

LIETUVOS VYRIAUSIASIS ADMINISTRACINIS TEISMAS

METINIS pranešimas 2008



The System of Administrative Courts in Lithuania

The history of specialised administrative courts in Lithuania dates back to 1999. Constitutional basis for the judicial protection of rights of person against public authority acts, and the concentration of above-named protective means in the hands of administrative courts was set up by Paragraph 2 of Article 111 of the Constitution of the Republic of Lithuania. It provides that specialised courts may be established according to law for the consideration of administrative, labour, family and cases of other categories. By adopting an outline of the reform of legal system as early as on 25 June 1998 the Seimas of the Republic of Lithuania recognised the necessity of administrative justice following from the constitutional imperatives. The outline set an aim to establish administrative courts of two instances empowered to hear cases concerning the lawfulness of decisions adopted by governmental institutions or officials, and also other cases arising from administrative relations, e. g. taxes, etc. When suitable economic, financial, and organisational conditions were secured, an independent system of administrative courts was established in 1999. The institutional reform of administrative justice in Lithuania was completed in 2001, following the establishment of the Supreme Administrative Court of Lithuania by relevant Law of 19 September 2000.

While the administrative courts represent Lithuania's achievement of the current decade, demand for such type of courts was widely discussed in Lithuania as early as in the inter-war period. Professor Mykolas Roemeris focused on this topic in his works. He argued that "an administrative court is one of the most serious institutions in a state under the rule of law, because a state without an administrative court is just a state founded on the police power, not on the law"¹. He stressed that "unlawfulness" ought to be "perpetually disciplined" by a court supposed not to make any difference between the "unlawfulness" practised by private persons or governmental authorities. M. Roemeris regretted that "Lithuania is, in company with the USSR, an exception in the continental part of Europe as it has failed to

1 Mykolas Riomeris mokslas apie valstybę: skiriama Vytauto Didžiojo universiteto 75-mečiui, Mykolas Riomeris pirmojo išrinkimo Vytauto Didžiojo universiteto rektoriumi 70-mečiui, Lietuvos filosofijos ir sociologijos instituto 20-mečiui / Editor M. Maksimaitis. – Vilnius: Lietuvos filosofijos ir sociologijos institutas, 1997.

establish an administrative court”². He regarded administrative court (and, by the way, also the constitutional court) as a “court for governmental activities”, believing that both courts are “corner-stone institutions in the structure of a state under the rule of law”.

Currently, the Supreme Administrative Court and five regional administrative courts function in Lithuania. Lithuania has established a two-level system for the judicial review of administrative acts: first instance – appeal. The main function performed by administrative courts is to protect rights of the person against unlawful actions taken by governmental institutions or officials, or their respective decisions. For the purpose of implementing this function, administrative courts of Lithuania examine the following complaints (applications) lodged by natural or legal persons:

- » complaints (applications) relating to the lawfulness of individual administrative acts adopted or actions taken by public or municipal administration (e. g. ministries, departments, inspectorates, authorities, committees, and other central or territorial state or municipal institutions), and also to legality and validity of refusal by the said entities to perform the actions within the remit of their competence or delay in performing the said actions;
- » complaints (applications) relating to the compensation for pecuniary or non-pecuniary (moral) damage inflicted by unlawful acts or omission in the sphere of public administration by state or municipal institutions;
- » complaints (applications) relating to the payment, return or exaction of taxes or duties, and to the disputes over tax payment (disputes with Tax Inspectorate);
- » complaints (applications) relating to disputes over civil service relations (when a civil servant is one of the parties);
- » complaints (applications) relating to the infringement upon the Law on Election and Referendum;
- » complaints lodged by foreigners against annulment or refusal to issue a permit for residence in Lithuania, or to grant a status of a refugee;
- » complaints (applications) relating to the decision to impose an administrative sanction in cases of administrative offences;
- » other disputes provided by Article 15 of the Law of the Republic of Lithuania on Administrative Proceedings.

