SUPREME ADMINISTRATIVE
COURT OF LITHUANIA

2018 ANNUAL REPORT

CONTENTS

FOREWORD

GINTARAS KRYŽEVIČIUS
President of the Supreme Administrative Court of Lithuania

2018 was a year of important work and pressing decisions for the Court. It was also an intense period when, together with the entire Court staff, we continued to look for the most effective legal and organisational regulatory levers in pursuit of the Court's key task of the administration of justice, by affirming the protection of constitutional values, increasingly focusing on providing the person with a prompt and clear response, and simultaneously ensuring even greater confidence in the Court's activities, sense of responsibility, and at last – humanity.

Last year was indeed dynamic, and although case flow increased in almost all administrative courts, we should be pleased to see that the Court managed to reduce the remainder of cases received and examined in 2018 as much as fourfold. Looking at the main categories of cases received, there is a persistent trend – the largest number of appeals received was in cases on liability of the State for damage caused to persons, but there is also a noticeable positive inclination towards a specific way of ensuring lawfulness in the area of governance – examining petitions to investigate the lawfulness of regulatory administrative acts. Compared to last year, these so-called "regulatory cases" increased by more than one and a half times. All this demonstrates not only the legal literacy of society, but also trust in the Court.

It should be noted that regulatory cases are distinguished by the fact that they examine legislation which establish rules of conduct for a group of persons not characterised by individual features, and this in turn means that the judgement taken by the court will have direct impact on a larger number of individuals than in ordinary cases. This year, the Court evaluated acts adopted by central administration entities in the fields of energy, spatial planning, environmental protection, education, health care and public sector structural change, among others, thus contributing at least in part to the implementation of better lawmaking.

In addition to the abundance of regulatory cases, 2018 also saw a significant increase in the number of petitions to issue an opinion on whether a municipal council member or mayor against whom the procedure for the deprivation of powers has been started has broken their oath and/or failed to fulfil the powers entrusted to them by law. There was one such petition in 2017 and seven in 2018. On the one hand, this situation allows us to be happy with the relative popularity of the new institution, which provides the opportunity to evaluate the activities of municipal council members in the form of democratic control, but on the other hand, it is cause for worry that the procedure for issuing opinions that was instated in 2015 might become aimless or just a tool for manipulating politicians in the procedure for the deprivation of powers, seeing that in the four years of the institution's existence, it was only in 2018 that the fact of a municipal council member breaking his oath was established for the first time.

The significant increase in the number of case categories discussed – as a challenge that came up in 2018 – modifies the Court's very objective and further refines the identity of administrative justice. Today it is no longer just a matter of achieving final justice in a particular case – establishing judicial guidelines for the future based on the needs of society as a whole is also relevant. This transformation of the Court took place gradually, but it is definitely a positive phenomenon leading to significantly higher requirements for the Court staff and enhancing the understanding of just how important the role of the Court is.

By more and more frequently applying the provisions of European Union legislation as well as the principles of administrative law prevailing in European law and regularly initiating petitions to the Constitutional Court of the Republic of Lithuania and the Court of Justice of the European Union, the Court is not only improving the quality of its judgements, but is also harmoniously fusing into both Lithuanian and pan-European case-law. It is always a pleasure to share the news that the Court has an indirect impact on European case-law as well: after finishing his work with the Court in October 2018, Irmantas Jarukaitis was appointed as a judge to the Court of Justice of the European Union, which only confirms the high level of competence of the Court's justices.

I am not mistaken in saying that the full-fledged work of any institution is unthinkable without cooperation (both local and international) with other institutions, organisations and courts. So, like every year, in developing the idea of an open court, the Court organised a presentation of its annual report, held round tables and seminars, invited pupils and students to visit, and carried out various social campaigns.

In mentioning all that has been accomplished, I also have to name the tight, hard-working team that helped make it happen, which was joined this year by two new justices. So as we move into 2019 with the slightly improved Law on Administrative Proceedings, we look forward to new challenges. In preparing to mark the 20-year anniversary of the establishment of the administrative courts as a highly progressive factor in shaping the rule of law, we will resolve interesting and complex cases with new energy, continuing to develop all democratic values and the most important of them – effective judicial protection of individual rights.

The main activities of the administrative courts are undoubtedly related to the administration of justice in examining the complaints, petitions or applications of individuals on matters of specialised competencies under the jurisdiction of these courts. And even though during the year in review, just like in 2017, the bulk of cases received and – accordingly – heard by the Supreme Administrative Court of Lithuania (hereinafter referred to as "the Court") consisted of individual complaints regarding damages for improper arrest and detention conditions, this in no way means that 2018 was not marked by new challenges and decisions that were significant to the formation and development of case-law. In fact, the disputes heard by the administrative courts stem from a broad spectrum of social relations regulated by public law, so new and often complex issues were raised in the cases on competition, taxes, energy, social security and other issues that were examined in 2018 as well. Therefore, the rules for the interpretation and application of the law presented in the judgments taken by the Court, which is entrusted with the formation of a uniform administrative case-law, including those reviewed in this report, are relevant not only to the parties to the proceedings in the particular case, but also to other participants in relations of the same nature, including public administration entities. Regarding the nature of the cases heard during the year under review, of note is that over the past few years, there has been an increase in the number of cases involving the legal status of foreign nationals and asylum, which is obviously also the result of intensified activities on the part of national migration authorities, inter alia, in controlling whether the grounds for issuing Lithuanian residence permits are still valid, whether these permits were issued in a grounded manner, and so on. The number of petitions received by the Court to issue an opinion in impeachment proceedings for municipal council members has also been increasing annually, and this year there was a particularly significant jump in applications and petitions to carry out an investigation on the lawfulness of administrative regulations, while the majority of cases in the other categories remained virtually unchanged. The number of appeals in cases concerning the award of local fees continues to decline, despite the fact that the trend is exactly the opposite in courts of first instance.

LAWFULNESS OF REGULATORY ADMINISTRATIVE ACTS

One of the prerequisites for a person's trust in the State and law is the lawfulness of legislation, which gives considerable weight to the function entrusted to the administrative courts: review of the lawfulness of administrative regulations according to abstracts, i.e. applications of persons not related to the individual case or petitions of courts hearing specific cases. 2018 was marked by striking growth in this category of cases and a broad spectrum of relevant state areas (energy, education, health care, spatial planning, transport, finance, etc.). As the only instance for regulatory cases on administrative regulations adopted by central entities of state administration, the Court examined as many as 20 such cases in 2018 (i.e. twice as many as the previous year) and recognised the relevant provisions as unlawful in one-fifth of them.

Thus, the results of judicial review of administrative regulations bear testimony to the fact that the doubts of applicants regarding the lawfulness of the administrative regulation being asked to review often prove correct. For example, the Court examined the lawfulness of administrative regulations adopted by municipal councils in two cases, and they contain contradictions: it was acknowledged in the ruling of 28 February 2018 in administrative case No eA-53-415/2018 that the requirement established in the municipal council operational regulation reviewed stipulating that a municipal council member must submit a copy of a request for information to the mayor of the municipality can be considered *complicating* the implementation of the municipal council member's right to receive information; in expressing its opinion in its decision of 6 June 2018 in administrative case No A-1256-442/2018 on specific immovable property tax rates established by the municipal council which were differentiated according to which company the immovable property subject to this tax belongs to, the Court found that they contradicted Article 6(2) of the Law on Immovable Property Tax due to the fact that the amount of the tax was determined *irrespective* of the type of the specific tax *(immovable property)* and the objectives of the Law on Immovable Property Tax to tax property registered in the Real Property Register. Meanwhile, regulatory administrative case No eI-5-492/2018 reviewed an order of the Minister of Environment setting out the criteria for declaring a specific vehicle as unfit for use (said vehicle would no longer be able to be used – it would be mandatory to get rid of it by transferring it to a waste manager). By its decision of 10 May 2018, the expanded panel of judges recognised that these provisions of the administrative

regulation were unlawful, emphasising that they are a new, independent legal basis not provided for in any law based on which an owner may be prohibited from operating, using and disposing of a vehicle belonging to him by right of ownership at his own discretion, thereby limiting the owner's right of ownership and freedom of economic activity by order of the minister. Also recognised as being in conflict with legislation of higher precedence were the rules established in the regulations of the Court of Honour of Property or Business Valuers that the judgement of this Court of Honour is pronounced without writing down the reasons for the judgment, and that these reasons are written down later (decision of 20 July 2018 of the expanded panel of judges in administrative case No eI-8-662/2018).

The need to comply with the *procedures for the adoption* of administrative regulations was resolved in administrative case No eI-1-502/2018 (decision of 19 March 2018) in which, inter alia, it was established that in auditing the authority carrying out state supervision of spatial planning, the final version of the spatial planning document solutions discussed with the public in accordance with the established procedure must be submitted, and if the solutions are changed, the public hearing must be repeated. The requirement for law-making bodies to comply with the procedure established by law for the entry into force of administrative regulations governing economic activity was emphasised in the 20 September 2018 decision of the expanded panel of judges in administrative case No eI-13-822/2018, where the regulation examined was found to be unlawful upon establishing that the National Commission for Energy Control and Prices did not adhere to the requirement established in the Law on Energy that the service prices set shall take effect two months after their publication. As the expanded panel of judges noted, the publication and entry into force of these prices is related to the legitimate interests and expectations of the persons whose legal status is affected by these prices, i.e. it is important and of significance for them to find out about price changes being made in a timely manner, especially in cases when the prices are being increased. Upon acknowledging in administrative case No I-9-662/2018 that the administrative regulation under review *was not published in accordance with the established procedure*, the expanded panel of judges, by its ruling of 17 October 2018, terminated the regulatory case regarding the lawfulness of the regulation governing the management and use of the Trakai Old Town.

