2021

ANNUAL REPORT

SUPREME ADMINISTRATIVE
COURT OF LITHUANIA

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INTRODUCTORY WORD


Photo by Kęstutis Vanagas

Dear all,

2021 was a special year for the entire system of administrative courts in general and for the Supreme Administrative Court of Lithuania in particular. Last year, celebrating the 20th anniversary of the Court, we had an opportunity to evaluate the work we have done over this relatively short period – developing administrative jurisprudence and the unifying case law, setting precedents and practise in new areas of legal relations, successfully overcoming the challenge of European Union law application. I believe, we can safely state that in these twenty years the administrative courts have established themselves in the Lithuanian judicial system as a tool for judicial control of the public administration system, ensuring high protection of the rights and legitimate interests of individuals and legal persons alike.

Administrative courts dealing with disputes between a person and the State are particularly affected by the changes taking place within the State, and 2021 was exceptional because this year judges of the Supreme Administrative Court of Lithuania had to settle disputes and develop case law in two categories of cases, where numbers of cases grew larger than usual. The first category of cases adjudicated by the Court as the only instance concerns issues pertaining to the exercise of the person's right to a referendum. When the Constitutional Court of the Republic of Lithuania declared the Law on Referendums contrary to the Constitution of the Republic of Lithuania in 2020 and the legislator did not adopt a new law before the entry into force of the ruling of the Constitutional Court, the Supreme Administrative Court of Lithuania had to solve a large number of complex issues on interpretation of law and find ways to ensure the implementation of the right to a referendum in the vacuum of legal regulation. Among cases of this category, judgments regarding the registration of citizens' steering groups, the Central

Electoral Commission's control function of substantive legal character and its duty to assess the conformity of legal rules proposed for a referendum to the Constitution of the Republic of Lithuania should be highlighted. The second category of cases were disputes relating to the legal status of foreigners. Cases in this category are sensitive and complex, requiring special diligence from judges and assisting court personnel. The flow of cases concerning the legal status of foreigners not only generated an additional number of disputes to be urgently adjudicated, but also led to the inevitable need to develop case law based on international standards, which would be in line with the international obligations of the Republic of Lithuania. I would like to express my delight that the past year has further highlighted the focus, persistence and ability of the judges and staff of the Supreme Administrative Court of Lithuania to adapt quickly to changing circumstances and to continue their work smoothly. I would like to express my sincere gratitude to everyone for their excellent work, which, even in the context of complicated conditions of the pandemic and the flow of additional cases, has enabled us to achieve a lasting and objectively visible result – a shorter time of review of appellate complaints to 10–12 months. This is a joint achievement of everyone working in the court – of the experienced judges and of professional colleagues who have joined the judiciary of Supreme Administrative Court only recently, as well as of the other members of the Court personal including students, working in the framework of program to attract young talents. I believe that the focus and determination of us all will further strengthen the role of administrative courts as guardians of human rights in relations with the State.

President of the Court
Gintaras Kryževičius

JUDGES OF THE SUPREME ADMINISTRATIVE COURT OF LITHUANIA

Photo by Neringa Lukoševičienė

*On 16 March, judge **Ernestas Spruogis** joined judges working in the SACL. He was appointed to this position by the decree of the President of the Republic of Lithuania of 17 February 2021. Before taking the office of SACL judge, Ernestas Spruogis was a judge of the Vilnius Regional Administrative Court for 12 years. The judge has many years of legal experience, he has worked in a number of institutions, including the Constitutional Court of the Republic of Lithuania. The judge was awarded a PhD in law at the Law University of Lithuania in 2002 and has been a lecturer at Mykolas Romeris University since 2005.*

Photo by Dainius Stankus

*On 2 April, judge **Rasa Ragulskytė-Markovienė** joined judges working in the SACL. She was appointed by the decree of the President of the Republic of Lithuania of 23 March 2021. Before taking the office of SACL judge, Rasa Ragulskytė-Markovienė was a judge of Vilnius Regional Administrative Court for 13 years. The judge has defended a PhD thesis in the field of European Union environmental law in 2005 and was awarded a PhD in Law, she is a lecturer of Mykolas Romeris University Law School. Rasa Ragulskytė-Markovienė is also a Member of the Board and Vice-chair of the Association of European Administrative Judges (AEAJ), the Head of the Independence and Efficiency of Administrative Jurisdiction working group of this association.*

20TH ANNIVERSARY OF THE COURT

2021 was a special year for the SACL, as it turned 20. To commemorate this anniversary, we invite you to read the greeting word of Kęstutis Lapinskas, the first President of the Supreme Administrative Court of Lithuania, and to familiarize yourself with the most important events in the history of the Court.

The entire publication designed for the 20th anniversary of the Supreme Administrative Court of Lithuania is available here:

"The steady increase in the number of administrative cases in administrative courts shows the confidence of people and the society in these courts."

- Dr. Kęstutis Lapinskas, the first President of the Court

According to **Dr. Kęstutis Lapinskas**, the first President of the Supreme Administrative Court of Lithuania, "... 20 years ago, adopting laws on the establishment of administrative courts, the Republic of Lithuania in fact completed the formation of its modern judicial system in line with the most advanced models of the European continental judicial system. <...> In addition to courts of general jurisdiction (i.e. courts examining civil and criminal cases), the Constitutional Court was established and a possibility to found specialised courts, including administrative courts, was provided for. Where the main task of the Constitutional Court is to ensure that the acts adopted by the supreme state institutions – the Seimas, the President of the Republic and the Government – comply with the requirements of constitutionality and lawfulness, the task of administrative courts is to exercise judicial control over the activities of other public administration institutions and their officers.

Thus, the judicial system in Lithuania ensures judicial control over the entire state apparatus and all its institutions. The Lithuanian administrative courts, during 20 years of their activities, have done a huge job of examining complaints of individuals and applications for the implementation of subjective rights and interests protected by law in the area of public administration and handling cases of lawfulness of regulatory administrative legal acts. The steady increase in the number of administrative cases in administrative courts shows the confidence of people and the society in these courts. At the same time, administrative courts are becoming an important instrument for improving the performance of the public administration system."

MOST IMPORTANT EVENTS THROUGHOUT THE 20 YEARS

2001
the first application was made with the Constitutional Court of the Republic of Lithuania with a request to examine the conformity of a legal act to the Constitution of the Republic of Lithuania. Until 31 December 2020, the Constitutional Court examined 54 requests of the Supreme Administrative Court of Lithuania.

2004
the Supreme Administrative Court of Lithuania became a member of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe) and an observer member of the International Association of Supreme Administrative Jurisdictions (IASAJ) (full member since 2005).

2005
the Court referred to the Court of Justice of the European Union with a request for a preliminary ruling for the first time. 28 references for a preliminary ruling were made by 31 December 2020 in total.

2009
the Supreme Administrative Court of Lithuania, along with the French Council of State, won an international competition for the European Union twinning project in Ukraine “Strengthening the efficiency and management capacity of the administrative courts of Ukraine”.

2013
- an electronic filing system was introduced;
- an amendment to the Law on Administrative Proceedings came into effect, providing for a possibility to end an administrative dispute in court with a settlement agreement.

2014
in order to improve the quality of the Court performance and service of persons, the quality management system according to LST EN ISO 9001 standard was introduced.

2017
the Supreme Administrative Court of Lithuania joined the Superior Courts Network (“SCN”) of the European Court of Human Rights.

2019
the legal institution of referring a dispute for settlement by judicial mediation was established in the Law on Administrative Proceedings.

2020
the first application was made to the European Court of Human Rights with a request for an advisory opinion according to Protocol 16 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

20TH ANNIVERSARY OF THE COURT

During 20 years of its activities, the SACL adopted significant judgments in cases concerning the writing of street names in the state language, the freedom of assembly, damage for failure to establish the gender reassignment procedure, payment to officers for actually performed work, application of *non bis in idem* principle, the right to the value added tax deduction, concerted actions of tour operators in application of limited discounts, writing letters x, q, w in surnames, appropriateness of the implementation of the Tourism Directive in national law, the duty of a member of the municipal council to vote in person in the meeting of the municipal council, the medicinal products reimbursement procedure, issuing a permit of residence in Lithuania to a spouse of the same gender, the right of children who left to live in a foreign country to get payments from the children's maintenance fund, processing of a person's biometrical data for the purpose of working time recording purposes, the journalists' right to obtain, collect and disseminate information, etc.

OVERVIEW OF 2021 CASE LAW

2021 revealed several new features of the judicial activity of the Supreme Administrative Court of Lithuania (hereinafter also referred to as the "Court"). Based on the overview of the last year judicial activities in cases in very different areas of law, several trends can be pointed out. The first trend is a greater focus on the cases that the Supreme Administrative Court of Lithuania examines as the single instance. Regulatory cases, cases to be examined urgently regarding the referendum initiatives and requests for a conclusion whether a member of the municipal council breached an oath formed a significant part of the activity of the Court in the year in question, which is especially important for ensuring respect for rights and compliance with the principles enshrined in the Constitution of the Republic of Lithuania. The second trend is related to events that will remain remembered in many respects, accompanying measures to manage the migration crisis.

When examining appeals regarding issues of detention of foreigners, the Court had the opportunity to establish case law on the extent of the jurisdiction of the courts in respect of persons not formally allowed to enter Lithuania and the assessment of the proportionality of measures imposing restrictions on such persons. Finally, the fact that in 2021 cases were referred to the grand panels of judges more frequently clearly shows that, despite the challenges of the big workload of the Court, several important developments in jurisprudence have emerged. In this respect, the overview of the judgments given by the Court once again allows to state the diversity of areas within the competence of the administrative courts and the importance of the settled cases. As every year, in this section we overview the main trends in the development of case law by areas – lawfulness of regulatory administrative acts, taxes, health care and social security, legal status of foreigners, competition, environmental protection, personal data protection, etc.

LAWFULNESS OF REGULATORY ADMINISTRATIVE ACTS

Given that in 2020 the Court received almost 2.5 times more requests to investigate the lawfulness of regulatory administrative acts than in previous years, it is natural that in 2021 the Court gave a number of important interpretations on the lawfulness of certain rules approved by ministers.

In this section, regulatory verification proceedings regarding ensuring fair competition of carriers have to be notably pointed out. In administrative case No. eI-12-502/2021, the grand panel of judges ruled on lawfulness of paragraphs 14.5 and 22 of the Rules for Issuing Permits for Carriage of Passengers on Scheduled Routes of Road Transport, approved by Order No. 3-62 of the Minister of Transport and Communications of the Republic of Lithuania, dated 14 February 2006 (hereinafter referred to as the Rules), which establish cases when a tender procedure is to be organised (or may be not organised) for selection of carriers to carry passengers on the routes established by the competent authority. The grand panel of judges noted that cases when a tender procedure is to be organised, or may be not organised, for selection of carriers to carry passengers on the routes established by the competent authority, also the maximum period for which the relevant passenger carriage agreement may be extended, are material conditions of economic activities, as upon determining that in a certain case a tender procedure may be not organised, other carriers may lose a possibility to compete for carriage of passengers on a relevant route (routes), whereas where it is determined that a tender procedure is to be organised, the carrier already carrying passengers on a relevant route (routes) may lose such a possibility, which also may have a material impact on the economic activities of that carrier, especially taking into account investments required for economic activities in the field of passenger carriage on scheduled routes of road transport. In the opinion of the grand panel of judges, the maximum period for which the relevant passenger carriage agreement may be extended is also a material condition of economic activity, with regard to the fact that upon extension of an agreement with the carrier for a route for a certain period, in that period other carriers will not be able to compete for a possibility to carry passengers on the route to that extent to which a relevant passenger carriage agreement has been extended.

Having regard to the fact that the regulation establishing the material conditions of economic activity may be established in a legal act of at least legislative level, and having regard to the fact that the contested provisions have no legislative basis, the grand panel of judges stated that the defendant established namely material conditions of economic activities in paragraphs 22 and 14.5 of the Rules, i.e. in a sub-legislative legal act, thus exceeding its competence and violating the principle of the hierarchy of legal acts contained in the constitutional principle of the rule of law. With regard to that, it was ruled that paragraphs 22 and 14.5 of the Rules are contrary to the constitutional principle of the rule of law (see the judgment of the grand panel of judges of 17 May 2021 in administrative case No. eI-12-502/2021). The Court pronounced on restrictions on material conditions of economic activities also in administrative case No. eI-9-502/2021, dealing with lawfulness of subparagraph 16.6 of Annex 4 to the Description of the Social Care Norms approved by Order No. A1-46 of the Minister of Social Security and Labour of the Republic of Lithuania, dated 20 February 2007 (version of Order No. A1-386 of 8 July 2019). The contested regulation established the maximum number of persons (no more than 40) allowed to live in one building in a social care home for the elderly newly established in 2013 or later.

The Court noted that according to the provisions of subparagraph 1 of paragraph 1 of Article 23 of the Law on Social Services, the Minister of Social Security and Labour has a formal legal basis for establishing requirements for premises (linking it to the issuance of a license). Meanwhile, the contested provision imposes a restriction on the number of people that can live in one building, which is beyond the authority to establish requirements for premises. Therefore, it has been concluded that the restriction of material conditions of economic activity of this type is beyond the authority given to the Minister of Social Security and Labour by superior legal acts. It has been established that the provision contested in the case essentially restricts the economic activities of economic entities – an economic entity loses a possibility to provide social care services to the elderly based solely on the number of persons planned to be accommodated in one building, regardless of the characteristics of the building and other quality criteria for the services. Such a restriction has legal consequences not only for economic entities but also for social service recipients, who have less choice of social care establishments. Having regarded all these arguments, it has been admitted that subparagraph 16.6 of Annex 4 of the Description is contrary to the constitutional principle of the rule of

law and the principle of the supremacy of law enshrined in paragraph 4 of Article 3 of the Law on Public Administration (see the judgment of the grand panel of judges of 3 May 2021 in administrative case No. eI-9-502/2021).

In the area overviewed herein, regulatory verification cases related to the field of energy are worth to be discussed in more detail. In the year in question, in administrative case No. eI-22-415/2021 the Court investigated lawfulness of the provisions in the Mandatory Quality Indicators of Oil Products, Biofuels and Liquid Fuels Consumed in the Republic of Lithuania, permitting to omit mixing the mandatory quantity of biofuels into petrol and diesel fuel sold from state reserves and stated that the provision investigated in the case was contrary, to some extent, to the legislative principle of systemic character, which means that legal rules must be compatible with one another, legal acts of inferior legal power must not be in conflict with legal acts of superior legal power (see the judgment of the grand panel of judges of 17 November 2021 in administrative case No. eI-22-415/2021). By its judgment of 31 March 2021 in case No. I-5-261/2021, the grand panel of judges in fact stated that the Ministry of Energy is not competent to order the owners of apartments and other premises in a multi-apartment building to cover the costs of maintenance and operation of heat substations, which are not their property but that of heat suppliers or third parties.

In 2021, the Court also settled a number of cases concerning the lawfulness of regulatory administrative acts of territorial and municipal administrative entities.

As it has become usual, this year, too, the Court had to assess the lawfulness of certain provisions of the rules of procedure of municipal councils – by its ruling of 11 October 2021 in administrative case No. eA-1734-1062/2021, the panel of judges confirmed that the time limit for preparation of a draft agenda of an urgent council meeting, which is set in law, had been unreasonably shortened in the rules of procedure of the Visaginas Municipal Council.

As in previous years, issues relating to waste management, which are addressed in the light of the importance of the "polluter pays" principle, have remained relevant in the case law of the Court. In administrative case No. eA-1705-492/2021 regarding the provision of the Waste Management Rules of the Vilnius City Municipality, which regulates payment for the management of bulky items of waste, construction and demolition waste, textile, hazardous or other waste that is impermissibly left on the waste container grounds or nearby (at a distance of up to 5 m), it was stated that the investigated provision is in conflict with the "polluter pays" principle (see the judgment of the Grand Panel of judges of 11 November 2021 in administrative case No. eA-1705-492/2021).

Meanwhile, no conflict with the "polluter pays" principle has been found in another case. The Court took into account that the decision of the Panevėžys City Municipality Council was taken after a thorough investigation, during which it was found that the implementation of the possibility for waste holders to pay according to the amount of municipal waste collected from them and managed is not possible in the municipality. In those circumstances, the Court admitted that the provision establishing a minimum norm of municipal waste for owners of one-family houses who use individual containers is not in conflict with the said principle (judgment of 15 December 2021 in administrative case No. eA-4063-575/2021).

In overview of the regulatory verification issues, two judgments of the Court in relation to the education of children are to be particularly noted. In administrative case No. eA-2599-968/2021, the Court upheld the judgment of the court of first instance to recognize the provisions of the procedure, approved by a decision of the Vilnius City Municipality Council, according to which the obligation to pay for meals was applicable in cases when a child was absent from an educational institution for less than three days by reason of illness or another valid cause, as contrary to legal acts of superior legal power (see the ruling of 29 September 2021 in administrative case No. eA-2599-968/2021).

In terms of education, the ruling of 16 June 2021 in administrative case No. eA-2338-629/2021 is also to be highlighted, where provisions of the decision of the Alytus City Municipality Council, in principle establishing that the priority to continue education according to the secondary education program was vested in persons who declared their place of residence in Alytus town, were admitted to be unlawful.

Finally, six judgments of the Court meant to overview the application of the procedural rules for regulatory verification should be mentioned. The Court, examining separate appeals against the refusal of the court of first instance to allow an application for investigation of lawfulness of a regulatory administrative act or decision to dismiss a regulatory case, inter alia, pronounced on issues of the improperly formulated subject-matter of the investigation (e.g. the ruling of 15 September 2021 in administrative case No. eAS-476-492/2021), also the duty of the court of first instance to set a time limit for elimination of defects in the application (e.g. the ruling of 3 February 2021 in administrative case No. eAS-36-520/2021, the ruling of 7 April 2021 in administrative case No. eAS-252-261/2021).

The Court also pronounced on other issues of application of procedural rules regulating proceedings in relevant cases, where it is noteworthy that the grand panel of judges of the Court by its ruling of 12 May 2021 in administrative case No. eA-164-968/2021 dismissed a regulatory case started according to the application of a member of the Seimas regarding the real property tax rates of a relevant year upon stating that while this case was pending, the relevant tax periods, in which those rates applied, were already expired (see also the ruling of 30 June 2021 in administrative case No. eA-1575-602/2021; the ruling of 14 July 2021 in administrative case No. eA-2187-520/2021).