2 Roemeris M. Konstitucinės ir teismo teisės pasieniuose. – Vilnius: Pozicija, 1994.

Thus, unlike the general competence courts dealing with criminal cases and disputes arising from civil legal relations, the administrative courts consider disputes arising from internal or public administration. In other words, administrative courts hear disputes, in which at least one party represents a state, municipality, or public or municipal institution, agency, service, or official, and which arise from the implementation of executive authority functions by these entities.

For the purpose of securing rights and freedoms of the person administrative courts employ several measures. They may be divided into the following groups:

- » annulment of administrative acts or decisions adopted by public administration entities if these acts or decisions infringe the rights and freedoms secured to persons by international and national legal acts;
- » binding public administration entities with an obligation to carry out actions securing persons' possibility to use adequately the rights and freedoms guaranteed to them;
- » compensation for pecuniary or non-pecuniary damage emerging due to public administration entities' unlawful actions which infringe the guaranteed rights and freedoms.

The Supreme Administrative Court: Functions and Competence

The Supreme Administrative Court of Lithuania is located in Vilnius. The Court has jurisdiction within the entire territory of the Lithuanian State.

As a constitutional imperative, efficient judicial protection from public authority acts forms the basis for administrative justice. At the same time, it is its purpose and measure of appraisal of its performance. Thus, the Supreme Administrative Court of Lithuania pursuant to the national and the EU law seeks to preclude the infringement on persons' rights in the public sector. However, the Supreme Administrative Court purposes chiefly not only to administrate justice in definite cases but also to form a uniform practice to be followed by administrative courts in interpreting and applying laws and other legal acts. The Constitutional Court of the Republic of Lithuania has held that the judicial system established by the Constitution must function

so that the preconditions are created to form uniform (regular, consistent) judicial practice – the one which would be based on the principles of a state under the rule of law, justice, equality of all persons before the law (and other constitutional principles) enshrined in the Constitution, on the maxim inseparably linked with the said principles and arising from them that the same (analogous) cases must be decided in the same way, i. e. they have to be decided not creating new legal precedents competing with the existing ones but adhering to already established ones (Ruling of the Constitutional Court of 28 March 2006). Formation of a uniform administrative court practice helps to secure the rationality and predictability of judicial practice. This function is analogous to the ones performed by supreme administrative courts in other Member States of the European Union.

Courts, governmental and other institutions as well as other entities follow the interpretation of law application offered by the Supreme Administrative Court in its decisions, rulings and orders.

The competence and functions of the Supreme Administrative Court of Lithuania are defined by the Law on Courts³ as well as the Law on Administrative Proceedings⁴. The Supreme Administrative Court is:

- » the first and final instance for administrative cases conferred by law to the Court's competence;
- » the final instance for cases considering decisions, rulings and orders adopted by regional administrative courts;
- » the final instance for the cases of administrative offences considering district court decisions;
- » a court instance to hear, in cases prescribed by the law, petitions for renewal of proceedings in closed administrative cases, including cases of administrative offences.

Decisions and orders adopted in administrative cases by the Supreme Administrative Court of Lithuania are final and not subject to appeal. The Supreme Administrative Court, as a final instance court in administrative cases, forms a uniform administrative court practice in interpreting and applying the laws and other legal acts. While carrying out this function the Supreme Administrative Court:

- » publishes decisions, rulings, and orders adopted by court plenary

3 Published in Official Journal „Valstybės Žinios“ // 1994. No 46-851; Valstybės Žinios // 2002. No 17-649.

4 Published in Official Journal „Valstybės Žinios“ // 1999. No 13-308; Valstybės Žinios // 2000. No 85-2566.

sessions, and also decisions, rulings and orders adopted by a panel of three judges or expanded panel of five judges if the publication of which was approved by the majority of judges of this court as well as all decisions concerning the lawfulness of normative administrative acts;

- » analyses the practice of administrative courts in the application of laws and other legal acts.