In assessing the lawfulness of an administrative regulation in the decisions adopted in regulatory cases, rules for the interpretation and application of substantive norms are also provided. These norms were related to *servicing individuals* at institutions (decision of 1 June 2018 of the expanded panel of judges in administrative case No I-4-662/2018), the *provision of healthcare services* (decision of 12 June 2018 of the expanded panel of judges in administrative case No I-10-822/2018), *payment* for heating in common areas in blocks of flats (decision of 22 January 2018 of the expanded panel of judges in administrative case No eI-19-858/2017), *protection of cultural heritage* (decision of 11 May 2018 of the expanded panel of judges in administrative case No I-3-02/2018), and other issues. An opinion was also expressed on the *temporal scope of application* of the administrative regulation under review (decision of 17 October 2018 of the expanded panel of judges in administrative case No eI-23-556/2018; ruling of 5 December 2018 of the expanded panel of judges in administrative case No I-16-261/2018), on the requirements for the content of administrative regulations governing *property and business valuation* (decision of 22 October 2018 of the expanded panel of judges in administrative case No eI-6-822/2018), and on other issues.

In interpreting the *procedure rules* governing the legal proceedings of regulatory cases, the decisions taken in the year under review clarified and emphasised that, inter alia: investigating the conformity of administrative regulations with legislation of lower legal force than Government decrees is not within the competence of the administrative courts (decision of 2 January 2018 of the expanded panel of judges in administrative case No eI-21-438/2017); the unlawfulness of an administrative regulation (or part thereof) cannot be based on the premise (opinion) that due to the regulation established therein, the participants in the relevant legal relations will not fulfil or will avoid fulfilling the obligations imposed on them by other legislation (ruling of 18 December 2018 of the expanded panel of judges in administrative case No I-17-756/2018); administrative regulations do not include decisions of political party governing bodies to remove a member from a political party (ruling of 6 November 2018 of the expanded panel of judges in administrative case No eI-32-662/2018); in a regulatory administrative case, it is only the compliance of the administrative regulation (or part thereof) with the law and/or Government regulation that is assessed (is the subject matter of the case); acting within the limits of the competence clearly defined by the legislator, the administrative court, in a regulatory administrative case, does not and cannot decide on the lawfulness or validity of the administrative procedures, decisions taken and/or other actions (omissions) in executing (implementing) the disputed administrative regulation (or part thereof) (ruling of 4 October 2018 of the expanded panel of judges in administrative case No I-25-822/2018).

TAXES

As has already become usual in the field of indirect taxation, the Court allocated the most attention in 2018 to value added tax (VAT) issues, the majority of which were questions concerning the right to deduct this tax and the application of *zero-rate VAT*. In its 13 February 2018 ruling in administrative case No A-3010-438/2018, the judicial panel pronounced that in applying zero-rate VAT for the supply of goods when these goods are exported to third countries, confirmation of the export of goods from the competent customs office is sufficient primary and basic proof that the goods have left the territory of the European Union. In order to disclaim this confirmation, the tax administrator must collect evidence allowing the validity (correctness) of the export declarations (customs office decisions) to be denied without a doubt. Also of note is the ruling of 18 September 2018 in administrative case No A-374-442/2018, in which an opinion was expressed on the moment of emergence of the duty to *adjust a VAT deduction* when the initial deduction of this tax was not possible at all. In this regard, the Court, taking the relevant case-law of the Court of Justice of the European Union into account, held that in this case, the applicant had the duty to adjust the disputed VAT deduction (VAT declaration), but, unlike the evaluation of the tax administrator, concluded that the moment that this duty (of the applicant) arose coincided with the unsubstantiated deduction of VAT (the initial VAT deduction). In the case in question, this moment of emergence (of the duty to adjust the VAT deduction) was particularly important because the limitation period for calculating and re-calculating taxes was calculated based on it.

Regarding this limitation period, also of note is the fact that by its 7 March 2018 ruling in administrative case No A-1456-575/2018, the Court acknowledged that when it is decided to supplement a tax audit in progress with an investigation concerning additional tax, the *limitation period for calculating and re-calculating the taxes* applicable to the obligations related to this (supplemented) tax is calculated not from the initial order to audit, but from the day that this order is supplemented. In another case, it was fundamentally acknowledged that the *limitation period for the reimbursement (set-off) of a tax overpayment (difference)* had not been missed when the taxpayer filed the request for reimbursement (set-off) after this period had expired, but submitted a tax return with the overpayment (difference) specified before this period had expired (ruling of 7 March 2018 in administrative case No eA-619-442/2018). Also of note is the ruling of 29 August 2018 in administrative case No A-375-556/2018, in which it was found that it is prohibited to reduce the amount of *interest for a VAT difference not refunded on time* calculated and paid in accordance with the Law on Tax Administration to the advantage of the taxpayer upon taking into account other circumstances determined by actions other than those of the taxable person: the ratio of the interest amount to the VAT difference, the period of non-recovery and the reasons for it, as well as the losses actually incurred by the taxable person. Worth mentioning regarding *late payment penalties for failing to fulfil a tax obligation on time* is administrative case No A-1497-442/2018, in which the judicial panel specified by its ruling of 24 October 2018 that late payment penalties are no longer calculated from the moment that the fulfilment of this (tax) obligation was transferred to another person by a binding judgement in criminal proceedings.

With regard to direct taxes, namely – personal income tax, tax disputes continued to be investigated related to the determination of the amount of tax obligations when the taxpayer's expenses exceeded the taxpayer's official income (e.g. in administrative case No eA-1622-442/2018 of 21 November 2018). In one such case, the Court emphasised that in the absence of a real receipt of income confirmed by a comprehensive analysis of the factual circumstances of the receipt of income, the submission of contracts concluded in simple written form about monetary funds does not give proof of the actual receipt of income. By choosing to receive income in the form of cash (due to which the fact that this income was received is not recorded in the accounts of credit institutions) and not declaring this income when submitting a tax return for the corresponding tax period (e.g. when the submission of a return is not mandatory), the taxpayer assumes all the risk of the burden of proof (ruling of 28 November 2018 in administrative case No A-1648-438/2018).

The consistent case-law of the administrative courts that *tax exemptions cannot be interpreted broadly* was reflected in the ruling of 11 April 2018 in administrative case No eA-614-556/2018, where it was decided on the tax exemption provided for in the Law on Personal Income Tax related to the sale of housing where the taxpayer had declared his or her place of residence in the procedure established by law. Since there was no dispute in this case between the parties that the applicant had not declared his place of residence at the address of the flat that was sold, his right to the aforementioned tax exemption was denied without regard to the arguments that his and his entire family's actual place of residence was at the flat in dispute.

SOCIAL SECURITY

Most of the disputes that were resolved in 2018 in the field of social security were related to state social insurance old age pension and the calculation of the length of employment for the allocation of this pension (decision of 21 September 2018 in administrative case No eA-1593-502/2018, ruling of 22 November 2018 in administrative case No eA-1745-502/2018, ruling of 29 November 2018 in administrative case No A-1771-502/2018). The Court also assessed questions regarding the allocation of old-age pension to an individual who had returned to Lithuania from Ukraine, and asserted that in cases like these, pension is paid as stipulated in the agreement on social security signed between the Republic of Lithuania and Ukraine (ruling of 5 July 2018 in administrative case No eA-470-756/2018, ruling of 8 August 2018 in administrative case No eA-787-1062/2018).

Last year, there was a clear decline in disputes over illegally reduced state pensions, but in terms of these pensions, of distinction is the decision of 9 January 2018 in administrative case No A-1667-602/2017, in which the judicial panel advocated the right of individuals to receive a recalculated state pension, the size of which depended on remuneration (a salary) recognised as unlawfully reduced by the Constitutional Court of the Republic of Lithuania, in accordance with the provisions of the statute of Republic of Lithuania service in the Prison Department under the Ministry of Justice of the Republic of Lithuania. In general, there were a considerable number of disputes over state pensions, and especially pensions for state soldiers and officials. For example, a question regarding the right to receive the state pension for scientists was resolved (ruling of 9 May 2018 in administrative case A-702-525/2018), as was a question concerning the allocation of a state pension having regard to the average salary established for the individual, which also includes a service salary as well as the supplement granted (ruling of 29 November 2018 in administrative case No eA-941-756/2018), a question concerning the inclusion of the period during which the applicant served as head of the Customs Action Control Mobile Group into the length of employment for receiving a state pension for officers and soldiers (ruling of 7 November 2018 in administrative case No eA-922-261/2018), and a question regarding the pay of an expert received for implementing a relevant project not being equal to a basic salary in terms of Article 7 of the Law on State Pension for Officers and Soldiers (decision of 28 June 2018 in administrative case No eA-318-822/2018).

