Supreme Administrative Court of Lithuania

2017

Annual Report

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FOREWORD

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President,
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Ladies and Gentlemen,

We probably would not be able to find a court that could boast that the past year was easy and simple. The number of complaints received at the Supreme Administrative Court of Lithuania increased steadily, and unfortunately, the average length of proceedings for administrative dispute cases according to appeals has not decreased. In order to reduce the number of cases left pending at the end of the year and reduce the case length for appeals cases without causing damage to the quality of the proceedings, which is a key priority of court activity, the importance of alternative dispute resolution is evident against this backdrop.

Alternative dispute resolution makes it possible to resolve a dispute through simpler, faster and less costly procedures than those used in the judicial process, while also improving the quality of the judicial system, reducing workload, speeding up the judicial process, and helping to better guarantee human rights. In addition, one might say that this also creates a culture of reconciliation and ensures social and legal peace in society.

The most effective means of alternative dispute resolution is generally considered to be mediation. Even the EU legislator, in order to promote the use of alternative dispute resolution, has highlighted the benefits of the mediation process – first and foremost, cost effectiveness and speed. It is also important that this method allows for the use of processes adapted to the needs of the parties, and the agreements reached help to maintain friendly and sustainable relations between the parties.

No solution can be as fair as a solution achieved by reconciling the claims between the parties to the dispute. Therefore, the end-all is considered to be a legal system where the courts act as a means of ultima ratio, supplemented by alternative dispute resolution procedures which ensure justice for everyone in a cheaper, faster and more efficient manner.

And it is as if this idea reverberates the goal of our court: to focus as much as possible on the administration of justice, find a clear answer for the person as fast as possible, and ensure even greater confidence in the court's activities, responsibility, and at last – humanity.

During the year in review, the Supreme Administrative Court of Lithuania, which forms and develops the practice for applying and interpreting the law in the area of administrative disputes, dealt with a variety of different cases, just like it does every year. The bulk of cases concerned detention conditions and disproportionately reduced salaries; the number of cases concerning asylum and the legal status of foreign nationals increased, and the range of social security issues is growing and becoming more diverse. 2017 also saw a downturn in the number of cases regarding waste management fees and state-guaranteed legal aid. The rate of other disputes remains largely similar to last year.

In many cases, the jurisdictional activities of the court involve complicated and complex legal aspects (including ones that cover both national and international law as well as European Union law) that are particularly relevant for society as a whole, and often touch upon sensitive rights and duties of certain groups of people. In 2017, the Court had a myriad of opportunities to speak out in the fields of administrative proceedings on the legality of regulatory administrative acts, taxes, social security, the legal status of foreigners, civil service, competition and damages, all of which are covered in this report in more detail.

LEGALITY OF REGULATORY ADMINISTRATIVE ACTS

The number of cases on verification of the lawfulness of regulatory administrative acts adopted by central state administration entities did not decrease – 11 such cases were heard on the merits in 2017. Just like every year, these cases covered various areas of state management and were significant for a large part of society, including: ***support recipients*** (decision of 21 March 2017 of the expanded panel of judges in administrative case *No eI-4-822/2017* on the lawfulness of part of the regulations of the Methodology for the Application of Sanctions for Breach of Cross-compliance Requirements; ***disabled persons*** using labour market measures (decision of 30 March 2017 of the expanded panel of judges in administrative case *No I-3-502/2017* on the lawfulness of part of the Description of the Procedure and Conditions for Implementation of Active Labour Market Policy Measures); ***integrated pollution prevention and control permit holders*** (decision of 3 April 2017 of the expanded panel of judges in administrative case *No I-5-662/2017* on the lawfulness of orders of the Minister of Environment related to approval of the rules for the issuance, amendment and cancellation of integrated pollution prevention and control permits); ***consumer credit recipients*** (decision of 5 May 2017 of the expanded panel of judges in administrative case *No eI-10-858/2017* on the lawfulness of lart of the Regulations for Responsible Lending and the Assessment of Consumer Creditworthiness of Consumer Credit Recipients); ***judicial candidates and judges*** (decision of 19 September 2017 of the expanded panel of judges in administrative case *No I-11-492/2017* on the lawfulness of lart of the Description of the Procedure for Examination of the Health of Judicial Candidates and Judges and the Health Requirements for Judge Candidates and Judges); and ***students*** (decision of 19 December 2017 of the expanded panel of judges in administrative case *No I-20-556/2017* on the lawfulness of lart of the order on the Preliminary Number of State-Funded First-Cycle and Integrated Study Places that Students will be Admitted to in 2017, the Number of Study Scholarships, and the Allocation of State Funding) etc.

The diversity of legal relations analysed in these cases is also illustrated by the fact that in 2017, the Court resolved two regulatory administrative cases in which ***registration rules*** approved by ministers were examined (see the decision of 6 November 2017 of the expanded panel of judges in administrative case *No I-1-756/2017* on Order No 3D-384 of the Minister of Agriculture of 2 October 2006 on Amendment of Approval of the Rules for the Registration of Tractors, Self-Propelled and Agricultural Machinery and Their Trailers, and the decision of 15 December 2017 of the expanded panel of judges in administrative case *No eI-17-261/2017* on the Rules for the Registration of Seagoing Ships of the Republic of Lithuania approved by Order No 3-301 of the Minister of Transport and Communications of 4 July 2005).

Of note is that compared to last year, only in the lesser part of the cases were decisions adopted that recognised non-compliance of the regulatory administrative act with the legal regulation of higher precedence. Furthermore, during the year under review, investigation of the lawfulness of legal norms was carried out not only regarding compliance with the prevailing constitutional principle of rule of law, inter alia, the hierarchy of laws, but also with several other increasingly applicable constitutional principles: ***proportionality*** (see the decision of 21 March 2017 of the expanded panel of judges in administrative case *No eI-4-822/2017*, the decision of 11 April 2017 in administrative case *No eI-6-502/2017*, the decision of 19 September 2017 in administrative case *No I-11-492/2017*); ***responsible management*** (see the decision of 11 April 2017 of the expanded panel of judges in administrative case *No eI- 6-502/2017*); and ***legitimate expectations*** (see the decision of 11 April 2017 of the expanded panel of judges *No eI-6-502/2017*, the decision of 6 November 2017 in administrative case *No I-1-756/2017*).

On the other hand, the relevant subjects of investigation in the reviewed cases continue to be questions regarding the ***competence (authority)*** of state administration entities to adopt a certain regulatory act or part thereof (see the decision of 3 April 2017 of the expanded panel of judges in administrative case *No I-5-662/2017*, the decision of 11 September 2017 of the expanded panel of judges in administrative case *No I-12-502/2017*, and the decision of 19 September 2017 of the expanded panel of judges in administrative case *No I-11-492/2017*).

The administrative case in which the Court examined whether certain provisions of orders of the Minister of Health on haematopoietic stem cell transplantation services paid for from the human organ and tissue transplantation programme which regulate the requirements for the provision of these services related to the scope, duration and experience of university hospital activities in order to provide some of the services in question, is reviewed more extensively in terms of proper implementation of the discretion of law-making bodies in adopting regulatory administrative acts.