Pursuant to Article 234 of the Treaty establishing the European Community, the Court of Justice has a jurisdiction to give preliminary ruling concerning the validity and interpretation of Community law. Where such a question is raised before court of a Member State, that court may request the Court of Justice to give a ruling thereon. However, where any such question is raised in a case pending before a court of a Member State against whose decisions there is no judicial remedy under national law, that court shall bring the matter before the Court of Justice.

The Supreme Administrative Court of Lithuania is a court of final instance hearing administrative disputes and forming uniform court practice considering taxes, customs duties, social security, competition, and other spheres of public administration. Therefore, if an issue of interpretation of legislation adopted by European Community institution arises, it is to request the Court of Justice to give a preliminary ruling. In 2008 the Supreme Administrative Court of Lithuania applied to the Court of Justice asking it to adopt a preliminary ruling concerning the so-called Road tax issue. The Supreme Administrative Court of Lithuania asked to explain whether the provisions of European Union directives ought to be interpreted as precluding the Member State from maintaining and collecting deductions from income on the basis of the Law of the Republic of Lithuania on the Funding of Road Maintenance and Development Programme. This is the second application by the Supreme Administrative Court of Lithuania considering the adoption of a preliminary ruling.

For the purpose of forming a uniform judicial practice, the Supreme Administrative Court issued in 2008 three bulletins titled “Administrative Jurisprudence” where the most relevant practice of the Supreme Administrative Court is presented for the year 2008. Seeking to contribute to the development of administrative doctrine, the Supreme Administrative Court also published in these bulletins the topical articles on administrative law and procedure by Lithuanian or foreign law scholars and practitioners.

Composition of the Supreme Administrative Court of Lithuania

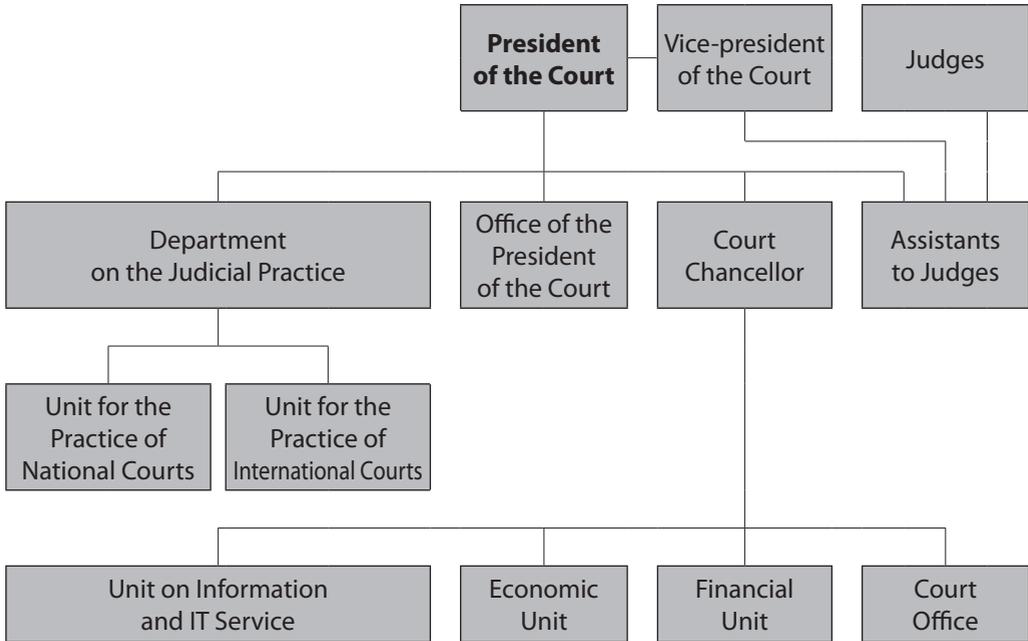
A judicial panel composed of three judges usually hears cases in the Supreme Administrative Court of Lithuania. For the purpose of hearing complex cases an extended panel of five judges may be formed on the initiative of the President of the Court or judicial panel's motion or the case may be referred to the plenary session of the Court.