Disputes on social insurance pensions for survivors were still being resolved. It is clear from the Court's case-law that in resolving the question of recovery of overpayment of a widow's state social insurance pension, it is vital to assess whether the institution, in taking the decision to pay survivor pension, paying survivor pension for a long time, and not checking the data provided, acted diligently and carefully, adhered to the principle of good administration, and lawfully decided to recover the entire overpayment from the individual rather than limiting itself to the five-year limitation period for the recovery of overpayment. The person's economic (social) situation must also be assessed (ruling of 30 May 2018 in administrative case No A-4107-552/2018).

In the field of state social insurance allowances and benefits, of distinction is the ruling of 9 January 2018 in administrative case No A-1621-602/2017, in which the Court, advocating more favourable application of legal regulation, in re-examining a question regarding establishment of the applicant's level of capacity for work, emphasised that the Disability and Working Capacity Assessment Office, in re-examining a matter falling within the competence of this authority, albeit according to a personal complaint, must not only verify the validity of the decision of the territorial division of the said office, but must also resolve the question regarding re-assessment of the level of capacity for work. An opinion was also expressed on the award of a one-off insurance benefit upon the death of the spouse of a person who is not a citizen of the Republic of Lithuania and who does not have a permanent Lithuanian residence permit, and it was found that he is entitled to this benefit (decision of 7 September 2018 in administrative case No eA-4092-552/2018).

In the field of social assistance for families, children and low-income families, of relevance was the ruling of 22 March 2018 in administrative case No A-530-502/2018, in which the Court ruled on the moment of expiration of the child maintenance obligation for a person for whom an obligation has been established by a judgement of the court to maintain a child with periodic payments upon fatherhood being challenged. It was clarified in the case that *the Law on the Children's Maintenance Fund links becoming a debtor not with the biological fatherhood of the child for whom payments from the Children's Maintenance Fund are allocated, but rather – with the obligation imposed by the court on a specific individual to provide maintenance to that child*. Since the applicant's fatherhood in the case was only challenged in court by a judgement of the court, the fact that the circumstance that the applicant is not the child's father was already established in an earlier expert conclusion

did not in itself negate the obligation imposed upon the applicant by a binding judgement of the court to maintain the child. A similar position was followed in the ruling of 5 July 2018 in administrative case No A-826-602/2018 in resolving a question on recovery from the debtor of payments paid from the Children's Maintenance Fund.

As in previous years in the activities of the Court, a number of disputes were resolved regarding the refusal of the Foreign Benefits Office to issue an A1 form regarding applicable social security legislation and decisions on the foreign social security legislation applicable during the term of the employment contract (ruling of 14 March 2018 in administrative case No A-684-552/2018, ruling of 26 April 2018 in administrative case No A-1020-822/2018, ruling of 7 November 2018 in administrative case No A-5187-1062/2018).

Other disputes in the field of social security were notable not only for their abundance, but also for the variety of the issues that were resolved: The Court ruled on the recovery of an overpayment of a social insurance benefit from the employer, which had provided erroneous information about the fact that the dismissed employee was not granted severance pay (ruling of 9 May 2018 in administrative case No eA-1091-502/2018, for a similar issue also see the decision of 21 March 2018 in administrative case No eA-496-502/2018); in examining a case concerning establishment of the special status of a disabled child and his special need for permanent nursing, the Court emphasised the need to take into account the special status of a child with a disability and the need for maximum protection of his or her rights and legitimate interests (decision of 24 July 2018 in administrative case No A-544-822/2018). The Court ruled in favour of the applicants in cases where it decided on the duties of the institution paying benefits in order to recover a benefit overpayment and the application of a limitation period for this kind of recovery (decision of 21 November 2018 in administrative case No A-1803-502/2018),as well as on the payment of targeted compensation for nursing (assistance) costs to a person for whom the special need for permanent nursing (assistance) was established after becoming eligible for old-age pension (decision of 18 December 2018 in administrative case No A-1884-525/2018).

LEGAL STATUS OF FOREIGN NATIONALS

The number of cases that reached the Court involving the legal status of foreign nationals continued to grow in 2018. The number of cases received and the number of cases resolved both increased by more than half in 2018. Most of the cases received were related to refusal to issue a temporary residence permit or cancellation of a temporary permit to reside in the Republic of Lithuania.

In deciding on the validity of a refusal to issue a Republic of Lithuania residence permit, the Court emphasised that the fact that the company had not performed the activities specified in the documents of incorporation in the Republic of Lithuania according to the business plan for at least the last six months prior to the applicant applying for a temporary residence permit is an independent and sufficient basis to refuse to issue a temporary residence permit (ruling of 28 February 2018 in administrative case No eA-3414-502/2018). Significant clarifications were also made in administrative case No A-4498-520/2018, in which the Court held that the fact that an employee of the company was on special leave (paternity and child care leave) could not be equated with failure to comply with the requirement established in Article 45(1)(1) of the Law on the Legal Status of Aliens concerning the number of people working in the company.

The Court also clarified, on the basis of the provisions of national and EU legislation, that the cancellation of a permit to reside in the Republic of Lithuania is also justified when information is received that another Schengen country has issued an alert. In the opinion of the Court, if there is sufficient data to make a reasoned and lawful decision, additional consultation with the country that issued the alert does not have imperative character (ruling of 6 November 2018 in administrative case No eA-5229-552/2018). In administrative cases concerning the detention of foreign nationals, a tendency can be observed regarding *the priority of the interests of vulnerable persons*. For example, in the decision of 4 October 2018 in administrative case No A-5350-662/2018, the Court emphasised that even though the behaviour of the alien could be regarded as abuse of the asylum procedure, in assessing the individual circumstances of the situation and taking into account that her identity and nationality have been established and that she is included on the list of vulnerable persons, there are grounds to provide the foreign national with an alternative means of detention.

In administrative case No A-5072-520/2018, the Court, having established that the applicants and their four minor children (asylum seekers) had been included

on the list of vulnerable persons, that there were no doubts concerning their identity, and that there was no evidence that they would pose a threat to public order or public security or that they had violated the internal rules of the Foreign National Registration Centre, ruled that the application of alternative detention measures was not expedient and proportionate to the behaviour of the family and did not meet the needs of this vulnerable family and minor children, so enforcement measures could have been completely abolished for the applicants' family. There was even more focus on the interests of minors in administrative case No A-5717-492/2018, in which the Court clarified that even if there is a sufficiently high risk that the foreign nationals will repeat their attempt to leave the Republic of Lithuania illegally, their detention cannot be recognised as a proportionate measure, since proper protection of the interests and needs of children is an overriding objective.

In asylum cases, the Court clarified that officers of the State Border Guard Service have a duty to accept both motivated and unmotivated applications from asylum seekers (ruling of 14 February 2018 in administrative case No eA-3309-575/2018). In evaluating in another case the validity and lawfulness of a decision of the Migration Department to hand over foreigner nationals to the Federal Republic of Germany and establishing that the disabled mother and brother of the applicant live in the Republic of Lithuania, the Court declared that upon receiving the asylum application of the applicants, the Migration Department, which is entitled, but not obligated, to exercise the discretionary clause established in Article 17 of Regulation (EU) No 604/2013, nevertheless underestimated the situation of the applicants, especially related to humanitarian considerations and the health condition and disability of the applicants' relatives and the applicant's ability to take care of them. Even though Article 17(1) of the Regulation does not establish an individual's right to claim, and accordingly – the respondent's duty to exercise the right to examine this person's asylum application in the event that it is established on the basis of the criteria laid down in the Regulation that another EU Member State is responsible for examining the asylum application, it is the opinion of the Court that in cases when an asylum seeker bases his or her application on Article 16(1) of the Regulation, the Migration Department, in taking a decision on the transfer of the asylum seeker to another Member State, must also be able to present a motivated argument on the possibility of applying this legal norm as well (decision of 13 June 2018 in administrative case No eA-4189-552/2018).

CIVIL SERVICE

Quite a few service disputes were resolved in 2018. And given that the number of cases concerning the award of remuneration visibly decreased, more significant clarifications were presented in other types of cases in this category, i.e. in cases which dealt with dismissal, the lawfulness of disciplinary penalties, and the assurance of social guarantees.

In one of the cases, the expanded panel of judges expressed an opinion on the main procedures for imposing a disciplinary penalty. The expanded panel of judges noted that point 8 of the Rules for Imposing Disciplinary Penalties on Civil Servants (hereinafter – "the Rules") approved by Resolution No 977 of 25 June 2002 of the Government of the Republic of Lithuania, systematically assessed in the context of the Rules and of the Law on Civil Service (hereinafter – "the Law", "LCS"), is to be interpreted as obligating the person responsible for the management of the agency's staff or another civil servant authorised to investigate the misconduct to indicate in the report of misconduct until when the civil servant suspected of misconduct can submit a written explanation of the alleged misconduct, and to objectively make it possible for the civil servant to submit said explanation. In this case, the expanded panel of judges also noted that information provided in writing by another public administration agency or institution regarding the possible misconduct of a civil servant in the investigation procedure cannot be regarded as a document in lieu of the notice of misconduct provided for in point 7 of the Rules (decision of 14 February 2018 in administrative case No A-3008-662/2018).