The expanded panel of judges found that **in carrying out regulatory activities, procedural options are established in legislation for the law-making body to set preconditions for the legal regulation being adopted (factual circumstances of the situation, certain data confirming these circumstances), to fully assess the positive and negative consequences of the legal norms being adopted (draft legislation), and to present this in accompanying documents or in the legal act itself (in its annexes). The use of these procedural options in the law-making process, taking the specific area of regulation and the nature of the established legal norms into account, not only creates preconditions to adopt lawful, inter alia, proportionate, objective and clear regulatory administrative acts, but also ensures that, having regard to the substantiation of the adopted legal regulation provided by the law-making body, it will be possible to properly carry out judicial review of the lawfulness of the adopted legal regulation.** The discretion of the law-making body, though being very broad, cannot be interpreted as negating the duty of the public administration entity to substantiate the decisions that it makes in general, so in adopting a specific regulatory administrative act (establishing specific legal norms), there must be clear facts, arguments and legal grounds that the public administration entity based itself upon. Substantiation of the established legal regulation must be adequate, clear and sufficient. The absence of such substantiation makes it difficult for the administrative court to verify the lawfulness of such acts, especially when investigating the lawfulness of an administrative act which regulates a field requiring special expertise.

In light of this interpretation as well as the circumstances of the actual case situation, it was decided that insofar as the investigated legal regulation was not adequately motivated by the need and necessity to ensure the suitability and accessibility of healthcare, and insofar as it was not substantiated by reliable, specific, clear and objective data, it cannot be considered proportionate and in compliance with the provision of Article 53(1) of the Constitution that the State shall take care of people's health and shall guarantee medical aid and services if a person falls ill, and that in terms of law-making procedure, it cannot be considered to be in compliance with the constitutional principle of responsible management (decision of 11 April 2017 of the expanded panel of judges in administrative case *No eI-6-502/2017*).

TAXES

The bulk of tax cases in 2017 were related to value added tax issues dealing with problems ensuring the effective protection of European Union law, but a number of taxation rule clarifications in applying, inter alia, European Union legislation, were also provided by the Court in the areas of excise duties and customs.

As regards the exemption for intra-Community supplies of goods (taxation at a 0% VAT rate), of note is that in administrative case No A-516-602/2017, which was heard by an expanded panel of judges on application of Article 49(1) of the Law on Value Added Tax and Article 138(1) of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, it was clarified that the **circumstance that the right to dispose of goods supplied within the Community may have been transferred not to the person specified in the VAT invoice, but to another (unspecified) purchaser, is irrelevant in determining the (non)existence of the conditions for tax exemption.** In cases where someone other than the real purchaser is specified in the VAT invoice, the right to VAT exemption may be denied if the supplier: 1) cheated, for example, by deliberately indicating incorrect information about the purchaser; 2) knew or, being attentive and careful, could have known that the purchaser was cheating, but still concluded the transaction.

Regarding the argument that, in the case of tax exemption, goods must be physically transferred from the supply Member State, but must remain within the Community, it is also stated in the case that in **Lithuanian tax laws and/or implementing regulatory acts, in the absence of explicit (named) evidence (documents) that the taxable persons (VAT payers) must have in order to prove the physical transportation of goods from Lithuania to another Member State, this circumstance (actual export) is proven in the normal practice of specific supply transactions with evidence confirming the export of goods that the taxable person (usually) has.**

Finally, regarding supply to a VAT payer in another Member State, the expanded panel of judges noted that **a VAT payer who has used the 0% VAT rate in accordance with Article 49 of the Law on Value Added Tax, when this rate is applicable in supplying goods to a VAT payer registered in another Member State, must also have evidence that the person to whom the goods were shipped is a VAT payer registered in another Member State.** The VAT identification number usually proves the status of the taxable person in this respect (decision of 22 November 2017 of the expanded panel of judges in administrative case *No A-516-602/2017*; for the aspects discussed, also see the ruling of 2 February 2017 in administrative case *No A-1477-438/2017*, the ruling of 28 November 2017 in administrative case *No eA-869-602/2017*, and the decision of 29 November 2017 in administrative case *No A-5112-575/2017*).

Also, worth mentioning is an administrative case in which a dispute arose over a decision of the tax administrator to refuse to recognise the applicant's right to tax exemption for supply to an Estonian company after determining that after purchasing the goods from the applicant, the Estonian company immediately, while the goods were still in Lithuania and before beginning to transport them, sold them (the goods) to other taxable persons, and the applicant was aware of this circumstance. Upon the Court turning to the Court of Justice of the European Union, a preliminary ruling was received (case No C-386/16), according to the clarifications and factual circumstances of which the case in question was examined, and it was decided that in the present case, the conditions provided for in specific provisions of the VAT Directive to not tax (apply the 0% VAT rate) the disputed supply of goods were not met (ruling of 15 November 2017 in administrative case *No eA-159-602/2017*).

In 2017, the Court also resolved a number of cases in the field of realisation of the right to deduct VAT. Of note is the administrative case in which it was emphasised that questions regarding the fraud or abuse of European Union law of a taxable person looking to make use of the right to deduct VAT, or who knew or should have known of participating in a transaction connected with fraud, only becomes relevant in cases where the supply of goods has actually occurred. Furthermore, these questions, as far as they are related to realisation of the right to deduct VAT, are also irrelevant in cases where there is no direct connection between the purchased goods

or services and the taxable transactions or taxable activities of the taxable person seeking to exercise the right to deduct VAT (ruling of 12 July 2017 in administrative case *No eA-1923-575/2017*).

In 2017, the Court continued to deal with disputes over the taxation of excise goods unlawfully introduced into the customs territory of the Community (e.g. the 17 January 2017 ruling in administrative case *No A-168-143/2017*, the 16 May 2017 ruling in administrative case *No A-236-261/2017*, the 4 October 2017 ruling in administrative case *No A-2048-575/2017*), the taxation of excise goods brought in personal luggage or fuel brought in car fuel tanks (e.g. the 4 July 2017 ruling in administrative case *No A-676-261/2017*, the 25 July 2017 ruling in administrative case *No A-2064-575/2017*), and excise duty exemption (e.g. the 4 October 2017 ruling in administrative case *No eA-151-556/2017*).

Under the Community Customs Code (Article 202(3), third indent), customs debtors include, inter alia, any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been introduced unlawfully. In interpreting this legal norm, the Court explained that the **circumstance that a person did not unlawfully introduce goods subject to import duties personally is irrelevant in deciding on the question of recognition of this person as a customs debtor**. In this case, it is important that two conditions be met: 1) the person acquired or held the illegally imported goods; 2) the person knew or should reasonably have known that such introduction was unlawful (ruling of 25 January 2017 in administrative case *No A-195-556/2017*; for similar issues also see the ruling of 4 July 2017 in administrative case *No A-739-261/2017*).

In the area of direct taxation, a considerable number of cases were heard in 2017 in which the tax administrator calculated personal income tax and related amounts for residents, having determined that said residents had expenses in excess of income received, and were unable to evidence a source of income (e.g. the ruling of 13 July 2017 in administrative case *No eA-1345-442/2017*, the decision of 30 October 2017 in administrative case No A-991-602/2017, and the ruling of 27 November 2017 in administrative case *No A-1223-602/2017*).

In 2017, the Court expressed its position on the issue of the distribution of tax obligations under the Law on Personal Income Tax between the taxpayer and the tax withholder in administrative case No A-517-442/2017, stating that the **obligation of the tax withholder established in tax legislation to deduct a taxpayer's tax and pay it into the budget may be transferred to the taxpayer specified in the relevant tax law in the event that non-transfer would violate the principles of equality of taxpayers, fairness and universal obligation, and good faith, and/or would not be in line with the criteria of prudence and fairness which must be observed in the administration of taxes by the tax administrator.** The opportunity to demand fulfilment of a tax obligation arising from category A personal income directly from the taxpayer rather than from the tax withholder is recognised as an exception to the general rule in the practice of administrative courts. This exception can only be applied in special cases (ruling of 4 July 2017 of the expanded panel of judges in administrative case *No A-517-442/2017*).