The number of 15 judges at the Supreme Administrative Court of Lithuania was determined by the Decree of the President of the Republic of Lithuania No 1097 of 22 November 2000. However, in 2008 due to rotational changes administrative disputes were heard temporarily by 13 judges. Three judges at the Supreme Administrative Court of Lithuania have doctoral degrees in the area of social sciences (law direction).

Judges of the Supreme Administrative Court of Lithuania are assisted by the court personnel. In late 2008 the Court had 57 employees: 54 career public officials and 3 employees working on a labour contract basis. The judicial personnel is composed of advisors and assistants to the President of the Court, assistants to the judges, and consultants at the Department on the Judicial Practice. In late 2008 the Court had 31 judicial personnel members. All judicial personnel members have master degrees; two members have doctoral degrees in the area of social sciences (law direction). Six Court employees currently follow doctoral study courses in the direction of law.

Mean age of the Court personnel members is 32 years. Females represent 72 per cent, and males – 28 per cent of the total number of the Court employees.

Structure of the Supreme Administrative Court of Lithuania



International Co-operation

Since 2005 the Supreme Administrative Court of Lithuania has been a full member of the International Association of Supreme Administrative Jurisdictions, an institution found in 1983. The purpose of International Association of Supreme Administrative Jurisdiction is to promote co-operation among supreme judicial institutions empowered to adjudicate administrative judicial disputes. Today this association assembles approximately 100 high jurisdictions in all five continents, including the Court of Justice of the European Communities.⁵

On 13-14 April 2008, for the first time a world meeting of heads of supreme administrative courts or equivalent institutions was held in Lithuania

⁵ <http://www.iasaj.org>

and relevant region. Representatives of supreme administrative courts from all 5 continents and 27 countries appeared in Vilnius Town Hall. Among them there were presidents of supreme administrative courts of Austria, Finland, Sweden, Poland, Thailand, Australia, and Indonesia as well as heads of court boards from Côte d'Ivoire, The Netherlands, Belgium, Columbia, Italy, France and other countries. The meeting discussed issues concerning the speed of hearing judicial disputes, the significance of judicial practice, the importance of practice uniformity and predictability to citizens, the ability of public administration to improve itself, the rationality of judicial decisions, and the disputes related to nature protection. These are steadily becoming more and more relevant issues. The fact that the honour of organising this meeting was given to Lithuania shows not only Lithuania's recognition by international community but also the highest-level judicial institutions' confidence in the Lithuanian State and its system of justice administration.

The Supreme Administrative Court of Lithuania has been a member of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union since 2004.⁶ This membership is granted to courts of the Member States of the European Union representing the final-level courts in administrative cases (in some countries these functions are performed by the Councils of State). The chief aim of the Association is to encourage its members to share their views and expertise connected with their judicial or advisory functions, especially where the European Union law is applied.

Last year the sharing of experience with the courts of other European states continued. In 2008 Pekka Hallbers, President of the Supreme Administrative Court of Finland, and Garry Downes, President of the Administrative Appeals Tribunal of Australia, visited the Supreme Administrative Court of Lithuania. The guests were interested in the load of work attributed to the judges of Lithuanian administrative courts and the peculiarities of administrative disputes, also whether the introduction of specialised courts justified itself. Moreover, in 2008 a discussion over the distinctive features of administrative procedure in Lithuania and Poland was held with the Polish delegation headed by Andrzej Jagiełło, President of the Kielce District Administrative Court.

In 2008, Colin Roberts, Ambassador Extraordinary and Plenipotentiary of the United Kingdom, visited the Supreme Administrative Court of

6 <http://www.juradmin.eu/>

Lithuania. He presented the characteristics of judicial system of his country and took interest in the activities of administrative courts in Lithuania.

Invited by the member of the European Parliament Aloyzas Sakalas, judges of the Supreme Administrative Court of Lithuania participated in the meeting with members of the European Parliament and judges of the European Court of Human Rights in Strasbourg (France).

