive plan if the local government has an adopted comprehensive plan. The thematic plan is for dealing with a certain topic (or topics) that has been set as the objective of the comprehensive plan. Irrespective of whether the comprehensive plan is prepared for the whole territory of a local government or a part of it or as a thematic plan, the proceeding rules of the plan are the same.

Until now, mostly the comprehensive plans of rural municipalities or cities have been prepared. In the last years, more and more comprehensive plans have been made for parts of the rural municipalities or cities for renewing their earlier adopted comprehensive plans as by now the first contemporary comprehensive plans that were

prepared approximately 10 years ago are becoming outdated. Also, more and more thematic plans are being prepared, for example focusing on coastal areas, green systems of cities, identifying areas with cultural value, defining the locations for roads and technical networks or landfill etc.

The objectives of a comprehensive plan are to:

1) *Form the principles for the spatial development of the rural municipality or city;*
2) *Assess the potential economic, social and cultural impact of the proposed spatial development and the potential impact on the natural environment and, on the basis thereof, to establish conditions for sustainable and balanced spatial development;*
3) *Determine general use and building provisions for land and water areas;*
4) *Designate the areas and cases outside cities and towns where preparation of a detailed plan is mandatory;*
5) *Designate densely populated areas within the meaning of the Land Reform Act;*
6) *Designate built-up areas of cultural and environmental value, valuable arable land, parks, green areas, landscapes, individual features of landscapes and natural biotic communities, and to establish the provisions for their protection and use;*
7) *Establish the conditions to ensure the functioning of the green network;*
8) *Define the location of roads, streets, railways, ports and airports and the general principles of traffic management;*
9) *Declare, where necessary, a road on land in the ownership of a person in private law to be a public road pursuant to the procedure provided in the Roads Act;*
10) *Define the location of principal utility network routes and technical infrastructure;*
11) *Designate recreation and leisure areas;*
12) *Determine limited management zones and building exclusion zones of shores and banks of water bodies pursuant to the procedure provided in the Nature Conservation Act;*
13) *Make proposals, where necessary, for specification, amendment or termination of the protection regime for areas or objects placed under protection;*
14) *Make proposals, where necessary, for placing areas and objects under protection;*
15) *Take account of general national defence needs and, where necessary, to designate national defence areas and specify the boundaries of national defence areas designated by the county plan;*
16) *Make proposals to prevent, by way of planning, the risk of criminal activity in urban areas;*
17) *Address in the plan land use provisions and building provisions arising from Acts and other legislation.*

In the event of justified need, a comprehensive plan may include proposals to amend an adopted county plan.

Additional explanation should be given to aspects related to limited management zones and building exclusion zones of shores and banks of water bodies (item 12 in the list above). Conditions and restrictions for using shores and banks are provided in Chapter 6 of Nature Conservation Act. Building exclusion zone of a shore or a bank is an area with a certain width that is located on a shore or a bank of sea, lake, river, brook or canal, where it is prohibited to construct new buildings and structures. The width of building exclusion zones of shores and banks is set as follows:

- 100 meters on the sea coast and on the shores of the two biggest lakes;
- 200 meters on the sea coast within Narva-Jõesuu city limits and on the sea-islands;
- 25-50 meters on the banks of lakes and watercourses, depending on the size of the lake or the size of the catchment area of the watercourse.

Limited management zone of a shore or a bank is an area with a certain width that is located on a shore or a bank, within which the restrictions provided in the Nature Conservation Act apply. The width of limited management zone on the sea coast and on the shores of the two biggest lakes is 200 meters, on the banks of lakes and watercourses it is 50-100 meters, depending on the size of the water body. **In case of justified need, building exclusion zones can be extended or reduced**. Local governments may extend a building exclusion zone with an adopted comprehensive plan. The reduction of the building exclusion zone can take place with the permission from the Minister of the Environment. Naturally, the Minister may decide not to grant the permission. To apply for the permission for the reduction of building exclusion zone, local government needs to submit an adopted comprehensive plan or detailed plan to the Minister. Only local governments can apply for the permission, it cannot be done by the person interested in the permission or by the owner of immovable. The favourable decision by the Minister regarding the reduction of the building exclusion zone does not mean the final decision to reduce it. Local government may choose not to use the opportunity given with the permission. The reduction of the building exclusion zone comes into force with the adoption of the respective plan. Limited management zones cannot be reduced. In case the building exclusion zone is extended to become bigger than the limited management zone, it means also the extension of the limited management zone by the respective width.

In the aforementioned list of the objectives of comprehensive plan, attention should be drawn to a few amendments compared to the Act that was in force until the beginning of 2003. The task related to **green network** became part of the Act based on the experience of the preparation of national spatial plans and county plans, and derived from the need not only to ensure the protection of the individual valuable objects, but also the preservation and operation of the green system as a whole. The inclusion of the areas of cultural and environmental value and other valuable areas in the Act is an innovation that in practice means that those areas are taken under planning protection.

The definition of an **object of significant spatial impact** has been introduced in the Planning Act (§ 8 subsections 5 and 6). In earlier practice, the planning of an object of significant spatial impact began directly with a detailed plan, which provided the reason to include this concept in the Act. As a detailed plan is only concerned with the respective plot, the wider area that could be affected by the construction of an object was left out of the plan. In order to ensure that the whole area of an object's immediate impact is taken into consideration while selecting the location of the object, the PLA provides that *the preparation of a comprehensive plan is mandatory upon selection of the location for an object of significant spatial impact*. *The size of the comprehensive planning area in the case of an object of significant spatial impact shall be determined by the county governor in co-operation with the local government concerned and concertation therefore shall be sought from the Minister of the Environment.* For the purposes of the Planning Act, *an object of significant spatial impact is an object which creates a significant change in comparison with the existing situation in the flow of transport, volume of pollutants, amount*

of visitors or need for raw materials or labour force at the proposed location of the object and which has an impact on a large territory. The list of objects of significant spatial impact shall be established by the Government of the Republic. Such list has been established by the Government of the Republic and it includes the following:

1) Plant for crude oil processing with the daily usage of more than 500 tons of raw material;
2) Terminal for oil products with the total holding capacity of more than 5000 m³;
3) Terminal for chemical products with the total holding capacity of 5000 m³ of category D and C chemicals or 500 m³ of category B chemicals or 50 m³ of category A chemicals;
4) Nuclear power-station;
5) Power station which produces more than 500 MW of energy;
6) Wind energy power station with more than 5 wind turbines with the total capacity of more than 7,5 MW;
7) Temporary storage or landfill site for radioactive waste;
8) Airport;
9) Cargo port or passenger port on the sea coast;
10) Landfill for more than 25 000 tons of non-hazardous waste or inert waste;
11) Handling premises for non-hazardous waste with the capacity for more than 100 tons in a twenty-four hour period;
12) Landfill site for hazardous waste;
13) Handling premises for hazardous waste;
14) Dams and reservoirs for storing or obstructing more than 10 million m³ of water;
15) Cellulose, paper or cardboard plant;
16) Permanent racecourse or testing course for motor vehicles;
17) Defence forces central training area;
18) Cement factory;
19) Burial place and handling premises for animal waste;
20) Factory for the industrial production of yeast;
21) Factory of explosives.

At present, this list is under review and potential amendment.

*Adopted comprehensive plans serve as the basis for the preparation of detailed plans for areas and in the cases where the preparation of a detailed plan is mandatory and for establishment of land readjustment and **design provisions** for areas where the preparation of a detailed plan is not mandatory. A comprehensive plan shall determine the need for and sequence of detailed planning and indicate the economic possibilities for implementation of the comprehensive plan.* For fulfilling better the latter task, local governments are recommended to prepare an action plan for comprehensive plan's implementation, where the necessary action steps would be prioritised, responsible people indicated, deadlines set, the sources of financial means shown etc. Such action plan helps both the public as well as the council to understand better which changes, when and in which order could take place in the spatial development of the city or rural municipality and whether they can be financed.

For achieving a deeper understanding of Estonian planning and design work organisation, it is hereby relevant to clarify **the role of design criteria in the preparatory process for building**. The design of buildings is governed by the Building Act. In areas

and cases where the preparation of detailed plan is mandatory, adopted detail plan is obligatory basis for building design. In areas and cases where the preparation of detailed plan is not mandatory, the Planning Act and the Building Act provides that the design criteria issued by the city/rural municipality is the obligatory basis for the design of buildings and structures. The design criteria outline several conditions for the design work of the building:

- Area occupied;
- Allowed height;
- Purpose of the building;
- Several architectural criteria;
- Conditions for the construction of utility networks etc.

3.2.4 Detailed Plan

*A detailed plan is prepared for a part of the territory of a rural municipality or city and it serves as the basis for building activities and land use **in the short term**.* In practice, detailed plans are prepared for the territories of greatly varying sizes. The area of detailed planning is often relatively small – one or a few plots. In new building areas, detailed plans are also prepared for the construction of comparatively large groups of buildings.