In applying and interpreting the Law on Tax Administration in 2017, the Court repeatedly emphasised the duty of the tax administrator to help taxpayers exercise their rights and carry out their duties (e.g. the ruling of 3 July 2017 in administrative case *No eA-1805-575/2017*), expressed its opinion on the right of the tax administrator to give mandatory instructions for a taxpayer to make revisions to an annual tax return where an incorrect purchase price of a sold asset was given (decision of 5 July 2017 in administrative case *No A-202-602/2017*), as well as on the calculation of late fees during the period when a taxpayer is being urged to voluntarily pay tax arrears (decision of 9 February 2017 in administrative case *No A-38-438/2017*), and the obligation to inform the tax administrator of a change in one's place of residence (address) (ruling of 4 July 2017 of the expanded panel of judges in administrative case *No A-517-442/2017*).

SOCIAL SECURITY

In 2017, this category stood out for the fact that noticeably fewer cases concerning reduced state pensions were heard, which allowed many other types of disputes to be resolved over issues such as the decisions of a municipality to not allocate social benefits (see the ruling of 27 July 2017 in administrative case *No A-1620-502/2017*), the recovery of social benefit overpayment (see the ruling of 3 April 2017 in administrative case *No A-238-822/2017*), the termination of compensation provided to cover household heating, hot water, and drinking water costs (see the ruling of 31 August 2017 in administrative case *No A-2289-520/2017*), the decision of the Ministry of Culture to not allocate compensatory allowances pursuant to the Law on Theatre and Concert Institutions (see the ruling of 5 July 2017 in administrative case *No A-3995-525/2017*), and the increase or recalculation of allocated old age pension and the termination of payment of early old age pension (see the ruling of 26 April 2017 in administrative case *No A-1234-502/2017*, the ruling of 28 June 2017 in administrative case *No A-1507-502/2017*, and the decision of 28 August 2017 in administrative case *No A-1771-502/2017*).

Some of the more interesting examples of disputes in this category include a case which involved the pension insurance record of a person serving a prison sentence (see the ruling of 19 July 2017 in administrative case *No A-1373-525/2017*), as well as a case concerning the payment of benefits to a person sentenced to imprisonment (see the ruling of 9 May 2017 in administrative case *No A-536-146/2017*). In the activities of the Court, like always, a number of disputes were resolved regarding decisions of the Foreign Benefits Office, for example, concerning foreign social security legislation applicable during the period of validity of an employment contract (see, for example, the ruling of 27 February 2017 in administrative case *No A-226-146/2017* and the ruling of 27 September 2017 in administrative case *No A-1627-525/2017*).

An important clarification was also presented in this area in 2017 that for persons who became entitled to receive maternity allowance prior to the **Republic of Lithuania Law on Amendment of Law No IX-110 on Social Sickness and Maternity Insurance adopted by the Seimas of the Republic of Lithuania on 28 June 2016 coming into effect (i.e. 1 January 2017), maternity allowances calculated on the basis of the compensatory wage limited to 3.2 the amount of the Government-approved insured income for the current year valid for the month during which the right to receive this allowance arose must be recalculated by 31 March 2017 using the compensatory wage calculated without applying these restrictions, and said persons must be paid the outstanding maternity allowance by 30 June 2017.** There is no provision for the recalculation of maternity allowances awarded to other persons (ruling of 13 April 2017 in administrative case *No A-473-502/2017*, also see the ruling of 30 November 2017 in administrative case *No eA-2381-502/2017*). Also of note are cases in which the definition of **"persons living together"** under the Law on Cash Social Assistance for Low-Income Families was clarified (ruling of 3 April 2017 in administrative case *No A-238-822/2017*), it was decided on the recognition of work performed by a person as being community work in accordance with the same law (ruling of 27 July 2017 in administrative case *No A-1620-502/2017*), and an opinion was expressed on the inspection of living conditions in making a decision on the award of a benefit when the person does not have a permanent place of residence (ruling of 7 February 2017 in administrative case *No A-1317-822/2017*).

LEGAL STATUS OF FOREIGN NATIONALS

In 2017, the Court faced more than twice the number of cases involving the legal status of foreign nationals than it did the previous year, and the number of asylum cases that were heard tripled. As always, the majority of people applied regarding the right to temporary residence in the Republic of Lithuania and asylum, but a number of important procedural decisions were also taken concerning the departure of foreigners from the Republic of Lithuania. In terms of new aspects, of note is the practice where the Court interpreted and applied the provisions of the Republic of Lithuania Law on the Legal Status of Aliens regulating the issuance of a temporary residence permit to a foreign national who is engaged in and intends to continue to engage in legal activities, inter alia, when the foreign national is a participant in a company which has been carrying out the activities specified in the founding documents in the Republic of Lithuania for at least the six months prior to the foreign national applying for a temporary residence permit to be issued. Upon establishing that the company does not meet at least one of the conditions set out in the said law (for example, if three citizens of the Republic of Lithuania or foreign nationals permanently residing in the Republic of Lithuania were not employed with the company full-time six months prior to the foreign national's application), the applicants' complaints are rejected (e.g. the ruling of 18 September 2017 in administrative case *No A-4492-624/2017*, the ruling of 3 October 2017 in administrative case *No A-4567-624/2017*, and the ruling of 13 December 2017 in administrative case *No eA-5201-261/2017*).

Important clarifications regarding the duty of institutions dealing with the legal status of foreign nationals to substantiate the threat to national security, public order, or society posed by a foreign national were presented during the year under review in administrative case No A-1048-624/2017. According to the Court, legislation does not give a public administration entity the right to only base decisions which are adopted regarding the threat posed by citizens of European Union Member States on factual data that constitutes a secret of the state or service, and with which the person whom the means of enforcement are imposed upon by said act cannot become acquainted with. Furthermore, evaluation of the threat posed by a citizen of a Member State of the European Union must, in each individual case, be based exclusively on the conduct of the person concerned, which must present a real and obvious threat, and the evaluation cannot be based on circumstances unrelated to the particular case, or general prevention (decision of 18 January 2017 in administrative case *No A-1048-624/2017*). In this context, it should be noted that the lawfulness of the decision of the State Border Guard Service by which a citizen of the Russian Federation was refused entry into the Republic of Lithuania at the Vilnius Airport border control because he was considered to be a threat can only be judged after evaluating the content of the decision adopted by the Migration Department to prohibit the applicant from entering the Republic of Lithuania and the reasons for the prohibition (ruling of 4 July 2017 in administrative case *No eA-4033-624/2017*).

In one of the cases, the Court was guided by the principle of indirect effect of European Union law, including directives. In analysing the aspect of the expulsion of foreigners from Lithuania without giving them the opportunity to leave the country on their own, it was stated in the case that according to Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, **in applying the procedure for returning third-country nationals, in those cases when there is no probability that the purpose of the return procedure will be undermined, Member States must give priority to voluntary return rather than forced return or the use of other coercive measures.** Meanwhile, the provisions of the Republic of Lithuania Law on the Legal Status of Aliens are laid down without obliging the Migration Department to first decide on the obligation to depart voluntarily. In addition, under Lithuanian national law, the right to return to a foreign state is granted only with the assistance of an international or non-

governmental organisation, even though this additional condition is not established in the above-mentioned directive and a Member State cannot impose more stringent conditions. Thus, as it has been clarified, the Migration Department, when deciding on the issue of returning a foreign national to a foreign state, must, in each individual case, assess all relevant factual circumstances and decide whether to impose an obligation on that person to leave (return) voluntarily or to apply the expulsion procedure if no circumstances have been determined which would impede returning the person to a foreign state (ruling of 3 August 2017 in administrative case *No eA-4316-858/2017*).