REFERENDUMS

The Constitutional Court of the Republic of Lithuania admitted in its ruling of 30 July 2020 that the Law of the Republic of Lithuania on Referendums (the version of 20 December 2018), according to the procedure of its adoption, was contrary to paragraph 3 of Article 69 of the Constitution of the Republic of Lithuania, the constitutional principle of the rule of law, according to its form – to subparagraph 5 of paragraph 1 (the version of 9 October 2014) of Article 2 of the Constitutional Law of the Republic of Lithuania on Entering into the List of Constitutional Laws, therefore, it cannot be applied since 1 July 2021. The experience of the Supreme Administrative Court of Lithuania in 2021 demonstrated that the need to organize referendums can arise also before the legislator has had time to implement the ruling of the Constitutional Court. Although this situation has undoubtedly made it more difficult for the Court to act, in 2021, the Court, as the only instance, urgently settled even 11 cases in this category on the merits and gave a number of important interpretations on certain aspects of the exercise of the right to a referendum. Four judgments have to pointed out among them.

In administrative case No. R-14-1062/2021, the grand panel of judges of the Court passed a judgment on important issues of organising a referendum, inter alia, the registration of the referendum steering group and arranging further initial actions of the referendum organisation stage. In this case, the dispute was over Decision No. Sp-172 of the Central Electoral Commission of the Republic of Lithuania (hereinafter referred to as the CEC, the Commission) "Regarding the organisation and performance of procedures of the mandatory referendum regarding the Law on Amending Articles 9 and 147 of the Constitution of the Republic of Lithuania", dated 1 July 2021, by which the steering group of citizens of the Republic of Lithuania having the right to vote in elections was not issued sheets for collection of citizens' signatures for the mandatory referendum regarding the Law on Amending Articles 9 and 147 of the Constitution and was not given access to the electronic sheet for collection of citizens' signatures in the CEC information system.

The grand panel of judges, with regard to the historic legal regulation by the Law on Referendums, to the fact that the provisions of the Law on Referendums that regulated the registration of the steering groups, issuance of sheets for collection of signatures (later accompanied by creation of the access to the electronic sheet for collection of citizens' signatures in the CEC information system and giving a possibility to sign in it), setting of the time limit for exercise of the citizens' right of initiative to announce a referendum, have been valid for almost thirty years, arrived at the conclusion that the initial actions in the referendum organisation stage resulted in formation of a consistent tradition of legal regulation. The grand panel of judges also noted that the Law on the Central Electoral Commission defines essential grounds for powers of the CEC to issue sheets for collection of citizens' signatures, inter alia, to determine forms of documents to be used in the referendum, specimens of completing them and there is no reason to find a legal gap in this regard.

According to the Constitution, the duty to organise referendums lies with the institution specified in it expressis verbis (in express words, directly), i.e. the Central Electoral Commission, and two entities (a group of at least 1/4 of all members of the Seimas or at least 300,000 voters) have the right to submit a specific draft of amendments to the Constitution, i.e. a law on amending the Constitution, to the Seimas of the Republic of Lithuania. After a steering group submits such a draft to the CEC and no defects in the content of the draft are identified, when the Central Electoral Commission registers the steering group according to the Law on Referendums, as in effect at the time of submission of the draft (the CEC's decision No. SP-170, dated 29 June 2021), in the absence of the basis set in the Constitution to suspend further initial actions of the referendum organisation stage, the CEC cannot default on its duty to properly carry out the powers granted to it by the Constitution and law to ensure the organization of the referendum (issue the necessary number of sheets for collection of citizens' signatures to the representatives of the initiators) on the sole basis that the special law setting out the referendum announcement and performance procedure lost effect a few days after the registration of the steering group.

The grand panel of judges arrived at the conclusion that with regard to the fact that according to Article 6 of the Constitution, the Constitution is a directly applicable act and each person can defend his rights referring to the Constitution, it is reasonable to cancel the CEC's decision No. Sp-172 of 1 July 2021 and to obligate the CEC to issue sheets for collection of citizens' signatures to the citizens' referendum steering group and create access to the electronic sheet for collection of citizens' signatures in the CEC information system and give

a possibility to sign in it for this referendum initiative (see the judgment of the grand panel of judges of 20 October 2021 in administrative case No. R-14-1062/2021).

In another administrative case No. R-17-261/2021, the Court presented its interpretations regarding the conformity of the referendum initiative in relation to the free mandate principle to the Constitution. In accordance with the jurisprudence of the Constitutional Court, the Court arrived at the conclusion that the Central Electoral Commission, in performance of its powers to register a citizens' referendum steering group, performs functions not only of procedural control but also substantive legal control and, having found non-conformity of the proposed legislative provisions to the Constitution and laws, it has the right and duty to refuse to register citizens' referendum steering group. The draft Law on Amending the Constitution proposed by the applicants for the referendum, which was aimed, inter alia, at establishing a possibility of initiating the impeachment of a member of the Seimas for failure to follow his electoral program, was also evaluated in the case. In this context, the Court noted that according to the Constitution, a member of the Seimas is not a representative of any political parties or political organizations, public organisations, other organisations, interest groups, territorial communities, voters of his constituency, in the Seimas – he represents the entire Nation (see the ruling of the Constitutional Court of 1 July 2004). The free mandate of a member of the Seimas established in the Constitution reveals the essence of the constitutional legal status of a member of the Seimas as a representative of the Nation and is integrally related to the equality of the members of the Seimas. According to the Constitution, each member of the Seimas represents the entire Nation (see the ruling of the Constitutional Court of 1 July 2004). In view of this, the partisan interests, which the interests of voters in a constituency for election of a member of the Seimas may be recognised as, do not ensure that the Nation will be duly represented in its democratically elected representation body, i.e. in the Seimas.

The free mandate of a member of the Seimas also means that voters do not have the right to recall a member of the Seimas. The early recall of a member of the Seimas would be one of the elements of the imperative mandate (see the rulings of the Constitutional Court of 26 November 1993, 9 November 1999, 25 January 2001, 30 May 2003). The panel of judges held that the proposal to establish a possibility to initiate the impeachment of a member of the Seimas for the non-execution of the electoral program may create preconditions for ignoring the said imperative enshrined in the free mandate. If it is possible to initiate an impeachment in the manner proposed by the applicants, a member of the

Seimas will be bound, in the exercise of his constitutional duty to represent the Nation and in the exercise of all the powers of a member of the Seimas, in particular, by the provisions of the electoral program and the interests indicated therein, although these interests may not coincide with the interests of the entire Nation, and can sometimes even contradict the Constitution.

On the basis of these arguments, the Court ruled that the draft Law on Amending the Constitution proposed by the applicants did not comply with the Constitution, therefore, the Central Electoral Commission reasonably refused to register the steering group for the referendum (see the judgment of 11 October 2021 in administrative case No. R-17-261/2021).

In administrative case No. R-21-415/2021, the Court provided explanations on the draft law proposed for the referendum, on announcing early elections to the Seimas. The applicant in this case challenged the decision of the Central Electoral Commission, by which it refused to register the citizens' steering group for announcement of the mandatory referendum on the early elections to the Seimas of the Republic of Lithuania. The steering group proposed a draft law for the referendum, which provided that "In case a negative assessment of the work of the Seimas and the Government of the Republic of Lithuania, adoption of legal acts contrary to the Constitution, after the adoption of this Law in a referendum, the President of the Republic shall announce early elections to the Seimas. <...>".

In assessing the final text of the decision, proposed by the steering group for the referendum, the panel of judges concluded that the steering group sought to initiate the adoption of such regulation, the content of which is an addition to the regulatory subject-matter set out in Article 58 of the Constitution – the fundamentals of the constitutional institution of early elections to the Seimas. The mere fact that by its legislative initiative the steering group sought the presentation for a referendum and adoption by a referendum of such a legal act, which, in its form, is not an amendment to the Constitution provided for in Articles 147, 148 of the Constitution, a law supplementing Article 58 of the Constitution, but rather a law provided for in paragraph 4 of Article 69 of the Constitution "The provisions of laws of the Republic of Lithuania may also be adopted by referendum", is per se contrary to the legal act of superior power, i.e. the Constitution. If such or other law presented for a referendum, which is provided for in paragraph 4 of Article 69 of the Constitution, were adopted by a referendum and entered into force, it would not be able to gain such legal power that would be above the legal power of Article 58 of the Constitution, which was adopted by the referendum on 25 October 1992. The conflict between rules of different power would be inevitable in such a legal situation. On the basis of these

legal conclusions, the panel of judges found that the contested decision of the Commission was lawful (see the judgment of 2 December 2021 in administrative case No. R-21-415/2021).

In this section, yet another decision relating to the requirements applicable to the provisions of a draft law to be presented for a referendum, especially their conformity to the requirements of legal clarity and certainty, needs to be mentioned. In administrative case No. R-22-629/2021, the Court, having evaluated the text of paragraph 1 of Article 55 of the Constitution proposed to be amended by a draft law, stated that the prepared provisions of the draft law cover a wide range of situations, but the very text of the draft law does not contain criteria for identifying the scope of these provisions. Such an abstract draft law is unclear, therefore, its content does not make it possible to determine what specific requirements would arise for entities entitled to register candidates in the elections to the Seimas. Therefore, it would not be possible to ensure that citizens, voting in the referendum, are accurately informed about the issue that is being decided in the referendum, therefore, presentation of the said proposal for a referendum would not meet the constitutional requirement to establish the true will of the Nation in a referendum. The defects of the draft law, as a whole, meant that its provisions are unclear, worded inaccurately, contain ambiguities. Some of the provisions of the draft law discussed raise unenforceable requirements, some would be determined by various random circumstances. The draft law with substantial and numerous shortcomings could cause legal uncertainty, which is incompatible with the imperative of legal certainty and legal clarity, arising from the constitutional principle of the rule of law. In this context, the panel of judges arrived at the conclusion that the Constitution amendment proposed by a steering group of citizens for a referendum could violate the harmony of provisions of the Constitution, it is not in line with the substantive restrictions on amending the Constitution, therefore, the Commission, referring to subparagraph 1 of paragraph 6 of Article 3 of the Law on the Central Electoral Commission and to powers arising directly out of the Constitution, had the duty to refuse to register such a steering group of citizens for a referendum (see the judgment of 29 December 2021 in administrative case No. R-22-629/2021).

LEGAL STATUS OF FOREIGNERS

The critical situation caused by the massive influx of foreigners, by reason of which an emergency of national level was announced in 2021, also, a state of emergency was imposed, reflects changes in the background of the activities of the competent authorities, inter alia, courts settling cases of this category. In this context, it is natural that the Supreme Administrative Court of Lithuania settled almost four times more cases concerning the legal status of foreigners in 2021 than in 2020. The absolute majority were cases which dealt with the issue of the lawfulness of detention of foreigners, which in that year significantly prevailed over another aspect traditionally most often present in cases concerning the legal status of foreigners – complaints concerning the right of third-country nationals and their family members to live in Lithuania. Asylum cases were also characterized by a wide range of problems requiring expert knowledge.

A very important and meaningful judgment, summarizing the latest and most relevant case law on the issue of the lawfulness of the detention of foreigners and, at the same time, forming the position of the Court in certain aspects, was adopted in administrative case No. A-4270-492/2021.

When examining the issue of application of the accommodation measure to a foreigner set in paragraph 6 of Article 5 of the Law of the Republic of Lithuania on the Legal Status of Foreigners, the Court noted in that case that the regulation set in this law creates a situation of legal uncertainty when the accommodation measure, without the right of free movement in the territory of the Republic of Lithuania, can be applied to a foreigner for up to 6 months without establishing, at the same time, a clear mechanism of legal verification of the lawfulness of such a measure. The court emphasized that the emergency of national level declared by the Government of the Republic of Lithuania does not provide grounds to limit the right of a foreigner to defence in court guaranteed by the Constitution of the Republic of Lithuania and the rules of international law. Thus, an important conclusion was naturally arrived at that the court has jurisdiction to assess and decide on the proportionality of restrictive measures imposed on persons not formally admitted to the territory of the Republic of Lithuania within the meaning of Article 5 of the said law. Assessing temporary accommodation at the border crossing points, in the

transit zones or at the State Border Guard Service or other places adapted for this purpose, without granting the right to move freely within the territory of the Republic of Lithuania, in the aspect of the restriction of freedom of the persons seeking international protection, the Court's position was that such accommodation may in fact be equivalent to an alternative to detention provided for in subparagraph 5 of paragraph 2 of Article 115 of the Law on the Legal Status of Foreigners – accommodation of a foreigner at the State Border Guard Service with the right of movement only within the territory belonging to the accommodation facility. Thus, the court of first instance, examining the case on the merits and ruling on possible methods of defence of foreigners' rights and lawful interests, must assess the lawfulness of a measure imposed on foreigners that restricts their freedom of movement and, taking into account arguments of the foreigners' complaints, must determine whether the foreigners reasonably state that they are detained, i.e. whether the measure imposed on foreigners (accommodation without the right to move freely in the Republic of Lithuania) can be treated as de facto detention. Among other things, it is necessary to check whether there is a legal basis for restricting the freedom of movement of a foreigner, to assess whether there is any doubt about the constitutionality of legal acts, under which the freedom of movement of foreigners in the territory of the Republic of Lithuania is restricted. After assessing whether the foreigner's accommodation may be considered de facto detention, the issue of the imposition of an alternative to detention, requested by the foreigner, should be considered. In the context of the assessment of the foreigners' accommodation conditions, the circumstance that such persons have a limited possibility to provide evidence of possibly inappropriate accommodation conditions, was considered to be important. Therefore, after a foreigner clearly indicates the significant circumstances describing his/her accommodation conditions, the duty to present required documents and other evidence about meeting certain requirements related to ensuring proper accommodation conditions lies with the institution responsible for the accommodation of these persons and, in deciding whether a foreigner's accommodation conditions are proper, the situation must be assessed individually, taking into account both the requirements set in legal acts for the temporary accommodation of asylum seekers and the standards applied by the European Court of Human Rights. A measure restricting the freedom of movement must, inter alia, be assessed in another very significant aspect – its necessity and proportionality in order to achieve the objective provided for by law (to promptly and appropriately solve the issue of the legal status of a foreigner

t in the Republic of Lithuania, to take and fulfil a relevant decision). In this respect, the emphasis was placed on the requirement, arising out of the principle of proportionality, to ensure an appropriate balance between the rights to freedom and safety and the purposes of public interests which restrict those rights. In the case at issue, the Court held that the accommodation measure applied to the foreigner should be considered as equivalent to the alternative to detention provided for in subparagraph 5 of paragraph 2 of Article 115 of the Law, but the court of first instance did not establish and did not assess the circumstances relevant to the basis for application of one of the mildest alternatives to detention.

In the context of compliance with the requirements formed in the jurisprudence of the European Court of Human Rights, an important ruling was given in administrative case No. A-3543-556/2021, which pronounced on the protection of the best interests of the minor children of a foreigner, when it is decided to restrict the freedom of movement of a foreigner. In light of the ECtHR judgment in Popov v. France, which recognized that minor children whose parents were detained and placed in detention facilities cannot find themselves in a legal vacuum if no decision was taken on their administrative detention, the lawfulness of which could be verified by a court, it was found that upon the restriction of the freedom of movement of a foreigner, a decision must also be made on his minor children. Thus, although the case in question, based on the applicant's submission to the Court, did not have to and did not address the issue of an alternative to detention for minor children of the applicant, the Court considers that a situation is not possible in which a foreigner, on whom an alternative to detention is imposed, would be accommodated separately from his minor children (where the other parent of the children is not with them) or with his minor children, without taking a relevant decision on them as laid down by law.

In the cases of the asylum category, we should mention the ruling of the Supreme Administrative Court of Lithuania in administrative case No. eA-200-492/2021, which dealt with the duty of the Migration Department to assess the fact of the real property of the asylum seeker in the Republic of Lithuania in deciding in which state the asylum application should be examined. Though there was no dispute in the case that it was the Republic of Poland that was competent to examine the applicant's asylum application, based on legal rules of the European Union and the Republic of Lithuania relevant for the dispute at hand, the Court stated that the European Union Member States have the right but not the duty to decide to examine an asylum application in case it is established, based on the criteria laid down in Regulation (EU) No. 604/2013,[1] that

another Member State of the European Union is responsible for examining an asylum application. In the case in question, the Court held that the Migration Department, which has the right but not the duty to use the discretionary clause contained in the said Regulation, upon receipt of the applicant's asylum application, however, failed to sufficiently assess the applicant's situation, given that he owns a home in Lithuania, living in which, as the applicant himself confirms, would be in his interests. A properly equipped (suitable for living) own home, where a person has the right to live and can live, in the present case was admitted a circumstance that had to be evaluated in the context of application of the discretionary clause in order that a decision contested by the applicant could be regarded as properly reasoned for the purposes of the Law on Public Administration.

In the context of circumstances legally important for examination of an asylum application, a certainly important interpretation was given in administrative case No. eA-3467-520/2021, where a situation was examined when an asylum application is lodged by a child. The Court noted that the rules of international law determine that state institutions or non-state actors can assign views and opinions of adult parents to their children. This may be true even if a child is unable to express his or her views or explain the activities of the parents, as well as when the parents consciously do not disclose information to protect their child. Therefore, the fact that the applicant's mother has not applied for asylum cannot be considered as a basis for separating threats arising for the mother of the asylum seeker and the asylum seeker himself/herself. It was also noted that the conclusion of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees on children at risk calls for not only the establishment of asylum procedures based on an exceptional approach to children, but also for specific evidentiary requirements in such cases. In taking asylum decisions, children should be subject to the liberal principle of the privilege of doubt, which means that, upon assessment of a child's age and development, if the submitted application, with regard to everything, could be plausible, it should be enough for awarding the refugee status. In the present case, having regard to the relevant circumstances established in the case, the contested decision of the Migration Department was annulled, and the institution was obliged to re-examine the applicant's application for asylum in the Republic of Lithuania.

With regard to the issue of the right of third-country nationals and their family members to reside in Lithuania, two regulatory cases must be notably pointed out (No. eI-16-575/2020 and No. eI-11-556/2021), where, referring to the statements of the Supreme Administrative Court of Lithuania, the issue of lawfulness of legal rules on

calculation of the period a foreigner has lived in the Republic of Lithuania was dealt with. According to the questioned regulation, the Migration Department under the Ministry of the Interior of the Republic of Lithuania, examining a foreigner's request for a permanent residence permit on the basis provided for in subparagraph 8 of paragraph 1 of Article 53 of the Law of the Republic of Lithuania on the Legal Status of Foreigners, in calculation of the period a foreigner has lived in the Republic of Lithuania, assesses the data on the period(s) when the foreigner had a valid temporary residence permit but did not meet the conditions for obtaining a temporary residence permit on such a basis. The Court analysed such regulation in close reference to Article 4(1) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, which lays down the duty for Member States to grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application. In the context of this rule of EU law, the Court emphasized the importance of a properly and correctly calculated period of such legal residence in the country, which determines the need to ensure that such a period does not include the time when the foreigner lived in the country in violation of the rules of national law governing the conditions for legal residence. In other words, when calculating the period of legal residence in the country, it is important, according to the Court, not to merely formally take into account the fact of having a temporary residence permit during the period concerned, but to determine the actual time a person legally resided in the country. Thus, the emphasis was made on the obligation of the competent authorities to ensure that a permanent residence permit is not issued to a foreigner who meets the set requirements only formally, without a thorough checking whether at the time of issue of the permanent residence permit all the necessary conditions for issuing such a permit really exist and there are no grounds for refusing the permit. In the context of ensuring the effectiveness of European Union law, it is also important to stress that no faultiness of the valid national regulation was determined referring to inter alia the duty of national courts, in application of national legal acts, to interpret them as much in line with the wording and the purpose of the Directive as possible, in order that the result provided for in the Directive is achieved and the third paragraph of Article 288 of the Treaty on the Functioning of the European Union is complied with.