The objectives of a detailed plan are to:

1) *Divide the areas being planned into plots;*
2) *Determine the building rights of a plot;*
3) *Delimit the area that can be occupied by buildings, meaning that share of a plot on which buildings permitted by the building rights of the plot may be erected;*
4) *Determine the areas and traffic management of streets and, where necessary, to declare an existing or proposed street located on land in the ownership of a person in private law as a public road pursuant to the procedure provided for in the Roads Act;*
5) *Determine the principles for planting vegetation and providing public services and amenities;*
6) *Determine clearances;*
7) *Determine the location of utility networks and technical infrastructure;*
8) *Establish environmental provisions for implementation of the plan and, where necessary, to designate buildings in the case of which the preparation of the building design documentation requires environmental impact assessment to be carried out;*
9) *Make proposals, where necessary, for specification, amendment or termination of the protection regime for areas or individual objects placed under protection;*
10) *Make proposals, where necessary, for placing areas and objects under protection;*
11) *Designate, where necessary, built-up areas of cultural and environmental value and to establish the conditions for their protection and use;*
12) *Establish the essential architectural requirements for buildings;*
13) *Determine the need for easements;*
14) *Determine, where necessary, land areas for national defence purposes;*
15) *Establish requirements and conditions to prevent the risk of criminal activity;*
16) *Determine the scope of other restrictions on immovable property ownership arising from Acts and other legislation in planning areas.*

At this point, it is relevant to look further into the aspects related to easements. According to the Act, the detailed plan *determines* ***the need for easements***. The easements **can be established only** with the **agreement of the owners** of respective immovables. For establishing easements, it is reasonable for the respective owners to enter into the contract only after the plan has been adopted. Before the detailed plan is adopted it is necessary to ensure that it is possible to implement it later. It is rather meaningless for a local government to adopt a detailed plan, for which it is known that it cannot be implemented. If during the preparation of a detailed plan it becomes known that the need for establishing easements arises in the planning area, it has to be ensured during the preparation of the plan that the establishment of easements would be possible after the adoption of the plan. For ensuring such arrangement, it is useful to sign a pre-contract between the counterparts of the easement during the preparation of detailed plan.

In the Act, a *plot* is defined as *a land unit intended for building purposes and located in an area where the preparation of a detailed plan is mandatory.* Based on this definition, a park or city forest cannot be regarded as a plot.

In detailed plan, for every plot the **building rights of the plot** must be defined.

The building rights of a plot define:

1) *The intended use or intended uses of the plot;*
2) *The maximum permitted number of buildings on the plot;*
3) *The maximum area to be occupied by the buildings;*
4) *The maximum permitted height of the buildings.*

The Act requires ***at least one drawing illustrating the content of the detailed plan*** *to render the plan understandable both in the course of the public display and to the participants in the decision-making process.* Such requirement has been included in the Act mainly because a detailed plan is a specific technical document, the content of which is relatively hard to be understood by people who are not engaged in planning. Despite that, an 'average' person participating in public disclosure and a member of the city/rural municipality government or council should understand how the planned environment will look like. For more complex detailed plans (if there are both private and public interests in the planned area, or if the planned object may significantly impact the environment, or in case a central/important location in is dealt with), illustrations of the content of the plan from different perspectives or its model should be added additionally to the minimum requirements in the Act. This would help the citizens as well as the officials or politicians who are involved in decision making to understand the nature of the detailed plan better, and assess its suitability or unsuitability to the area.

In the event of justified need, a detailed plan may include proposals to amend an adopted comprehensive plan.

Adopted detailed plans serve as the basis for:

- *The formation of new cadastral units and for the alteration of the boundaries of existing cadastral units,*
- *The building design.*

If a detailed plan has been adopted, the design of the building will take place according to the detailed plan; no supplementary permits or supporting documents are required for the design. As provided in the Land Cadastre Act, the determination of the intended use of cadastral unit takes place on the basis of an adopted detailed plan. Local

government determines the intended use of the cadastral unit and it is registered in cadastral register by the county cadastral office.

3.3 General Proceeding Requirements and Definitions

3.3.1 Publishing Public Notices

According to the PLA, all public notices should be published in a newspaper. The Act indicates in which newspapers the notices regarding a particular type of plan should be published. In the PLA, the term ***relevant newspaper*** is used – and the same phrase is employed hereon in this article. *For the purposes of* PLA*, the relevant newspaper is:*

- *In the case of a national spatial plan, at least one daily national newspaper;*
- *In the case of a county plan, a county newspaper published on a regular basis or at least one daily national newspaper and a rural municipality or city newspaper published at least once a month;*
- *In the case of a comprehensive plan or a detailed plan, a rural municipality or city newspaper published at least once a month and a county newspaper published on a regular basis or a daily national newspaper, designated by the local government as the newspaper where the official notices of the rural municipality or city are published.*

Even though it is not required by the Act, most of the local governments also publish their public notices on their web pages. Additionally, many local governments make the plans that are going through the stage of public display available on their websites.

3.3.2 Personal Notifications

Persons should be personally informed of the information related to the preparation of plans in the following cases:

- The prepared plan will prejudice the right of ownership of the owner of immovable;
- The person has presented proposals or objections during the public disclosure of the plan.

In such cases where persons have to be personally notified about plan proceedings, the notice should be sent by the way of registered letter that has to reach the addressee in person and should be confirmed by the person's signature. Such relatively "complicated" form of notifying is provided by the Act in order to ensure that all persons who definitely need to know that certain planning procedures are taking place will be confirmed receiving the information on time.

In case a person has presented proposals or objections during the public disclosure of the plan by electronic mail, the reply will be given in the same format.

3.3.3 Notification of the Intention to Plan

Local governments shall inform the public of any proposed comprehensive planning and detailed planning at least once a year in the relevant newspaper. Such requirement has been included in the Act to ensure that the people will receive prior information about the plans that local government intends to prepare within the coming year. It has to be admitted that the practical application of this requirement is yet poor. As the Act does not define what *a proposed plan* is, the question arises about its meaning. The widespread explication of the term is that a proposed plan is the plan that local government has

included in its schedule by a document (local budget, development plan or other decision of the city/rural municipality).

3.3.4 Temporary Building Ban

A local government may establish a temporary building ban in a planning area or a part thereof if, upon initiation of comprehensive planning or detailed planning, if it is known that the initiated comprehensive planning or detailed planning will result in amendments to the previously adopted detailed plan of the area as well as to the land use provisions, building provisions or building rights of plots determined thereby. **Temporary building ban is necessary in order to avoid granting building permits for those areas about which it is known that its earlier adopted land use and building provisions are to be changed by the new comprehensive plan or detailed plan.**

Temporary building ban may be established for a maximum of two years. *The local government* has to*, by way of registered letter, inform the owners of immovables who may be affected by a temporary building ban of the intent and reasons to establish the temporary building ban at least two weeks prior to the date on which the temporary building ban is to be established.* Temporary building ban has been used very little in the past practice; it is only in the last couple of years that it has been taken into more extensive use.

3.3.5 Planner

According to the PLA, the right to prepare and direct the preparation of national spatial plan, county plan and comprehensive plan belongs to *the specialists with higher education in an appropriate field to whom either the ministry, county governor or local government administering preparation of the plan assigns the task of preparing the plan.* The Act does not specify what these *appropriate fields* should be. For example, the experience in county planning has demonstrated that a psychologist could be a successful leader of the planning process as county planning is largely a task of communication and cooperation. In Estonian practice, an architect or a geographer is the most common leader of the preparation of or the compiler of a county plan or comprehensive plan.

Detailed planning is architectural planning, which requires the education of an architect or planner. Therefore, the PLA provides that *architects and planners with higher education and other specialists with higher education who have received training in the field of planning may undertake or direct the preparation of detailed plans independently and on their own responsibility.* As the provision also mentions responsibility, it should be stipulated in the contract of employment of the planner in detail who, how and to what extent will bear the legal and proprietary liability in case of dispute between the planning company and the institution who orders the plan. As in Estonia there is no education given to planners and there are only a few planners who have received related special education abroad, the architects usually prepare detailed plans and direct their preparation.

3.3.6 Assessment of the Likely Effects of the Implementation of a Plan

The requirements of impact assessment are provided in Chapter 2 of the Environmental Impact Assessment and Environmental Management System Act (EIAEMSA) that deals with the strategic environmental assessment of the likely effects of

implementation of strategic planning documents. Impact assessment is mandatory in the preparation of national spatial plan, county plan and comprehensive plan. For detailed plans, impact assessment is mandatory in case the plan is prepared for objects for which environmental impact assessment is required by EIAEMSA. During the preparation of a plan, the following documents should be prepared:
- Impact assessment programme;
- Impact assessment report;
- Monitoring measures of the plan implementation.

Impact assessment programme, impact assessment report and the monitoring measures will be approved by county environmental department or the Ministry of the Environment. During the preparation of the plan, the results of impact assessment have to be taken into account.

3.3.7 Concertation

Concertation is the **pre-control of the content and the legality of the plan** by relevant state authorities prior to finalising the preparation of the plan and adopting it. State authorities with whom a plan has to be concerted are given in the Act. Additionally to those, the Ministry of Internal Affairs or the county government may also identify the need for seeking concertation with other state authorities. The Act indicates clearly that local governments or county governments are the ones to seek concertation with necessary state authorities. The Act **does not give the opportunity to delegate the seeking of concertation to companies/consultants preparing the plan**.

It was considered one of the shortcomings of the previous Act that concertation was not defined and it was not clear to what extent the viewpoints of the agencies from whom the concertation is sought should be taken into account. The regulation of the concertation in the Planning Act operates on the distinction between proposals and objections that are based on acts, legislation and adopted plans and those subjective proposals and objections which are based on some deliberations. Proposals and objections of the first category must be taken into account, while the ones in the second category may be treated as advice/recommendations and it is not mandatory to take them into account. According to the Act, *a plan is deemed to have been concerted regardless of any proposals or objections submitted concerning the plan unless, upon seeking concertation, reference is made to contradiction with an Act, legislation established on the basis of an Act or an adopted plan* (§ 17 subsection 4). Including such provision in the Act was necessary as the parties authorised to concert the plans tended to give very subjective opinions and often set restrictions that had no legal grounds to the owners of immovables.