Civil service

In 2017, a trend that has been constant for some time now persisted: investigation of a particularly high number of civil service cases, the bulk of which continued to be remuneration cases. Other disputes in this area were mainly over dismissal, the lawfulness of penalties, and social guarantees. Although disputes over the dismissal of a public servant upon doing away with the post are some of the most frequent, the Court provided new clarifications in this regard during the year under review.

In one of the cases, the expanded panel of judges expressed its position on the possibility, in reorganising an institution or agency, to assign part of the functions of the state service to people working under employment contracts. According to the Court, civil service relationships are given a special distinction and universal significance, so in light of the fact that professional activity in civil service is manifested in the performance of public administration at state or municipal institutions, as well as the fact that in order to ensure the proper protection of public interest, the civil service is held to high standards related to the special procedure for the formation of civil servants, as a corps, the specifics of their legal status, and their special responsibility to the public for the performance of the functions entrusted to them, **professional activity (public administration) corresponding to Article 2(1) of the Law on Civil Service at a state or municipal institution or agency should normally be entrusted to civil servants.** A situation should not occur where the legislator establishes general requirements for every person admitted to the public service, and sets outs general conditions for which a person is not allowed to enter the civil service, thus limiting the possibility for said persons to perform the professional activity (public administration) of civil servants defined in Article 2(1) of the Law on Civil Service, so these public administration functions are assigned to a person to perform under an employment contract, thus avoiding verification of said person's compliance with the general requirements established by law for each person admitted to the public service.

In deciding on the reality of the abolishment of a position, the expanded panel of judges noted that in adding new functions to a civil servant's job description, the significance of the position and its influence on the performance results of the agency must be assessed, and it must be checked if inclusion of the new functions is material to the level and category of the position. **A change in the level and category of a position in a civil servant's job description must be based on the tasks and functions of the structural unit, the content of the position, the level of independence and responsibility, and other evaluation criteria.** In the case that was examined, the two additional functions provided for a newly established position did not provide a basis for conclusion that in this way, the civil servant filling this position would have a greater workload or responsibility constituting grounds for giving this position a higher level and category (ruling of 7 February 2017 of the expanded panel of judges in administrative case *No A-1053-662/2017*).

When dismissing a person from the civil service on the grounds that the position of the civil servant is being abolished, a guarantee must be provided for the continuation of service in that institution or agency – the civil servant must be offered other vacancies for which he or she meets the special requirements set out in the job description. The provisions of administrative jurisprudence were expanded upon in this regard in the ruling of 19 December 2017 of the expanded panel of judges in administrative case *No eA-5042-556/2017*.

Over the past year, the Court also had the opportunity to express its position on the concept of "impeccable reputation" in hiring someone as a civil servant. Article 9(3)(1) of the Law on Civil Service establishes that a person cannot be hired for the position of a civil servant "if, from information provided in the cases and in accordance with the procedure established in the Law on the Prevention of Corruption . . . the appointing authority comes to the conclusion that the person does not meet the impeccable reputation requirements". The concept of a person's impeccable reputation is given in Article 31 of the same law. This legal norm includes an exhaustive list of cases where a person cannot be considered to have an impeccable reputation which cannot be expanded or broadly interpreted. **A person can only be recognised as not having an impeccable reputation if the information received about that person corresponds to one of the points specified in Article 31(1) of the Law on Civil Service.** This means that other evaluations of the personal qualities (reliability, loyalty, etc.) of a person who is a candidate for certain civil duties cannot, for the purposes of the Law on Civil Service, be understood as separate and independent evaluation criteria for a person (the qualities he or she possesses) and must be interpreted solely in the context of the concept of "impeccable reputation" used by this law. In the case that was examined, the activities and personal ties of the applicant indicated by the respondent, in terms of the applicable law in the case, could not be recognised as an appropriate factual basis to consider the applicant as not qualifying as a person of impeccable reputation (decision of 11 April 2017 in administrative case *No A-675-143/2017*).

In examining a dispute over civil service recruitment, a question arose in one of the cases of who is considered to be the respondent in cases when requirements are made to abolish the results of a competition for the position of director at a ministry agency. The Court explained that in the event of a dispute, the parties to the substantive legal relationship are the applicant – the candidate for the position of director of the agency who participated in the competition, and the employer – in this case, the ministry holding the rights and duties of owner of the agency. In the case in question, the minister was not considered to be a public administration entity having independent legal (procedural) subjectivity and competent to answer for organisation of the competition for the position of director of one of the ministry's agencies or protection of the rights of the candidates participating in the competition. The proper respondent regarding the above requirement in the case under examination was held to be the ministry (ruling of 12 June 2017 in administrative case *No eA-3618-756/2017*).

Of note among the more interesting examples of civil service disputes are the ruling of 25 April 2017 in administrative case *No A-521-492/2017* on evidence in disputing a certificate issued by the Central Medical Expertise Commission, as well as the ruling of 20 September 2017 in administrative case *No eA-4761-575/2017* on the concept of employer within the meaning of Article 18 of the Law on Trade Unions.

Competition

Even though there usually are not very many competition cases, disputes in this area, as a rule, tend to be large in scope and feature a wide range of problematic issues and unusual factual circumstances. This year, clarifications were provided regarding concentrations and unfair practices of retail companies.

In administrative case No A-899-858/2017, a ruling was made on the lawfulness of the decision of the Competition Council by which UAB Lukoil Baltija (currently named "UAB AMIC Lietuva") was fined EUR 3,297,700 due to the fact that prior to a planned concentration (acquisition of control of 15 filling stations), UAB Lukoil Baltija did not notify the Competition Council thereof and did not obtain a permit. It was established in the case that the applicant acquired control of the 15 filling stations in accordance with a

2003 joint arrangements agreement concluded with UAB Baltic Petroleum. During entry into joint arrangements, the 15 aforementioned filling stations were owned by the bankrupting AB Lietuvos Kuras and were leased to UAB Baltic Petroleum. The applicant in the case claimed that it was not obliged to submit a notice to the Competition Council and obtain a permit because in 2001, the Competition Council had issued the applicant a permit to implement concentration when the applicant and UAB Vilniaus Bankas concluded a transfer of claim agreement, according to which the applicant acquired 37% of the voting rights at the bankrupting AB Lietuvos Kuras meeting of creditors.

After examining the content of the notification of concentration submitted in 2001 as well as of the permit issued by the Competition Council that year, the Court found that UAB Lukoil Baltija had been issued a permit in 2001 to take over specific rights, i.e. the right of claim, thus acquiring 37% of the voting rights at the meeting of creditors, but had not been issued a permit to take over control of the assets of the bankrupting AB Lietuvos Kuras or part thereof. Thus, the applicant was obligated to notify the Competition Council about the planned concentration and obtain a permit from the Competition Council prior to concluding the 2003 joint arrangements agreement.