In terms of disputes over cancellation of a permanent residence permit, administrative case No. A-2765-261/2021 is to be noted, where an exceptional situation was dealt with after the competent authorities had decided to annul a permanent

permanent residence permit for a stateless person born in the Republic of Lithuania and who had lived all his life in the Republic of Lithuania, who, the authorities held, posed threat for public policy and the public. In that case, the Court noted that the purpose of the provision of subparagraph 21 of paragraph 1 of Article 54 of the Law of the Republic of Lithuania on the Legal Status of Foreigners is actually to prevent foreigners from arriving to and permanently residing in the Republic of Lithuania, when they, inter alia, can pose a threat to public policy, and if such persons, nevertheless, arrive and live in the Republic of Lithuania – to return them to a foreign state or expel them from the Republic of Lithuania. Thus, it was found that the application of that rule to the applicant would not be in line with the regulatory purpose established by it. After the annulment of the permanent residence permit to live in the Republic of Lithuania issued to the applicant yet on 18 December 1996, the Court held that a situation would arise meaning that the applicant had illegally lived in the Republic of Lithuania where he was born, where has always lived, which is considered to be his country of origin, where the applicant's integration into the political, social, economic and cultural life is implicitly confirmed by paragraph 1 of Article 2 of the Law on the Implementation of the Law of the Republic of Lithuania on the Legal Status of Foreigners, which situation would be unjust in principle, would violate the legitimate expectations of the applicant and would unduly restrict the possibilities to exercise and defend any of his rights and/or legitimate interests.

An important explanation of rights granted by residence permits and visas, which are documents formalising different legal regimes, in the context of movement restriction relevant in the pandemic period, was given in administrative case No. A-2913-438/2021. When examining the issue of the right of a foreigner with a visa to enter the Republic of Lithuania in the event of an emergency of national level in effect, the Court indicated that a visa issued under the established procedure entitles a person to enter, stay in or transit the Republic of Lithuania, whereas the right to temporary or permanent residence in the Republic of Lithuania is given to a person either by a temporary or permanent residence permit issued under the established procedure. According to the regulation that was in effect during the examination of the case, at the time of the emergency, Lithuania allowed entry of persons lawfully residing in the Member States of the European Economic Area, thus, such persons include foreigners who lived in the Member States of the European Economic Area with temporary or permanent residence permits issued in those states. And, on the contrary, persons holding visas issued by the Member States of the European Economic Area, who gave them the right to stay but not live in those states, were prohibited from entering Lithuania during the emergency. Accordingly, the Court held that a foreigner who came to Lithuania during the emergency with a visa issued to her in Poland, had arrived to Lithuania illegally.

SOCIAL SECURITY AND HEALTH CARE

In 2021, in the areas of social security, beside ordinary disputes related to assignment of various types of pensions and calculation of the length of service, giving compensations, allowances, payments and social support, issues of new character appeared in connection with the pension accumulation system and the consequences of the COVID-19 pandemic. In addition, the Court addressed the Constitutional Court concerning issues related to social security even for three times.

Disputes of new character regarding involvement of persons into the pension accumulation system and request to remove from the Register of Pension Accumulation Participants, Agreements on Pension Accumulation and Pension Benefits, which reached the Court in 2021, most often concerned issues in connection with the duty to properly inform a person about the fact of his/her involvement into the pension accumulation system and the person's right to refuse to participate in the accumulation of pensions. The Court explained that the State Social Insurance Fund Board under the Ministry of Social Security and Labour, sending a notification to the applicant on 8 January 2019 via the Electronic Service System for Residents, properly fulfilled its duty provided for in paragraph 2 of Article 6 of the Law on the Accumulation of Pensions to inform a person about the fact of his/her involvement into the pension accumulation system and the person's right to enter into a pension accumulation agreement of his/her choice no later than on 30 June of the year of involvement into the pension accumulation system or to refuse to participate in the accumulation of pensions no later than on 30 June (the ruling of 16 June 2021 in administrative case No. eA-1525-552/2021, also, on this issue, see the judgment of 15 September 2021 in administrative case No. A-2099-602/2021, the ruling of 20 October 2021 in administrative case No. eA-2126-502/2021).

In 2021, the Court also had to deal with disputes of new type regarding payments to the self-employed when the Government of the Republic of Lithuania declared an emergency and a lockdown. These disputes were mostly about the fact whether a person corresponds to the concept of a self-employed person (the ruling of 27 October 2021 in administrative case No. A-3108-624/2021), also about the refusal to make payments after determining that the self-employed activity was registered for less than 3 months in 12 months (the ruling of 1 December 2021 in administrative case No. eA-2327-624/2021).

In some cases, the Court cancelled decisions of the responsible authority not to give payments to self-employed persons, having found defective reasoning in administrative decisions (the judgment of 27 October 2021 in administrative case No. A-1967-756/2021, the judgment of 15 December 2021 in administrative case No. eA-2380-789/2021).

A new category of cases in the area of social security settled in the Court, which is the most numerous in recent years, has emerged – state pensions of officers and servicemen. Issues arose in these cases regarding the inclusion of relevant periods into the length of service (see the ruling of 27 January 2021 in administrative case No. A-205-602/2021, the ruling of 28 April 2021 in administrative case No. A-684-552/2021), also giving a state pension of officers and servicemen for their service when a person served in the system of interior affairs of the Republic of Lithuania for a certain period of time after 11 March 1990 (the ruling of 8 December 2021 in administrative case No. A-2495-502/2021). The grand panel of judges, referring to the jurisprudence of the Constitutional Court, gave an interpretation about working time not equated to the time of service calculated for the purpose of giving a state pension of officers and servicemen in accordance with subparagraph 3 of paragraph 3 of Article 16 of the Law on the State Pensions of Officers and Servicemen, where persons worked after 1 January 1995 as heads of professional fire-fighting units, firemen, firemen-drivers under the Law on the Employment Contract if later these workers were appointed officers of paramilitary fire-fighting service (the judgment of the grand panel of judges of 31 March 2021 in administrative case No. A-667-1062/2021). In addition, the Court initiated a constitutional justice case regarding the compliance of the legal regulation, according to which the difference in the amount of the state pension of officers and servicemen, resulting from its recalculation after the economic crisis, is not paid, with the Constitution.

Issues arose in 2021 also regarding state pensions of scientists. In one case, the Court held that the parliamentary term of a former Member of the European Parliament must be included into the special length of service of a doctor or habilitated doctor only if the length of service of this type was interrupted due to the fact that the person was elected and stepped into the office of a Member of the European Parliament (see the ruling of 10 March 2021 in administrative case No. A-401-502/2021). In another case, the Court referred to the Constitutional Court regarding the constitutionality of the provision of the Provisional Law on State Pensions of Scientists, according to which only work in state research and higher education institutions is included into the length of service of a scientist to become eligible for this pension (the ruling of 21 April 2021 in administrative case No. eA-935-553/2021).

In the field of state pensions, a case regarding application of a more favourable legal regulation in deciding on assignment of a second-degree state pension is important. The Court found that the new legal regulation of the second-degree state pension for a parent having raised many children eased the situation of the persons in this relationship (the legal rules established a more favourable legal regulation in relation to the persons subject to those rules), therefore, it held that the applicant should be subject to the rules easing her situation and enabling her to be awarded a second-degree state pension (see the judgment of 17 February 2021 in administrative case No. A-659-756/2021).

The second most numerous field of social security cases settled in the Court is state social insurance old-age pensions. In this field, most disputes were regarding inclusion of certain periods into the length of service qualifying for state social insurance, for example, when the applicant worked on the farm of a farmer (the ruling of 24 March 2021 in administrative case No. eA-626-602/2021) or studied in a higher education institution (the ruling of 21 April 2021 in administrative case No. eA-1203-756/2021).

In a case where an institution decided not to pay the applicant the compensatory amount of the state social insurance old-age pension that her deceased spouse did not receive because the applicant's request was made having missed the time limit for application for payment of the compensatory amount, the Court interpreted that the payment of the compensatory part of the pension provided for in the Law on the Compensation for State Social Insurance Pensions and State Pensions Reduced by Reason of Having Insurable Income must be effective, just and functioning. There is, therefore, no reason to consider that the time limits referred to in paragraph 6 of Article 2 of that Law are resolutory and prevent a person from recovering the compensatory part of the pension (the judgment of 14 July 2021 in administrative case No. A-1510-756/2021).

In the event of a dispute regarding the decision of an institution to refuse to give the applicant the orphan's pension for the period from 1 July 2020 to 31 August 2020 (on 30 June 2020, the applicant graduated from a bachelor's degree study program in Vilnius University and on 9 July 2020 concluded a study agreement with Vilnius University regarding admission to the life sciences master's degree study program of biophysics), the Court settled the case in favour of the applicant and explained that according to paragraph 2 of Article 38 of the Law on Social Insurance Pensions, full-time students, who are at least 18 years old, are entitled to the orphan's pension from the day when they acquire the status of a full-time student under legal acts on higher education. Therefore, it is not the beginning of studies but the acquisition of the status of a full-time

student that is relevant for the emergence of the right to an orphan's pension. It was recognized that the institution had unreasonably held that the applicant became entitled to the orphan's pension only from the start date of the second cycle full-time studies of biophysics, i.e. from 1 September 2020 (the ruling of 17 November 2021 in administrative case No. A-3112-442/2021).

In the field of state social insurance allowances and payments, the Court noted that the purpose of a severance pay is to ensure income for a dismissed employee for some time, to compensate his losses caused by termination of employment, but not to continue all social guarantees of a former employee (the ruling of 6 April 2021 in administrative case No. eA-716-552/2021).

In the field of compensations, a case is significant where the Court explained that legal regulation provides not only for the duty of owners of apartments in a multi-apartment building, who apply for compensations for home heating costs, to take part in considering and taking a decision in a meeting regarding the implementation of the multi-apartment building renovation (modernisation) project, but, as it is sought to encourage owners of apartments in a multi-apartment building to take part in a multi-apartment building renovation program, also legal consequences if such a person was absent from the meeting for considering and taking a decision on the implementation of the multi-apartment building renovation (modernisation) project and refused to take part in the implementation of this project. However, it was held in the case that as no circumstances were identified that would allow to state, without doubt, that it was namely the applicant's absence from the meeting that determined the situation in which no decision on renovation of the multi-apartment building was taken and the applicant refused to take part in the implementation of the project, the applicant was not to face negative consequences (the ruling of 3 February 2021 in administrative case No. A-2428-552/2021).

In the field of compensations for special working conditions, a case settled by the grand panel of judges is to be pointed out, where the Court, having explained that the child care leave taken by an employee during the period of employment, is not regarded as actual work for determination of working time, entitling to compensation for special working conditions, however, having assessed the individual circumstances of the case, ruled that the decision of the institution, by which the child care leave given to the applicant was included into the period of working under special conditions, must be left in effect by reason of legal regulation set in the Law on State Social Insurance Pensions, which lacks sufficient clarity, and by reason of insufficient care of the public administration entity in assessment of the facts of the actual

situation, also following the constitutional principle of the rule of law and the principle of reasonableness (the judgment of the grand panel of judges of 28 April 2021 in administrative case No. A-297-1062/2021).

Child welfare issues were also relevant in other cases. The Court pronounced on the duty of an institution, in determining the overpayment of the benefits paid from the Children's Maintenance Fund, to act diligently and with care (the judgment of 17 November 2021 in administrative case No. eA-1969-822/2021). In another case, the Court initiated a case of constitutional justice regarding the compliance of the rules of the Statute of the Internal Service insofar as they did not establish annual leave for the officers of the internal service system who alone raise a child (children) under fourteen, with the Constitution. In the case regarding assessment of actions of the State Child Rights Protection and Adoption Service, when addressing a central authority of another state in the event of illegal removal of a child referring to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, the Court noted that this Convention does not contain a provision that a central authority must immediately forward the received request to the central authority of the Contracting State (the ruling of 11 August 2021 in administrative case No. A-2302-520/2021).

The disputes that emerged in 2021 implied the need for the Court to analyse the nature of the relationship between the assistant coach working in a sports club and the employer – whether it was employment under an employment contract or a sports activity contract, and to assess whether the applicant was reasonably fined EUR 2,000 by a decision of the institution for failing to comply with the obligation to notify the institution of the employment of the person. The Court held that the case file had no data to the effect that the person was going to conclude, negotiated for conclusion and believed to have concluded not an employment contract but a sports activity contract, therefore, it ruled that the fined was reasonably imposed (the ruling of 27 October 2021 in administrative case No. eA-2137-624/2021).

In the field of health care, the Court emphasized the duty of the clinic providing health care services to inform the patient in a clear and understandable way what he is additionally paying for when he has the right to receive medical services free of charge (the ruling of 19 May 2021 in administrative case No. eA-1264-552/2021). The Court explained that though Article 12 of the Law on the Rights of Patients and Compensation of the Damage to their Health establishes namely the patient's duty to get familiar with the rules and to sign in confirmation of this, this does not eliminate the duty of the health care institution to inform properly about changes in the rules,

to present them and to make sure that the patient signs in confirmation that he is familiar with the rules. It was noted in the case that patients are not subject to the obligation to enquire about the balance of quota from territorial patient funds, no such condition was indicated for provision of services free of charge on the website of the clinic, either, therefore, the patient had a legitimate basis to expect that services provided to her would be covered (the ruling of 3 March 2021 in administrative case No. eA-2482-822/2021).

In the field of health care, the Court also pronounced on procedural obligations of an institution: the State Health Care Accreditation Agency under the Ministry of Health, when examining an application for the cancellation of a licence, must carry out an investigation and, on the basis of results of this investigation, take a decision on the cancellation of a licence or refusal to cancel it. The content of the letter disputed in administrative case No. eA-1082-525/2021 allowed to state that the institution, though it could perform an investigation of the doctor's actions but did not perform it and said a priori (in advance, before checking of facts) that it would not have a factual basis for cancelling the doctor's licence for medical practice with the professional qualification of doctor neurologist, besides, the institution actually did not take any decision (the ruling of 21 April 2021 in administrative case No. eA-1082-525/2021).

ENVIRONMENTAL PROTECTION

The field of environmental protection was distinguished by a great number of disputes settled by the Court, relevance of the issues addressed and the active interest of the public to question decisions important for them. The character of most numerous cases settled has changed, too.

Most of the cases settled in the field of environmental protection in 2021 were related to the rational use and protection of natural resources. A great number of cases were settled in the field of use and protection of the underground resources, which dealt with issues regarding tax assessment for applicants at the increased rate for mining of state natural resources in sand or gravel fields (the ruling of 27 January 2021 in administrative case No. eA-1136-662/2021, the ruling of 16 June 2021 in administrative case No. eA-1927-520/2021, the ruling of 6 October 2021 in administrative case No. A-1068-822/2021, etc.). The Court pronounced on recording an additional volume of mineral resources as an increase in resources of field and on not treating mining of such resources to be in excess of the resources indicated in the permit issued for use of underground resources and underground caves (the ruling of 7 April 2021 in administrative case No. eA-1953-624/2021). In some cases, the Court also reduced fines for the illegal mining of natural resources (the ruling of 6 October 2021 in administrative case No. eA-2067-556/2021).

In terms of use and protection of forests, a case is to be highlighted, where, upon assessment of the fact that the land plot indicated in the contested letter of the Neris Regional Park Authority, which is in the forest holding owned by the applicant, is within the territory of the Western Taiga Habitat in the Neris Regional Park, the Court held that the defendant lawfully and reasonably disapproved of the planned clear forest cutting in the land plot (the ruling of 7 April 2021 in administrative case No. eA-1559-624/2021).

In the field of use and protection of wildlife resources, a case is important, where, following Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, it was found that namely the applicant (in the case in question, VšĮ Raubonių parkas) has the duty to submit a duly completed application and documents necessary for issuing the certificate of an eagle owl (the ruling of 15 December 2021 in administrative case No. eA-2884-520/2021).

Equally as in previous years, a very significant share of cases settled in the field of environmental protection were about waste prevention and management issues. The Court interpreted in this area that by transferring management of hazardous waste to a company that did not have the right to store and dispose of it, having no agreement with a company entitled to dispose of hazardous waste, the economic entity did not comply with the requirements laid down in legal acts. Such actions may not be considered proper management of waste and ensuring its disposal in the manner safe for the environment, therefore, such an economic entity remains liable for management of improperly transferred hazardous waste (the ruling of 14 July 2021 in administrative case No. eA-1984-525/2021). The Court also pronounced on the biggest volume of waste that can simultaneously be kept on an open ground operated by a company (the judgment of 12 May 2021 in administrative case No. eA-603-789/2021) and settled a case, which received much interest, regarding issuance of documents proving that waste has been managed (the ruling of 24 November 2021 in administrative case No. eA-2855-624/2021).

In 2021, there was a bigger number of cases questioning lawfulness and reasonableness of permissions to cut down or prune trees. Let's say, in one case the Court admitted that the applicant's request for a permission to cut down a Norway maple, upon payment of its price, where such a tree is healthy (not damaged mechanically, by rot, fungus), is not inclined, does not pose a danger to people, structures, has an orderly crown, where the applicant's neighbours (co-owners of the land plot and the tree) deny their consent for removal of the tree, had been reasonably turned down (the ruling of 3 February 2021 in administrative case No. A-915-520/2021).