Let us look at the following example to illustrate the aforementioned situation. A detailed plan is being prepared for a territory inside a city heritage conservation area. According to the plan, the construction of a 3-storey building is expected. When concertation is sought for the plan, the National Heritage Board does not agree with a building that has more than 2 storeys. According to the Heritage Conservation Act, the terms and conditions for building are set by the Heritage Conservation Area Statute that is adopted by the Government of the Republic. This document does not provide restrictions to the number of storeys that the buildings in heritage conservation area can have. Deriving from that, the National Heritage Board does not have the right to prescribe their

intended restriction. According to the Planning Act, making the decision about how many storeys the buildings can have on a particular plot is within the competence of local government. The example is not made up – it describes what really happened in one small town in Estonia.

It has been continuously **emphasised that the cooperation with potential agencies that are authorised to concert the plan should be initiated already at the beginning of the preparation of the plan. It ensures that in case of good cooperation obtaining the official concertation is more of a formality that concludes a successful cooperation.**

Concertation is given in written format. The summary of concertation should be formulated as a table, where also the opinion of local government on concertation is included. The table of concertation is the best way to present the results of concertation and the decisions about them. The table should also be included in the public display of the plan.

In order to avoid undefined delays in concertation, the Act provides that *if the agency authorised to concert a plan has not concerted the plan within one month as of the date on which the plan is sent thereto, the compiler of the plan shall assume that the agency has no proposals or objections concerning the plan.*

According to the PLA, the ways in which public and private bodies and natural persons participate in the final stage of the preparation of the plan are different. **As a rule, state authorities give their opinions on a plan during concertation, private bodies and natural persons do it during the time of public display.**

The word *concertation* is relatively modestly used in this context in English; the translation of this term is based on the direct meaning of its Estonian equivalent (*kooskõlastamine*) that is widespread and common in Estonian legislation. In English, such activity is usually described by the word *consultations.*

3.3.8 Acceptance of the Plan

According to the Planning Act, local government or county government *shall make the decision on acceptance of a plan and shall organise the public display of the plan*. Acceptance of a plan means that the city or rural municipality government or council or the county governor who is going to make the decision acknowledges that the plan is ready, its content complies with their purpose, it has received all the necessary concertations and that its content and proceedings are in conformity with the law.

3.3.9 Presentation of proposals and objections and responding to them

Everyone has the right to present proposals and objections concerning a county plan, comprehensive plan and detailed plan *during the time the plan is on display to the public.* Proposals and objections can be sent *by post or electronic mail during the time the plan is on display to the public. The local government or county governor administering preparation of a plan shall inform persons who have sent proposals and objections of the opinion of the local government or county governor on such proposals and objections and shall specify the time and place of the public discussion within two weeks after the end of the public display of the plan. In the case of proposals and objections sent by post, the*

opinion shall be sent by way of registered letter, and in the case of proposals and objections sent by electronic mail, the opinion shall be sent by way of electronic mail.
During the time of public display a person may present proposals and objections and a local government or county government may respond to them either by post or electronic mail (§ 20 subsection 2). The communication during the public display is **the only communication that can take place by electronic mail**, in all other stages of the proceeding of a plan, the local government or the county government has to send the notifications by the way of registered letter.

3.3.10 Access to Public Display

The earlier Act defined the length of the public display, but it did not specify the access time to it within the 4-week display period – e.g. should access be made available during the time outside the office hours. In order to avoid misunderstandings and possible court disputes on this matter, the PLA states that *during the time the plan is on public display, all interested persons shall have access to all material and information related to the plan in the possession of the county government or local government administering preparation of the plan **during the office hours** of the county government or local government.* Although the Act provides the access to public display during the office hours, **it is also important to identify certain times outside the office hours when the public display may be visited and to include this information in the display announcement**. This is to ensure that the public display can also be accessed by those who are not able to attend it during the office hours.

At the location of public display, there should be a note with the contact details of a person in city/county government who could be reached for proposals and objections, should anyone want to submit these in person, and for any additional inquiries about the plan that may arise during the public display. The latter contributes to a more complete fulfilment of the aforementioned accessibility requirement and reduces the need to present written proposals and objections.

3.3.11 Amending the Basic Content of Plan as a Result of Public Display

As a result of public display and discussion, a local government or a county governor may consider it necessary to change the content of a county plan, comprehensive plan or detailed plan to such extent that it brings about the amendment of the basic content of the plan. Amending the basic content of the plan means in practice that a plan with different/new content is prepared. Therefore, in case the basic content of the plan is amended, the concertation seeking, public display and public discussion of the county plan, comprehensive plan or detailed plan have to be repeated.

3.3.12 Supervision of the Preparation of Plan

Supervision is exercised with regard to the preparation of county plans, comprehensive plans and in some cases of detailed plans. *With regard to county plans, the supervision is exercised by the Ministry of Internal Affairs; with regard to comprehensive plans and detailed plans, county governor* exercises the supervision. One of the objectives of supervision is the legal supervision to ensure the compliance of the plan with requirements to its content, proceedings and public disclosure. Additionally to

legal supervision, it is within the competence of the supervisory authority to *monitor compliance with national interests in planning if no more general plan has been adopted for the planning area*. It is also the task of the supervisory authority to *grant consent for the amendment of a more general plan which has been adopted, upon the adoption of a plan which include a proposal to amend the more general plan submitted to it*. These two responsibilities are clearly of such nature where in most cases there is no direct regulative basis for taking the supervisory decisions. The supervisory authority has to make discretionary decisions based on substantive consideration. In case the discretionary decision of the supervisory authority does not accept the substantive content presented in the plan, it has to reason its decision especially thoroughly. In cases where the objections presented during the public display have not been taken into consideration in planning, it is the task of the supervisory authority to *hear persons who have presented written objections concerning a plan and the county government or local government administering preparation of the plan, and to present an opinion concerning these objections* (§ 23 subsection 3 clause 5). Thus, **the Act provides the supervisory authority with the role of a conciliator, who should in case of disagreements mediate the process of reaching an agreement between the counterparties**. Let us remember that the objection could entail a subjective disagreement with a particular part of the plan as well as an allegation that the substantive content of the plan, public disclosure or proceeding does not meet the requirements of the Act or legislation. Therefore, the settlement of planning disputes and the forming of an opinion on an objection are also largely discretionary activities. If the agreement is not reached during the supervision, *the supervisory authority* shall provide the county government or local government who is administering the preparation of the plan and the person who submitted the objection with *a written opinion concerning the objection within two weeks after hearing the parties.* For subjective objections to substantive planning solutions the supervisory authority has to provide reasons with sufficient depth, explaining why it considers one or the other solution more justified, i.e. the opinion on subjective objection is based on discretionary reasons. In such questions the final decision making competence on whether to take the substantive objection into account or not is within the authority who adopts the plan. If the supervisory authority proves that the substantive solutions of the plan are not in compliance with the Act or other legislation, the content of the plan has to be amended accordingly.

Including the requirement of supervision in the Act is largely **motivated by the wish to prevent court action**. Supervision gives a chance for the counterparties in disagreement to discuss their arguments and reach the agreement via the assistance of an impartial mediator. The practice till now has demonstrated that the majority of disputes can be settled during supervision. Additionally, the wish to prevent court action elicits the provision according to which *differences in opinion between the local government administering preparation of the plan and the county governor exercising supervision which remain unsolved during supervision shall be resolved by the Ministry of Internal Affairs.* After the adoption of the Planning and Building Act in 1995, the ministry has had to solve disagreements of such nature only a few times.

Approval of the plan by supervisory authority is a prerequisite for the adoption of a county plan, comprehensive plan and a detailed plan which is subject to supervision.

3.3.13 Partial Adoption of Plan

In the current planning practice there have been several occasions where during the final stage of the preparation of a plan or during supervision it is concluded that, for example, on a part of the territory of rural municipality:

- The content of comprehensive plan should be amended;
- The proposed content of the plan causes disputes that cannot be settled and therefore alternative solutions should be sought for the particular rural municipality/city.

In such situations it would not be practical not to adopt and delay a largely acceptable comprehensive plan due to certain disagreements that have not been settled in some parts of rural municipality/city, as this document provides the basis and prerequisite for successful further spatial development of the rural municipality/city. In cases like these, it makes sense to exclude the disputable parts from the plan and adopt the rest of it.

The aforementioned problem can be well explained by the example of the comprehensive plan of Kuusalu rural municipality. Within its territory, there is the intended Defence Forces training area. Several plan disputes arose about its location and building conditions. Settling these disagreements would have taken quite a while and it would have impeded the adoption of the comprehensive plan for a long time. At the same time, there were no objections related to the plan for other parts of the rural municipality. Adopting the comprehensive plan as soon as possible was necessary to set up land use conditions for other parts of the rural municipality's territory, especially for the coastal areas where there is intense construction pressure. Therefore, the only reasonable solution was to exclude the territory of the training area from the comprehensive plan to be adopted and to treat this territory in a separate Defence Forces training area plan.