Other relevant issues were also addressed in this case: assessment of whether it is necessary to establish the relevant market for each of the filling stations; treating transactions on the basis of which the actual control of filling stations is acquired as a single concentration and calculating the income of all of the filling stations together; refusal by the Competition Council to grant access to a certificate drawn up by the Competition Council, which, in the case examined, corresponded to the features of an official-use document (ruling of 18 April 2017 in administrative case *No A-899-858/2017*).

Retail companies are prohibited from performing actions which are in conflict with fair business practices and by which the operational risk of the retail companies is transferred to suppliers or additional obligations are forced upon them, or which hinder the ability of suppliers to act freely on the market and are expressed as requirements for the supplier to pay, directly or indirectly, part of the costs of sales promotion carried out by or together with the retailer or to compensate for such costs in any other way, except for cases where there is a written agreement between the retailer and the supplier regarding the amount of costs to be paid and the sales promotion activities to be applied (Article 3(1)(8) of the Law on the Prohibition of Unfair Practices of Retailers). Violation of this provision of the law was established in administrative case No eA-1537-858/2017, upon evaluation of the Court of the provisions of wholesale purchase contracts concluded by UAB Rimi Lietuva in 2010–2015 with food and beverage suppliers on the regulation of sales promotion activities and costs.

It should be noted that in this case, the Court took into account the fact that in the reports that were made publicly available in 2011–2013, the Competition Council, in carrying out systematic monitoring of the retail sector, consistently specified on an annual basis that it had analysed wholesale supply contracts with major retail chains, and that retail companies have abandoned the actions provided in the law which are in conflict with fair business practices in their relations with suppliers. In the opinion of the Court, based on the consistent, unambiguous public statements made by the Competition Council, the applicant could have reasonably formed a conviction that the standard contracts used thereby, which the applicant submitted to the Competition Council, and which, as indicated in the reports, had been analysed in drawing up the reports, do not violate the law relevant to the case. Therefore, despite the established violation of the law, the applicant's legitimate expectation was defended by abolishing the fine imposed on the applicant by the decision of the Competition Council (ruling of 27 September 27 in administrative case *No eA-1537-858/2017*).

During the year under review, the Court continued to develop its jurisprudence on the duty of public administration entities to ensure freedom of fair competition (e.g. the ruling of 13 June 2017 in administrative case *No A-2013-624/2017*, the ruling of 21 November 2018 in administrative case *No eA-2166-624/2017*). Of note in this context is a case in which the Court found that in 2004 and 2005, the Minister of the Interior exceeded his competence when legislation was adopted which gave State Enterprise Infostruktūra the exclusive right to carry out the functions of operator of the Secure State Data Communication Network, thus limiting freedom of economic activity (decision of 11 September 2017 of the expanded panel of judges in administrative case *No I-12-502/2017*).

One of the conditions for terminating an investigation of the Competition Council is the finding that no substantial damage was caused to competition through prohibited actions. In this regard, a dispute was investigated in 2017 between UAB G4S Lietuva and the Competition Council (decision of 4 September

2017 in administrative case *No A-3075-822/2017*). In 2017, the Court also had to address other issues of relevance to competition law (see the ruling of 28 February 2017 in administrative case *No A-1230-624/2017* on misleading advertising by indicating no longer valid starting prices of goods, the ruling of 21 March 2017 in administrative case *No eA-215-552/2017* on effect of the Public Procurement Office's permission to carry out procurement by acknowledging violation of the Law on Competition, and the ruling of 3 September 2017 in administrative case *No A-417-822/2017* on the right of the Competition Council to use pre-trial investigation data).

Damages

Cases concerning damages caused by the unlawful acts of public authorities remain the main part of the practice of the Court. The bulk of cases heard in this category concerned improper arrest and detention conditions. Although claims for compensation of material and non-material damage incurred during arrest and detention were mainly related to not enough space, a trend has been observed that people are more often filing complaints regarding various other violations, i.e. lack of access to the cafeteria (ruling of 16 January 2017 in administrative case *No A-2428-520/2017*), lack of security for personal belongings (ruling of 29 March 2017 in administrative case *No A-596-525/2017*), the provision of toothpaste, toothbrushes, and razor blades to convicts (ruling of 3 April 2017 in administrative case *No A-1121-858/2017*), reasonable time to attend the funeral of a loved one (ruling of 24 April 2017 in administrative case *No A-246-602/2017*), excessive time in the quarantine room (ruling of 30 June 2017 in administrative case *No A-592-624/2017*), and so on.

The rise of disputes in continually new aspects in this area is illustrated by a case on the right of a convicted person recognised as a special witness in a criminal case to take walks. According to the Court, **the status of special witness does not form the basis to differently evaluate the duty of the house of correction to ensure that all convicts are able to take advantage of the right to take a walk.** Holding a person in isolation (solitary confinement) for an unlimited and lengthy time undoubtedly determines the rise of negative consequences, i.e. negatively impacts the person's emotional, mental and physical well-being (ruling of 4 May 2017 in administrative case *No A-275-438/2017*).

In 2017, the Court had the opportunity to form significant practice in cases regarding damages due to improper transposition by the State of the provisions of Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours related to the conditions for the compensation of losses incurred by tourists through insolvency of the tour operator. In this administrative case, the judicial panel came to the conclusion that the legal regulation established by **national legislation did not ensure full compensation for losses incurred by the tourist upon the tour operator becoming insolvent as established in the Directive, so upon the State of Lithuania improperly transposing and implementing Article 7 of this Directive, it was found that all conditions exist for enforcing the right to compensation for damage caused to individuals by a violation of Union law attributable to a Member State.** Since the right of the tourist to full reimbursement of money paid for a trip upon the tour operator becoming insolvent was not ensured by national legislation, the pecuniary damage incurred by the applicants must be compensated by the State (ruling of 8 May 2018 in administrative case *No eA-990-502/2017*).

Administrative proceedings

Application and interpretation of the Law on Administrative Proceedings is a constantly relevant area of the Court's jurisdictional activity that is continually being supplemented with new administrative jurisprudence provisions and in which, as usual, during the year at hand, the prevailing issues concerned the assignment of a particular dispute to the court, access to justice, recovery of litigation costs, measures securing the claim, and other aspects of the administrative process that had not yet been analysed.

In its latest practice, the Court ruled that an entity established in another European Union Member State – the United Kingdom – providing audio-visual media services and organising the provision thereof to the market of the Republic of Lithuania (television broadcaster) has a material legal interest in the lawfulness and soundness of the decision of the Radio and Television Commission of Lithuania, by which rebroadcasters, through which the latter television broadcaster transmits its television programme, thus reaching consumers, are subject to an enforcement measure: suspension of the rebroadcast of certain programmes of the respective television programme in the territory of the Republic of Lithuania (decision of 31 October 2017 of the expanded panel of judges in administrative case *No A-638-492/2017*).

In terms of access to justice, one administrative case was also marked by distinction in which the expanded panel of judges found that **the right of the applicant (a private person) to apply directly to the Supreme Administrative Court of Lithuania with an abstract petition to review a special territorial planning document which was recognised in the case as a regulatory administrative act is not provided for by law,** so the application could not be accepted (ruling of 27 March 2017 of the expanded panel of judges in administrative case *No eI-8-756/2017*).