In expressing its opinion regarding guarantees for a dismissed civil servant who is raising a child/children under three years of age, the expanded panel of judges noted that in deciding on the lawfulness of the dismissal of a public servant by terminating the position held thereby (Article 44(1)(9) of the LCS), the legal norms granting guarantees to the civil servant must be assessed (Article 44(7) of the LCS). However, assurance of the guarantees provided for in Article 44(7) of the LCS for a civil servant whose position is being terminated cannot be interpreted as meaning that the civil servant must be dismissed on the grounds

provided for in Article 44(1)(9) of the LCS, when the child reaches the age of three. On the other hand, the expanded panel of judges indicated that the guarantee provided to a civil servant whose position is being terminated to be assigned to another position of the same or lower level and category is not absolute (decision of 25 October 2018 of the expanded panel of judges in administrative case No eA-5093-575/2018).

A significant clarification was also presented regarding an appeal against the consent of the head of a territorial division of the State Labour Inspectorate (hereinafter – "SLI") to dismiss an employee performing employee representation activities. In its ruling of 19 December 2018 in administrative case No eA-4948-575/2018, the expanded panel of judges held that a decision of the head of a territorial division of the SLI to give consent to dismissing an employee or changing the indispensable employment contract terms may be appealed against in accordance with the procedure established by the Law on Administrative Proceedings by either the employee or the employer. In expressing an opinion on the issues that must be assessed in the decision of the SLI, the expanded panel of judges concluded that the territorial division of the SLI had to assess only whether the company's plan to dismiss the employee was related to his activities in the trade union.

In recent years, the Court also had a chance to express an opinion on the material liability of a former minister.

In its decision of 13 November 2018 in administrative case No A-2995-492/2018, the expanded panel of judges held that in deciding on the liability of the Minister of the Interior for damages caused by unlawful acts carried out in exercising internal administrative powers with respect to an agency under the ministry, inter alia, by imposing disciplinary penalties, the terms of civil liability are applicable, inter alia, Article 6.280(1) of the Civil Code and the norms of the Law on Damages. In order to determine whether the State acquired the right of recourse (counter claim) to the person who caused the damage, in this case – the Minister of the Interior for the material consequences caused by his unlawful acts, *the following two conditions must be established*: first, the State must have already compensated the damage caused by these actions of the Minister of the Interior; second, the damage must have been caused by the guilty actions of the Minister of the Interior.

The Court also ruled on the discretion of a minister in deciding on the appointment of a successful candidate to the position of head of a subordinate institution. In its ruling of 4 October 2018 in administrative case No eA-5154-492/2018, the Court noted that the right of discretion of public officials and civil servants is defined as the power that gives the administrative entity certain freedom of action in decision-making, enabling it to select, from among several legally possible behavioural options, the one which it considers most appropriate. In accordance with the principle that *the right of discretion in the rule of law cannot be absolute*, it should not be interpreted as an unmotivated and unbinding choice. Entities exercising the right of discretion are constrained by the criteria and general requirements of the principle of legality. The judicial panel considered that the competence conferred to the minister to adopt legislation – as well as the Rules for the Selection of Correctional Officers – and to form the Selection Commission are not only measures for realisation of the discretion of the minister, but also an instrument for defining the limits of discretion, since the minister is bound by his own rules.

In its ruling of 7 March 2018 in administrative case No eA-492-442/2018, in which the applicant sought to have the respondent initiate an official investigation regarding a civil servant, the judicial panel clarified that commencement of an official misconduct investigation is the discretion of the person/institution that hired the civil servant suspected of the misconduct. Assurance of the applicant's subjective right was manifested in the fact that the respondent was obligated to investigate the applicant's appeal in accordance with the procedure established by the Law on Public Administration and accompanying legislation. Bringing disciplinary action against the civil servant has no impact on the applicant's rights or legitimate interests.

In expressing its opinion on granting additional leave to a civil servant for the period for which payment for annual leave was delayed, the Court, based on Article 176(2) of the Labour Code (the version in force until 1 July 2017) and having regard to the case-law of the Supreme Court of Lithuania, explained that the above legal norm establishes the general rule that an employee is paid for the leave period before the start of the leave. Extension of leave when the employee is late in being paid for it is the right of the employee to be coordinated with the employer, so in order to exercise this right, he would normally have to *express his will during the leave or within a reasonable time* (but without delay) once it is over (ruling of 6 June 2018 in administrative case No eA-851-575/2018).

In another case which dealt with the applicant's dismissal under Article 44(2) of the Law on Civil Service (a civil servant absent from work due to temporary incapacity for more than 140 days over the past 12 months), the judicial panel explained that in this case, the Labour Code must be followed in *calculating the period of incapacity* for work and Article 44(2) of the LCS must be interpreted as meaning that all calendar days must be included in the 140-day period of incapacity for

work (ruling of 31 August 2018 in administrative case No eA-4758-662/2018).

Relevant interpretations of legal norms were provided in other service dispute cases as well: the Court held that vacant positions must also be offered to the head of an institution who is being dismissed due to reorganisation of the institution (ruling of 14 November 2018 in administrative case No eA-5189-438/2018); in a case that dealt with issues concerning remuneration for work, it was the opinion of the Court that the reality of shift work must be assessed, i.e. the mere inclusion of a position in the list of officials working in shifts is not grounds for paying for the time worked as shift work (ruling of 28 November 2018 in administrative case No A-1560-556/2018).

COMPETITION

As usual, not many competition cases were heard in 2018; however, the disputes in this area that were resolved this year enabled the Court to shape case-law on extension of the period for examining a notification of concentration, the dissemination of false advertising, and the competence of the Competition Council to refuse to begin an investigation or to terminate one that has already begun.

Administrative case No eA-1115-624/2018 dealt with a resolution of the Competition Council by which the applicant, who was managing the classified ad websites www.plius.lt, www.autoplius.lt and www.domoplius.lt through a related company in Lithuania, was refused a permit to implement concentration upon indirectly, through another legal entity, acquiring 100 per cent of the shares in the company that was managing the classified ad websites www.skelbiu.lt, www.autogidas.lt and www.aruodas.lt. Even though the combined income thresholds established by law were not exceeded by this concentration and the applicant was not obligated to obtain the permission of the Competition Council for its implementation, the latter, having decided that it is likely that the concentration will create or strengthen a dominant position or significantly restrict competition in the classified ads market, obligated the applicant to submit a notification of concentration. Upon the applicant transferring 100 per cent of the shares in one of the legal entities and all of the assets managed by this company (including the aforementioned ad websites) to a third party and informing the Competition Council thereof, and also submitting a request to terminate examination of the notification of concentration, the Competition Council still refused to issue the applicant a permit to implement concentration.

The Court ruled that the court of first instance, by repealing the resolution of the Competition Council and obliging the Competition Council to conduct an additional investigation and adopt a new resolution on the basis thereof, adopted a decision of a kind not provided for in the Law on Competition which essentially extends the four-month period for examining a notification of concentration specified in Article 11(2) of the Law on Competition, which may be extended for one month only at the reasoned request of the economic operator that submitted the notification of concentration and only if the Competition Council intends to adopt a resolution according to Article 12(1)(2) of the Law on Competition, i.e. in the presence of circumstances that were not present in the event of dispute. In addition, the Court, having evaluated Article 14(2) of the Law on Competition, explained that if not all the information that had a significant impact in adopting the resolution was submitted and assessed, there is always a possibility to review the resolution of the Competition Council, i.e. the Competition Council has a measure to correct an error in the concentration control procedure, and the person concerned – to dispute the Competition Council's refusal to do so; therefore, a need to establish a different standard of proof does not in essence exist (ruling of 14 March 2018 in administrative case No eA-1115-624/2018).

This year, the Court also had to investigate the activities of economic operators in disseminating false advertising (see the ruling of 21 November 2018 in administrative case No eA-1612-502/2018 concerning false advertising by specifying inaccurate information on the conditions for the discount applicable in pharmacies and the ruling of 19 December 2018 in administrative case No eA-1239-822/2018 on false advertising on petrol station price boards) and express an opinion on other issues relevant to competition law (see the ruling of 4 June 2018 in administrative case No eA-143-624/2018 on horizontal agreements not to apply discounts to cinema tickets, the ruling of 26 March 2018 in administrative case No eA-4-822/2018 on termination of an investigation commenced by the Competition Council, and the ruling of 11 April 2018 in administrative case No eA-568-502/2018 on the refusal of the Competition Council to open an investigation when related economic operators are participating in a public procurement).

ENERGY

In the field of energy, most of the significant cases examined in 2018 were related to price regulation in the energy sector. As the renewable energy sector gained stability, the number of disputes in this area was lower than in previous years. During the year under review, the important energy-related cases were characterised by diversity, which was, inter alia, the result of abstract petitions submitted to the Court to investigate the lawfulness of administrative regulations.

On 22 January 2018, the expanded panel of judges examined a regulatory administrative case which dealt with how the cost of heating in common areas in blocks of flats should be distributed among the consumers in the building fairly and in accordance with the law. This case examined the lawfulness of the legal norms which established the allocation of payment for heat consumption to consumers in blocks of flats when there are consumers in the building who have disconnected themselves from the common heating system. In this case, the expanded panel of judges noted that the provisions of the Republic of Lithuania Law on the Heat Sector cannot be understood as exempting the heat supplier from the obligation to pay for all of the heat consumed for heating the building only because some of the consumers in the building are disconnected from the common heating system. In blocks of flats, heat is consumed in the heat supply equipment basements and in the heat substations from the pipelines, which warm the building construction as well as private and common premises (ruling of 22 January 2018 in administrative case No eI-19-858/2017).