In regulating such cases, the Act provides that *in the event of justified need, a supervisory authority may make a proposal for a plan submitted for supervision to be adopted partially. Alteration of the size of the planning area in connection with the partial adoption of a plan is not deemed to be amendment of the basic content of the plan.*

3.3.14 Accessibility and Filing of the Information Necessary for the Preparation of Plan

In order to take into consideration the interests of all persons related to the planned territory and the existing information about the territory, the necessary information should be easily accessible to the ones preparing the plan. To ensure it, the PLA provides that *persons who are located in a planning area or who possess information concerning such an area are required to provide, free of charge, information required for the preparation of a plan to the ministry, county governor or local government administering preparation of the plan or to the compiler of the plan authorised thereby.*

It is as important that all information gathered during the planning process would be filed and, in case of need, be easily accessible to all. For this, the Act provides that *the ministry, county governor or local government administering preparation of a plan is required to ensure the preservation of information and materials collected in the course of preparation of the plan and that interested persons have access to such information and materials.*

3.3.15 Obligation to Review Adopted Plans

According to the PLA, the obligation to review adopted plans **concerns only the national spatial plan and comprehensive plan**. The objective of the review of adopted plans is to make conclusions about their implementation during the past election period and to inform the Government of the Republic or the rural municipality/city council of the substantive planning decisions that have been made, the activities that should be carried out to continue implementing the plan, and, in case of need, what should be improved in the current plans. Plan review has to ensure regular monitoring of plan implementation and its improvement, should it be needed. It is also necessary to assure that the new council and government of the rural municipality/city would be competent while making subsequent planning decisions.

3.3.16 Entrance of an Interested Person to the role of subscriber or financer of a detailed plan

The PLA **allows an interested person to order and/or finance the preparation of plan**. The Act provides that *a local government may enter into a contract for the preparation of a detailed plan with a person interested in the preparation thereof. The contract shall determine the respective obligations of the local government and the person interested in the preparation of the detailed plan in the course of preparation of the plan and in the financing of its preparation (§ 10 subsection 6).* The Act allows that an interested person, based on contract, may provide the rural municipality/city with the necessary means for the preparation of plan; after that, the latter prepares the detailed plan or orders its preparation. It also allows that, based on a contract with rural municipality/city, an interested person may be the one who orders the preparation of plan. At the same time, the Act also enforces a restriction, according to which **an interested person should not contract for the preparation of a detailed plan for the areas of significant public interest**, i.e. the areas under nature conservation or heritage conservation, or the territories where public interests or general development needs have not been expressed in the adopted comprehensive plan or, in large cities, in the partial comprehensive plan adopted for the respective city district. The contract referred to in the Act also allows combining the means of the local government and of the interested person in situations where:

- Within one area, it is desired to prepare the construction on immovable that belongs to several owners/investors;
- Additionally to the immovable that the investor is interested in, the local government considers it necessary to prepare the plan for a wider area.

3.3.17 Specifications for the Planning of Objects of National Importance

Specifications for the planning of objects of national importance (Chapter 6) were included in the Act mainly because in practice no local government wants such building on their territory, because, as a rule it raises many objections among the citizens. In order to ensure the possibility for such buildings to be planned and constructed, it was necessary to create an opportunity by the Act to ignore the opposition of local government. *For the purposes of the Act, the following are objects of national importance:*

- *Defence Forces training areas of national importance,*
- *Military airfields of national importance,*
- *International civil airports,*
- *Power stations with energy production exceeding one third of the national electricity consumption,*
- *National landfills for the final disposal of hazardous waste,*
- *National radioactive waste storage facilities,*
- *Ports of national importance with a national defence purpose (§ 32).*

The ministry in whose area of government a planned object of national importance belongs shall prepare proposals for site of the object. Proposals are generally prepared for several sites. A proposal shall include economic and technical justifications and an environmental impact assessment. On the basis of proposals for the site of an object, the ministry shall enter into negotiations with the local governments of the potential sites of the object in order to agree on the final site of the object. The specifications provided in the Act do not apply if an agreement on the site of an object of national importance is reached with the local government of one of the potential sites of the object.

The final location of the object of national importance is determined by the comprehensive plan. In case no local government agrees to allocate the object of national importance on its territory, the Government of the Republic may ignore the will of a local government and make the decision about the location. If the Government of the Republic has made the decision, the comprehensive plan and the detailed plan for the final location of the construction works are prepared by the county governor, not the local government.

In Estonia, there has been no case where the specifications for the planning of objects of national importance have been applied since their adoption in 2003. Hopefully the existence of such special arrangements has preventive effect, and makes the involved parties look more for agreement so that there would never be a need for putting them into practice.

3.4 Plan Proceeding Rules

3.4.1 National Spatial Plan

The procedures for proceeding national spatial plan are relatively briefly regulated compared to other types of plans. For national spatial plan, there are no requirements for public display and public discussions provided in the Act.

The decision to initiate the preparation of national spatial plan is made by the Government of the Republic; the administration of the preparation of the plan is the task of the Ministry of Internal Affairs. The decision to initiate the preparation of national spatial plan, like all other decisions of the Government of the Republic, is published in the Appendix of the State Gazette. *Within one month after the decision to initiate planning is made*, the ministry will publish a notice concerning the initiation of the preparation of the plan and communicate *the objectives of the initiated planning* in a national daily newspaper*.*

National spatial plan should be prepared in cooperation with county governors, county unions of local governments and ministries, and should also be concerted with them afterwards. The Ministry of Internal Affairs has to communicate the main statements of national spatial plan to the public *in at least one national daily newspaper*. The Ministry of Internal Affairs is also the body which submits the concerted national spatial plan to the Government of the Republic for adoption after administering its preparation, and has to ensure that the announcement about the adoption of national spatial plan is published in a national daily newspaper.

The preparation of *National Spatial Plan Estonia 2010* was carried out in large scale cooperation with county governments and the county unions of local governments. With them, the draft text of the plan was discussed, and a great many ideas were collected as feedback. Constant cooperation was also developed with all ministries who govern the physical or social infrastructures. Additionally, a working group was involved in planning, comprising of scientists, politicians and representatives from the field of culture. The result of the working group was the consolidation of four potential development scenarios for Estonia, which were taken as the basis for designing the content of the national spatial plan. Although the Act regulates the preparation of national spatial plan only briefly, it can be said that it was prepared in wide based cooperation with different levels of administration and stakeholders.

3.4.2 County Plan

3.4.2.1 Initiation and Notification

A county governor or the Government of the Republic shall initiate and administer the preparation of a county plan. The Government of the Republic is the initiator of the preparation of county plans if the same task of the preparation of a county plan is given to all counties at the same time. In such cases the Ministry of Internal Affairs has cooperated with county governments in working out a common planning methodology for all counties.

The county governor shall notify the respective local governments of the initiation of the preparation of county plan *within two weeks as of the date on which the decision to initiate planning is made*. It will also announce the initiation of the preparation of county plan in the respective newspaper within one month after the decision to initiate planning is made. In the published notice, information has to be provided about the size and location of the planning area and the objectives of the initiated plan have to be communicated. There is no need to inform anyone personally about the initiation of the preparation of a county plan.

3.4.2.2 Cooperation and Involvement

Preparation of county plan is a long process and based on the experience so far, it may last up to three years. At the same time, there is only one sentence in the Act regulating the communication during the plan preparation. According to it, the planning should be carried out in cooperation with *local governments on planned territory, county governors whose territories are neighbouring the planned territory and ministries* whose area of governance the plan has impact on. In practice, county planning has been a constant consultation process, in which the local governments of the planned territory are

involved together with respective ministries and several non-governmental organisations and persons representing the interests of various stakeholders.

3.4.2.3 Concertation

For a county plan, concertation should be sought from *the county governors of counties neighbouring the planning area and from the local governments of the planning area*. Additionally to that, the Ministry of Internal Affairs may determine ***the need to seek concertation*** *from state authorities or county environmental services* (§ 17 subsection 3). For determining other concertations, the county governor should contact the ministry.

3.4.2.4 Public Display and Discussion

County governor shall decide on the acceptance of a county plan and shall organise the public display of the plan. The latter is to be held in the *county centre, in other cities in the county and in rural municipality centres of the planning area*. The duration of the public display of county plan is *4 weeks*. The time and place of the public display of the county plan should be made known *at least one week before displaying the plan to the public by publishing the notice in the relevant newspaper*. The notice should *provide information on the size and location of the planning area and a short overview of the content of the plan*.

The county government shall inform *persons who have sent proposals and objections of the time and place of the public discussion* and of its *opinion on such proposals and objections within two weeks after the end of the public display of the plan*. *Within one month after the end of the public display a county government shall organise a public discussion regarding the county plan and the outcome of the public display thereof*. If written proposals or objections concerning the county plan were received during the public display, the county governor shall publish *information concerning the outcome of the public display and public discussion in the relevant newspaper within two weeks as of the date on which the public discussion is held.*

Taking into account the outcome of the public display and public discussion, necessary amendments are made to the county plan and it is then submitted to the supervisory authority *together with information on the proposals and objections which were not taken into consideration.* (§ 21 subsection 4).

3.4.2.5 Supervision, Adoption and Notification of the Adoption of Plans

The supervision of county plans is exercised by the Minister of Regional Affairs. *The plan that has been approved by the Minister of Regional Affairs is adopted by the county governor*. A county governor shall publish a notice concerning the adoption of a county plan in the *relevant newspaper within one month as of the decision to adopt the plan*. Within the same time, *a county government shall send a copy of the decision to adopt a county plan and the adopted county plan to the local governments of the planning area and to the Ministry of Internal Affairs*.

3.4.3 Comprehensive Plan

3.4.3.1 Initiation and Notification

According to the Act, the decision on the initiation of the preparation of comprehensive plan can only be made by the local government council. City or rural municipality government are not eligible to take such decision. *Within one month after the decision to initiate comprehensive planning is made, a notice concerning the initiation of planning has to be published in the relevant newspaper*. In it, information should be provided about the *size and location of the planning area* and *the objectives of the initiated planning*.

Local government has to inform county governor about the initiation of the preparation of comprehensive plan *within two weeks after the decision to initiate comprehensive planning is made*. If with comprehensive plan the selection of the location for an object of significant spatial impact takes place, the size of the comprehensive planning area has to be determined in cooperation with county governor and concertation should be sought from the Minister of Regional Affairs.