During the year under review, the court also resolved a question on the right of a property and business valuation company to appeal a subsequent property and business valuation inspection certificate (during the subsequent inspection, the Audit, Accounting, Property Valuation and Insolvency Management Authority determines whether the shortcomings of the activities of the assessor or the valuation company were corrected and if the instructions given by this authority to correct the shortcomings identified during the initial inspection were implemented), by pointing out that **this act is not part of the administrative procedure, during which subsequent individual administrative acts causing legal consequences for the applicant may be adopted, and that the applicant is not subject to any binding enforcement or liability measures, so without immediate, actual and binding effect on the applicant (valuation company), it does not give rise to independent legal consequences** and cannot be an independent subject of a dispute before an administrative court (ruling of 14 March 2017 of the expanded panel of judges in administrative case *No eAS-136-525/2017*).

Of note in a similar regard are the cases on dispute of the instruction of a territorial health insurance fund for a hospital to submit financial documents (ruling of 14 March 2017 in administrative case *No eA-213-261/2017*), dispute of a temporary decision of the State Food and Veterinary Service (ruling of 24 May 2017 in administrative case *No eAS-456-552/2017*), dispute of the decision of the State Security Department regarding inspection of a member of the Seimas (ruling of 14 June 2017 in administrative case *No eAS-465-502/2017*), the outcome of a case upon establishing that the removed applicant has been returned to office (ruling of 9 August 2017 in administrative case *No eAS-635-492/2017*), dispute of the conclusion of the Seimas Commission for Ethics and Procedures (ruling of 6 September 2017 in administrative case *No eAS-667-552/2017*), dispute of a warning under Article 3423 of the Law on Waste Management (ruling of 11 October 2017 in administrative case *No eAS-872-525/2017*), and disputed procedure of the decision of the Research Council of Lithuania to not submit a scientific project submitted for expert evaluation (ruling of 18 October 2017 in administrative case *N0 eAS-886-552/2017*).

Other cases

In 2017, exceptional and noteworthy practices could also be found in other case categories. For example, during the year at hand, the Court formed a practice on the ***spelling of non-Lithuanian names in passports and identity cards***. Aspects of reference on this issue are set out in administrative case *No eA-2413-662/2017* (ruling of 27 February 2017). The Court, in accordance with constitutional principles and European Union law and having regard to the jurisprudence of the European Court of Human Rights and United Nations Human Rights Committee, consistently holds the position that **individuals have the right to have their personal name written in their passports and/or identity cards in Lithuanian characters as well as in the original non-Lithuanian characters and in their non-Lithuanianised form** (also see the ruling of 28 February 2017 in administrative case *No A-2445-624/2017*, the ruling of 7 March 2017 in administrative case *No A-2176-662/2017*, the ruling of 19 April 2017 in administrative case *No eA-3294-624/2017*, the ruling of 1 June 2017 in administrative case *No eA-3736-261/2017*, and the ruling of 16 October 2017 in administrative case *No eA-4302-624/2017*).

Upon the emergence of a previously unexamined aspect in the process of ***restoring property rights*** regarding land designated for state purchase due to the fact that said contains plots necessary for the operation of buildings and facilities (under construction or already built) for public institutions and organisations as well as for public use, the expanded panel of judges clarified that **the term "state organisation" within the meaning of the Republic of Lithuania Law on the Restoration of the Rights of Ownership of Citizens to the Existing Real Property** also includes a state enterprise that uses buildings and/or other structures under its control that are located on the said plot of land to ensure (satisfy) public needs (state, public interest). However, the mere presence of the relevant building (operated or used by a public institution or organisation) cannot determine the return or non-return of the land in kind – this is determined by a real and justified public need for that particular land which cannot be satisfied by returning this land in kind (ruling of 26 July 2017 of the expanded panel of judges in administrative case *No eA-818-525/2017*).

European Union support is a pertinent area of dispute which, during the year under review, was dominated by questions concerning application administration and payment reduction and recovery under the Lithuanian Rural Development Programme for 2007–2013. For example, in one of the cases it was clarified that **upon establishing discrepancies between work performed and the estimates that were submitted and assessed during evaluation of the eligibility of the support application to receive funding, point 34 of the rules for implementation of the non-productive investments measure of the Lithuanian Rural Development Programme for 2007–2013 is not proper legal basis to give rise to negative legal consequences (recalculation of funding by reducing it).** In the case that was examined, legislation did not establish a specific method for haying, so the legal regulation allowed the work to be done manually or mechanically and created opportunities to calculate the value of the work performed eligible for financing depending on the haying method. However, the respondent must qualify such cases (when the estimate is corrected after the work has been done, upon establishing discrepancies in the agreed method of work, and only when legislation provides for the possibility for also financing work done by the other method) as a violation of the terms of the support application and impose a sanction by way of partial non-payment of funding. This lack of an individual legal application act in the case under examination was regarded by the expanded panel of judges to be substantive – upon the National Paying Agency improperly legally qualifying the relationships being formed and incorrectly applying legal norms, inter alia, persons are deprived of the opportunity to identify the content of their rights and obligations, as well as the change therein and the basis for this change. In the case, an opinion was also expressed on the legal consequences of performing work in a way other than imperatively specified in legislation, as well as on the right of the court to return the matter of assessment of the application to the public administration institution to decide again (ruling of 14 September 2017 of the expanded panel of judges in admin-

istrative case No eA-709-415/2017).

In 2017, an important administrative case was heard in this area regarding the application of limitation periods in carrying out multiannual programmes under projects financed by the Cohesion Fund. In accordance with the clarifications presented in this case by the Court of Justice of the European Union (case No C-436/15), the expanded panel of judges pronounced that **in cases of Cohesion Fund project violations, when deciding on the recovery of European Union support funds allocated for the project, general legislation applies – Council Regulation No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests, even though national legislation does not explicitly refer to this act**. The "financial correction" measure used in the situation under consideration was held to be an administrative measure within the meaning of Article 4 of the aforementioned regulation, i.e. a measure to recover amounts wrongly received and which is not regarded as a penalty. It was decided that in the case in question, Article 3(1) of this regulation, which establishes the limitation period for proceedings, was directly applicable, inter alia, the special provision of this section which states that **in the case of multiannual programmes, the limitation period shall run until the programme is definitively terminated**. Other aspects were also considered in the case concerning the moment of definitive termination of a multiannual programme as well as the termination of the limitation period (beginning of a new limitation period) (ruling of 20 December 2017 of the expanded panel of judges in administrative case No A-155-858/2017).

From the field of ***legal protection of personal data***, of note was a case in which the Court specified that even in the presence of a request which meets the requirements established by law for such a request and was submitted by a person entitled to request the provision of the relevant data, the data processor may only provide the requested data in accordance with the procedure established by law, i.e. in the case in question, the Alytus Department of the State Social Insurance Fund Board, in providing personal data to a lawyer on the basis of Article 5(1)(5) of the Law on Legal Protection of Personal Data, was obliged to inform the data subject of his right to not consent to his personal data being processed (decision of 27 March 2017 in administrative case No eA-471-756/2017).

A question related to ethics breaches in the ***provision of information to the public*** was resolved in an administrative case in which it was specified that to the extent that the Public Information Ethics Commission has the competence to establish violations of the Code of Ethics of Lithuanian Journalists and Publishers and obligate the responsible publisher or disseminator of public information to publish this decision and implement the refutation procedure in accordance with Article 44 of the Law on Provision of Information to the Public, a term of application of said enforcement measures should be applied (two years from the day the violation was committed) (decision of 30 August 2017 in administrative case No eA-4518-438/2017). The Court often has to resolve a dispute by systematically interpreting and applying several laws governing public relations. Thus, in light of the relevant provisions of the Law on Legal Protection of Personal Data, the judicial panel recognised the publication of a person's address of residence without the consent of the person as being illegal, despite the fact that the person's address of residence was publicly available through the Google search engine, and without considering the circumstance that this information is declared and available in the population register (ruling of 7 February 2017 in administrative case No A-63-261/2017).