Questions have also arisen in this area regarding the right of the interested public to address a court to contest permissions to cut down or prune trees. The Court, having established that implementation of the project is related to impact on natural resources – plants (trees), therefore, a permission, allowing implementation of the project, is to be treated as a decision related to environmental protection and use of natural resources in accordance with paragraph 2 of Article 7 of the Law on Environmental Protection, held that association SOS Šilutės medžiai, which promotes environmental protection, has the right to address the court for defence of public interest in order to preserve greenery (trees) (the ruling 26 May 2021 in administrative case No. eA-1115-789/2021). In another case, the panel of judges, having evaluated data from the Register of Legal Entities and evidence submitted by applicants, which confirm their actions related to their aims to spread information on environmental issues, to carry out activities in the field of environmental protection, arrived at the conclusion that the applicants VšĮ

Viešojo intereso gynimo fondas, association Klaipėdos žalieji are to be treated as legal entities that promote environmental protection, thus, they have the right to contest permissions for cutting, replanting or other removal, pruning of trees and shrubs subject to protection (the ruling of 24 November 2021 in administrative case No. eA-2757-602/2021).

Rights of the interested public were defined in other cases, too. Let's say, in the case regarding the possibilities of the planned construction of Mykolo Lietuvio street in the city of Vilnius, the Court accentuated the duty to assess the noise and pollution caused by traffic flows in the environmental impact assessment report and the fact that the interest of the interested public cannot be confronted with the public interest to have better transport in the city, transport infrastructure of better quality. Public interest must be implemented by seeking the balance of interests, which means that adequate measures must be stipulated in order to protect rights of the interested public to proper quality of life (the ruling of 13 January 2021 in administrative case No. eA-6-492/2021).

In the areas of assessment of impact on and consequences for the environment, the Court pronounced on the aspects assessed in the public health impact assessment report in construction of wind power plants, i.e. it is assessed in such a report whether planned future activities will not exceed the limit values of maximum permissible noise (the ruling 29 December 2021 in administrative case No. eA-1861-1062/2021). In another case, the Court evaluated a selection conclusion of the Environmental Protection Agency, stating that based on the information presented for the selection conclusion purposes to the effect that an environmental impact assessment is mandatory for the economic activity planned by an economic entity, which is management of non-hazardous waste that will be performed in a land plot, as reasonable and lawful (the ruling of 28 April 2021 in administrative case No. eA-1552-520/2021).

In cases of state control over environmental protection, the Court pronounced on not equating a failure to obey a mandatory instruction in time with a repeatedly committed failure to obey a mandatory instruction (the ruling of 20 January 2021 in administrative case No. eA-21-624/2021), on liability of legal entities for performance of economic activities in connection with the integrated pollution prevention and control permit issued, when an administrative supervisory authority changes its position on calculation of waste quantities (the judgment of 27 October 2021 in administrative case No. eA-2188-815/2021), also that in cases when an infringement could have been committed due to force majeure (as in the event examined in the case, which was due to heavy downpour), such circumstances must be taken into account when imposing an economic sanction (the judgment

of 24 March 2021 in administrative case No. eA-358-492/2021). In administrative case No. eA-2568-624/2021 the Court admitted that the hydroelectric power plant operated by the applicant did not have characteristics indicated in the relevant sub-paragraphs of the Grigiškės Pond Rules, therefore, the authority lawfully and reasonably gave the mandatory instruction (the ruling of 23 June 2021 in administrative case No. eA-2568-624/2021).

Another case is also relevant in terms of imposition of administrative liability on legal entities, where, upon determining that the character of the applicant's activities is mixed agriculture, growing of dairy cattle, also crop growing, and, when a new version of the Underground Law came into effect on 1 July 2020, the basis disappeared for the imposition of a fine on the applicant by the contested resolution (no permission is required for use of underground resources or underground caves in order to use fresh groundwater), the law mitigating the applicant's position must be applied to the applicant (the judgment of 14 April 2021 in administrative case No. eA-933-815/2021).

The Court has also explained that imperative procedures are established in paragraph 1 of Article 47 of the Law on Environmental Protection that upon finding, inter alia, infringements set in Article 55 of the Law on Environmental Protection, a legal entity must be given a written notice and a reasonable time must be set for it for correction of the identified infringements, and only if the infringement is not corrected within a set period of time, the proceedings for imposition of an economic sanction are to be started. If such procedures are ignored, the resolution of an authority to impose a sanction on a legal entity for an infringement of legal acts regulating environmental protection and use of natural resources is to be cancelled (the ruling of 10 November 2021 in administrative case No. eA-3139-815/2021).

As evident, the issues of cultural heritage protection that dominated previously gave way to other types of disputes in 2021. However, in the area of cultural heritage a case is to be pointed out regarding the demand of the Department of Cultural Heritage under the Ministry of Culture not to perform demolition of the building within the territory of the cultural heritage site at Žaliakalnio 1-oji in Kaunas, which was admitted to be lawful and reasonable (the ruling of 29 September 2021 in administrative case No. eA-3013-662/2021). In another case, the Court held that the Department of Cultural Heritage unreasonably imposed a fine of EUR 1,000 on the Administration of the Vilnius City Municipality for the fact that the latter, handling and installing facilities in an object of cultural heritage, i.e. in the Lukiškės square (sand was spread in the southern part of the Lukiškės square, facilities, advertising stands, a screen demonstrating ads were placed),

breached provisions of paragraph 3 of Article 25 of the Law on the Protection of Immovable Cultural Heritage, which are blanket provisions referring to the Typical Rules for Visiting Cultural Heritage Objects Owned by the State and Municipalities. The Court accentuated that in all cases, the basis and conditions for application of legal liability, in the form of imposition of certain monetary fines, economic sanctions or other coercive measures on the infringer, must be explicitly established in a legal act of supreme power, i.e. a law. The Court held that a provision in paragraph 11 of the Typical Rules for Visiting Cultural Heritage Objects Owned by the State and Municipalities to the effect that the infringement of those rules inflicts liability under the procedure set be laws, when no specific law establishes liability for violations of requirements and restrictions set in the rules, cannot be regarded a legal basis for imposition of liability on the Administration of the Vilnius City Municipality (the judgment of 8 December 2021 in administrative case No. eA-2786-492/2021).

TERRITORY PLANNING AND CONSTRUCTION

In the area of territory planning, administrative case No. eA-266-502/2021 is to be pointed out, where the Court emphasized the duty of the planning organiser to perform a full and detailed examination of proposals received from the public regarding territory planning documents and, if the received proposals are rejected, to indicate clear and detailed reasons in writing for non-acceptability (unreasonable-ness) of the proposals to the persons who presented those proposals. Though the planning organiser, having received such proposals, has discretion to take them into account or not, the Court noted that the procedure of examination of proposals of the public regarding territory planning documents cannot be performed just formally and answers of the planning organiser to proposals of the public regarding territory planning documents cannot be based merely on the planning organiser's discretion to approve or reject such proposals, giving absolutely no reasons for a relevant decision. After the planning organiser takes a decision to reject the proposals, reasons for the rejection of such proposals given in the answer must primarily respond to the arguments specified by the persons who gave the proposals (individually) and must be detailed enough in order that the reasons for a relevant decision are clear (why the applicant's proposals cannot be approved) and it must be evident from this answer that the planning organiser has really carried out its duty to examine the proposals given to it, considered and evaluated them. When a decision refusing to uphold proposals given by applicants is, inter alia, based on the need of the public to have access to the territory in dispute, such an argument for rejection of proposals should be all the more so reasoned in detail, evaluating a real and reasonable need of the public namely for that specific piece of land, giving clear reasons in the answer to the persons who gave the proposal in this respect, at the same time presenting its unambiguous position whether there is an intention to solve the issue of appropriation of land for public needs (the judgment of the grand panel of judges of 2 June 2021 in administrative case No. eA-266-502/2021).The grand panel of judges pronounced on the possibility to contest a statement of complex verification of a territory planning document issued by the authority performing state supervision over territory planning. It has been explained in the case that the case law

of administrative courts regarding an interim procedural administrative decision, as not having independent legal consequences and, therefore, incapable of being an independent subject-matter of an administrative case, becomes irrelevant if the final document of the territory planning process is a regulatory administrative act, for which a special appeal procedure is established in the Law on Administrative Proceedings. The grand panel of judges has no doubts that the decision of the Vilnius City Board and the detailed plan as such are individual legal acts, therefore, when, in the process of amendment/adjustment of such a detailed act, a territory planning state supervisory authority performed verification of a territory planning document and found no circumstances why it cannot be presented for approval, a drawn-up verification statement regarding amendment/adjustment of the detailed plan, with the positive outcome, which was prepared and approved before 1 January 2014, is an interim territory planning procedural document, which cannot be an independent subject-matter of an administrative case (the ruling of the grand panel of judges of 13 May 2021 in administrative case No. eA-669-502/2021).

During the year, the Court presented a number of important interpretations also in the field of disputes in construction. For example, administrative case No. eA-29-525/2021 is to be mentioned among them, where the Court stated that the land plot formation and transformation procedures in those cases when arbitrary construction is found in the territory to which the builder has no legal right of possession and, consequently, under the Law on Construction, has no right to the exercise the builder's rights, are not to be treated as important reasons provided for in the Law on the State Supervision over Territory Planning and Construction, which allow to extend the time limit for fulfilment of a mandatory instruction. A different interpretation of the rules of law would create conditions for builders of arbitrary structures to claim, without any legal justification, land which is not theirs, which, in a certain sense, would encourage arbitrary construction on land that one is not entitled to (see the judgment of 27 January 2021 in administrative case No. eA-29-525/2021). This position was also taken by the Court in administrative case No. eA-1985-415/2021, settled later, giving its views on the possibility to extend the time limit for fulfilment of a mandatory instruction to eliminate consequences of arbitrary construction, when a person does not have rights to manage or use the state-owned land on which a building is erected. In that case, the Court noted that in those cases when it is established during the proceedings that the applicant, who has been given a written mandatory instruction to eliminate the consequences of arbitrary construction, does not have any rights to possess or use the state-owned land, on which such a structure is erected, a request for extension of the time limit for fulfilment of a mandatory instruction must be rejected solely on that basis (the ruling of 23 June 2021 in administrative case No. eA-1985-415/2021).

COMPETITION

With a steady increase in the number of competition cases settled each year, in 2021 a record figure was reached – even 23 cases falling into the competition category were solved (for comparison, this figure would not reach 20 in the last few years). A larger number of cases allowed the Court to cover a wider range of issues that highlighted both the continuing and emerging trends in case law – as it was almost every year until now, the Court pronounced on infringements of the Law on Advertising, once again stressed the right of the Competition Council to refuse to open an investigation into a possible infringement and the rules for imposition of penalties on managers of economic entities, also gave a more detailed explanation of smaller categories, significant for the size and limits of the applicable liability, such as joint and several liability of associated economic entities or the definition of the "previous financial year" relevant to the calculation of sanctions.

In the overview of 2021, it must be primarily noted that the Court once again confirmed the right of the Competition Council to refuse to start an investigation into a possible infringement if it does not fall within operational priorities of the Competition Council. It is sought to create conditions for the Competition Council by the Law on Competition to prioritise its investigations without carrying out an unreasonably broad analysis of legal and factual circumstances, unnecessary in a specific case, and European Union law underlines that competition authorities should be able to prioritize their procedures in order to effectively use their resources and to focus on the prevention of and putting an end to anti-competitive behaviour, which distorts competition in the internal market, thus being able to reject complaints on the sole basis that they are not prioritised (the ruling of 22 December 2021 in administrative case No. eA-2016-822/2021). The Court emphasized that the authority could prioritise those investigations where intervention can contribute significantly to effective protection of competition, in this way ensuring the greatest possible welfare of consumers.

The Court also had to speak about the restriction of the right of the head of an economic entity, who has committed a competition infringement, to hold certain offices and the financial sanctions that could accompany such a restriction – the Court reaffirmed that the Law on Competition does not require to impose both the sanctions (both the

restriction to hold certain offices and a fine), therefore, the Court is not bound by the proposal of the Competition Council either regarding the number of sanctions or their size (the ruling of 15 March 2021 in administrative case No. eA-254-822/2021). However, the Competition Council, requesting to impose certain penalties, must follow procedural rules itself, therefore, missing of the time limit to refer to a court with a request for imposition of sanctions provided for in the Law on Competition (and not requesting renewal of such a time limit) leads to the dismissal of a part of the case (the ruling of 3 March 2021 in administrative case No. eA-383-502/2021).

In administrative case No. eA-1150-520/2021, the grand panel of judges examined even a few issues that are important for the formation of the case law – first of all, a possibility to apply joint and several liability of undertakings recognised as a single undertaking in terms of competition law, who together committed an infringement of competition law rules. As, at the time of committing the infringement, the Law on Competition did not establish joint and several liability, the provisions that sanctions are imposed on undertakings for infringements of national competition law, in the absence of a specific (other than administrative legal liability) legal liability clearly established at the legislative level, also in the absence of clear rules on fines in case of specific legal liability, cannot be interpreted as meaning that not an individualised but a common (joint and several) fine could be imposed on undertakings. Also, the Court, having assessed the differences between EU and national legal rules and the genesis of the system for calculating fines for infringements of competition law rules, interpreted that, for the purposes of the Law on Competition, the previous economic year is a full economic year before the moment of adoption of a relevant resolution of the Competition Council. Finally, the seriousness of the infringement should not in itself lead to the imposition of a maximum fine when it is clear that neither mitigating nor aggravating circumstances were involved in sanctioning (i.e. where no such circumstances were established) (the ruling of the grand panel of judges of 9 September 2021 in administrative case No. eA-1150-520/2021).

An interpretation is important for disseminators of advertising that such claims as "without meat substitutes" and "No for meat substitutes!" can confuse consumers, therefore, they are to be regarded as product advertising prohibited by the Law on Advertising. Giving information that a food has certain particular characteristics when such characteristics are actually inherent in all similar foods (with particular reference to the presence of certain ingredients and/or nutrients) in all cases is to be treated as information misleading consumers that may affect consumers' economic behaviour (the ruling of 3 November 2021 in administrative case No. eA-2226-815/2021).

TAXES

In the year under review, the Court dealt with a number of cases concerning tax disputes or other disputes related to taxation legal relationship, and it was not rare in judgments given in those cases that the Court presented new or clarified and developed earlier rules on the interpretation and application of tax law provisions.

In examination of these cases, the Court inevitably has to pronounce on various issues of interpretation and application of provisions regulating tax administration procedures, starting with issues on annulment of a property seizure act (e.g. the ruling of 24 March 2021 in administrative case No. A-1069-442/2020), refusal of the tax administrator and/or authorities dealing with the tax dispute to release from default interest on overdue tax (e.g. the ruling of 29 September 2021 in administrative case No. A-2692-968/2021) and ending with the refusal to repay (offset) tax overpayment (e.g. the ruling of 24 November 2021 in administrative case No. eA-2486-438/2021). With regard to the latter, some cases must be separately mentioned related to the refusal of the tax administrator to repay the stamp duty that courts ordered to repay by their effective rulings. By the ruling of 20 January 2021 in administrative case No. eA-59-556/2021, the panel of judges emphasized that under the current regulation, a request of the person concerned and an effective court ruling are enough for repayment of the stamp duty, whereas Article 87 of the Law on Tax Administration, which regulates offsetting and repayment of tax overpayment, does not apply. In another case, the Court held that the position of the tax administrator that the stamp duty can be repaid only to the party of the proceedings, not another person who paid this stamp duty for a party to civil proceedings, to whom the court ordered by its ruling the relevant amounts to be repaid, was unfounded (the ruling of 15 September 2021 in administrative case No. eA-2063-602/2021).

Issues still arise in case law regarding the interpretation and application of the concept of tax dispute – it was reminded in the ruling of 24 March 2021 in administrative case No. eA-2385-442/2020 that a dispute is not to be regarded as tax-related when a taxpayer complains about the decision of the tax administration regarding approval of an inspection statement, which does not give new estimates and figures for the payment of taxes and related amounts. As for issues related to a tax inspection, the

judgment of 16 June 2021 in administrative case No. eA-2362-442/2018 must be mentioned, in which the panel of judges admitted that the tax administrator unreasonably refused to satisfy the request of a creditor of a taxpayer in bankruptcy for a repeated tax inspection of this taxpayer.

Perhaps one of the most prominent decisions of the Court on tax administration procedures is the ruling of 24 February 2021 in administrative case No. eA-665-575/2021, where the grand panel of judges for the first time pronounced in detail on the discretion of the tax administrator in taking a decision on a preliminary undertaking concerning application of provisions of tax law (Article 371 of the Law on Tax Administration). It is also important to note that in this ruling the Court, inter alia, admitted that the reasonableness and lawfulness of the tax administrator's decision to disapprove of the said application indicated in the taxpayer's request must be assessed by an administrative court in essence – in order to assess whether the decision of the tax administrator to disapprove of the application is lawful and justified, the administrative court must assess the reasons (arguments) for the refusal to perform the actions specified therein, including reasons (arguments) disapproving of the specific application of provisions of tax law, indicated in the taxpayer's request, to a future transaction.

It has become common that the largest part of tax disputes relating to indirect taxes consists of cases relating to value added tax (VAT) – starting with a denial of the right to a 0% tariff for intra-EU supplies when one takes part in a transaction involving fraud (e.g. the ruling of 11 January 2021 in administrative case No. eA-4491-968/2020) and ending with the obligation to pay this tax where a taxable person does not notify that he performs the taxable economic activity (e.g. the ruling of 10 February 2021 in administrative case No. eA-526-602/2021, where the Court ruled on the VAT on the sale of the structures built for oneself). In the aspects of the obligation to pay VAT, the Court also pronounced on recognition of transactions of lending to controlled companies to be random activity for the purposes of VAT taxation (the ruling of 29 September 2021 in administrative case No. eA-3441-438/2021). Having regard to the fact that, following the acquisition of goods in the EU, the Member State to which the goods were dispatched or carried, exercises the right of taxation without taking into account the procedure of imposition of VAT which the transaction was subject to in the Member State where the dispatch or carriage of the goods began, by its ruling of 3 February 2021 in administrative case No. A-102-602/2021 the panel of judges ruled that the tax administrator did not have an obligation to assess whether VAT on a new vehicle purchased in another Member State was paid in that Member State in order to tax this acquisition with VAT in Lithuania.

There were numerous disputes also over the conditions of the exercise of the right to deduct VAT – for example, it was admitted by the ruling of 28 April 2021 in administrative case No. eA-426-556/2021 that the produced fixed assets could not be regarded as used in economic activities when, at the time of production of those assets, it was known that they would be given to another economic entity to be possessed for a period of 10 years free of charge. In the ruling of 24 March 2021 in administrative case No. eA-2169-968/2021, the panel of judges emphasized that a taxpayer acquires the right to deduct input VAT only if it has a relevant VAT invoice, therefore, it acknowledged that the applicant's right to deduct VAT assessed by itself was reasonably denied as it was acquiring assets from a person that was not registered as a VAT payer and that did not issue the buyer any VAT invoice.