A local government may establish a temporary building ban for the time of the preparation of comprehensive plan if it is known that the comprehensive plan intends to make *amendments to the previously adopted detailed plan of the area*. A notice about temporary building ban has to be published as provided in the Act.

3.4.3.2 Cooperation and Involvement

Owners of immovables located in and residents of the planning area and other interested persons shall be involved in the preparation of comprehensive plan. Local government should also host *public discussions to present the initial planning outline, the draft plans and the potential impact of the implementation of a comprehensive plan*. As plural form is used in the Act to refer to public discussions, it indicates that several of them should be organised. In practice, local government receives many opinions on the plan during the preparation of comprehensive plan. Responding to these should follow the standard procedures and their existence or non-existence does not impact the proceeding rules. During the preparation of comprehensive plan the local government should cooperate with *local governments neighbouring on the planning area and the county governor concerned*. In practice, cooperation is also initiated with several state authorities (e.g. rescue service, heritage conservation and environmental protection authorities, ministries, road administration etc); it is recommended to cooperate continuously with all the stakeholders from whom concertation should be sought for the plan.

3.4.3.3 Concertation

For comprehensive plan, local government should seek concertation from:

- *Local governments neighbouring on the planning area and the county environmental services;*
- *Relevant state authority or manager of a protected area if the planning area includes an area or object placed under state protection or if the plan serves as a proposal to place that object under protection or if earth deposits belonging to the state or subsurface mining areas are located in the planning area.*

Besides the aforementioned, county governor has the right to identify state authorities with whom the plan should be concerted. During the preparation of comprehensive plan the city/rural municipality should approach county governor for the identification of additional concertations.

3.4.3.4 Public Display and Discussion

According to the Act, a city/rural municipality council shall decide on the acceptance of a comprehensive plan and on the organisation of the public display of the plan. City/rural municipality government cannot make these decisions. Public display of comprehensive plan should be organised in the *rural municipality or city centre, the larger settlements of the rural municipality or the settlement for which the plan is being prepared*. The duration of the public display of comprehensive plan is *4 weeks*. *At least one week before displaying the plan to the public, a notice in the relevant newspaper should be published,* setting out the time and place of the public display of the plan and the time and date of the public discussion regarding the plan. It should also *provide information on the size and location of the planning area and a short overview of the content of the plan*. In addition to newspaper announcements, also supplementary advertisements about the public display should be placed *in at least one public building or place open to the public (shop, library, school, bus stop or other such place) in the villages of the rural municipality or in the urban regions of the city*.

Although it is not directly set by the Act, many local governments have considered it necessary to organise a public introduction of the comprehensive plan at the beginning of public display. It is very reasonable as on one hand it creates wider public interest towards the display, and on the other hand narrating and explaining the content of the plan to people helps to obviate several potential proposals and objections.

In cases where proposals and objections have been presented during the time the plan is on public display, the local government shall inform *persons who have sent proposals and objections of the time and place of the public discussion* and of its *opinion on such proposals and objections within two weeks after the end of the public display of the plan*. *Within one month after the end of the public display* a local government shall organise *a public discussion regarding a comprehensive plan and the outcome of the public display thereof*. In the preparation of comprehensive plan, it is mandatory to organise public discussion after the public display and it cannot be left out.

If written proposals or objections concerning the comprehensive plan were received during the public display, the local government should publish *information concerning the outcome of the public display and public discussion in the relevant newspaper within two weeks as of the date on which the public discussion is held.*

Taking into account the outcome of the public display and public discussion, necessary amendments and improvements are made to the comprehensive plan and it is then submitted to the supervisory authority *together with information on the proposals and objections which were not taken into consideration.* As a result of public display and discussion, a local government may consider it necessary to amend the content of a plan to such extent that it brings about the amendment of the basic content of the plan. In case the basic content is amended, the concertation seeking of the comprehensive plan (from

the persons who are impacted by the amendment), public display and public discussion should be repeated.

3.4.3.5 Supervision, Adoption and Notification of Adoption of Plans

Supervision over comprehensive plan is exercised by county governor. A plan can be adopted only after it has received the approval from the supervisory authority. According to the Act, only the city/rural municipality council can adopt comprehensive plan. *If an adopted comprehensive plan includes a proposal to amend an adopted county plan and the county governor has given his or her consent to the amendments in the course of supervision, the county governor shall enter the corresponding amendments in the county plan. A decision to adopt a comprehensive plan which includes a proposal to amend an adopted county plan enters into force after the amendments made to the comprehensive plan are entered in the county plan.* When entering the amendments to county plan which are included in the comprehensive plan into the county plan, the county governor has to issue the regulation that provides the entry of the amendments.

Within one month after the adoption of comprehensive plan the local government has to:

- Publish a notice concerning the adoption of comprehensive plan in the relevant newspaper;
- *Send a copy of the decision to adopt a comprehensive plan and the adopted comprehensive plan to the county governor*;
- *Send information concerning the land use provisions, building provisions and restrictions on land use or building which enter into force upon adoption of the comprehensive plan to the state registrar of the land cadastre. If an adopted comprehensive plan includes any amendments to the county plan and the county government has entered the corresponding amendments in the county plan, the county government shall send an extract of the county plan containing the amendments to the Ministry of Internal Affairs within one month as of the date on which the amendments are entered in the plan.*

Personal notifications concerning the adoption of the comprehensive plan should be sent to persons whose:

- *Written proposals and objections made in the course of the public display of the plan were not taken into consideration upon adoption of the plan;*
- *Current land use or building rights are restricted on the basis of the adopted plan;*
- *Registered immovable is made a subject to a temporary building ban that has been established in the course of preparing the plan.*

If in the course of the preparation of comprehensive plan a temporary building ban was established for an area that had an earlier adopted detailed plan, then it is necessary to decide, together with the adoption of the comprehensive plan, whether the detailed plan should be declared invalid. In case the comprehensive plan that is to be adopted defines different land use and building provisions compared to the earlier detailed plan, the decision to a adopt comprehensive plan has to be accompanied by the decision to declare the earlier adopted detailed plan invalid. Together with the decision to adopt the comprehensive plan, also the decision declaring the temporary building ban invalid has to

be made, irregardless whether the earlier land use and building provisions are amended or not.

3.4.4 Detailed Plan

3.4.4.1 Initiation and Notification

A city/rural municipality government or council shall initiate the preparation of detailed plan. If it is considered justified, the local government may refuse to initiate the detailed plan. In case the local government finds that the implementation of the objective enclosed into the proposal to initiate the detailed plan in its desired location is not acceptable, the decision of refusal to initiate the detailed plan has to be substantively and thoroughly reasoned. Written notification of the refusal has to be sent to the person proposing the preparation of the detailed plan together with relevant reasoning.

According to the Planning Act, *anyone may make a proposal for initiation of the preparation of a plan.* There are no restrictions regarding who can propose the preparation of a plan. It has been debated whether a city can decline the proposal for the preparation of detailed plan and refuse to initiate the preparation of detailed plan. A person may propose anything to the local government, also absurd suggestions. For example, someone may propose to the city government to initiate the preparation of detailed plan for planning her/him a residential building in the middle of the central square of the city. Local government should consider whether any proposal it receives is acceptable both by its content and legal basis. In case the proposal is not acceptable (for example, it may be in contravention of the comprehensive plan of the city/rural municipality, the Act or other legislation, prejudice other persons' interests to a significant extent or is not suitable for a particular location based on some other substantive reason), local government has to send a written reply to the person who has made the proposal and reason thoroughly why it refuses to initiate such detailed plan. The more thorough the explanation is the fewer reasons there are to dispute the refusal. Accepting or refusing the proposal to initiate the preparation of plan is the first discretionary decision that is to be made in the preparation of a plan. It could be concluded that **the obligation to accept every proposal for initiating the preparation of plan would be in contradiction with the discretionary nature of planning**.

The Act does not specify whether the decision to initiate the preparation of detailed plan should be made by the city/rural municipality government or council. The general rule for it should be provided in the building regulation of the city/rural municipality. The decision on to initiate the preparation of detailed could be made by the council if:

- The planning concerns an area of significant urban development potential;
- With the detailed plan it is intended to make a proposal to amend the adopted comprehensive plan (i.e. it is intended to amend the comprehensive plan that has been adopted by the council);
- The planning concerns an area which is of significant public interest or value.

In case the decision to initiate the detailed plan is made by the council, the council should also be the one to accept and adopt the plan.

Local government has to inform the public about the intended plans *at least once a year* in the relevant newspaper. When initiating the preparation of detailed plan local government should:

- *Publish a notice concerning the initiation of planning, provide information on the size and location of the planning area and communicate the objectives of the initiated planning in the relevant newspaper within one month after the decision to initiate planning is made;*
- *Inform county governor within two weeks as of the date on which the decision to initiate planning is made;*
- *Inform by way of registered letter the owners of the immovables about which it is known that the initiated detailed planning may bring about a need to transfer immovables or parts thereof within two weeks as of the date on which the decision to initiate planning is made.*

When initiating the preparation of detailed plan, the local government has to decide also whether it will:

- Prepare the plan itself;
- Order it from a planning company;
- Make a suggestion to the interested person to involve her/him in the financing of plan preparation;
- Allow the interested person to order the plan.

Even if local government allows an interested person to order the preparation of detailed plan, all proceedings during preparation of the plan provided in the Act have to be carried out by the local government.