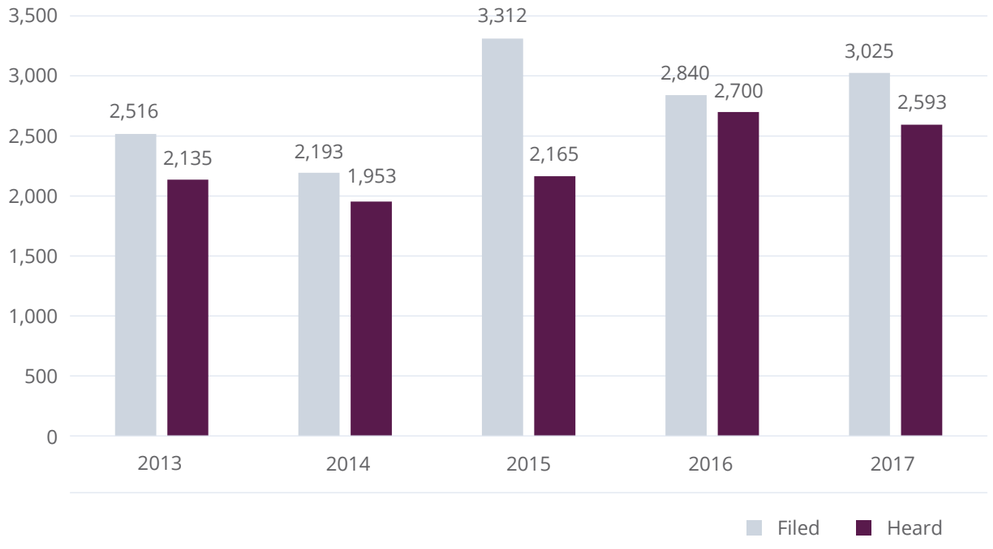
In briefly reviewing the latest practice in the field of ***registries***, of note are two cases: one concerning the right of the manager of the real property register to cancel an entry about a lease contract when the court, in issuing a penal order in criminal proceedings, recognised this contract as being illegal, and another concerning the registration of a car after changing the steering wheel from right to left. In the first case, the Court, having assessed the content of the penal order, indicated that in issuing it, neither the validity of the transactions nor the cessation of civil law consequences created by them were analysed, so it could not be regarded as a judgment which, according to the Law on the Real Property Register, could be recognised as an appropriate legal basis to deregister the legal fact (decision of 12 January 12 in administrative case No A-128-492/2017). In the case of the actions of the State Enterprise Regitra – refusal to register a vehicle because technical expertise documents on proper conversion of the vehicle issued in accordance with Lithuanian national law were not submitted – the Court clarified that **upon rebuilding a vehicle before issuance in an European Economic Area country of a vehicle registration certificate that is issued when registering vehicles that complies with a European Community approved type or which has been given individual European Community approval, the vehicle registration certificate issued in the European Economic Area country is sufficient to register said vehicle in another member state, in this case – Lithuania** (decision of 28 November 2017 in administrative case No eA-697-662/2017; for vehicle registration, also see the decision of 18 April 2017 in administrative case No A-484-442/2017).

Municipalities, in performing their functions, participate in various legal relations, so the category of ***local self-government*** cases also includes various administrative disputes. Of mention are cases related most closely to the rights and duties of entities implementing local government functions. For example, when deciding in one of the cases on the lawfulness of a regulatory act of a municipality, the Court established a procedural violation in the adoption of this legislation – consideration of the draft regulatory acts was included on the agenda of the municipal council meeting without complying with the procedure established by the Law on Local Self-Government (ruling of 7 February 2017 in administrative case No eA-127-146/2017). In checking the lawfulness of acts of individual institutions of local self-government that affect the rights of specific individuals, the Court clarified in 2017 that **legal regulation does not establish any provisions which would empower the mayor of a municipality to change the main purpose and/or method of land use** (ruling of 7 June 2017 in administrative case No eA-825-492/2017). The Law on Local Self-Government **does not limit the competence of the municipal council to decide on distrust in the deputy director of the municipality administration and the dismissal thereof on these grounds, as well as initiation of this procedure** (ruling of 20 September 2017 in administrative case No eA-4814-575/2017). In this context, another case heard in 2017 is also distinguished, where the abolition of the mandate of a member of a municipality council was decided on after the permanent place of resident of the council member was changed (ruling of 12 April 2017 in administrative case No eR-1-422/2017, as is the case where the Druskininkai Municipal Council requested a conclusion as to whether a council member had broken his oath and did not fulfil the powers entrusted to him by the Republic of Lithuania Law on Local Self-Government and other laws by not attending three meetings of the Control Committee. In this case, the case was closed after it was established that the request was submitted to the court after the six-month time limit. Before submitting the request to the court, 15 months had passed since non-attendance of the first meeting that the request was based on, and 12 months had passed since the last meeting; information about the inactivity of the municipal council member indicated in the request was available to the members of the Druskininkai Municipal Council, so acting in accordance with the standards of caring and cautious behaviour, they had the opportunity to know about it and to submit the request to the court in a timely manner (ruling of 16 June 2017 of the expanded panel of judges in administrative case No eI-16-442/2017).

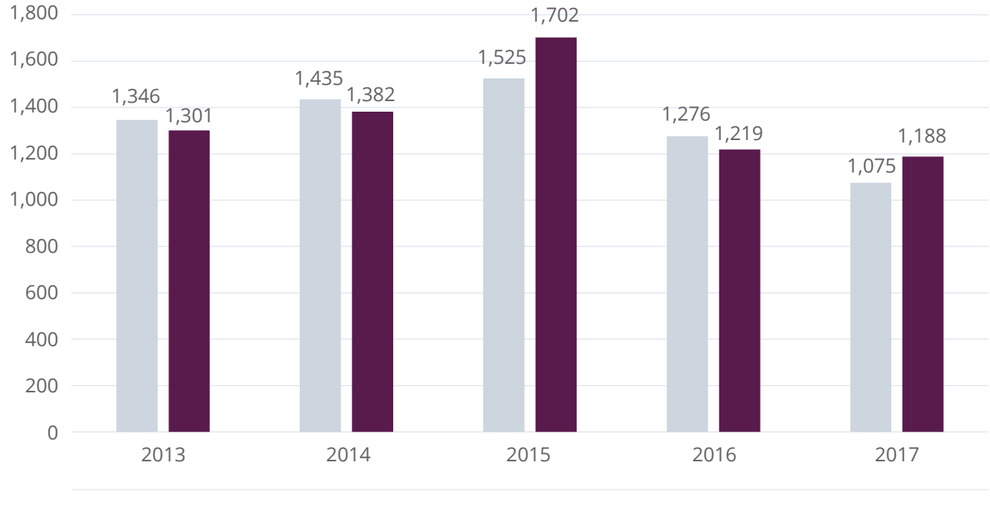
Public administration entities, irrespective of which area of administrative relationships they operate in, have a duty to adhere, inter alia, to the ***principles of public administration***, and also to give proper reasoning for the decisions that they make. It is worth pointing out that 2017 case law of the Court confirms that these requirements must be ensured, inter alia, in environmental protection officers issuing obligatory instructions (ruling of 4 October 2017 in administrative case No A-1405-556/2017), in the Commission calculating the damage caused by game in inspecting crops and making a decision on the establishment and compensation of damage (decision of 6 February 2017 in administrative case No A-17-602/2017), in the municipal council refusing to approve a draft detailed plan submitted to it (ruling of 28 November 2017 in administrative case No A-740-662/2017), in the National Paying Agency adopting a decision to recover a portion of funding (ruling of 26 June 2017 in administrative case No A-1282-442/2017), and in the municipal administration cancelling a person's registration for a pre-school or pre-primary education group at a pre-school educational establishment (decision of 24 October 2017 in administrative case No eA-290-602/2017).