In the field of energy sector price regulation, the Court consistently emphasised in its case-law in 2018 the procedural requirements arising from law that public authorities must respect in adopting obligatory instructions for private individuals. For example, failure to comply with the period during which the newly approved Electricity Transmission Service Prices and the procedure for their application must come into force was recognised as a material breach of the law (decision of 20 September 2018 in administrative case No eI-13-822/2018). Similar standards were also followed in the examination of administrative case No eA-2979-822/2018, where there was a dispute as to whether the National Commission for Energy Control and Prices (hereinafter – "the Commission") had the right to extend the previous price regulation period and therefore not to apply the newly approved legal regulation of the Government of the Republic of Lithuania on the establishment of electricity price caps. The expanded panel of judges ruled that a decision to extend the regulation period must be motivated and adopted before expiration of the established deadline. The condition that a decision to extend the regulatory period for transmission and distribution service price caps must be motivated means that it must be taken not on the basis of random circumstances, but only for objective reasons which prevented the Commission from recalculating and approving the prices in question (ruling of 13 March 2018 in administrative case No eA-2979-822/2018).

On the other hand, in the case-law of the Court, not every procedural violation is considered to constitute grounds for declaring the administrative act unlawful. In another case concerning recognition of the status of an entity with significant influence, it was found that the Commission had missed the deadline for conducting the market analysis during which this status can be recognised – this status could have only been granted by the Commission after conducting the market analysis that is carried out at least every five years. Despite the fact that more than five years had passed since the previous analysis, during which the applicant in this case was recognised as having significant influence, the Commission subjected the economic operator to legal norms which are only applicable to entities with significant influence. The judicial panel noted that in accordance with Article 66 of the Law on Electricity, a person only loses the status of having significant influence by decision of the Commission. The fact that the Commission did not carry out a market analysis in due time would be decisive in the event that the applicant in the present case could prove that it had lost the status of a person with significant market power. However, the applicant did not provide any evidence to that effect, so this procedural violation did not form grounds to recognise the actions of the Commission as unlawful (ruling of 30 October 2018 in administrative case No eAS-4523-822/2018).

DAMAGES

Cases concerning the compensation of damages caused by the unlawful acts of public authorities still make up the majority of the cases received and examined by the Court, i.e. a bit less than half of all of the Court's cases.

The bulk of cases heard in this category concerned improper arrest and detention conditions, or more precisely – insufficient cell space and/or inadequate hygiene; however, there is a trend to claim non-material damage for disregard of other convict demands as well. For example, for not creating an opportunity for a person with health problems to sleep in the bottom bunk (ruling of 11 January 2018 in administrative case No A-464-520/2018), on the use of handcuffs in a medical facility (decision of 24 October 2018 in administrative case No A-2513-1062/2018), on short-term leave for individuals convicted of very serious crimes (ruling of 7 November 2018 in administrative case No A-1106-575/2018), on the possibility to combine visits and the possibility to use Internet telephony (ruling of 14 November 2018 in administrative case No A-1631-662/2018), and so on.

According to the data available to the Court, the amount of non-material damages awarded to prisoners in 2018 came to approximately EUR 820,000, which is almost half as much as in 2016 and a bit more (about 6 per cent) than in 2017. The highest amount of compensation for non-material damages was EUR 75,000, which was awarded by the Court to two appellants for the fact that the Pravieniškės Correction House-Open Prison Colony did not ensure the safety of their close relative (son and brother), which led to him being beaten up while sentenced and ultimately dying from complications after the injuries suffered (ruling of 24 May 2018 in administrative case No A-664-756/2018).

OTHER CASES

Many rules of interpretation and application of the law significant to the formation of administrative court case-law were presented in 2018 in the decisions and rulings adopted by the Court in other categories of cases.

This year, as many as seven petitions were received by the Court to *issue an opinion* on whether a municipal council member or mayor against whom the procedure for the deprivation of powers has been started has broken their oath and/or failed to fulfil the powers (specified in the petition) entrusted to them by law. For the first time since the implementation of this institution in the Law on Administrative Proceedings, the Court held that a municipal council member did indeed break the municipal council member oath. The Court came to this conclusion after recognising the public statements of a member of the municipal council as belittling information and misinformation spread about a Lithuanian partisan commander (conclusion of 26 November 2018 in administrative case No eI-29-415/2018).

It should be noted that in investigating these petitions, significant rules of interpretation and application of the law were also presented in relation to the duties of the municipal council members. For example, in the conclusion of 28 February 2018 (administrative case No eI-7-822/2018), the judicial panel clarified that a municipal council member's *duty to personally vote* at a municipal council meeting is attributed to the imperative duties of a municipal council member established by legislation. The constitutional status of a municipal council member and the mandate of an individual municipal council member also imply that no person, inter alia, another municipal council member, can assume the rights and obligations of a municipal council member – a representative of the community – including the right to vote. In the conclusion of 25 July 2018 presented in administrative case No eI-24-822/2018, the judicial panel noted that from the municipal council member oath, the members of the council are subject to standards of conduct as members of collegial bodies. If a municipal council member does not adhere to them and the activities of the body of local self-government are disrupted as a result (inter alia, the faction fails to fulfil its duty to nominate candidates to the Control Committee), it may be recognised that the municipal council member broke the oath.

In examining this category of cases, the Court also presented a few significant clarifications during the year under review concerning the procedure for the actual impeachment proceedings, emphasising that where a petition is filed with the Court to issue an opinion as specified in Article 120 of the Law on Administrative Proceedings on several municipal council members,

the accusation in the acts (the conclusion of the commission and the decision of the municipal council to apply to the Court) adopted during the procedure for the deprivation of powers of municipal council members concerning actions taken by municipal council members for whom impeachment proceedings have been initiated *must be individualised* and motivated for each municipal council member (conclusion of 30 May 2018 in administrative case No eI-15-556/2018); the day of clarification of the grounds for a proposal to initiate the procedure for the deprivation of powers of a municipal council member/mayor, from which the one-month deadline for submitting a proposal to the municipal council is calculated, must be determined in each individual case, taking into account the nature of the violation that might have been committed by the municipal council member (ruling of 12 June 2018 in administrative case No eI-21-525/2018).

Even though disputes under the General Data Protection Regulation[1] – if any did arise – did not yet reach the Court in 2018, a few interesting and significant cases were examined by the Court *in the area of personal data protection*. For example, in dealing with disputes in this area, the Court issued an opinion on making an audio recording without the individual's consent (ruling of 24 January 2018 in administrative case No eA-3-822/2018), on ascribing data about the education of a civil servant to private information (ruling of 29 March 2018 in administrative case No A-552-502/2018), and on an employer's right to check an employee's company email account in order to determine whether the employee has violated the employer's interests (ruling of 20 April 2018 in administrative case No A-622-525/2018). In the decision of 20 February 2018 in administrative case No A-17-822/2018, an opinion was issued on the competence of the State Data Protection Inspectorate to decide on the expediency and lawfulness of the submission of evidence to the court by parties to the proceedings in civil cases, and note was made of the fact that providing evidence to the court in executing a court order cannot be regarded as the provision of personal data within the meaning of Article 6 of the Law on Legal Protection of Personal Data. In another case, the Court also provided a clarification that *the mere fact that video cameras are used to monitor (partially monitor) more than just the territory belonging to the person means that this monitoring is already directed to outside of the private sphere of the person processing the data in this way*, i.e. upon establishing that the monitoring oversteps the boundaries of the private territory of the natural person (the data processor), both Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and the Law on Legal Protection of Personal Data must be applied (ruling of 7 February 2018 in administrative case No A-1452-442/2018).

Just like every year, there were not many cases concerning *citizenship* (grant, revocation), but the ones that were heard stood out for their unusual factual circumstances and the clarifications presented by the Court related thereto. For example, in the decision of 5 January 2018 in administrative case No A-2842-1062/2018, the Court concluded that the wording of Article 24(2) of the Law on Citizenship ("Citizenship of the Republic of Lithuania shall be lost…on acquiring citizenship of another state") means that citizenship in this regulated case is lost when the citizenship of another state is acquired later than citizenship of the Republic of Lithuania. In another case, the Court emphasised that based on Article 14(1) of the Law on Citizenship ("A child both of whose parents or one of them are citizens of the Republic of Lithuania shall acquire citizenship of the Republic of Lithuania by birth, irrespective of whether he was born in or outside the territory of the Republic of Lithuania"), the daughter of the applicants, though not born in Lithuania, acquired Lithuanian citizenship at birth in light of the fact that her parents are citizens of the Republic of Lithuania. Therefore, in order for the daughter of the applicants to be in Lithuania legally, she does not have to have the type of permit that is issued to citizens of other countries (ruling of 29 August 2018 in administrative case No eA-4926-502/2018).