In cases about the excise duty, the Court continued examination of disputes over taxation of excise goods (usually cigarettes) illegally brought into the country (e.g. the ruling of 17 February 2021 in administrative case No. eA-1222-662/2021, the ruling of 7 July 2021 in administrative case No. eA-1823-575/2021), and by its ruling of 14 July 2021 in administrative case No. A-2050-662/2021 the Court rejected the taxpayer's argument that the customs authorities are not competent to control the payment of excise duty on imported excise goods.

Speaking about disputes over activities of the customs authorities, they certainly were mainly related to the non-clearance or incorrect clearance of customs procedures (e.g. the ruling of 2 June 2021 in administrative case No. A-2162-442/2021), in examination of which the Court, inter alia, emphasized liability of the warehouse if it does not ensure that the goods, subjected to the customs warehousing procedure, are not unlawfully removed from customs control (the ruling of 16 December 2021 in administrative case No. eA-3117-442/2021, the ruling of 30 June 2021 in administrative case No. eA-1964-968/2021). There were also disputes concerning the classification of goods, such as the application of the definitive anti-dumping duty for the purposes of the fertilisers of Russian origin (the ruling of 10 November 2021 in administrative case No. eA-2885-968/2021), also concerning the customs value when the tax administrator refused to assess this value according to the transaction value method (e.g. the ruling of 29 September 2021 in administrative case No. eA-2722-442/2021). In the judgment of 29 September 2021 in administrative case No. eA-672-442/2021, the Court actually emphasized that the sole circumstance that the costs of carriage of goods up to the customs territory of the Union, incurred by the manufacturer before transfer of the goods to the importer, were more than the price actually paid by the latter, does not mean per se that this price does not reflect the real economic value of the goods.

It should also be noted that deciding on the application of the limitation period provided for in the Community Customs Code[1] for the notification of a customs debt, the Court noted in the ruling of 3 November 2021 in administrative case No. eA-2052-261/2021 that this period is suspended by filing of a complaint not only with the Tax Disputes Commission and court but also with central tax administrator, also drew attention to an obvious mistake in the Lithuanian language version of the provision on this concept (erroneous translation).

In the area of direct taxes, cases regarding the personal income tax (PIT) continued to dominate, where the Court mostly examined cases regarding taxation of income from unknown sources, estimated upon determining that an individual's expenditure was more than his income, where the essence of the dispute usually consisted of assessment of evidence (e.g. the ruling of 3 November 2021 in administrative case No. eA-2497-602/2021, the ruling of 8 December 2021 in administrative case No. eA-3099-968/2021). In the judgment of 12 July 2021 in administrative case No. eA-1899-602/2021, the panel of judges emphasized the duty of the tax administrator, upon application of the substance over form principle, to establish the moment of taxation with the PIT also according to the true content of the relationship, not its formal expression, which was denied by this public administration entity itself.

The issue of recognising expenses as allowable deductions was among the main key issue in the cases regarding the corporate income tax (e.g. the ruling of 14 April 2021 in administrative case No. eA-575-602/2021, the ruling of 26 May 2021 in administrative case No. eA-1390-438/2021). Among these cases, it should also be noted that, when deciding on the recognition of a group of companies as a sham entity for the purposes of the application of the Law on Corporate Income Tax, the panel of judges emphasized in its ruling of 8 December 2021 in administrative case No. eA-2232-789/2021 that in such a case those material circumstances are considered (including the intentions of the persons directly or indirectly participating in the group, based on objective data), which allow to identify (confirm or deny) the reasons for determining the existence of the entity namely at the time of receipt of the benefit provided for in the law (important commercial reasons that arise subsequently and justify the economic logic of the determination of the existence of the entity are not relevant).

Several judgments were also adopted in cases concerning the environmental pollution tax. The ruling of 17 November 2021 in administrative case No. eA-2019-602/2021 should be mentioned here, where, inter alia, it was admitted the a water management company owned by the municipality has the obligation to pay a tax for contaminating surface water bodies with hazardous substances. Having stated that the company had no authority to release this pollutant and

concealed it, the decision to assess this tax applying a rate increased by several times was recognised to be well-founded. Cases regarding the real property tax were dominated by issues pertaining to decisions of municipal authorities by which real property objects were included into the list of abandoned and neglected real property objects (e.g. the judgment of 2 June 2021 in administrative case No. eA-1257-1062/2021, the judgment of 20 October 2021 in administrative case No. eA-2754-624/2021, the ruling of 21 April 2021 in administrative case No. eA-1889-442/2021).

There were also numerous cases concerning the request for award of local charges for collection of municipal waste from waste holders and its management, where, taking into account the shortened limitation period for the tax assessment and reassessment, which applies in such cases in case law of administrative courts by analogy, the Court pronounced on the running of this period when a request for award of charges was lodged with the court after 1 January 2020 (e.g. the ruling of 23 June 2021 in administrative case No. TA-599-415/2021). Important issues were also solved regarding repayment of the overpaid local charges for a permission to install outdoor advertising (e.g. the ruling of 15 December 2021 in administrative case No. eA-2833-968/2021).

SUPERVISION OVER FINANCIAL MARKETS

In the year under review, the Court also dealt with a number of important cases concerning decisions taken by the Bank of Lithuania, the authority supervising entities operating in financial markets, starting with the refusal of this authority to perform an inspection of economic entities operating in these markets (the ruling of 20 January 2021 in administrative case No. eA-20-624/2021), the decision on ceasing to treat a public limited liability company as an issuer (the ruling of 12 May 2021 in administrative case No. eA-1277-756/2021) and ending with disputes regarding measures of impact (sanctions) imposed on such entities, for example, for violations of the market abuse prohibition (the ruling of 14 April 2021 in administrative case No. eA-2113-624/2021). With regard to the latter issue, the ruling of 19 November 2021 in administrative case No. eA-2503-629/2021 should also be mentioned, where, having admitted that the applicant (natural person) had infringed the prohibition of insider dealing (the applicant, having access to data with signs of inside information, acquired shares and encouraged other three natural persons to acquire shares), the grand panel of judges held that a fine of EUR 150,000 is proportionate and fair for this infringement.

In dealing with cases of this category, issues arose regarding the competence of the supervisory authority as such – for example, giving the ruling of 14 April 2021 in administrative case No. eA-663-822/2021 the grand panel of judges admitted that the Bank of Lithuania, in order to ascertain whether the issuer whose securities are admitted to trading on a regulated market in Lithuania, gave correct information in the annual report about its compliance with the corporate governance code approved by the operator of this regulated market, has the right to check whether provisions of this code are in fact complied with. Moreover, both in this ruling and in the ruling of 7 July 2021 in administrative case No. eA-1110-556/2021 (where, inter alia, the Court adjudicated whether a person was to be regarded as merely having performed the function of distributing units of an investment fund or was, nevertheless, a participant of that fund for the purposes of application of legal acts regulating the activities of collective investment undertakings), emphasis was placed on the duty of the supervisory authority to give proper reasons for its decision, clearly indicating both the infringement as such and the circumstances to which it relates.

In terms of competence of the supervisory authority, the ruling of 13 January 2021 in administrative case No. A-159-822/2021 should also be mentioned, where it is clearly emphasized that the supervision of the financial market and examination of disputes between individual consumers and financial market participants are different functions performed by the Bank of Lithuania – a decision of this authority regarding the essence of the latter disputes is recommendatory and not subject to appeal in court and a consumer does not lose his right to refer the same dispute to a general court (see also the ruling of 17 March 2021 in administrative case No. AS-151-502/2021).

Separately, we would like to welcome the success of judicial mediation in resolution of a dispute between a financial market participant and the supervisory authority (the Bank of Lithuania), and we hope that this example will encourage the parties to the dispute, especially public administration entities, to seek amicable resolution of disputes (the ruling of 1 December 2021 in administrative case No. eA-73-822/2021).

TOBACCO AND ALCOHOL CONTROL

Unlike in previous years, when alcohol control issues dominated, in 2021, important issues of a completely new nature emerged in the Court in the area of tobacco control, particularly in relation to the provision of information on tobacco products on websites.

In administrative case No. A-1744-629/2021 the Court pronounced on the prohibition of distance sales of electronic cigarettes and advertising of these products, i.e. that the provisions of the Law on Control of Tobacco, Tobacco Products and Related Products prohibit distance sales of electronic cigarettes and their refill containers both inside the Republic of Lithuania and cross-border, without any reservations. Besides, advertising of electronic cigarettes, refill containers for electronic cigarettes or herbal products for smoking, also surreptitious advertising of electronic cigarettes, refill containers for electronic cigarettes or herbal products for smoking is prohibited in the Republic of Lithuania. Having found in the case that the applicant carried out illegal trade in electronic cigarettes and their refill containers, purposefully presented information about an electronic cigarette kit on the website in order to disseminate information about the product offered by it for sale (seeking its acquisition and consumption), a conclusion has been made that dissemination of such information and giving a possibility of remote acquisition of a product, among other things, also increases consumption and accessibility of products related to tobacco products for a particularly protected group of the public – minors, which is contrary to the aim of the Law on Control of Tobacco, Tobacco Products and Related Products (the ruling of 17 March 2021 in administrative case No. A-1744-629/2021).

In this field, administrative case No. eA-664-261/2021 regarding advertising of tobacco products and surreptitious advertising of tobacco products in the case of electronic device IQOS – a part of the tobacco heating system used together with a specially produced heated tobacco product HEETS is also to be pointed out. In the opinion of the grand panel of judges, the applicant, presenting information on the website about points of sale of tobacco products, also disseminated information about tobacco products (i.e. heated tobacco products used together with the electronic device IQOS). The information was presented in a way, which may confuse advertising consumers as to the actual purpose of presentation of such information (i.e. heated tobacco products were also surreptitiously advertised). In the opinion of the grand panel of judges, the condition in the definition of surreptitious advertising of tobacco products and/or related products to the effect that

information "is presented in a way that it may confuse advertising consumers as to the actual purpose of presentation of such information" also includes those cases when information about tobacco products can confuse advertising consumers as to the actual purpose of presentation of such information as it is presented in advertising of another product (which is not a tobacco product), in this way creating an impression that only the other product is advertised, though in fact the tobacco product is advertised, too (the ruling of the grand panel of judges of 24 March 2021 in administrative case No. eA-664-261/2021).

In the field of alcohol control, issues were traditionally dealt with in connection with imposition of an economic sanction on an economic entity for sale of alcoholic beverages to persons under 20 (the ruling of 14 July 2021 in administrative case No. eA-1442-261/2021), cancellation of the license for retail trade in alcoholic beverages in a restaurant (the ruling of 6 October 2021 in administrative case No. A-2164-525/2021), prohibition of alcohol advertising (the ruling of 8 December 2021 in administrative case No. eA-2402-629/2021). For example, in administrative case No. eA-1829-415/2021, the Court indicated that advertising of a non-alcoholic beverage, by virtue of having signs corresponding to advertising of alcohol, has an effect on the awareness about a bitter produced and distributed by the applicant, promotes its acquisition and consumption, violates the imperative of absolute prohibition of alcohol advertising set forth in paragraph 1 of Article 29 of the Law on Alcohol Control (the ruling of 2 June 2021 in administrative case No. eA-1829-415/2021).

In this area, the Court assessed new issues, for example, regarding sale of alcoholic beverages at places for which the company does not have a license to keep and sell alcoholic beverages (via vending machines). The panel of judges explained that following subparagraph 4 of paragraph 3 of Article 18 of the Law on Alcohol Control, sale from vending machines is prohibited in the Republic of Lithuania (the ruling of 30 June 2021 in administrative case No. eA-2375-968/2021, see also the ruling of 3 November 2021 in administrative case No. eA-2134-261/2021).

In another case, the Court noted that actions performed by the applicant – placing a stand with an alcohol beverage trade mark, at which the festival visitors could be photographed and collect a photograph, is to be considered a promotion action for the purposes of subparagraph 4 of paragraph 1 of Article 28 of the Law on Alcohol Control, by which it was sought to affect the consumers' choice to acquire and/or consume alcoholic beverages, and such actions are prohibited by subparagraph 4 of paragraph 1 of Article 28 of the Law on Alcohol Control (the ruling of 10 February 2021 in administrative case No. eA-216-968/2021).

LEGAL PROTECTION OF PERSONAL DATA

More and more cases related to the legal protection of personal data are heard in the Supreme Administrative Court of Lithuania. In 2021, the Court settled one third more cases in this category than in 2020. In cases in this area, the issues of application of the General Data Protection Regulation (hereinafter referred to as the GDPR) dominate.

In administrative case No. eA-745-261/2021 the grand panel of judges noted that the principle of accountability provided for in Article 5(2) of the GDPR consists of two parts: the responsibility of the controller to ensure compliance of its activities with the requirements of the GDPR and the ability of the controller to prove this compliance to the supervisory authority. It was also noted that the supervisory authority has an obligation to conduct a thorough investigation and to give a reasoned administrative act. It was found in the case that when the applicant was providing a payment initiation service, copies of the screenshots of the payers' electronic banking accounts were made and stored. The Supreme Administrative Court of Lithuania stated that the applicant processed (accessed, collected, stored) the personal data visible in the payer's banking environment in a non-transparent manner, to a greater extent and for a longer period than it was necessary to achieve the purposes of data processing, and personal data processed to a greater extent than necessary for the purpose of data processing are processed unlawfully. Thus, the Court ruled that both the State Data Protection Inspectorate (hereinafter referred to as the Inspectorate) and the court of first instance reasonably assessed that the applicant violated Article 5(1)(a), (c) and (e) of the GDPR. It was also ruled in the case that the applicant did not ensure that personal data be processed in a way so as to ensure security corresponding to the threat level by application of relevant technical or organisational measures, including protection against unlawful processing, disclosure, and thereby breached Article 5(1)(f) and Article 32(1)(b) of the GDPR, and by failing to notify the Inspectorate of the personal data breach, it breached Article 33 of the GDPR (the ruling of the grand panel of judges of 2 July 2021 in administrative case No. eA-745-261/2021).

In administrative case No. eA-2951-968/2021, the Court examined the issue regarding the bailiff's right to process personal data when a civil statement of claim is lodged against the bailiff for indemnification for moral

damages caused by his actions as a bailiff. Systematically interpreting the relevant provisions of the Law on Bailiffs in the context of the case in question, it has been stated that a bailiff (a person authorised by the State) is granted the right by paragraph 1 of Article 22 of the Law on Bailiffs to receive information necessary for the performance of the bailiff's function in the course of execution of the execution documents provided for in law, free of charge, from Sodra database (including personal data). It was emphasized that such a bailiff's right also remains when a civil statement of claim is made against the same bailiff, whose powers have not expired, for indemnification for moral damages that are said to be directly caused by allegedly improper execution of execution documents, even in those cases when performance of such functions has ended. In the opinion of the panel of judges, receipt of information from Sodra database (including personal data) in such cases is directly related to the necessity to prove that the bailiff performed a specific function without violating laws and having properly assessed all factual circumstances, therefore, obtaining such information in defence from subsequent accusation in connection with it cannot be treated as "unrelated to the performance of the bailiff's functions", the prohibition, which is provided for in paragraph 2 of Article 22 of the Law on Bailiffs, to request data, documents or other information indicated in paragraph 1 of the same article does not apply to such cases. Accordingly, personal data processing for the said purpose, if that is done following the personal data processing related principles set forth in Article 5 of the GDPR, is directly related to the performance of functions assigned to the bailiff (a person authorised by the State) by law and meets the condition of lawfulness of the processing of personal data provided for in Article 6(1)(e) of the GDPR (processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller) (the judgment of 20 October 2021 in administrative case No. eA-2951-968/2021).

PROVISION OF INFORMATION TO THE PUBLIC

The number of settled cases in the area of the provision of information to the public has remained stable over the last few years, however new issues of interpretation of law keep arising. In 2021, the Court presented significant interpretations in this area, too. Two important judgments are to be mentioned – the first one is related to establishment of criteria to strike a balance between the protection of a person's private life and the right of the public to know; the second judgment is meant to discuss the procedure for the application of penalties imposed for the violations of the Law on the Provision of Information to the Public.

In administrative case No. eA-2066-624/2021, the Court examined the issue of a possible violation of the right to protection of private life by making public of data about a person in the published lists of the richest persons. The grand panel of judges noted that the richest persons of the country have such a position in society, due to which their activities related to the management of their assets are important for public matters (creation of numerous jobs, business environment, collection of taxes to the state treasury), therefore, they are public figures both for the purposes of the Convention and paragraph 77 of Article 2 of the Law on the Provision of Information to the Public. However, in case they do not hold any public offices in the public sector, their right to keep their private life secret is in principle wider than of public figures holding such offices. In the opinion of the grand panel of judges, publication of the list of the richest people in the country, the value of the assets they manage and fields of their business can indeed contribute to the discussion of public interest inter alia about business processes significant for society, income generated there, at the same time, about the appropriateness of state taxation and social policies (distribution of tax burden, etc.). Therefore, the list of the richest people, the value of the assets they manage and the areas in which their business operates are issues that affect society to the extent that they can reasonably attract public attention and public interest.

It is stated in the judgment contested in a case that publishing of inaccurate information on the value of the assets of a third party concerned was in violation of paragraph 3 of Article 3 of the Law on the Provision of Information to the Public. The grand panel of judges held that the publications in dispute indicated approximate value of the assets of the third party concerned, which is a result of

assessment of data available about assets of the third party concerned, i.e. an opinion, not a fact or true (correct) data (message). The grand panel of judges noted that, in the event that an opinion expressed is an assessment of facts, the criteria of truth and accuracy are not applied to that opinion (i.e. the assessment of facts) (paragraph 3 of Article 3 of the Law on the Provision of Information to the Public), but it is subject to paragraph 36 of Article 2 of the Law on the Provision of Information to the Public, which provides that it must be expressed in a fair and ethical manner, without deliberately concealing or distorting facts and data. Facts and data, referring to which an opinion (assessment of facts) was stated in the publication, should be indicated by the producer (disseminator) of public information, however that does not release the Office of the Inspector of Journalist Ethics from the duty to actively seek to find out all legally significant circumstances and to refer to them in taking of a decision (the ruling of the grand panel of judges of 15 September 2021 in administrative case No. eA-2066-624/2021). In administrative case No. eA-668-624/2021, the grand panel of judges examined an issue concerning the requirements of the Law on the Provision of Information to the Public applicable to the members of the Radio and Television Commission of Lithuania (hereinafter referred to as the Commission). The grand panel of judges noted that paragraph 9 of Article 47 of the Law on the Provision of Information to the Public provides for a mandatory prohibition for members of the Commission inter alia to be related to radio and/or television programme broadcasters, re-broadcasters. This provision of the law gives a formal structure of violation of the Commission member impartiality requirement, without allowing an individual assessment of the impartiality of a member of the Commission in such a case. It has been stated in the case that in taking the contested decisions, some members of the Commission did not meet the mandatory requirements of the Law on the Provision of Information to the Public. With regard to the indicated failure by some of the members of the Commission to meet legal requirements in their activities, the grand panel of judges stated that in taking of the decisions contested in the proceedings, there was no 2/3 quorum of the Commission members required by paragraph 13 of Article 47 of the Law on the Provision of Information to the Public, which is mandatory for the Commission meeting to be lawful. Though, in the case in question, the measure taken by the Commission decision that was applied following paragraph 3 of Article 34[1] of the Law on the Provision of Information to the Public and Article 3(2) of Directive 2010/13/EU – temporary suspension of free receipt of television program RTR Planeta for 12 months, is not expressis verbis defined in the said law as a penalty or sanction, with regard both to the character of such a measure and the consequences of its use,

the grand panel of judges stated that such a measure should be regarded as a penalty for the purposes of paragraph 13 of Article 47 of the said law. Therefore, in taking of the decision, the statutory requirement (paragraph 13 of Article 47 of the Law on the Provision of Information to the Public) to take such decisions by 2/3 majority of votes of all the members of the Commission was not fulfilled. As, in taking of the contested decisions, the main procedures were violated, especially rules, which had to ensure the objective assessment of all the circumstances and substantiation of the decision, it has been stated that they are not lawful, therefore, should be cancelled (the judgment of the grand panel of judges of 12 May 2021 in administrative case No. eA-668-624/2021).