3.4.4.2 Cooperation and Involvement

The preparation of detailed plan lasts from the decision to initiate planning until the decision to accept it. The preparation of detailed plan is often a long and complex process that takes up ~90 per cent of the total time spent on preparing and proceeding the plan, however in the Act it is only regulated by one section and its 3 subsections. Such fact may seem paradoxical, but the reason for it is that different plans may be very different from each other in their content, making it almost impossible to provide common requirements for the plans of such varying nature.

The PLA provides that *the owners of immovables located in and residents of the planning area and other interested persons* shall be involved in the preparation of detailed plans. As a general rule, it is indicated that *the need to organise public discussions to publicise the initial detailed planning outline and the draft plan shall be determined by the local government*, adding at the same time that *at least one public discussion shall be organised if the detailed plan is prepared for an area under heritage conservation or nature conservation, a region of significant urban development potential or an area concerning which a corresponding proposal was made in the course of processing the plan*. Furthermore, it states that detailed plan should be prepared *in co-operation between the owners of the immovables located in the planning area and the owners or possessors of existing or planned utility networks in order to ensure that the planning area is supplied by utility networks*. This means that the Act leaves the local government a considerable freedom of decision and choice, or the discretionary obligation for deciding on whom, how much and how to involve in the process of detailed planning. While making the decision

about the way and the extent of involvement, it is important to consider the following aspects for every particular detailed plan:
- The location and size of the planned territory;
- The significance of the location from the perspective of urban development potential;
- Alignment with adopted comprehensive plan;
- The nature and scope of planned buildings;
- The nature and value of existing buildings;
- Natural conditions;
- The extent of public and private interests;
- Possible conflicts of interest etc.

Even though the Act leaves it for the local government to decide about the need for public discussions, it does not mean that public discussions on the initial planning outline and the draft detailed plans should not be organised. It means that **the local government should use their right for discretion while deciding on the need for public discussion**.

In practice, public discussions on initial planning outline and draft plans could only be disregarded for simple detailed plans that follow comprehensive plans. Organising at least one public discussion is definitely necessary when the planning area has been described as one where the decision to initiate the preparation of detailed plan should be made by the council. The success of the preparation of plan and its implementation is largely dependent on how the local government utilises involvement, cooperation and public discussion during the preparation of the plan. Involvement, cooperation and public discussion ensure that all persons can have timely access to sufficient information about plans. Delayed and inadequate information may create the impression that the local government wants to hide something from the public and may cause conflicts that cannot be settled. Hereby it is appropriate to remember that based on the Act, the city/rural municipality has to ensure that *the interests of interested persons are considered and balanced, which is a precondition for adopting a plan*. **Different interests can only be considered and balanced if they are identified during the preparation of the plan through cooperation and involvement.**

Taking into account that insufficient usage of the right for discretion, inadequate reasoning of the decisions and insufficient informing can be contested in court, the decisions made during the preparation of detailed plans have to be sufficiently reasoned and the records should be appropriately maintained. Also, the records of public discussions carried out during the preparation of plan and of the events aimed at involvement and cooperation have to be maintained.

3.4.4.3 Concertation

For a detailed plan, concertation should be sought from *the relevant state authority or manager of a protected area if the planning area includes an area or object placed under state protection or if the plan serves as a proposal to place that object under protection or if earth deposits belonging to the state or subsurface mining areas are located in the planning area*. On various occasions detailed plans should also be concerted with other state authorities. If the preparation of detailed plan follows the adopted comprehensive plan, *local government determines the need to seek concertation from state authorities or county environmental services*. If a detailed plan includes proposal to amend

comprehensive plan or is prepared for *an area where there is no comprehensive plan*, *county governor* will determine the need for other concertations. Local government should form its opinion on concertations and present its viewpoints to the public during the public display of the detailed plan.

3.4.4.4 Public Display and Discussion

A local government shall make a decision on acceptance of a plan and shall organise the public display of the plan. It is not specified in the Act in which cases the detailed plan should be accepted by city/rural municipality government or council. The decision to accept the plan should be made by the council at least in those cases where it was the one deciding on the initiation of the preparation of plan. Public display of detailed plan is mandatory, except in case it is prepared following the **simplified procedure** (see 3.4.4.6). Public display should take place in the *rural municipality centre and the settlement concerned, or the city centre and the city district concerned* and it should last for *two weeks*.

If the proposals made in the detailed plan result in a need to expropriate immovables or in changes to the existing land use or building rights on the plots against the will of the owner, the local government shall, by way of registered letter and at least two weeks before displaying the plan to the public, inform the owners of the immovables concerned of the time and place of the public display of the plan and of the public discussion regarding the comprehensive plan. Whether amending the existing land use and building provisions is against the will of the owner of the immovable has to be identified by the local government during the cooperation and involvement as set by the Act. Sometimes, prejudicing persons' interests is unavoidable – for example in a case where it is necessary to expand a public road and it cannot be done in any other way but on the account of the parts of the plots facing the street.

If written proposals or objections concerning the county plan were received during the public display, local government should organise public discussion of the detailed plan within one month after the end of the public display. Hereby it should also be emphasised that if no proposals or objections were submitted it does not mean that the public discussion should not be organised. For each detailed plan, the local government should consider the need for public discussion after the public display and decide on whether to carry it out or waive it based on the content of the plan. Local government should publish a *notice in the relevant newspaper at least one week before the public discussion of the detailed plan, setting out its time and date*. The local government shall inform persons who have sent proposals and objections during the time the plan is on display to the public of *its opinion on such proposals and objections and shall specify the time and place of the public discussion within two weeks after the end of the public display of the plan. If written proposals or objections concerning a plan are received during the public display thereof, the local government shall publish information concerning the outcome of the public display and public discussion in the relevant newspaper within two weeks as of the date on which the public discussion is held*.

3.4.4.5 Supervision, Adoption and Notification of Adoption of Plans

County governor shall exercise supervision over the preparation of detailed plan only if:

- The detailed plan includes proposal to amend adopted comprehensive plan;
- The city/rural municipality has no adopted comprehensive plan;
- Not all objections presented during the public display have been taken into consideration.

If the preparation of detailed plan follows simplified procedure, the supervision is not exercised over the preparation of plan regardless of whether the city/municipality has or has not an adopted comprehensive plan.

In practice, there have also been occasions where the local government has not submitted the detailed plan to the supervising county governor and adopts the detailed plan without the approval from the supervisory authority. The adoption of such detailed plan is null and void and the county governor has to issue the city/rural municipality the precept declaring the decision regarding the adoption of detailed plan invalid. If the city/rural municipality fails to observe the precept, the county governor has to contest the decision of the adoption of detailed plan in court.

Detailed plan is adopted by local government. The Act establishes council's exclusive competence *to declare a detailed plan invalid and to adopt a detailed plan with mandatory supervision requirement or with which the building area of cultural value is identified*. In other words, such provision means that if the detailed plan follows the comprehensive plan and all the objections presented in the public display have been taken into consideration, city/rural municipality government may adopt the detailed plan. The general rule for settling which detailed plans should be adopted by the council and which by the government should be provided in the building regulation of the city/rural municipality. The council should definitely adopt the detailed plans which were initiated or accepted by their decision. Nevertheless, for every particular plan, based on its content and the importance of its location, the local government should consider to whose competence the adoption of detailed plan should be given. For example it would definitely be better for the council to adopt the detailed plan of the central part of the city as such plan is of significant public interest and impacts the development of the whole city.

In case a detailed plan was prepared for an area that had an earlier adopted detailed plan, the old detailed plan becomes invalid with the adoption of the new detailed plan. It should be mentioned in the adoption decision that with the adoption of the new detailed plan the earlier adopted detailed plan for the same area becomes invalid.

A notice concerning the adoption of detailed plan has to be published *in the relevant newspaper within one month as of the date on which the plan is adopted*. All adopted detailed plans, irregardless of whether they are subjects to supervision or not, have to be sent to the county governor within one month after their adoption. Such arrangement is necessary for ensuring that the county governor would have all adopted detailed plans which he/she could use in the process of settling planning disputes that are brought before him/her.

The adopted detailed plan should also be sent to *the state registrar of the land cadastre within one month as of the date on which the plan is adopted*. Personal notifications concerning the adoption of the detailed plan should be sent, by way of registered letter, to:

- *Persons whose written proposals and objections made in the course of the public*

display of the plan were not taken into consideration upon adoption of the plan;

- *Owners of immovable whose current land use or building rights are restricted on the basis of the adopted plan;*
- *Owners of immovable whose immovable was made a subject to a temporary building ban in the course of preparing the plan.*

If a temporary building ban was established for an immovable on the planned area, it should be declared invalid with the adoption of the plan.

3.4.4.6 Simplified Procedure for the Preparation of Detailed Plan

The Act provides an **opportunity to prepare simpler detailed plans according to a simplified procedure** (§ 22). Within the simplified procedure, there is no need for:

- Publishing notifications in the newspaper,
- Sending personal notifications to persons,
- Organising public display and discussion of the plan.

If a detailed plan is prepared according to simplified procedure, no supervision is exercised over its preparation.

If a detailed plan is prepared according to simplified procedure, it should be concerted by the owners of the planned plot and the owners of its neighbouring plots. The PLA states that simplified procedure may be followed in case the detailed plan is prepared for:

- *The planning of plots of up to five detached houses, summer-houses or garden houses in an existing built-up area;*
- *The planning of an empty plot between existing buildings in a city or town, if the main function of the building planned on the plot is a residential building or office building and if the size of the building will not change the character of the urban district.*

While planning aforementioned buildings using a simplified procedure, a full-fledged detailed plan has to be prepared, where all the necessary substantive objectives of the detailed plan stated in the Act are expanded upon.