One of the cases in the field of education pertinent to students about to complete secondary school came about when the applicant attempted to change the score for the state Lithuanian language and literature exam after an appeal due to which the original score (87 point) was changed to a significantly lower score of 58 points. In rejecting the applicant's complaint, the Court stated that the Description of the Procedure for Organising and Conducting Maturity Examinations does not prohibit giving a lower score for exam work than was given during the initial assessment after examining an appeal. The Court also stated that the applicant could not have legitimately expected a score that was at least not lower, since neither the Republic of Lithuania Law on Education nor the aforementioned Description of the Procedure for Organising and Conducting Maturity Examinations establish prohibition of reformatio in peius in the appeals procedure for state examinations (ruling of 10 September 2018 in administrative case No A-4703-1062/2018).

1 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

In the area of *health care*, the Court examined an interesting case concerning the duty of the Commission for the Reimbursement of Treatment for Very Rare Human Health Conditions to take a decision according to an administrative procedure that has already been initiated. In this case, the Court noted that once the institution has begun the decision-making process, failure to take a decision due to non-receipt of data cannot be justified for a long period (decision of 10 May 2018 in administrative case No A-908-502/2018). In ruling in this area on the obligation of a self-employed person residing in another EU Member State to pay compulsory health insurance contributions in Lithuania, the Court followed the provisions of the EU rules on coordination of social security systems and concluded that in order for it to be possible to assess whether a person is self-employed in two Member States, said must carry out activities, provide services, receive income, etc. in those Member States. In view of the fact that the applicant is not considered to be self-employed in Lithuania within the meaning of Title II of Regulation (EEC) No 883/2004 – there was no evidence in the case that the applicant received monetary payment in Lithuania during the period in question for working as a lawyer on a self-employment basis – there were no grounds to assume that the Law on Health Insurance was applicable to the applicant according to the EU rules on coordination of social security systems (ruling of 16 October 2018 in administrative case No eA-874-602/2018).

In the area of *state-guaranteed legal aid*, the Court examined the lawfulness and validity of a decision of the Klaipėda department of the State-Guaranteed Legal Aid Service by which the applicant was refused secondary legal aid due to the fact that the applicant had not paid EUR 1,240 in secondary legal aid costs in another case. In accordance with the 11 October 2018 resolution of the Constitutional Court in which it was recognised pursuant to an appeal of the Court that Article 11(7)(11) of the Law on State-Guaranteed Legal Aid (9 May 2013 version), insofar as secondary legal aid is not provided according to the legal regulation established therein if the applicant was provided with such aid in another case but did not pay for all or part of the costs of said aid by the deadline specified, is, in cases where such aid is particularly difficult for the person to access due to financial reasons and ensuring it in criminal proceedings is necessary in the interests of justice, in conflict with the Constitution of the Republic of Lithuania, the Court settled the case in favour of the applicant. Although the administrative case in question dealt with the provision of secondary legal aid to the applicant in an administrative offence case, the Court repealed the challenged decision (decision of 19 December 2018 in administrative case No A-3189-556/2018).

Regarding the *provision of information to the public*, a pertinent issue was resolved this year upon ruling that a municipality's website may also be considered to be a public information tool in some respects, so by posting certain publications on it, they are also subject to the provisions of the Law on Provision of Information to the Public, and that the Inspector of Journalist Ethics is in principle competent to deal with complaints concerning them (ruling of 5 July 2018 in administrative case No eA-854-602/2018). The Court also had to express an opinion on material published in a book about crimes committed by criminal groups that was related to the applicant's criminal activity, the verdicts made concerning him, and the investigations conducted. The Court held that the public has a right to be acquainted with information of this nature (ruling of 16 August 2018 in administrative case No A-1330-520/2018). However, in situations where the public interest in knowing the circumstances of a private person's life without his or her consent is not substantiated, making them public is unjustified (decision of 26 September 2018 in administrative case No eA-3327-492/2018).

In resolving a dispute over the legal relations of the *restoration of property rights* and expressing an opinion on the consequences of the illegal transfer of state-owned land, the Court developed the practice of applying the principle of proportionality. The Court noted that the eligibility of the transfer of the item and the honesty of the acquirer as well as the proportionality of the burden of the consequences of vindication depending on them are essential circumstances that need to be evaluated in detail in order for a case on vindication to be disclosed in essence. The Court clarified that in cases where the acquirer, having should have understood the possible unlawfulness of the transaction, opted to act in a non-transparent manner and acquired the property in bad faith, it is considered that the acquirer personally assumed the risk of the burden of the negative consequences, so in this case, recovery of the item will not be a disproportionate burden thereto. Furthermore, the Court noted that *the qualifying attribute for the application of vindication specified in Article 4.96(2) of the CC – the fact of the crime committed – can also be found before the criminal proceedings on the offence that caused the item to be lost is heard in court* (ruling of 25 September 2018 in administrative case No eA-330-1062/2018). Under dispute in another case were administrative acts by which, in restoring property rights, a forest of national significance belonging to the State by right of exclusive ownership was unlawfully transferred to the respondents. Even though the administrative acts referred to were disputed 10 years after the restoration of property rights, the Court, in developing its previous case-law, found that an administrative

act which contradicts mandatory provisions of the law, and by which the constitutional principles of the disposal of property under the exclusive ownership of the State and the protection of such property rights are fundamentally negated, does not create civil rights and obligations, so they cannot be protected. This means that *property with the legal status of exclusive state ownership is returned to the State, fairly compensating the honest persons who acquired it and applying the law of restitution and the civil law institution of the limitation period, regardless of how many years have passed since the adoption of the administrative act* (ruling of 10 October 2018 in administrative case No eA-4507-415/2018).

As far as disputes concerning the operation of *registers*, there was one case that stood out where the applicant mistakenly submitted erroneous data to the State Enterprise Centre of Registers and later asked for them to be annulled, but the Centre of Registers refused to do so, arguing that the submission of the data under dispute met the formal requirements. The court noted that *legal norms give the registrar not the right, but rather – the obligation to correct erroneous data at the request of the provider of the documents and data*, because the provision to third parties of data recorded in the register which does not correspond to the actual situation violates their rights and legitimate interests (ruling of 9 January 2018 in administrative case No A-5-662/2018).

In resolving disputes arising in the area of *financial market supervision*, the Court underscored the obligation of a brokerage firm to take all possible measures to prevent the transfer of inside information to other persons (decision of 24 September 2018 in administrative case No A-2332-1062/2018), and that if shares are paid for in full or in part by a non-monetary contribution when increasing a company's authorised capital, the value of this contribution must be checked in entering it in the books when, after evaluation of this contribution, there are changes to significant circumstances that may affect the value in question (ruling of 9 May 2018 in administrative case No eA-944-442/2018).

In examining *public procurement* issues, the Court found that upon a state enterprise conducting the international Procurement of Food Products for the Most Deprived and the Supply Thereof by open procedure, public procurement violations were committed, since disproportionately high, discriminatory requirements that artificially restricted competition had been established for the object of purchase and the qualification of the service providers, and the object of purchase was unduly not split into separate parts (ruling of 23 April 2018 in administrative case No A-727-502/2018).

With the number of cases heard on *financial assistance from national, European Union and foreign institutions* up by as much as a third, the expanded panel of judges began taking steps to unify the Court's case-law, specifying that the practice considered significant and exemplary is that in which the completeness and detail of the terms of the purchase (invitation to tender) for the settlement procedure is not an essential circumstance or condition in order to qualify a change to the purchase contract as essential (decision of 10 October 2018 in administrative case No eA-214-261/2018). The Court also clarified that extension of the time limits for the supply of goods or services provided for in contracts cannot be in each case, i.e. without assessing the circumstances of the specific procurement, it is considered to be a modification of the existing public procurement contract in breach of public procurement principles, so each situation therefore requires careful evaluation in the context of the specific purchase (ruling of 8 January 2018 in administrative case No A-1495-602/2017) and emphasised the importance of the protection of legitimate expectations (decision of 13 March 2018 in administrative case No A-235-602/2018). During the year under review, the Court explained that there is no obligation established in legislation for persons requesting assistance to make investment market price assessments on their own initiative and at their own expense – the right to perform these assessments is granted to the National Paying Agency, so the court order unjustifiably restricts the applicant's right to proper defence of his violated interests in court (ruling of 31 May 2018 in administrative case No eA-1138-520/2018), and had the opportunity to issue an opinion on the influence and assessment of newly discovered circumstances (decision of 19 January 2018 in administrative case No eA-56-1062/2018, decision of 1 February 2018 in administrative case No eA-81-492/2018). The Court also presented a clarification that the circumstance in a specific case that state land lease agreements were terminated with a person when the plots of land were returned to the owners by law is not considered to be force majeure (ruling of 18 September 2018 in administrative case No A-1379-422/2018).