CIVIL SERVICE

In the year under review, the grand panels of judges of the Court gave significant judgments in the field of civil service, among which judgments on dismissal of the head of an institution and the internal service officer after receipt of interpretations by the Constitutional Court, on compensation for work in harmful conditions, on responsibility of the Chancellor of the Ministry, upon receipt of an audit report from the National Audit Office, and on pecuniary liability of civil servants, are to be highlighted.

In administrative case No. eA-757-556/2021, the issue of lawfulness of dismissal of the Director of the State Food and Veterinary Service was examined. It was noted in the case that administrative courts are not granted the power to invalidate acts of the Government of the Republic of Lithuania – according to Article 102 of the Constitution, only the Constitutional Court has this power. The grand panel of judges noted that after the Constitutional Court has assessed the lawfulness of the Government resolution and admitted it to be lawful, the court has no reason for arriving at a different conclusion. The investigation and assessment of the circumstances in connection with the lawfulness of the contested resolution is performed in administrative courts to the extent necessary to ensure a person's right to effective defence in court and to formulate a reasoned application to the Constitutional Court, with regard to the interpretation given in the Constitutional Court ruling of 2 March 2018 to the effect that investigation whether the Government reasonably gave a negative evaluation of the report on activities of the Director of the State Food and Veterinary Service falls primarily within the competence of the court seized of the administrative case. When the Supreme Administrative Court of Lithuania used these powers, legally significant circumstances in the applicant's complaint were investigated and the dismissal of the head of the institution was recognized lawful (the ruling of the grand panel of judges of 25 February 2021 in administrative case No. eA-757-556/2021).

After the ruling of the Constitutional Court, by which it was decided that the provision in the Statute of the Internal Service prohibiting a person who committed a minor offence (even if the previous conviction is expired (expunged)) from becoming (being) an officer of internal service for an indefinite period of time, is incompatible with the Constitution, the Court had to answer a question

whether a time period that has passed from a certain criminal offence was sufficient/proportionate for no longer applying the prohibition to enter civil service. The legislator established a relevant time limit (5 years), making a person eligible for internal service, despite acts contrary to law in the past (not wilful). Such a time limit of 5 years, preventing one from entering internal service upon commitment of a non-wilful offence, was one of the legal grounds, referring to which the Court could decide that in case of a wilful offence, the period of prohibition to enter the internal service should not be shorter than that (however, not for a lifetime, in any case) (the ruling of 24 November 2021 in administrative case No. eA-3921-556/2021).

The SACL settled an administrative case regarding compensations for work in harmful conditions in the District Court of Ukmergė District. The panel of judges held that the facts found in the case, regarding them in the context of the legal regulation of the extra pay for work in harmful working conditions, confirmed that the contamination of the building of the District Court of Ukmergė District with mercury vapour in the period in dispute was not integrally and directly related to the performance of the work functions assigned to civil servants working in this court. Data in the case file, inter alia, the facts established in the ruling of the Supreme Court of Lithuania of 6 June 2019 also confirmed that in the period in dispute both the public authorities and the management of the District Court of Ukmergė District were or should have been aware of risks in connection with work in premises contaminated with mercury vapour (the mercury hazard is well investigated, scientifically proven and the public is aware of it). Consequently, there was every opportunity to reduce the harmful working conditions caused by mercury in the premises, by use of technical or any other means, to the permissible limit values indicated in regulatory legal acts on safety and health of workers. With regard to that, the panel of judges had no doubt that in the circumstances in the case in question, extra pay "for work in harmful, very harmful and hazardous working conditions" provided for in Article 26 of the Law on the Civil Service could not be established and paid to civil servants (accordingly, also to applicants judges) who worked in the premises of the District Court of Ukmergė District in the period in question by reason of mercury vapour contamination of the premises (the ruling of 31 March 2021 in administrative case No. eA-2293-968/2021).

In administrative case No. eA-3061-629/2021, the Court presented explanations regarding the liability of the chancellor of a ministry upon receipt of an audit report from the National Audit Office. In the case, the applicant, chancellor of a ministry, challenged the official penalty imposed on him – a severe reprimand. Having determined that the applicant's right to defence was not properly

ensured during the investigation of misconduct in service, the Court emphasized that it is not a civil servant who has to prove, in response to abstract accusations, that he acted properly, but the respondent must indicate specific facts and circumstances, give their legal justification, when stating the existence of misconduct in service that manifested in improper performance of functions. There was not enough evidence in the case, referring to which it could be judged that the applicant, when controlling and coordinating the activities of the Asset Management and General Service Division, acted differently than required by the legal acts determining his duties and functions. In the summary of the arguments set out above, the grand panel of judges stated that the defendant did not prove the claims made in the official report that the applicant did not control and did not coordinate or improperly controlled and coordinated the activities of the Asset Management and General Service Division. It means that the defendant did not prove meeting the substantive condition for the application of the applicant's official liability as it did not prove the very fact of misconduct in office (the ruling of the grand panel of judges of 27 October 2021 in administrative case No. eA-3061-629/2021).

The Court also gave interpretations on the issue of pecuniary liability of civil servants. In administrative case No. eA-1680-525/2021, the grand panel of judges noted that the implementation of the right of recourse of state and municipal authorities and institutions, where unlawful actions of employees (civil servants) of such authorities and institutions have resulted in the award of damages to the injured parties, against a civil servant who caused the damage is a part of the institution of pecuniary liability of the latter. The possibility of imposition of such liability is bound by the need to determine, beyond doubt, meeting of the conditions for pecuniary liability, i. e. all elements of the pecuniary liability of a civil servant must be proved. The grand panel of judges upheld the conclusion made by the court of first instance that two out of three conditions for defendants' pecuniary liability are met, therefore, they have been validly ordered to indemnify the State of Lithuania for damages under the recourse procedure (the ruling of the grand panel of judges 17 June 2021 in administrative case No. eA-1680-525/2021).

CASES CONCERNING DECISIONS OF THE CHIEF OFFICIAL ETHICS COMMISSION

In 2021, the Court examined three times more administrative cases (33 administrative cases), challenging decisions of the Chief Official Ethics Commission (hereinafter referred to as the COEC) than in 2020 (11 administrative cases).

The Court presented an interpretation concerning assessment of the publications intended for the image of personalities (rather than institutions) in the context of the Law on the Adjustment of Public and Private Interests in the Civil Service. It was stated in administrative case No. eA-747-415/2021 that the publication where an article was published was meant to present personalities rather than institutions, and the assessment of the article content implies that it is dominated by the information of personal character about the applicant rather than about VšĮ Alytaus kolegija (Alytus University of Applied Sciences), where the applicant was the Principal, as a state higher education institution of the Republic of Lithuania, the achievements of which are directly linked to the special role of the applicant. That is evident from her personal contribution, which is constantly accentuated. The article, published on the applicant's initiative and financed by VšĮ Alytaus kolegija, is not in any way consistent with the aims, objectives of this university of applied sciences, proper performance of the Principal's functions in possession, use and disposal of the assets of VšĮ Alytaus kolegija, is in breach of the mandatory requirements set forth in the Statute of VšĮ Alytaus kolegija for possession, use and disposal of the assets, especially the imperatives of public benefit. The panel of judges held that by such actions the applicant breached the provisions of subparagraphs 3 and 6 of paragraph 1 of Article 3 of the Law on the Adjustment of Public and Private Interests in the Civil Service (the ruling of 17 February 2021 in administrative case No. eA-747-415/2021).

The Court presented significant interpretations regarding recognising that a person who acted on behalf of an association carried out unlawful lobbying activity. In administrative case No. eA-984-520/2021, the Court interpreted that the applicant (the President of the Lithuanian Guild of Beer Brewers) was the sole-person governance body of the Lithuanian Guild of Beer Brewers at the time of presentation of the letter, by which specific offers were presented to the Ministry of Agriculture regarding an order of the Minister of Agriculture, and the content of the applicant's communication confirms that the applicant presented the letter acting

on behalf of the Lithuanian Guild of Beer Brewers (association). The fact that at the time of presentation of the letter the Law on Lobbying Activities did not provide that legal persons in general (including associations) may act as lobbyists does not mean that in this case the sole-person governance body of the Lithuanian Guild of Beer Brewers (the applicant) should be subjected to liability for the letter presented by the Lithuanian Guild of Beer Brewers with a draft of a legal act. The Court found that the defendant and the court of first instance unreasonably established that the applicant breached paragraph 1 of Article 10 of the Law on Lobbying Activities (see the judgment of 10 March 2021 in administrative case No. eA-984-520/2021).

The SACL developed the case law on the prohibition to represent natural or legal persons for one year in the institution in which the person worked or held office in the past year. The panel of judges admitted that the Law on the Adjustment of Public and Private Interests in the Civil Service is a special law with regard to adjustment of interests, it prevails in this area over the Law on the Bar, therefore, the prohibition to represent natural or legal persons for one year in the institution in which the person worked or held office in the last year applies to attorneys at law, too. The Court emphasized that the Chief Official Ethics Commission admitted the applicant's right to represent the client in the Labour Disputes Commission, in defence of her interests in connection with the dismissal, and individual procedural actions performed by the applicant in this labour dispute case (making a proposal for entry into a settlement agreement) cannot be considered as independent approach to the municipal council, not related to the labour dispute case, in representation of interests of the client (the ruling of 6 October 2021 in administrative case No. eA-2112-552/2021).

In administrative case No. A-1032-756/2021, the panel of judges noted that a new version of paragraph 1 of Article 4 of the Law on the Adjustment of Public and Private Interests in the Civil Service came into force on 1 January 2018, however neither the law nor the Rules for Completing, Adjusting and Submitting Declarations of Private Interests approved by the COEC established that a person, holding a relevant office in a legal entity and having declared it according to the provisions of the Law on the Adjustment of Public and Private Interests in the Civil Service effective until 1 January 2018 and the Rules for Completing, Adjusting and Submitting Declarations of Private Interests, must declare an additional office to which he was appointed in the same legal entity. Thus, the absence of a clear declaration procedure has led to legal uncertainty. The SACL also took into account the fact that in the dispute resolution process the COEC had not indicated any facts to the effect that the applicant had taken any biased decisions during her performance of public procurement procedures or other functions in the civil service or that her activities were related to corruption. The sole circumstance that

the applicant, before starting performance of public procurement procedures in the institution on 14 March 2018, did not amend (supplement) her office identification code (from 501 to 470) in the declaration of private interests, is not a basis for an unambiguous conclusion that she breached requirements of paragraph 1 of Article 4 and paragraph 4 of Article 5 of the Law on the Adjustment of Public and Private Interests in the Civil Service. The panel of judges emphasized that the essence of the declaration of private interests is its content, not form. Therefore, absence of timely amendment of only the office identification code, where the declaration of private interests was submitted on 26 December 2017, did not harm the good protected by the Law on the Adjustment of Public and Private Interests in the Civil Service (the judgment of 21 April 2021 in administrative case No. A-1032-756/2021).

INDEMNIFICATION

Cases concerning indemnification of damages caused by unlawful actions of public authorities have been one of the largest categories in the context of all administrative cases settled by the Court already for a number of years.

As in previous years, most of these cases are related to inappropriate arrest and/or detention conditions. Although the prevailing complaints continue to be about a too small area of the living space and inadequate hygiene conditions, the Court has to deal with an increasing number of claims for damages related to various other violations of the convicts' (detainees') rights. For example, in 2021, the Court, examining persons' complaints about damage cause by failure to ensure adequate food for them, presented its interpretations in administrative case No. TA-266-261/2021 on the customisation of the diet menus for the convicts, and in case No. TA-595-815/2021 – on the duty to approve a separate menus for working vegans kept in detention facilities. Also, in administrative case No. TA-1110-438/2021 the Court pronounced on (non-)isolation of a detainee (convict), who declared a hunger strike, from other persons kept together with him, who are not on a hunger strike.

It should be noted that in 2021, among cases of this category, the Court had to deal with Covid-19 related claims, for example, in administrative case No. TA-845-261/2021 it assessed (non-)application of the requirement to keep a certain minimal distance for persons living in one room in detention facilities.

In the year under review, the Court presented a number of interpretations also in other cases of this category. In judgments and rulings given in 2021, the Court pronounced on other indemnification issues relevant to the case law, for example, on the indemnification of damage for demolition of structures unlawfully built on state land before identification of the owner of the structures (the ruling of 12 May 2021 in administrative case No. A-780-624/2021), on the joint and several liability of the State for damage originating from an unlawfully approved territory planning document, and assessment of payments for services made under contractual obligations, admitting this expenditure to be damage when the issue of non-contractual liability of the State (municipality) is dealt with (the ruling of 29 December 2021 in administrative case No. eA-2576-415/2021), on discrimination by failure

create access for persons with reduced mobility to public buildings for the purpose of getting public services (the judgment of 15 December 2021 in administrative case No. eA-2796-492/2021), etc.

In this area, more attention should be paid to administrative case No. eA-3411-556/2021 where the Court pronounced on liability of the State for improper transposition of provisions of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (hereinafter referred to as Directive 2009/103/EC) into national law, to be specific, establishing a limitation of the sum insured for moral damages up to EUR 5,000 in the Law of the Republic of Lithuania on Compulsory Insurance against Civil Liability in Respect of the Use of Motor Vehicles. The Court interpreted that the provisions of Article 9 of Directive 2009/103/EC are clearly aimed at entitling victims of traffic accidents to damage compensation (primarily, damage to property and personal injury, including moral damages), the amount of which may not be limited by national legal acts to an amount less than indicated in the said provision of the directive. It is namely the responsibility of the Member States to ensure that insurance covers at least certain minimum amounts that is considered an important element of victim protection.

Article 9 of Directive 2009/103/EC gives Member States the discretion to provide for better guarantees than provided for in the article, but no provision of the said directive presupposes the discretion of a Member State to limit such guarantees in such a way as to negate the effectiveness of the provision in question. Having determined that, in the case at hand, national legal acts did not ensure traffic victims' right to compensation (of moral damages, to be specific), which is guaranteed by Directive 2009/103/EC, the amount of which would not be limited to an amount less than established in the said provision of the directive, the Court held that the applicant suffered damage which the State must compensate (the ruling of 20 October 2021 in administrative case No. eA-3411-556/2021).

LOCAL SELF-GOVERNMENT

The Constitution and laws give powers to local self-government authorities to act in various areas, therefore, overview of cases in this field covers a wide range of issues, starting with complaints of persons concerned regarding the decision to name a street after Lech Kaczyński (the judgment of 24 February 2021 in administrative case No. A-2442-624/2021) or the refusal to remove power transmission poles from the territory of the gardening society (the ruling of 17 November 2021 in administrative case No. eA-2431-438/2021) and ending with the requests to annul a permit to cut down trees growing on state land (the ruling of 16 June 2021 in administrative case No. eA-2347-968/2021). A number of disputes was also settled in connection with decisions about installation of (refusal to install) traffic signs or traffic restricting measures (e.g. the ruling of 7 April 2021 in administrative case No. A-975-1062/2021, the ruling of 8 December 2021 in administrative case No. eA-2553-520/2021).

There was also a number of cases regarding judgments related to the regulation of economic activities in the territory of municipalities, such as: denying a permit for placement of outdoor advertising (the ruling of 13 October 2021 in administrative case No. eA-2642-624/2021) or changing the list of places where such advertising is allowed (the ruling of 22 December 2021 in administrative case No. eA-2629-525/2021); denying trading permits (the ruling of 20 January 2021 in administrative case No. eA-185-575/2021) or denying approval for location of temporary trading places (the ruling of 29 December 2021 in administrative case No. eA-2475-556/2021).

The Court also had to examine internal disputes of local self-government authorities, for example, in the ruling of 10 February 2021 in administrative case No. A-641-415/2021 the panel of judges accentuated a mayor's duty to actively cooperate with a group of members of the municipal council that was seeking to initiate a survey of the residents of the municipality, rather than just formally refuse to satisfy their request, without giving a possibility to provide all necessary information within the shortest period possible. Meanwhile, pronouncing on the formation of committees of the municipal council, in its ruling of 24 March 2021 in administrative case No. A-576-815/2021, the Court emphasized that the law does not prohibit a member of the council from being a member of more than one committee (not only of the Control Committee), therefore, there are no

obstacles either for majority or minority members of the council to be members of several committees of the council and in this way to ensure compliance with the proportional majority and minority representation principle.

It should also be noted that during the year under review the Court received a request for a conclusion, submitted on behalf of the Plungė District Municipality Council, whether a member of this council – the mayor – breached his oath and/or failed to exercise the powers given to him by law. However, by the ruling of 21 July 2021 in administrative case No. eS-2-575/2021, the grand panel of judges held that this request was not filed by a proper entity as the Court was addressed not by a decision of the municipal council, it was a request for a conclusion signed by separate members of the council, however, no data was found to confirm that the council had considered and approved the request in question. By the ruling of 12 May 2021 in administrative case No. eS-1-415/2021, the Court also dismissed an administrative case initiated at the request of the Pagėgiai Municipality Council for the same conclusion regarding a member of the council of this municipality, as the Court found, inter alia, material violations of the procedure of the loss of powers of a member of the municipal council by a decision of the municipal council, i.e. failure to ensure the right of the council member accused of breach of oath to be heard and the right of representatives of the faction, to which this member belongs, to participate in the activities of the commission formed for investigation of facts.