Simplified procedure may also be applied to detailed plans that are prepared for *determining the size of plots for existing buildings and constructions located in areas where no new buildings are erected for which the preparation of a detailed plan is mandatory and where the intended purpose of the buildings will remain unchanged*. Such a possibility is necessary when carrying out ownership and land reform, during which it is necessary to identify a plot for the returned or privatised buildings. As in such situations detailed plans are prepared for allocate plots to existing buildings, there is no substantive need to deal with all the objectives of the detailed plan which are mentioned in the Act, because most of them are already set by the existing buildings. In such cases, the detailed plan may also be prepared in reduced scope, including only the information related to the division of land into plots and those provisions which are necessary to be indicated in the detailed plan in addition to the characteristics of the existing buildings. Within the reduced detailed plan, the identification of the following aspects should take place:

- Division of planned land into plots,
- Building rights of the plot,
- Street areas and the principles for traffic organisation,
- Location of utility networks and buildings,
- The need for easements,

- Other restrictions of the immovable deriving from the legislation.

The simplified procedure for the preparation of detailed plans does not extend to *areas and construction works under heritage conservation or nature conservation*. In case simplified procedure is followed for the preparation of detailed plan, the steps prior to the initiation of the preparation of detailed plan, its initiation and adoption do not differ from the standard procedures.

3.5 Sectoral Planning

No (separate) spatial planning that could be defined as sectoral planning exists based on Estonian law. All spatial planning takes place according to the Planning Act as described above.

Various sectoral strategies, programmes or plans are prepared (energy, national defence, transportation, education etc) on national level. In their nature, these are mostly the plans of socio-economic development. These plans also have a greater or smaller impact on settlement development, but commonly they are lacking the analysis of spatial impact.

Besides the plans that have been described in the earlier chapters, local governments also have to prepare the rural municipality/city development plan and several sectoral plans (education, water supply and sewerage, waste etc). In its content, the development plan is a plan of socio-economic development and on the level of generalisation it is parallel to comprehensive plan. Sectoral plans are the action plans for the implementation of the development plan and comprehensive plan.

3.6. Main Characteristics of the Planning System According to Planning Act

	National Spatial Plan	**County Plan**	**Comprehensive Plan**	**Detailed Plan**
Planned Territory	The entire territory of the state	- The whole county or a part thereof - Several counties or parts thereof - Thematic plan for the county or for a part thereof	- The whole city/rural municipality or a part thereof - Several cities/rural municipalities or parts thereof - Thematic plan for the county or for a part thereof	A smaller part of a city/rural municipality
Preparation Obligation	Based on need	Based on need	Based on Need	Mandatory as the basis for the construction of buildings (excl. small buildings) and for the division of land into plots
Plan Proposal/ Initiator	Anyone can make a proposal for the initiation of the preparation of plan Government of the Republic	Government of the Republic or county governor	City/rural municipality council	City/rural municipality council or government
Main Objectives	- Defining the principles of sustainable and balanced spatial development - Directing the development of settlement systems	- Defining the principles of sustainable and balanced spatial development - Balancing state and local interests - Determining the location of main roads and utility network routes	- Forming the principles of sustainable and balanced spatial development - Determining general use and building provisions - Determining the location of roads and utility networks - Establishing the conditions for the protection and development of the areas of environmental value	- Determining detailed land use and building provisions - Dividing land into plots - Determining the building rights of a plot
Assessment of Likely Effects of the Implementation	Mandatory	Mandatory	Mandatory	Mandatory in certain cases
Concertation	- Ministries - County governors - County Associations of Local Governments	- County governors of neighbouring counties - Cities/rural municipalities of the planning area - Other state authorities defined by the Ministry of Internal Affairs	- Neighbouring cities/rural municipalities - Nature and heritage conservation authorities - Other state authorities defined by county governor	- Nature and heritage conservation authorities - Other state authorities based on need
Public Display, its	No public display	- County centre - Towns/rural municipalities	City/rural municipality centre and larger settlements	- Rural municipality centre and respective

Location and Duration	, the main content should be introduced in the newspaper	4 weeks	4 weeks	settlement - City centre and respective city district 2 weeks
Prerequisites for Adoption	None	Approval from the supervising Ministry of Internal Affairs	Approval from the supervising county governor	Approval from the county governor in case: - The detailed plan is not aligned with the adopted comprehensive plan - There are objections which were not considered
Adopting Authority	Government of the Republic	County governor	City/rural municipality council	City/rural municipality government or council
Legal Impact	Indicative basis for the preparation of county and local plans and sectoral decisions	- Basis for the preparation of comprehensive plans - Holds no direct legal impact to the owner of immovable	- Basis for the preparation of detailed plans in cities and other built-up settlements - Binding for the owner of immovable if detailed planning is not mandatory	- Basis for designing and constructing the buildings and for the formation of new cadastral units - Determines land use and building provisions and restrictions
Obligation to Purchase Immovable if the Existing Rights of Ownership are Restricted	None	None	In certain cases the owner may require the city/rural municipality to buy the immovable	In certain cases the owner may require the city/rural municipality to buy the immovable
Obligation to Review	Within a year after the election of the Riigikogu	None	Within 6 months after local elections	None
Authority Administering and Ordering/ Financing the Preparation of Plan	Ministry of Internal Affairs	County governor	City/rural municipality	- City/rural municipality - Interested person (only in cases where the detailed plan is aligned with comprehensive plan)
Amendment of the Adopted Plan	Not possible	- Comprehensive plan may include proposal to amend county plan - With thematic plan	- Detailed plan may include proposal to amend comprehensive plan - With thematic plan	Not possible, new plan has to be prepared

4. Connections and Conjunctions

4.1 Hierarchy of the Types of Plans, Connections and Conjunctions

The hierarchical connections between different types of plan are described in subsection 1.2.1 In practice, there is significant mutual influence between the plans of different levels. For example, the adopted national spatial plan has strongly impacted the choice of themes of the subsequent county plans. Also, national spatial plan has influenced the content of comprehensive plans.

As a rule, an adopted county plan should be followed while preparing comprehensive plan; however, relatively many amendments to county plans have been proposed with comprehensive plans. In practice, it is also quite common that detailed plans include proposals to amend comprehensive plans. As a conclusion it can be said that Estonia's interactive planning system allows effective reaction to the changing needs and avoids adopted plans' becoming dogmatic. At the same time, its interactive nature has a negative side, which becomes particularly evident on the local level – on many occasions the adopted comprehensive plans are amended with detailed plans too easily.

The situation, especially in the vicinity of larger cities, has been balanced by county plans that deal with the conditions for the functioning of green network. The majority of valid comprehensive plans have been adopted before the preparation of county plans that deal with green networks, and therefore they do not include green network related issues. The detailed plans which indicate new built-up areas on the defined green network areas have been rejected during supervision or court action, because they do not follow the conditions for a functioning green network that have been provided in county plan.

4.2 Spatial Planning and Sectoral Plans

On national level many sectoral strategies, programmes or plans have been prepared in Estonia (see also subsection 3.5.). As a rule, sectoral plans are adopted by the Government of the Republic, while some of the most important sectoral plans have also been approved by the Parliament. Most of these sectoral plans lack direct spatial dimension. In some cases it can be observed that, to certain extent, sectoral plans are contradictory to the spatial development objectives set in the national spatial plan or county plans. At the same time, many sectoral plans (strategy for regional development, architecture policy etc.) also support the achievement of spatial development objectives. In practice, better conjunctions of different national level plans are aimed at through the establishment of common working groups between ministries and the concertation of plans by all ministries. One of the steps taken for improving the connections and conjunctions between spatial planning, regional development and sectoral objectives was also bringing the spatial planning from the jurisdiction of the Ministry of the Environment to that of the Ministry of Internal Affairs, the Minister of Regional Affairs in 2004.

4.3 Harmonisation of Sectoral Plans

Better conjunctions of different national level strategies, programmes and plans are aimed at through the establishment of common working groups between ministries and the concertation of plans by all ministries.

4.4 Consideration of the Planning Trends in Neighbouring Countries and Europe

During the preparation of the Planning and Building Act that was adopted in 1995, the planning experience of other countries and their acts overseeing planning were studied. The planning of built-up areas had been at a relatively good level during the period before the re-establishment of independence in 1991, and the content of plans was established. While preparing the Act, the most valuable parts of both our own experience as well as that of the other countries was taken into account. The ground principles of the Act were based on European Regional/Spatial Planning Charter.

The author of the article has always questioned the amount of impact that the documents prepared in spatial planning cooperation of the European Union and Baltic Sea countries, e.g. ESDP or VASAB (European Spatial Development Perspective, Vision and Strategies around the Baltic Sea) have on its member countries' spatial planning. ESDP can be primarily considered a collection or a summary of the planning experience that was there by the time it was made. Therefore, it is not very appropriate to speak of the implementation of ESDP through a planning activity of a country. All the elements included in ESDP are included in countries' national spatial plan, county plans and local plans. However, it is not so because of the purpose of implementing ESDP, but for finding appropriate solutions to respective questions within country's own context. At the same time, the elaboration of the topic may significantly expand the experience that the ESDP is based on. Consequently, spatial planning cooperation within the European Union and VASAB and national level are in constant interactive relations. The planning documents of the European Union and VASAB have had the most impact on the content of national level plans.

Estonia has had constant and fruitful cooperation in the field of planning with Finland. It can be said that Finland has played a major role in the design of our planning practice and methods on the county level and the local level. The cooperation with other Nordic countries and Baltic countries has been rather modest and it has had little impact on our planning practices. Hereby it should be mentioned that even though international cooperation has helped to shape Estonian planning methods, there has been no case where provisions or ideas have been directly adopted from the legislation of other countries.