Statistical data concerning cases filed and decided in the Supreme Administrative Court of Lithuania in 2008

In 2008, a total number of **5 723** administrative cases, including the backlog from the preceding year, were heard in the Court:

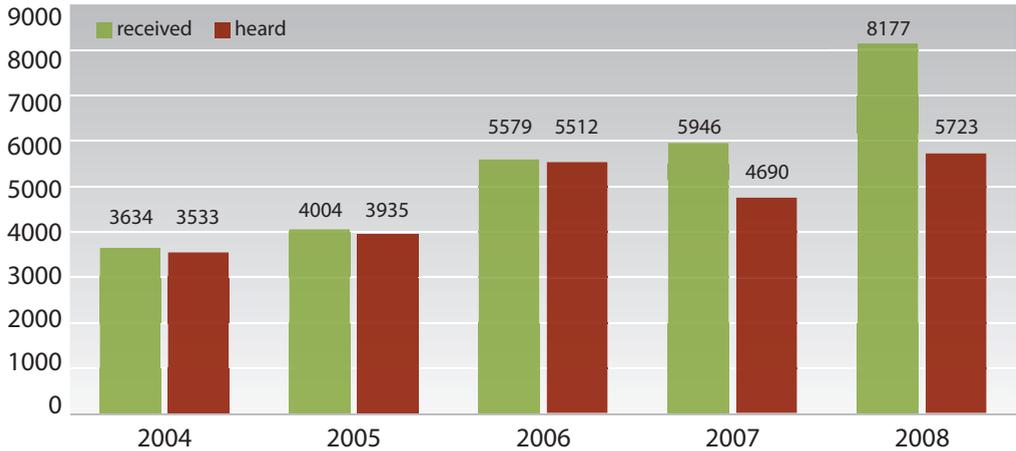
	Number of cases decided⁷
Appeals on decisions of regional administrative courts	2044
Appeals on interim rulings of regional administrative courts	643
Cases concerning the lawfulness of normative administrative acts	8
Cases concerning complaints against decisions adopted by the Central Electoral Commission or its omission	2
Requests for reopening of proceedings	153
Requests for the restoration of time-limit in administrative cases	86
Cases of administrative offences	2764
In total	5723

In 2008, every judge of the Supreme Administrative Court of Lithuania, as a judge rapporteur, heard approximately **443** administrative cases, and, as a panel member, participated in the hearing of about **873** cases⁸.

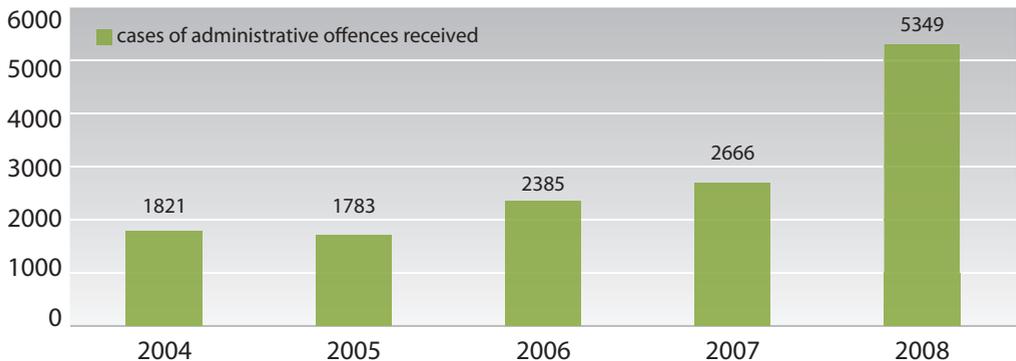
⁷ Covers also the cases when, following the hearing, appeal procedure was discontinued or complaint left unconsidered, and also the cases when the administrative case was disposed in conformity with prescribed procedure by law without adopting any judicial decision.

⁸ For the purpose of precision, calculation of judges' labour load was carried basing exclusively on data provided by judges who worked all year round.

As is seen from the diagram below, the number of cases – both filed and heard – has grown steadily⁹ over the last five years in the Supreme Administrative Court of Lithuania. However, the number of cases filed in 2008 increased very significantly – almost by 40 percent, in comparison with the one filed in 2007 (5946 cases were filed at the court in 2007, and 8177 - in 2008).