Though according to applications and requests of representatives of the Government carrying out supervision of municipal activities, the issues actually most frequently examined by the Court were lawfulness of regulatory administrative acts adopted by municipal councils, several cases on other issues are also worth highlighting – for example, by its ruling of 16 June 2021 in administrative case No. A-1544-552/2021 the panel of judges approved of the position of the representative of the Government that the municipal council must properly complete an investigation of the misconduct in office of the former director of the administration by adopting one of the decisions provided for in legal acts rather than just leave the investigation incomplete. In addition, there were also disputes regarding the decisions of representatives of the Government themselves, by which, upon examination of residents' complaints, they stated absence of any violations of provisions of legal acts or unlawful actions of local self-government authorities (e.g. the ruling of 2 December 2021 in administrative case No. A-1792-822/2021, the ruling of 24 February 2021 in administrative case No. eA-617-575/2021).

OTHER DISPUTES

The overview of the main areas of judicial activity, due to the broad nature of the categories of administrative cases, reflects only a part of the work completed during the year. In addition to issues already overviewed in administrative cases, it is equally important to mention the part of the case law that promoted the implementation of the requirements implied by the principle of good administration – the right to be heard, the right to a reasoned administrative decision and the right to information – in cases of various categories.

Upon change of the provisions of the Law on Public Administration, the Court formed case law, ensuring the continuity of previous case law of the Court concerning the general requirements for an individual administrative act established in Article 8 of the Law on Public Administration and the obligation to present reasons. The Court indicated that after the rewording of the Law on Public Administration, which entered into force on 1 November 2020, the provisions of Article 8 changed substantially, but the requirement for giving proper reasons for an administrative decision did not disappear, it is indirectly provided for in paragraph 5 of Article 10 of the Law on Public Administration and arises out of the general principles of law, for example, the principles of lawfulness and good administration (the judgment of 27 October 2021 in administrative case No. A-1967-756/2021).

In the field of supervision of the activities of economic entities, the Court pronounced on the reasoning of the decision to perform an unscheduled inspection based on an anonymous complaint (the ruling of 10 February 2021 in administrative case No. eA-220-756/2021), also on the duty to inform on performance of the follow-up control (unscheduled inspection) and creating a possibility to participate in the inspection (the judgment of 24 November 2021 in administrative case No. eA-2467-525/2021).

Regarding persons' right to obtain information from state governmental authorities, a case is to be pointed out, where after the Special Investigation Service refused to present (all) information requested by the applicant – the Lithuanian Bar, the Court held that there are no arguments in the letter in dispute, why the defendant is unable to provide the applicant with the requested information related to the certificate mentioned in the notification of the Ministry of Justice, nor any references to specific rules of law

(the ruling of 2 June 2021 in administrative case No. eA-1518-575/2021), also a case concerning refusal to submit documents (designs of a structure) that are to be considered an object of copyright (the ruling of 17 November 2021 in administrative case No. eA-2491-502/2021).

ADMINISTRATIVE PROCEEDINGS

Proper application and interpretation of the provisions on administrative proceedings is a significant part of the jurisdictional activities of administrative courts, creating preconditions for efficient and effective realisation of a fundamental right of every person to have access to justice, ensuring a fair, objective, economically efficient and just process of examination of administrative disputes.

Upon settlement of almost all received separate appeals in 2021, the Court pronounced on various situations that arise for administrative court in administrative proceedings, however, the major part of disputes of this category were issues regarding the procedure of addressing a court, among which emphasis should be on the still particularly relevant aspects related to a possibility for administrative courts to exercise judicial review of certain acts or actions and to the interest of specific persons to challenge an administrative act. In a number of cases, the Court accentuated a duty to assess a complaint, in the stage of its admission, in the aspects of its conformity to formal requirements, and only in the situation, where it is obvious that the contested act does not cause any independent legal consequences for the person, admission of the complaint in court may be denied. Administrative case No. eAS-549-1062/2021 can be mentioned as an example. A company made a request to the administrative court for the annulment of the decision of the State Tax Inspectorate to remove the applicant from the list "Legal entities eligible to tax aid measures in connection with Covid-19 after 1 January 2021 without submitting an application". It is indicated in the decision in dispute that the applicant does not have financial difficulties and may fulfil its tax obligations, therefore, it will be removed from the list 20 business days after receipt of the decision. The decision gives arguments supporting this conclusion, sets out the course of the investigation performed and its results. The decision also indicates that the applicant has tax in arrears and explains that in case it is not paid, the tax in arrears will be enforced under the procedure established by the Law on Tax Administration. On the basis of these circumstances, the Court could not arrive at the conclusion that the decision had no legal consequences for the applicant, all the more so that it was established, based the case file material, that no other (additional) decision was taken after the lapse of the said 20 business days

(the ruling of 8 September 2021 in administrative case No. eAS-549-1062/2021).

In 2021, it was for the first time that the Court approved a settlement agreement concluded by way of mediation, also presented interpretations significant for court's approval of the settlement agreement concluded by way of mediation. In administrative case No. eA-73-822/2021, the Court noted that the court must get certain about the circumstance whether an administrative dispute (or its part) is to be settled amicably ad hoc (with regard to a specific situation) in each case. According to the Court, the possibility of an amicable settlement of a dispute (a part of it) relates to the right of discretion (freedom of action) available to the public administration entity in the relevant area of activity. Before the court approves a settlement agreement in a case, it is important to get certain that the settlement agreement could be concluded with regard to the character of the dispute, in other words, to assess whether a public administration entity, when concluding the settlement agreement, had the right of discretion to decide on aspects agreed in the settlement agreement and properly exercised this discretion, which is bound by the general principles of law – primacy of law, objectivity, proportionality, non-abuse of power, effectiveness, which lead to the need to ensure an adequate balance between the significant public interest and rights held by the public administration entity. In the case in question, the Court held that the Bank of Lithuania, reducing the fine imposed on UAB Pervesk in the settlement agreement, acted within the limits of its discretion and did not exceed it, also followed general principles of law and ensured an appropriate balance of rights held by the Bank of Lithuania and the safeguarding of a significant public interest. The Court also held that there was no reason to conclude that the Bank of Lithuania, deciding against imposition of a fine and deciding to enter into a settlement agreement with the head of a company, ignored the above-mentioned general principles of law relevant for the public administration entity in exercise of its discretion or failed to ensure an appropriate balance of a significant public interest and rights available to the Bank of Lithuania (the ruling of 1 December 2021 in administrative case No. eA-73-822/2021).

In 2021, the case law in examination of administrative cases was supplemented with new interpretations regarding compensation for litigation costs. In an administrative case regarding award of a local levy for the collection and management of municipal waste, the Court supported the position that litigation costs should not be awarded in the event that a party, inter alia, omits to use the institution of a court order. Having considered that the case in question did not raise a new legal issue, case law in cases of this type has already been formed, the case is not complicated by its scope, assessment of facts, evidence, application of law governing the dispute, and that

the applicant could approach the court under the simplified procedure – using the institution of a court order, the panel of judges stated that the litigation costs, award of which was requested, did not meet the criterion of necessity and were excessive (the ruling of 24 March 2021 in administrative case No. eTA-904-968/2021).

An important interpretation was given in another case about the right to compensation of litigation costs in those cases when an administrative act is cancelled also by the reason that the fine imposed by it is disproportionate and is reduced by the court. The Court held in this situation that in the absence of special provisions of the procedural law, where the court reduces or cancels a sanction (a measure of impact) imposed for violations of law, the provisions of the Law on Administrative Proceedings on award of litigation costs must be interpreted and applied so that, inter alia, they would conform to the official constitutional doctrine on the reality and effectiveness of exercise of a person's right to defend his rights in court. According to the Court, the rights of a person (the applicant) would not be ensured if the administrative court denied compensation of the litigation costs incurred by him (the person) solely by the reason that the public administration entity does not have powers to reduce (not to impose) the sanction provided for in the law, when this court recognizes such a sanction as unjustified (disproportionate) and therefore mitigates or cancels it (the ruling of 17 November 2021 in administrative case No. eA-2019-602/2021).

One of the grounds for the invalidity of a judgment provided for in the Law on Administrative Proceedings is settlement of a case by a court sitting in an unlawful composition. Adjudicating in an administrative case on legal consequences, after determining that a competition case was settled in breach of the collegiality rule, the Court stated that this constitutes an independent basis for the nullity of the decision. The requirement for a case to be settled by a court sitting in a lawful composition is an important guarantee of implementation of a person's right to due process of law, whereas ignoring this requirement raises doubts about the lawfulness of the proceedings in the court of first instance, therefore, it is irrelevant whether or not this violation of the rule of procedural law has led to an incorrect decision of the case. This violation is in breach of the substantive provisions of the process, which determine the limits of the activities of the court (composition, competence, duties of the court). It means that such a violation leads to negative legal consequences – absence of due process in the court of first instance, resulting in the need to repeat this process (the ruling of 28 April 2021 in administrative case No. A-638-629/2021).

In the year under review, the process in closed administrative cases was reopened even for 11 times in 2021 (6 times in 2020, for comparison). In 5 cases, the process was reopened after it turned out that the case was closed with one party to the case being already deceased (e.g. the ruling of 1 September 2021 in administrative case No. P-48-492/2021; the ruling of 20 October 2021 in administrative case No. P-79-822/2021). Persons are increasingly exercising the right to submit an individual constitutional complaint, consequently, in 2021 two cases were remitted back to the Court after settlement of such complaints – mandatory membership in the Architects' Chamber of Lithuania (the ruling of 14 April 2021 in administrative case No. eP-3-602/2021) and a prohibition, unlimited in time, for a person who committed a minor crime (no matter whether the previous conviction is expired (expunged)) from becoming (being) an officer of internal service (the ruling of 1 September 2021 in administrative case No. eP-41-815/2021) were admitted to be unconstitutional. It should also be noted that the process was reopened in a case between a mass media representative and the Office of the Inspector of Journalist Ethics, examining the limits of mass media freedom and a person's privacy and the issue of matching these two values, in order to establish clearer case law on the said aspects (the ruling of 17 November 2021 in administrative case No. eP-83-602/2021).

REFERENCES TO THE COURT OF JUSTICE OF THE EUROPEAN UNION

1. A dispute is pending in administrative case No. eI-1-492/2021 regarding the prohibition to register a motor vehicle, for which an alert has been issued in the second-generation Schengen Information System (SIS II). The SACL made a request to the CJEU for a preliminary ruling on interpretation of Article 39 of Decision on the establishment, operation and use of the second-generation Schengen Information System (SIS II) (case No. C-88/21).

2. A dispute is pending in administrative case No. eA-25-629/2021 regarding a resolution of the Competition Council, by which it admitted that the Lithuanian Chamber of Notaries and notaries public breached requirements of the Law on Competition and the Treaty on the Functioning of the European Union (TFEU). The SACL made a request to the CJEU for a preliminary ruling on interpretation of Article 101(1) TFEU (case No. C-128/21).

3. A dispute is pending in administrative case No. eA-186-575/2021 regarding decisions of the State Food and Veterinary Service prohibiting the placing on the market of an unsafe product – fresh poultry meat. The SACL made a request to the CJEU for a preliminary ruling on interpretation of Article 1 of Regulation on microbiological criteria for foodstuffs and Article 14(8) of Regulation laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (case No. C-89/2021).

4. A dispute is pending in administrative case No. eA-154-1062/2021 regarding decisions of the State Consumer Rights Protection Authority prohibiting making available on the market of cosmetic products similar to confectionery products, without proving actual danger of the products. The SACL made a request to the CJEU for a preliminary ruling on interpretation of Article 1(2) of Directive on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers (case No. C-122/21).

5. A decision of the tax administrator is challenged in administrative case No. eA-2121-968/2021, by which, among other things, the tax administrator refused to recognise the applicant's right to a deduction of the input value added tax (VAT). The SACL made a request to the CJEU for a preliminary ruling on interpretation of Directive on the common system of value added tax in connection of the tax neutrality principle (case No. C-227/21).

REFERENCES TO THE COURT OF JUSTICE OF THE EUROPEAN UNION

6. A dispute is pending in administrative case No. eA-2769-438/2021 regarding lawfulness and justification of a decision of the Migration Department, by which the applicant was denied the refugee status and subsidiary protection in the Republic of Lithuania. The SACL made a request to the CJEU for a preliminary ruling on interpretation of Article 10 of Directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (case No. C-280/21).

7. A dispute is pending in administrative case No. eA-434-602/2021 regarding the decision of the Kaunas County State Tax Inspectorate, where it assessed additional payable VAT and related amounts for the applicant private limited liability company after it basically stated that upon liquidation of the company the applicant became subject to the duty to amend the VAT deduction and repay the VAT on the acquired goods to the state treasury. The SACL made a request to the CJEU for a preliminary ruling on interpretation of Articles 184–187 of Directive on the common system of value added tax (case No. C-293/21).

8. A dispute is pending in administrative case No. eA-2540-662/2021 regarding a decision of state enterprise the Centre of Registers, where it refused to register the applicant's title to the real property of the deceased because, according to the defendant, the European Certificate of Succession presented by the applicant did not list the property inherited by the applicant. The SACL made a request to the CJEU for a preliminary ruling on interpretation of Article 1(2)(1) and Article 69(5) of Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (case No. C-354/21).

9. A dispute is pending in administrative case No. eA-2230-968/2021 regarding the decision of the Lithuanian Transport Safety Administration, where it decided not to allocate public railway infrastructure capacities to UAB Gargždų geležinkelis in 2019–2020 during the period the service railway timetable is in force. The SACL made a request to the CJEU for a preliminary ruling on interpretation of Directive establishing a single European railway area (case No. C-671/21).

10. A dispute is pending in administrative case No. A-466-822/2021 regarding a decision of the Bank of Lithuania ordering the applicant to ensure that in automated fitness checking of euro banknotes, the tolerance level does not exceed the 5 percent tolerance level set by the European Central Bank. The SACL made a request to the CJEU for a preliminary ruling on interpretation of Article 6(2) of Decision on the authenticity and fitness checking and recirculation of euro banknotes (case No. C-772/21).

EVENTS IN 2021

Jan 1 20th anniversary

The Supreme Administrative Court of Lithuania (SACL), which was established and started its activities on 1 January 2001, celebrated its **20th anniversary in 2021.** "During these two decades, administrative justice has become firmly established. This leads to institutional and legal preconditions for effective protection of persons' rights and legitimate interests. We are on the road to success!" said Gintaras Kryževičius, the President of the SACL. In 2021, 21 judges adjudicated in the Supreme Administrative Court of Lithuania, about 80 other staff members gave the Court essential administrative support and support related to the administration of justice. The 20th year anniversary of the SACL was commemorated by issuance of the court jubilee medal.

Jan 28 MRU master theses awarded

On 28 January, the Supreme Administrative Court of Lithuania traditionally congratulated the graduates of Mykolas Romeris University Law School and, on behalf of the Court, awarded authors of the three best master theses in public law evaluated by the commission.

Jan 29 SACL judges in new positions

On 29 January, the Judicial Council in its meeting approved the Judicial Court of Honour of the new composition, where Dainius Raižys, a judge of the Supreme Administrative Court of Lithuania, became one of the six members approved by the Judicial Council. The Judicial Council, in its meeting, also considered the issue of the new composition of the Judicial System Awards Commission, and Vaida Urmonaitė-Maculevičienė, a judge of the Supreme Administrative Court of Lithuania, was unanimously appointed a Member and the Chairperson of this Commission. Also, Renata Juzikienė, the Chancellor of the Supreme Administrative Court of Lithuania, became a member of the Judicial System Awards Commission.

Feb 3 SACL case law bulletin No. 39

On 3 February, new electronic bulletin No. 39 of administrative case law was published, summarising the key case law of the SACL of January to June 2020. The SACL case law published in this bulletin was set in cases dealing with lawfulness of regulatory administrative acts, in cases over disputes in the area of public administration. The information section provides an overview of the rulings of the Special Panel of judges on jurisdiction, overviews of judgments of the Court of Justice of the European Union, the European Court of Human Rights and the Councils of State of the European Union and other administrative courts of the Member States.

Mar 18 2020 annual report

On 18 March, the Supreme Administrative Court of Lithuania introduced the results and the overview of its activities in 2020 to the public. The document presents the most significant case law in cases of administrative justice, also, in the overview of activities in 2020, judges of the Supreme Administrative Court of Lithuania shared their experience and insights from the previous year. The article "Has the global pandemic changed the work of the Supreme Administrative Court of Lithuania?" deals with the organisation of court work during the pandemic period. This publication, inter alia, discusses in detail the topical issues of administrative proceedings, the SACL practices of approaching the Constitutional Court of the Republic of Lithuania and the Court of Justice of the European Union, gives statistics on the activities of the SACL, other figures, overview of events. The overview of the SACL activities of 2020 is published on the Court's website.

May 20th anniversary publication

In May, the Court issued a publication on its 20th anniversary. In this publication, the SACL presented the beginning of the establishment of administrative courts in Lithuania, reviewed the most significant dates of the SACL activities over the 20 years, the most important cases dealt with by the SACL, summarized the limits of the SACL competence. The former Presidents and the current President of the SACL shared their insights about the significance of the SACL for Lithuanian law and protection of human rights, legislative initiatives, growth of the court as the community of administrative law experts, improvement of the system of administrative courts, responsibilities, cherishing of values, most important factors determining the administration of justice. The publication introduces judges working in the Court, the path of a case within the SACL, presents the structure of the Court staff and a number of historical facts. The 20th anniversary publication was published in Lithuanian and in English. From now on, the SACL jubilee publication meant for the 20th anniversary of the Court is also accessible on the Court's website.

May 27 SACL Open Day 2021

On 27 May, the Supreme Administrative Court of Lithuania organised a traditional Open Day and invited Court visitors to have a virtual tour of spaces of the Court: to have a look at the Court premises, at the meeting rooms where administrative cases are heard, places where all files of pending administrative cases are kept, where case files are received, dispatched and even bound and what offices of judges and their assistants look like. These images could be seen in the History section on the Facebook page "Lietuvos vyriausiasis administracinis teismas – LVAT Oficialus puslapis" (Supreme Administrative Court of Lithuania – Official page of the SACL). Those stories were accessible for 24 hours. More than 200 users watched the Facebook stories in total.

Jun 2 G. Kryževičius - member of ENCJ board

In the meeting of the General Assembly of the European Network of Councils for the Judiciary (ENCJ) on 2 June, Gintaras Kryževičius, President of the Supreme Administrative Court of Lithuania, representing the Judicial Council of Lithuania, was elected a member of the Executive Board of the European Network of Councils for the Judiciary. The European Network of Councils for the Judiciary brings together the national authorities of the Member States of the European Union, which are independent of the executive and legislative authorities, and are responsible for the support of courts in the administration of justice. The Executive Board of the European Network of Councils for the Judiciary consists of the President and seven representatives of the members of the European Network of Councils for the Judiciary, and the term of office of a Member of the Executive Board is two years.