5 Planning Practice

5.1 Planning Related Decisions of Supreme Court

The weakest aspect of planning practice so far has been the modest reasoning of planning decisions. Insufficient reasoning has been fatal for many such plans that have been prepared for objects which have raised strong objections (e.g. landfill, prison) or that have

caused significant land use restrictions to the owners of immovables. During the contestation of these plans in court the inadequate reasoning of planning decisions has become the main reason for rejecting the plans. A number of such court cases have reached the highest court instance, i.e. the Supreme Court. Therefore, the judgements of the Supreme Court provide valuable information about the greatest problems in spatial planning as well as about the tasks that should be undertaken during plan proceeding to avoid these problems. The decisions of the Supreme Court mirror the level of our spatial planning and consequently they could also be of interest to the readers in other countries.
Until now, the most disputed issues in Estonian judicial practice have been revolving around whether the requirements of the Act regarding public disclosure and proceedings have been complied with or whether other normative requirements that influence the content of the plan have been properly fulfilled. Recently also the first **litigations concerning discretion** have reached the Supreme Court. There are very few legal or normative criteria for assessing the legality of planning decisions. Consequently, there are only limited possibilities of judicial control over the planning decisions. In litigations concerning discretion the depth and argumentative nature of the reasoning of planning decisions become especially important, together with maintaining a proper record of these reasons and communicating them to the stakeholders and the public. Especially careful reasoning should be provided to those planning decisions that restrict persons' land use or building rights or which have received objections during the preparation of plan.
The Supreme Court has repeatedly **emphasised that in spatial planning, which is characterised by a particularly wide scope of discretion, the following of proceeding and formalisation requirements is especially important.**
In its judgement (no. of the case: 3-3-1-42-02) the Supreme Court stated that by discretion, a local government should protect public interests in a reasonable manner, at the same time adequately reasoning why the arguments or evidence presented by a party to the proceeding have not been accepted or are considered insufficient. The reasoning of an administrative act should also convince the court that during the consideration process the administrative authority has taken into account all relevant facts and interests and that the consideration has been carried out rationally.
In its judgement (no. of the case: 3-3-1-13-02) the Supreme Court has stated that the reasons behind an encumbering administrative act should include both factual as well as legal reasoning. The factual reasoning should demonstrate the circumstances that bring about the application of a legal provision that forms the basis of the act. It is important to connect the factual and legal reasoning logically as the addressee of the administrative act and anyone acquainting her/himself with it should be convinced that the circumstances of the case in conjunction with the applicable acts really do result in taking that particular administrative decision.
In connection with ensuring the passage from one plot of land to the other while defining the conditions for land privatisation with the right of pre-emption or land return and settling the incurred disputes during the process, the Supreme Court has formed the opinion that an administrative act (including the order about land privatisation with the right of pre-emption) may include additional requirements (no. of the case 3-3-1-73-03). The objective of the additional requirements is to ensure the flexibility for fulfilling administering duties and that different interests are taken into account. Application of the additional

requirements has to be clear, understandable and reasoned – why is it necessary to ensure the passage through this particular immovable and in this particular location, have the potential alternatives been considered etc. As ensuring the passages causes interests to clash and according to the Land Reform Act the size and boundaries of the privatised or returned land can be determined by detailed plan, it would be reasonable to solve the potential disagreements during the preparation of detailed plan. By the preparation of the plan it is also possible to determine restrictions concerning a plot of land, including the need for passage. The representatives of planners have constantly emphasised that land reform requires planning preparation, but they have often been ignored in order to carry out the land reform faster. The majority of the land reform decisions have been made without any planning preparation and therefore it has caused significant and serious planning mistakes, especially in larger cities and their vicinity. That is why this decision from the Supreme Court is very important and welcomed.

Supreme Court has also reversed some widespread misunderstandings.

On several occasions the persons who have financed and proposed the initiation the preparation of detailed plan have demanded the city/rural municipality to adopt the detailed plan, although the city/rural municipality has realised during the preparation of the plan that it is not right to adopt it. Such demand has been reasoned by the statement that together with the initiation and proceeding of the plan these persons have developed so called justified expectation, and therefore the city/rural municipality should compensate for their costs that have been made as well as for the expected damage if the persons are not able to realise their expectations. In case no. 3-3-1-15-01 the Supreme Court states: *'the preparation of plan based on a person's order, financing the costs of preparation of the plan and the approval of the initial planning objective do not create protected trust that the plan will be adopted in the form in which it was initiated.'* Additionally to that, the Supreme Court has stated (no. of the case: 3-3-1-42-02) that *'plan proceeding may also be terminated at the stage of acceptance, before organising any public display, and that the courts have concluded it correctly that* the Act *does not oblige local government to accept the initiated and prepared plan by all means*.*'* It is evident that the **obligation to accept or adopt the initiated plan by all means would be contradicting the discretional nature of planning.**

On several occasions the courts have, without basis, accepted the claims that have been filed during the preparation of plan. In case no. 3-3-1-8-02 it has been said that *'the violation of procedural provisions that has taken place during administrative proceeding can generally only be contested together with the final administrative act. As long as the final administrative act has not been issued, it is generally not possible for the court to evaluate whether the procedural violations could have influenced the decision-making.'* In the same case the Supreme Court adds, however, that *'exceptions could be made to this rule on cases which are directly provided in the Act, and also based on the principle of process economics, which is also allowed by the Administrative Procedure Act. As an exception, the contestation of procedural act or the administrative legislation that precedes the final administrative legislation is justified in case the procedural mistake is of such scope that it makes it possible to conclude already during the proceeding that the final administrative legislation that is going to be issued as a result of such proceeding cannot be substantively legitimate. It is also possible to file an appeal before the final*

administrative legislation if the procedural act violates the rights irregardless of the final result of the proceeding.'

The decision no. 3-3-1-54-03 of the Supreme Court regarding the detailed plan of Viljandi Prison with 400 places and the Central Hospital of Prisons with 100 places in Jämejala village has disclosed well the substantive and legal objective and nature of discretion in making planning related decisions. Local residents and environmental protectionists protested against having the prison and the hospital in Jämejala park. The intention to construct these buildings in the park was justified by saying that with this, it would be possible to use the building of the previous psychiatric hospital while establishing the prison complex, making the foundation of the whole complex cheaper. The rural municipality reasoned the need for building the complex by the necessity to bring new workplaces to the municipality. Already Tartu Circuit Court who dealt with this case pointed out that in the letters to the persons presenting the proposal and in the decisions of the council there is no reasoning why it was not considered to move the prison complex further from the existing park. The Supreme Court agreed with the position of the Circuit Court and explained how it interpreted the main objective of the disputed plan: *'in the current case, negative impact on the environment, particularly on Jämejala park on one side and the positive impact on employment, entrepreneurship and infrastructure on the other side were the critical considerations for making the decision. Also, it was necessary to take into account economising the costs of the state which would be possible by using the existing building. The decision had to be made based on whether the benefit of establishing the complex would outweigh the damage inflicted to the environment. Therefore, the local government had to collect information about the probability and scope of both the positive and negative impact.'*

The Supreme Court found that the plan does not indicate the consideration of why the prison complex should be established in the park and which motives outweigh the damage that is caused by partial destruction of the park. According to the Supreme Court, the reasons that were given in the planning documents did not enable the interested persons participating in the plan proceeding to understand the rationality of not considering their proposal, neither was it possible to contest the motives for not considering their proposal and to develop public discussion about the content of the plan. The nature and the need for substantive discretion were well illustrated by two examples in this decision of the Supreme Court. It stated that *'in addition to the ratio of the trees cut and the trees preserved, also the change of the holistic milieu of the park should be considered after having a prison being established on the territory of the park. A prison is characterised by walls, security zone, surveillance equipment and a constant risk for emergency situation. These phenomena cannot clearly harmonise with the essential milieu of a park that lies primarily in the natural environment that allows peace and recreation. The Chamber is of opinion that the milieu of the park would be destroyed or damaged to a significant extent even without cutting down any trees when a prison would be established in the park or next to it.'* In the reasons for its decision the Supreme Court also stated that *'the positive impact on employment and entrepreneurship will become evident on the state level also if the prison complex is not built in Pärsti rural municipality, but somewhere else. Based on the documents of this case, the Supreme Court does not see why Pärsti municipality should be the one benefiting from damaging the environment as public good, if*

presumably the prison complex could be established somewhere else in Estonia without causing the damage of such scale. If in reality there are still reasons which demand the economic development and the development of infrastructure in Pärsti municipality in particular (very low standard of living, high unemployment rate etc.), the municipal council should have stated these. As such reasons have not been stated, the Supreme Court concludes that compared to the environmental impact the municipal council placed too heavy weight to the social and economic impact on the rural municipality that would derive from building the prison complex. This entails a significant discretionary mistake.'
Supreme Court's decision on Jämejala detailed plan concludes many of its earlier judgements concerning discretion and it could be considered a good lesson of consideration to all the participants in the preparation of plans.

5.2 Relevant Documents and Links

The Planning Act and other Estonian acts are accessible in English at www.legaltext.ee.

Ministry of Internal Affairs: http://www.sisemin.gov.ee.
The web pages of the Planning Department of the Ministry of Internal Affairs provide information about the legal basis for planning, international cooperation, national spatial plan, publications of the department and the details of relevant seminars and further links.
Adopted county plans can be accessed on the web pages of the respective counties. The web pages of the majority of cities and rural municipalities provide an opportunity to make acquaintance with the adopted comprehensive plans and as well as gather information about the adopted detailed plans.