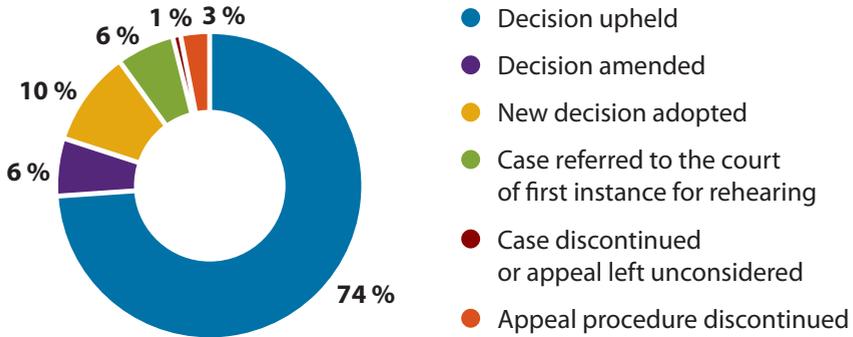


The number of cases of administrative offences grew up dramatically – from 2666 cases filed in 2007 to 5349 ones in 2008, i. e. the number of cases has almost doubled.

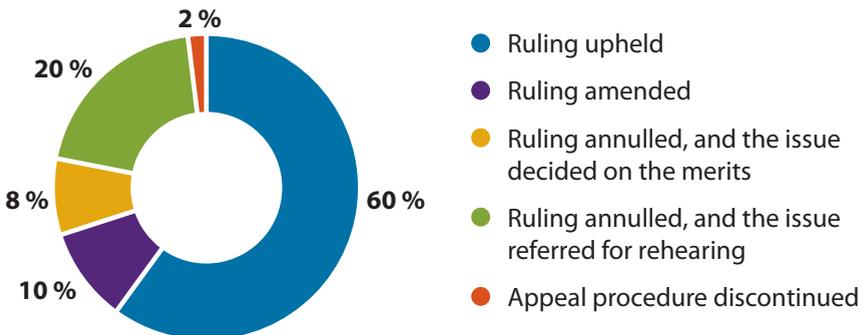


⁹ In 2007, the number of cases heard by the court is a little smaller because in the said year more than one fourth of positions intended for judges stayed vacant for almost a half of the year.

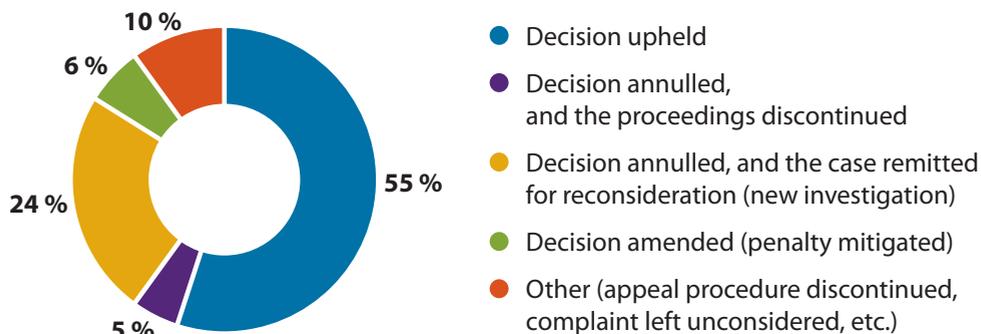
Outcome of decided cases in 2008
(appeals on decisions of regional administrative courts)



Outcome of decided cases in 2008
(appeals on interim rulings of regional administrative courts)