Jun 30 VU master theses awarded

On 30 June, the SACL President Gintaras Kryževičius congratulated the graduates of the Faculty of Law of Vilnius University on graduation and awarded the authors of three best master theses in the area of public law. During the congratulation ceremony, the SACL President G. Kryževičius in his congratulation speech paid particular attention to cherishing of justice as the greatest value, wished the graduates to successfully achieve their professional aspirations in their future endeavours.

Jul 1 Court open to visitors again

On 1 July, the Court resumed contact service of persons, leaving a possibility for persons to continue remote submission of requests, complaints, other procedural and non-procedural documents. In light of the ongoing pandemic situation in Lithuania, the SACL continued to hold sittings in the remote or mixed way, in order to protect everyone's health and ensure the accessibility and quality of services provided.

Jul 26 SACL case law bulletin No. 40

On 26 July, the SACL published bulletin No. 40 of administrative case law, summarising the key case law of the SACL of July to December 2020. The SACL case law presented in the bulletin of the Supreme Administrative Court of Lithuania was formed in cases dealing with lawfulness of regulatory administrative acts, also in cases over disputes in the area of public administration. The information section provides overviews of the rulings of the Special Panel of judges on jurisdiction, judgments of the Court of Justice of the European Union, the European Court of Human Rights, the Councils of State of the European Union and administrative courts. The electronic version of the periodical publication of the SACL, as all other case law bulletins published by the SACL, is available to readers free of charge online.

Aug 8 Learning by doing

On 8 August, the Supreme Administrative Court of Lithuania launched Learning by Doing program, intended to encourage the involvement of law students into judicial activities, combining active learning by doing with competences acquired during the studies.

Sep 17 Delegation from Poland

On 17 September, the Supreme Administrative Court of Lithuania had a visit of representatives of the Białystok administrative court (Poland). They met the SACL judge Veslava Ruskan, also Violeta Rodzienė, advisor to the court office, and discussed the specifics of the organisation of the SACL activities and work, workloads of judges and the office of the court, how the organization of written, oral and remote sittings was carried out, the specifics of examination of electronic cases and shared their experience of work organisation during the pandemic period.

Oct 11 Delegation from Ukraine

On 17 September, the SACL also had a visit of a scientists' delegation from the Institute of Law at Taras Shevchenko National University of Kyiv, visiting Lithuania within the framework of the project "Strengthening of Alternative Dispute Resolution in Lithuania and Ukraine: Finding the Cross-Border Solution". The guests met Skirgailė Žalimienė, the Deputy President of the SACL, judge Veslava Ruskan and Milda Treigė, advisor to the President of the SACL, and discussed the organisation of the SACL work and the specifics of activities, the trends of the administrative law development in Lithuania, topical issues related to settling administrative disputes in Lithuania and in Ukraine, shared their experience of work organisation during the pandemic period.

Oct 11 Delegation from Italy

On 11 October, the SACL was visited by Stefano Oliva, judge of the Italian Cassation Court. During the meeting with SACL judges, the guest demonstrated interest in the system of the Lithuanian administrative courts, the SACL competences, similarities, and differences between hearing of administrative cases and judicial proceedings in Lithuania and in Italy, he was also interested how the work of judges and the entire staff of the court is organised, how court sittings are conducted.

Oct 25 Free legal consultation day

On 25 October, on the Day of the Constitution of Lithuania and European Law, the SACL lawyers took part in the project of free legal consultations. In line with the recommendations to prevent COVID-19 spread and in order to protect both the staff of the Lithuanian courts who give consultations and people seeking help, legal consultations were provided remotely – by phone numbers indicated by the Lithuanian courts, without any prior registration. This year, the traditional event took place already for the sixth time.

Oct 27 Visit by ENCJ

On 27 October, the Supreme Administrative Court of Lithuania was visited by representatives of the extraordinary meeting of the General Assembly of the European Network of Councils for the Judiciary that was taking place in Vilnius. The European Network of Councils for the Judiciary (ENCJ) is an institution that brings together the national authorities representing courts of the EU Member States, which are independent of the legislative and executive authorities and the mission of which is to help to ensure independence of the judiciary in the administration of justice. The strategic directions of the ENCJ are upholding values of the rule of law, the principles of independence and accountability of the judiciary, increasing the efficiency and quality of judicial activities, effective use of information technology in ensuring access to justice, improving the communication with the public and the media.

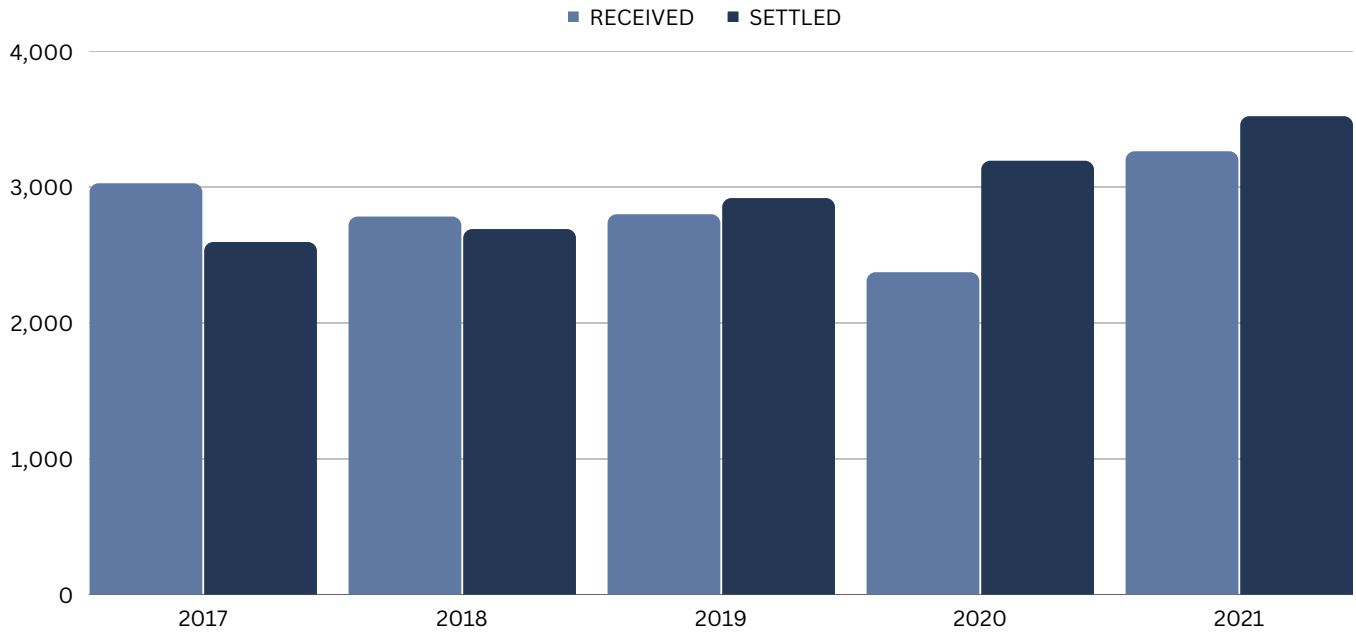
Dec 3 Visit by Judge from France

On 3 December, the SACL was visited by Estelle Jond-Necand, judge of civil cases in the French Cassation Court. In the meeting with the SACL representatives, the guest was interested in the system and principles of activities of the Lithuanian administrative courts, difference between specialised courts and courts of general jurisdiction, also shared good practices, exchanged views on what measures could improve the quality of judicial proceedings.

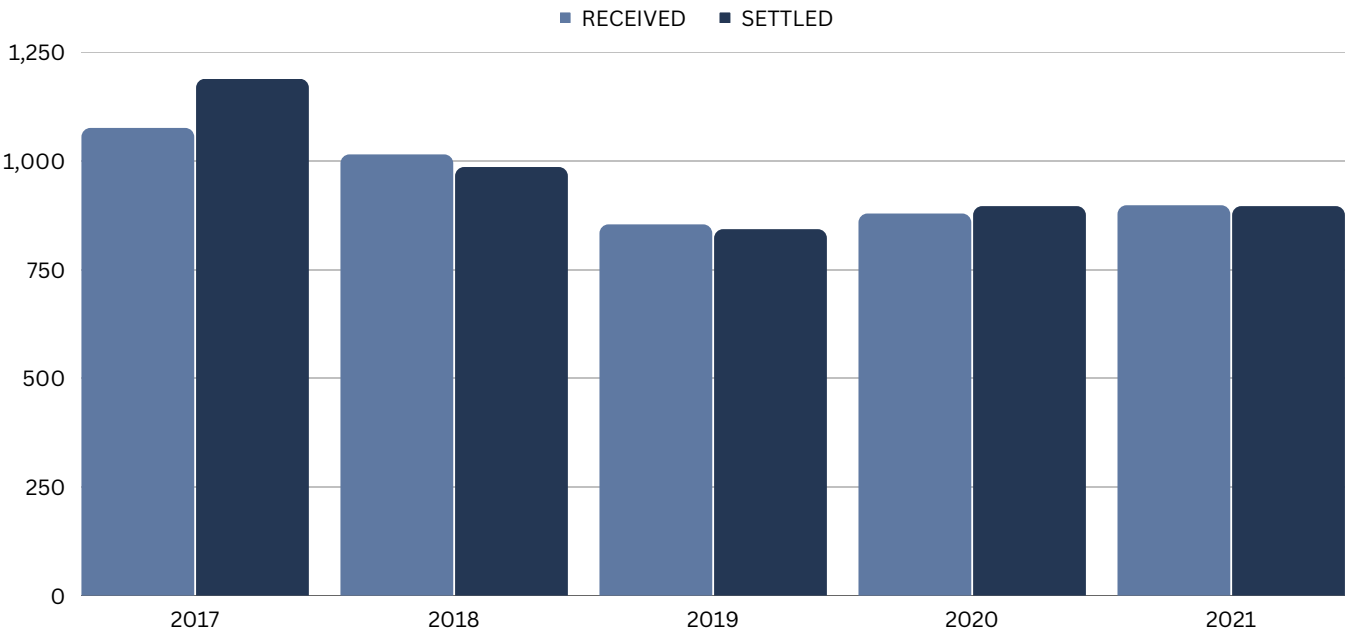
Dec 15 Day of the Lithuanian Courts

On 15 December, the Day of the Lithuanian Courts was celebrated. On this day, the Supreme Administrative Court of Lithuania congratulated the court staff and gave them medals to commemorate their 10 and 20 years of work in the Court.

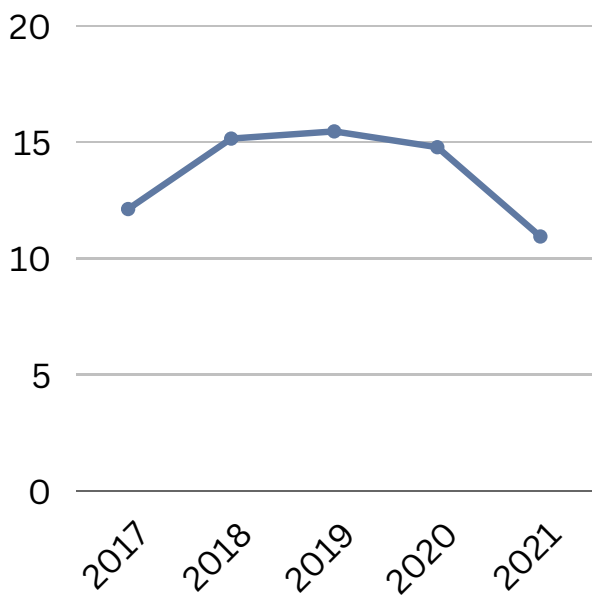
CASES OF ADMINISTRATIVE DISPUTES



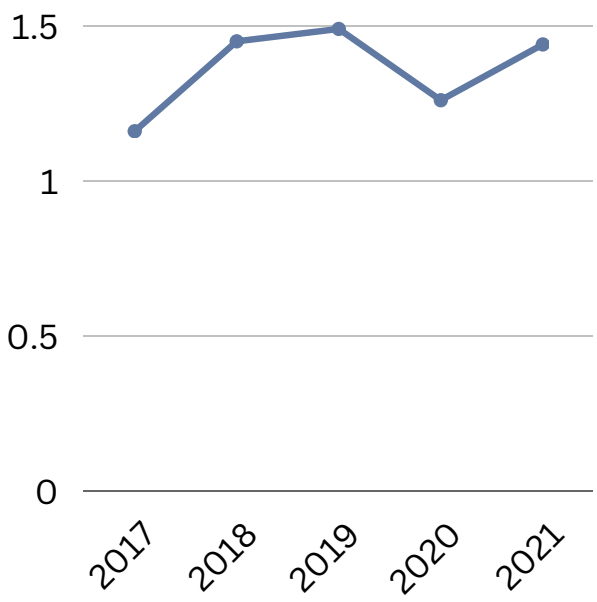
CASES FOR REOPENING OF PROCEEDINGS AND CASES INITIATED UNDER SEPARATE APPEALS



AVERAGE DURATION OF ADMINISTRATIVE PROCEEDINGS (IN MONTHS)



AVERAGE DURATION OF PROCEEDINGS IN CASES UNDER SEPARATE APPEALS (IN MONTHS)



OUTCOMES OF CASES ACCORDING TO APPEALS AGAINST JUDGMENTS OF REGIONAL ADMINISTRATIVE COURTS

JUDGMENT WAS UPHELD – 69%

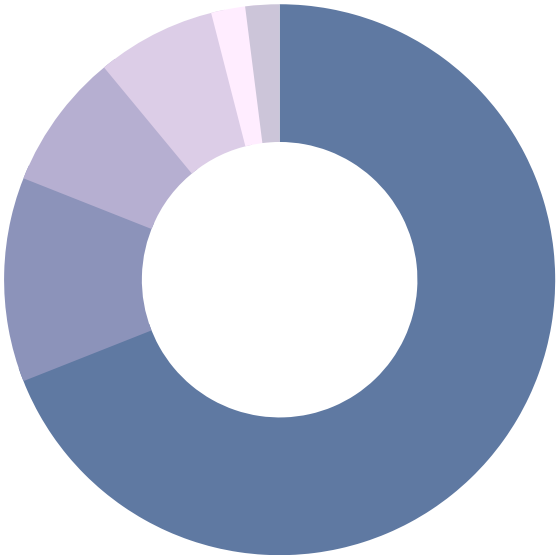
JUDGMENT WAS MODIFIED – 12%

CASE WAS REMITTED TO THE COURT OF FIRST INSTANCE FOR RE-EXAMINATION – 8%

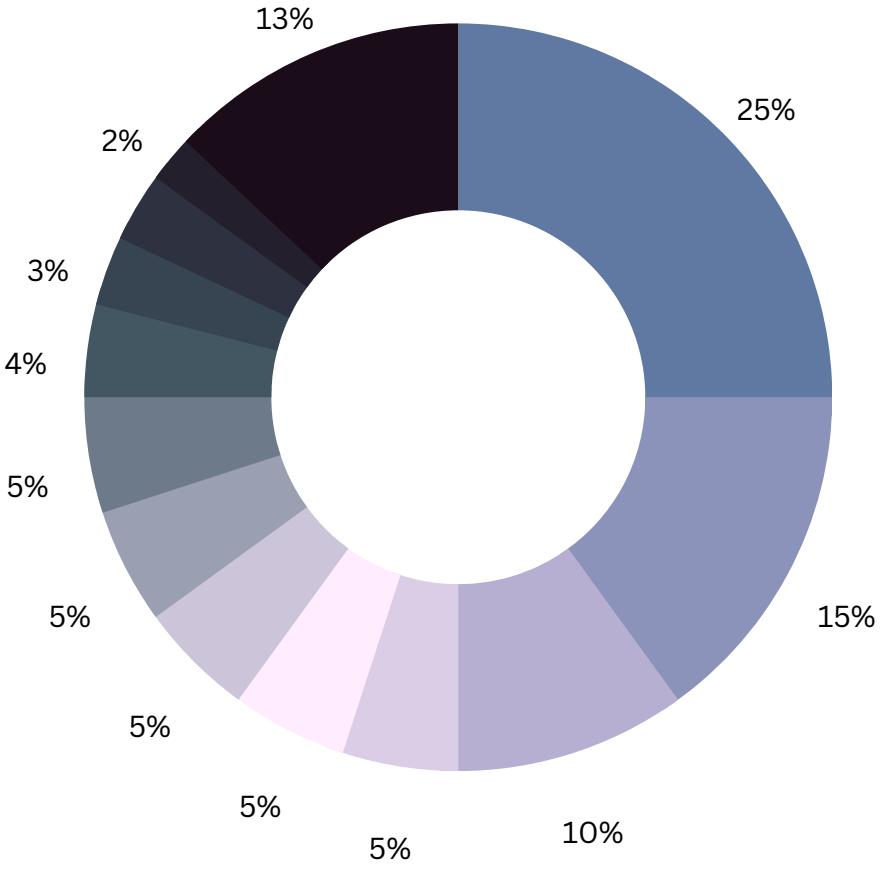
NEW JUDGMENT WAS ADOPTED – 7%

CASE WAS DISMISSED OR THE APPEAL WAS NOT PROCEEDED WITH – 2%

APPEAL PROCESS WAS TERMINATED – 2%



ADMINISTRATIVE CASES SETTLED BY THE SACL ACCORDING TO APPEALS IN 2021 BY CATEGORY



CONDITIONS OF EXECUTION OF SENTENCES AND DETENTION – 25%

LEGAL STATUS OF FOREIGN NATIONALS AND ASYLUM – 15%

TAXES AND CUSTOMS – 10%

CIVIL SERVICE – 5%

LIABILITY OF STATE INSTITUTIONS FOR DAMAGE – 5%

HEALTH AND SOCIAL SECURITY – 5%

CONSTRUCTION AND TERRITORY PLANNING – 5%

LAND LEGAL RELATIONS – 5%

FINANCIAL ASSISTANCE FROM THE EU AND OTHER INSTITUTIONS – 4%

ENVIRONMENTAL PROTECTION – 3%

RESTORATION OF OWNERSHIP RIGHTS – 3%

REGISTERS – 2%

OTHER – 13%

24 number of complaints filed about decisions or omissions of the Central Electoral Commission

14 number of requests (applications) filed in 2021 for investigation of lawfulness of regulatory administrative acts adopted by central entities of state administration

49 number of cases of administrative disputes settled by the grand panel of judges

12 number of cases, closed by an effective court judgment or ruling, where proceedings were reopened

32 number of rulings on matters of the specific jurisdiction of cases that were handed over to the Special Panel of Judges through SACL to decide on their assignment to a court