ADMINISTRATIVE PROCEEDINGS

In examining individual complaints of participants in proceedings in 2018, the Court accentuated the importance of the principle of universal access to judicial protection and, in its rulings, continually emphasised that as a general principle, the administrative court cannot assess whether a person's rights have actually been violated at the stage of receiving the complaint. For example, this position was adhered to in the ruling of 13 November 2018 in administrative case No eAS-769-552/2018 in deciding on the applicant's right to apply regarding decisions of the State Consumer Rights Protection Authority on the destruction of hazardous products, as well as in the ruling of 21 November 2018 in administrative case No eAS-628-756/2018, in which the Court expressed an opinion on dispute of the enforcement measure – instruction – given by the supervisory authority and held that the Panevėžys State Food and Veterinary Service, after carrying out an unscheduled inspection, not only recorded the infringement found in the inspection report, but also applied an enforcement measure (instructions to recover the beer from the Republic of Estonia) which was not of a recommendatory nature but on the contrary – imperative, leading to specific legal consequences for the applicant. The cases of note in terms of the right to apply to the court and the realisation thereof were those in which the Court clarified that with a clear procedure for appealing the decisions of the head of a territorial office of the State Labour Inspectorate established in codified legislation (Article 168(3) of the Labour Code), control of the lawfulness and validity of these decisions falls within the jurisdiction of the administrative courts (ruling of 8 May 2018 in administrative case No eAS-337-415/2018); the Court ruled that individuals have the right to appeal against the decision of the State-Guaranteed Legal Aid Service to appoint a lawyer who does not meet their will (ruling of 8 May 2018 in administrative case No eAS-383-261/2018); and in expressing an opinion on the right of the applicant, the Architects' Chamber of Lithuania, to apply to the court with an abstract petition to investigate the lawfulness of a particular legal norm, the Court, having found that land-use planning is an integral part of spatial planning, decided that issues related to the lawfulness of the relevant point of the

text regulations of the main drawing of the general plan fall within the competence of the applicant (ruling of 26 April 2018 in administrative case No eAS-297-822/2018).

In resolving issues concerning rectification and receipt of a complaint, of mention is the ruling of 10 May 2018 in administrative case No AS-322-415/2018, in which the Court clarified that the submission of copies of a complaint is not an essential obstacle to accept the complaint, especially given that the Court, having accepted the complaint by order, sends an electronic copy of the complaint to public administration entities by means of electronic communications (via the Lithuanian court electronic services portal).

In examining cases on the renewal of proceedings, the Court reiterated the importance of the objective impartiality of the judge and decided that when the spouse of the judge hearing the case is an employee of a party to the case, the situation, from the aspect of objectivity, may call into question the impartiality of the judge (ruling of 8 May 2018 in administrative case No eP-18-1062/2018).

APPLICATIONS TO OTHER COURTS

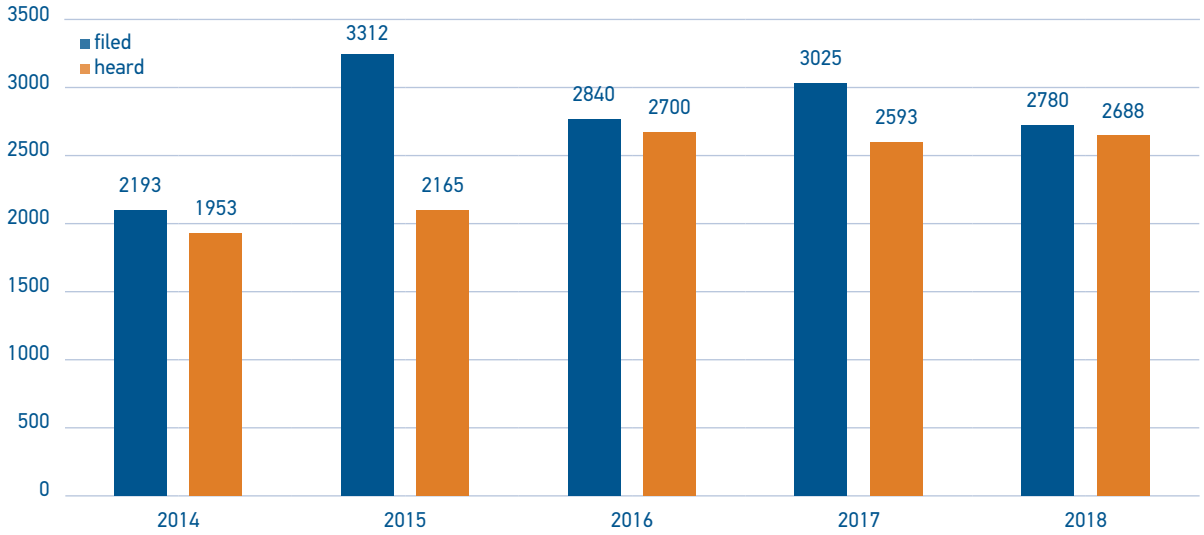
Like every year, the Court played an important role in initiating control of the lawfulness and constitutionality of legislation in the Constitutional Court of the Republic of Lithuania, as well as in the activities of the administrative courts by directly implementing the values established in the Constitution. Of note in the former is that this year, the Court initiated two appeals to the Constitutional Court of the Republic of Lithuania: the first petition presented the question of whether the provisions of the Republic of Lithuania Law on the Children's Maintenance Fund is in conflict with the Constitution insofar as they establish a requirement for the applicant and the child to reside permanently in the Republic of Lithuania in order to receive payments from the Children's Maintenance Fund (administrative case No A-3059-261/2018); the second petition formulated the question of whether points 1.2.1 and 1.2.2 of Resolution No 149 of 1 March 2017 of the Government of the Republic of Lithuania and the corresponding points of the Description of the Procedure for the Allocation of Funds From the State Budget of the Republic of Lithuania to Higher Education and Research Institutions to Develop Research, Experimental Development and Artistic Activities approved by this resolution imperatively obligating the Minister of Education and Science to approve, by means of administrative regulations, new criteria for the evaluation of research and experimental development and artistic activities which would be applied in assessing the activities of universities and research institutes before the adoption of these administrative regulations contradict the constitutional principle of the rule of law and Article 7(2) of the Constitution (administrative case No I-14-502/2018).

In terms of the latter, it is important to mention that in 2018, the Constitutional Court of the Republic of Lithuania examined four constitutional justice cases (i.e. almost one third of all of the resolutions adopted by the Constitutional Court of the Republic of Lithuania in 2018) according to petitions of the Court (on the material liability of ministers, on requirements for resolutions of the Government by which projects are recognised as being of national significance, on the establishment of criteria for granting the right to a fishing quota in inland waters, and on the provision of state-guaranteed legal aid in criminal proceedings), due to which, upon reopening suspended cases, the procedural decisions in all of the cases examined by the Court were made solely in favour of the individuals.

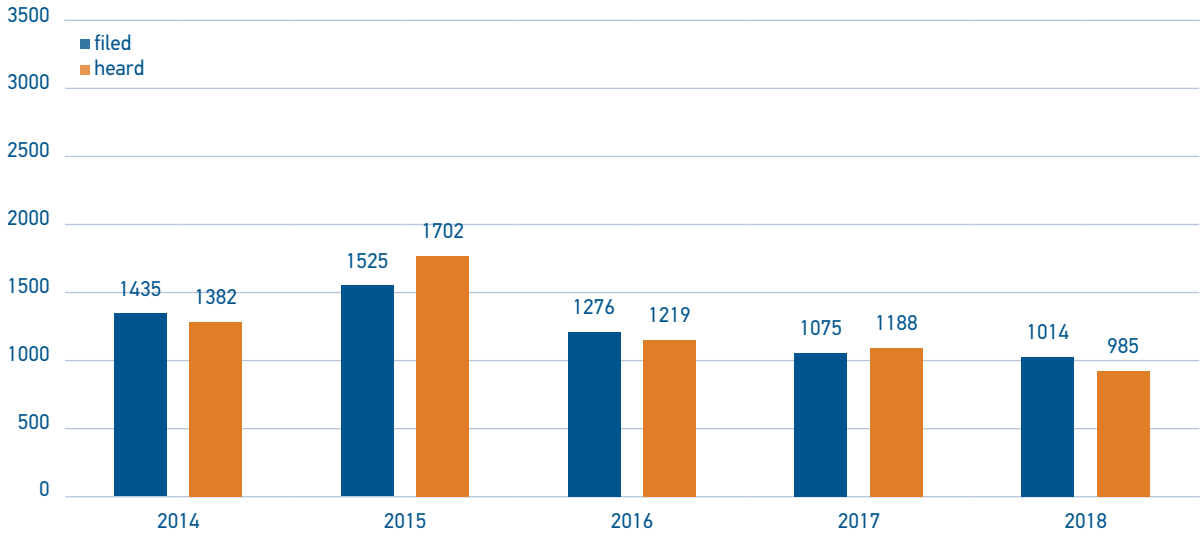
When, in carrying out its duties, doubts arose regarding the interpretation or validity of European Union legislation to request the Court of Justice of the European Union to give a preliminary ruling, the Court only submitted one question in 2018. In examining a dispute in administrative case No eA-368-556/2018 concerning the lawfulness of the instruction of the tax administrator to pay value added tax and value added tax interest as well as a fine imposed on this tax, a request was made to clarify Articles 282–292 of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, i.e. whether they should be interpreted as meaning that, in circumstances such as those in the present case, when two goods are supplied by way of the same transaction, but the annual turnover limit (scope of activity) established in Article 287 of the Council Directive 2006/112/EC of 28 November 2006 (in the corresponding provision of national legislation) was only exceeded due to the supply of one of these goods, the taxable person (the supplier) has the duty, inter alia, to calculate and pay value added tax on the total value of the transaction (the value of both the goods supplied) or only on the part of the transaction that exceeded the aforementioned limit (scope of activity) (the value of one of the goods supplied) (case No C-265/18).