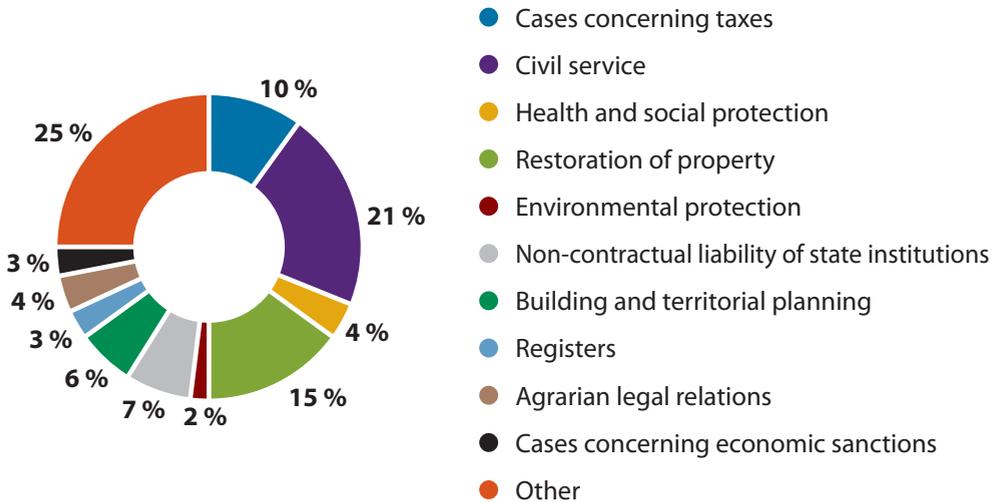
Outcome of decided cases of administrative offences in 2008



The number and results of appeals in administrative cases in 2008

	Decided			Decisions appealed against			Rate of decisions appealed against (%) to the total number of cases
	Administrative cases	Cases of administrative offences	In total	In administrative cases	In cases of administrative offences	In total	
Vilnius regional administrative court	4227	1910	6137	1083	325	1408	22,9
Kaunas regional administrative court	887	1081	1968	206	166	372	18,9
Klaipėda regional administrative court	630	683	1313	170	120	290	22,1
Šiauliai regional administrative court	457	703	1160	95	85	180	15,5
Panevėžys regional administrative court	367	618	985	118	91	209	21,2
In total	6568	4995	11563	1672	787	2459	21,3

Cases on appeals against decisions of regional administrative courts received at the Supreme Administrative Court of Lithuania in 2008
(by subject matter)



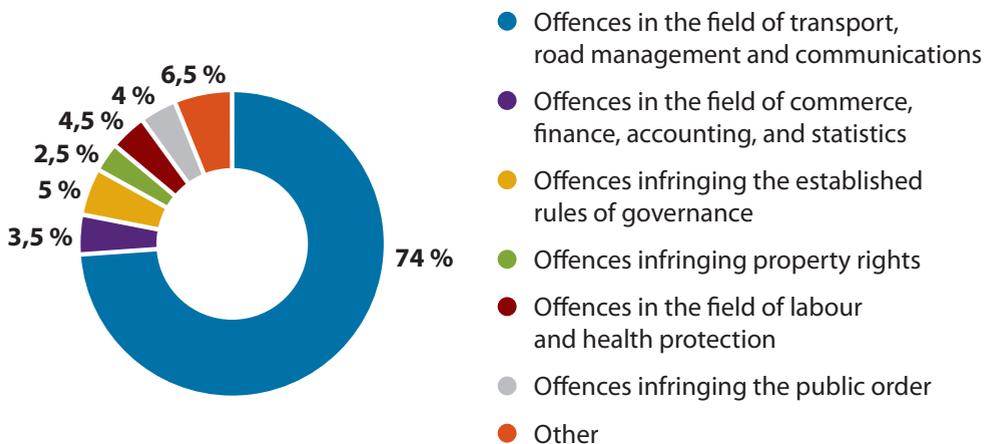
Like in 2007, among cases concerning appeals against decisions adopted by regional administrative courts received at the Supreme Administrative Court of Lithuania the ones arising from legal relations of civil service prevailed. However, compared to 2007, when such cases represented 38 per cent of the total number of received cases, the share of such cases decreased in 2008 to 21 per cent. In comparison with the previous year, the number of cases of this category went down: 1037 cases received in 2006, 878 - in 2007, and 383 - in 2008.