SUPREME ADMINISTRATIVE COURT OF LITHUANIA:

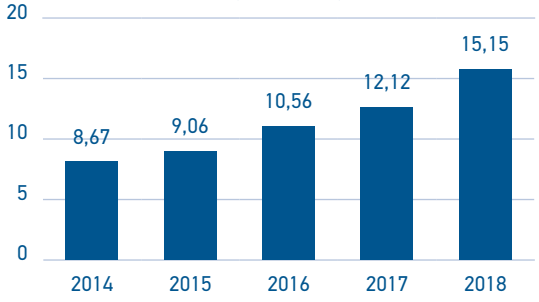
ADMINISTRATIVE DISPUTE CASES FILED WITH AND HEARD BY THE SACL



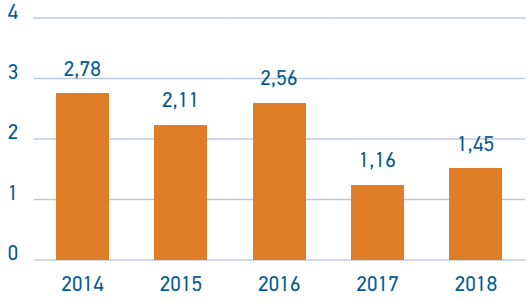
CASES FILED WITH AND HEARD BY THE SACL CONCERNING RESTORATION OF THE STATUS QUO ANTE, THE RENEWAL OF PROCEEDINGS AND COMPLAINTS AGAINST RULINGS



AVERAGE CASE LENGTH FOR ADMINISTRATIVE DISPUTES (MONTHS)



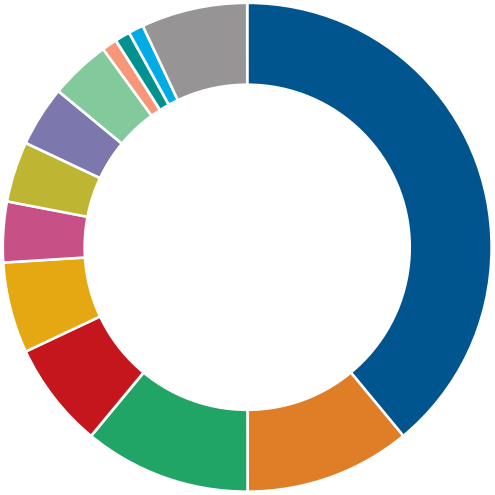
AVERAGE CASE LENGTH FOR COMPLAINTS AGAINST RULINGS (MONTHS)



YEAR 2018 IN STATISTICS

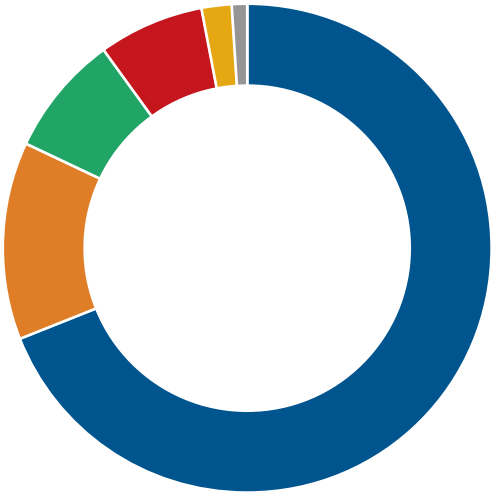
AVERAGE CASE LENGTH FOR COMPLAINTS AGAINST RULINGS (MONTHS)

- Liability of state institutions for damage – **39 per cent**
- Civil service – **11 per cent**
- Legal status of foreign nationals and asylum – **11 per cent**
- Taxes and customs – **7 per cent**
- Health protection and social security – **6 per cent**
- Financial assistance from European Union and other institutions – **4 per cent**
- Construction and spatial planning – **4 per cent**
- Restoration of property rights – **4 per cent**
- Land – **4 per cent**
- Environmental protection – **1 per cent**
- Registers – **1 per cent**
- State-guaranteed legal aid – **1 per cent**
- Other – **7 per cent**



RESULTS OF APPEALS CASES ON THE DECISIONS OF REGIONAL ADMINISTRATIVE COURTS HEARD BY THE SACL IN 2018

- Decision upheld – **69 per cent**
- Decision changed – **13 per cent**
- New decision adopted – **8 per cent**
- Case referred to the court of first instance for re-examination – **7 per cent**
- Appeals process terminated – **2 per cent**
- Case closed or complaint left unresolved – **1 per cent**



OTHER 2018 FIGURES

23

Number of petitions (applications) received to investigate the lawfulness of regulatory administrative acts adopted by central state administration entities

7

Number of petitions received to issue an opinion on whether a municipal council member or municipal council member/mayor has broken their oath and/or failed to fulfil the powers entrusted to them by law

33

Number of administrative dispute cases examined by the expanded panel of judges

3

Number of cases that ended with a binding judgement or ruling for which proceedings were renewed

10

Number of cases that ended with a court settlement being concluded by the parties

42

Number of rulings on matters of the specific jurisdiction of cases that were handed over to the Special Panel of Judges through the Supreme Administrative Court of Lithuania to decide on matters of the specific or general jurisdiction (in 33 per cent of the cases, the Special Panel of Judges returned the disputes to the administrative courts to be heard)

OTHER COURT ACTIVITIES

COURT BULLETINS

In implementing its function of shaping uniform case-law, the Court prepared two bulletins in 2018 which contained the most relevant information on case-law, a summary and review of case-law, as well as other information and material of significance to ensure uniform interpretation and application of the law.

Bulletin No 34 (July–December 2017) – relevant case-law of the Court, a summary of case-law in cases on the application of sanctions for competition law violations, an article by Agnė Andrijauskaitė, LL.M. entitled "Gingerbread or a Whip? A Different Take on Good Administration", as well as an article by Prof. Dr. Ulrich Stelkens entitled "Pacta Sunt Servanda in German and French Administrative Contract Law". The information section of the bulletin includes a review of the special rulings of the judicial panel on the specific jurisdiction of cases as well as foreign judgements relevant to Lithuania and an overview of European Court of Human Rights case-law.

Bulletin No 35 (January–June 2018) – a presentation of the most significant procedural decisions of the Court for the relevant period, an overview of pertinent judgements of the Court of Justice of the European Union, the European Court of Human Rights and foreign countries, as well as the Procedural Guidelines for Requests for Advisory Opinions According to Protocol No 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms. The administrative doctrine column features an article by doctoral student Eimantė Šilvaitė entitled "The Court Settlement as the Basis for Judicial Mediation in the Administrative Process".

PUBLICATIONS

In 2018, the Court published a scientific publication entitled "Challenges for the Courts of Today in Ensuring Human Rights", in which Lithuanian and foreign administrative law theoreticians and practitioners shared their insights on various topical issues. This publication contains articles by Dr. Aurimas Brazdeikis, Dr. Carsten Günther, Dr. Danutė Jočienė, Prof. Dr. Egidijus Jarašiūnas, Marc El Nouchi, Jean-Marc Sauvé, Prof. Dr. Lyra Jakulevičienė, Dr. Laura Paškevičienė, Prof. Dr. Rasa Ragulskytė-Markovienė, Prof. Dr. Hab. Marek Zirk-Sadowski and Dr. Tomasz Grzybowski, Prof. Habil. Dr. Vilenas Vadapalas, Prof. Habil. Dr. Virgilijus Valančius, and Dr. Vygantė Milašiūtė related to the defence of human rights in the modern world.

In response to the abundance of regulatory cases received this year, the Court also prepared and presented the Recommendations for the Preparation and Submission to the Administrative Courts of Applications and Petitions to Investigate the Lawfulness of an Administrative Regulation, which presents the requirements established by law and/or the provisions of case-law that must be adhered to in the preparation and submission of applications and petitions, as well as advice of a recommendatory nature to help prepare a quality procedural document. The recommendations aim to introduce and remind individuals of the verification procedure for applying to the administrative courts regarding the lawfulness of administrative regulations, and to provide applicants with practical information to facilitate in the preparation of compliant applications and petitions and the proper submission thereof to the administrative courts.

EXPERIENCE AND COOPERATION

In 2018, the Court consistently pursued inter-institutional cooperation in Lithuania as well as international cooperation with the courts of European countries. During visits to other Lithuanian courts and round tables at the Court, the judges shared best practice in the fields of judicial administration and work organisation, and discussions took place on the future and prospects of administrative justice.

The long-standing cooperation between Lithuanian and Polish administrative courts was developed: during meetings and numerous discussions, knowledge and experience was shared with judges from the Supreme Administrative Court of Poland and the administrative courts of the Warsaw, Kielce and Białystok voivodeships. In 2018, the Court hosted large delegations of foreign judges from Moldova, Ukraine, Finland and the Netherlands, as well as delegations of participants in the Exchange Programme for Judicial Authorities organised by the European Judicial Training Network (EJTN).

Judges from the Supreme Administrative Court of Lithuania developed their skills in 2018 at international events, training programmes and seminars in Hungary, Turkey, the Kingdom of the Netherlands, Romania, Ukraine, France, Malta, Estonia, the Grand Duchy of Luxembourg, Austria, Spain, Belgium, Croatia and Germany.

Photo of SACL president by KĘSTUTIS VANAGAS; other photos by NERINGA LUKOŠEVIČIENĖ

Žygimantų str. 2, LT-01102 Vilnius
Tel. (8 5) 279 1005
info@lvat.lt
www.lvat.lt