Taking into consideration the circumstance that the total number of cases concerning appeals on decisions of regional administrative courts has remained almost the same as in 2007, i. e. it reduced slightly, it is evident that the number of cases of other categories went up in 2008.

The picture of the most common case categories remains the same as in previous years. The most common ones concern the restoration of property (279 cases filed at the Court in 2008); taxes (191 cases received at the Court in 2008); civil liability for damage arising due to unlawful actions by governmental authorities (131 cases filed at the Court in 2008); health and social protection (76 cases received at the Court in 2008).

It is noteworthy that the rate of cases relating to building and territorial planning increased (110 cases received at the Court in 2008); however the rate of cases concerning environmental protection went down (40 cases filed at the Court in 2008).

**Cases of administrative offences received
at the Supreme Administrative Court of Lithuania in 2008**
(by subject matter)



As in previous years, cases arising due to offences in the field of transport, road management and communications form the largest share of received cases of administrative offences (3443 cases filed at the Court in 2008). It must be noted that the number of cases of this category, compared to the previous year, increased more than three times (1088 cases received at the Court in 2007). In 2008 they accounted already for almost three fourths of all cases of administrative offences filed (on the basis of appeals) at the Supreme Administrative Court of Lithuania.

Over 2008, a large number of cases relating to offences infringing the established rules of governance (220 cases), offences in the area of labour and health protection (212 cases), offences infringing the public order (171 cases), offences in the area of commerce, finance, accounting, and statistics (169 cases) was filed.

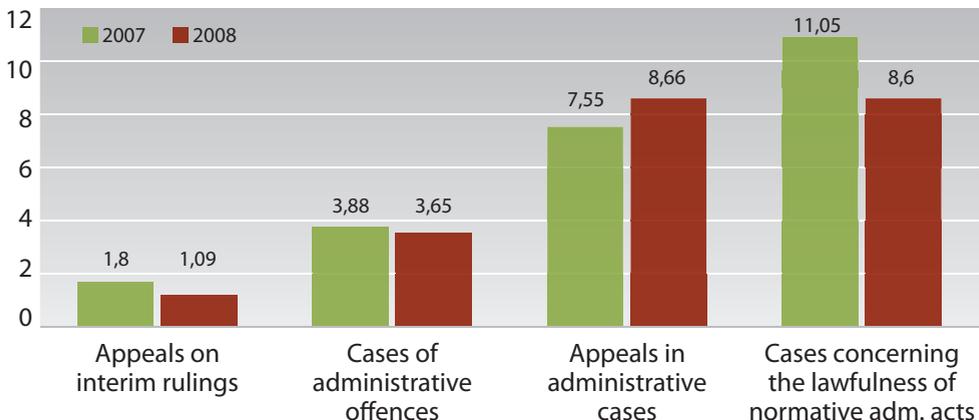
Length of the Proceedings at the Supreme Administrative Court of Lithuania

In 2008, in Supreme Administrative Court of Lithuania:

- » the mean period of hearing appeals on interim rulings of regional administrative courts was 1.09 month.
- » the mean period of hearing a case of administrative offence was 3.65 months.¹⁰
- » the mean period of hearing appeals on decisions of regional administrative courts was 8.66 months.
- » the mean period of hearing a case concerning the lawfulness of normative administrative acts was 8.60 months.

In 2007, in the Supreme Administrative Court of Lithuania:

- » the mean period of hearing appeals on interim rulings of regional administrative courts was 1.80 month.
- » the mean period of hearing a case of administrative offence was 3.88 months.
- » the mean period of hearing appeals on decisions of regional administrative courts was 7.55 months.
- » the mean period of hearing a case concerning the lawfulness of normative administrative acts was 11.05 months.



¹⁰ It should be noted that a substantial portion of cases arising from administrative offences are heard without delay (e. g. cases involving arrest, or cases in which other person's personal data are used, or cases returned because of protocol drawbacks, etc.), that is approximately in one month's time, however, the hearing of the rest of cases of this category lasts longer.