SUPREME ADMINISTRATIVE COURT OF LITHUANIA (SACL) YEAR 2017 IN STATISTICS

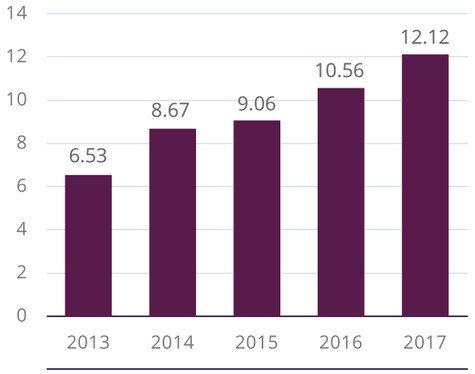
ADMINISTRATIVE DISPUTE CASES FILED WITH AND HEARD BY THE SACL



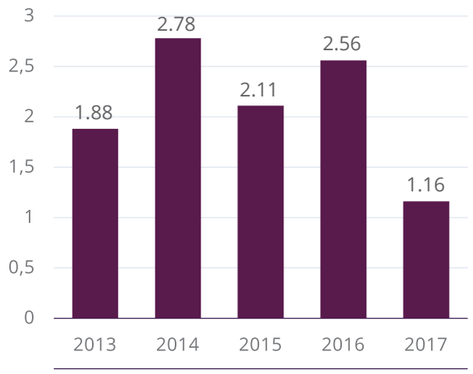
CASES FILED WITH AND HEARD BY THE SACL CONCERNING RESTORATION OF THE STATUS QUO ANTE, THE RENEWAL OF PROCEEDINGS AND SEPARATE APPEALS



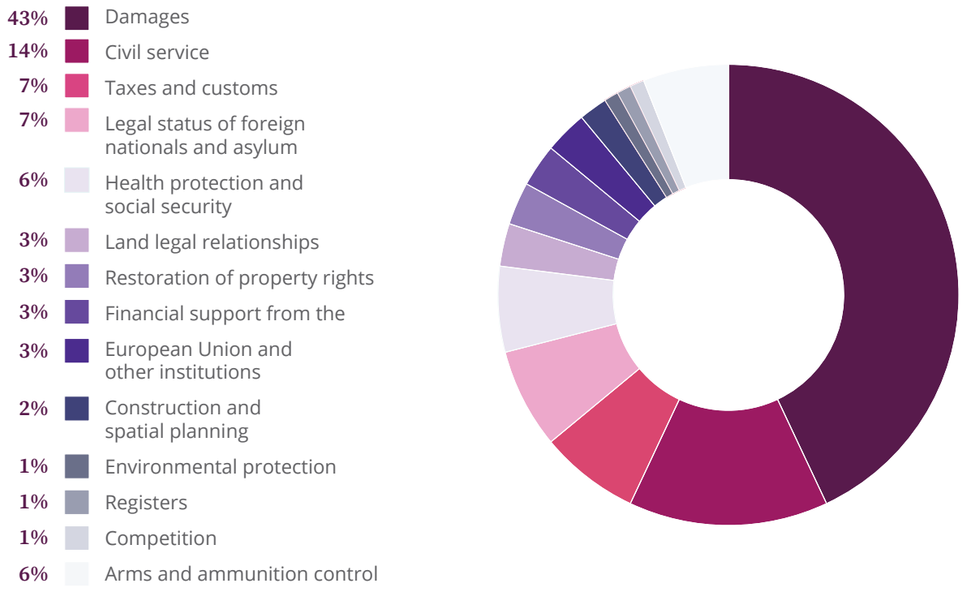
AVERAGE CASE LENGTH FOR ADMINISTRATIVE DISPUTES (MONTHS)



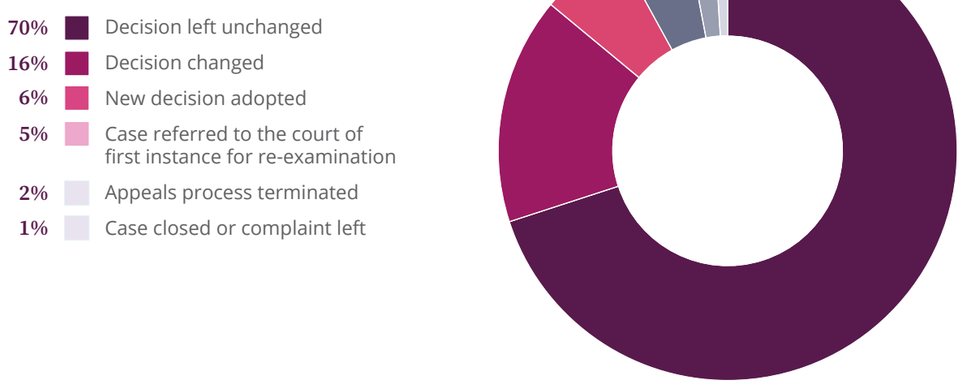
AVERAGE CASE LENGTH FOR SEPARATE APPEALS (MONTHS)



DISTRIBUTION OF ADMINISTRATIVE CASES ACCORDING TO APPEALS HEARD BY THE SACL IN 2017 BY CATEGORY



RESULTS OF APPEALS CASES ON DECISIONS OF REGIONAL ADMINISTRATIVE COURTS HEARD AT THE SACL IN 2017



OTHER 2017 FIGURES

3,374

the number of administrative disputes that were left pending in 2017

11

the number of regulatory administrative cases concerning the lawfulness of regulatory acts adopted by central state administration entities that were heard on the merits

27

the number of administrative dispute cases that were heard by an expanded panel of judges

3

the number of cases that ended with a decision or ruling taking effect for which proceedings were renewed

12

the number of cases that ended with a court settlement (34% of terminated cases)

59

the number of rulings that were handed over to the Special Panel of Judges through the Supreme Administrative Court of Lithuania to decide on matters of the specific or general jurisdiction (in 41% of the cases, the Special Panel of Judges returned the disputes to the administrative courts to be heard)

APPLICATIONS TO THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LITHUANIA

In order to ensure that in the course of justice, laws or other legal acts which are in conflict with the Constitution of the Republic of Lithuania are not used in cases, the Court raised new issues in 2017 of the constitutionality of the legal norms applicable in proceedings. During the year under review, the Constitutional Court of Lithuania accepted the following applications from the Court:

On the material liability of ministers

The question was presented (administrative case *No A-2995-492/2018*) of whether the provisions of the **Republic of Lithuania Law on the Government** are not in conflict with the Constitution insofar as they do not provide for the material liability of a minister for direct material damage caused to a state or municipal institution or agency by carrying out the internal administration of the ministry through illegal guilty acts, inter alia, the imposition of service penalties (constitutional justice case No 2/2017).

On the use of criminal intelligence

The question was presented (administrative case *No eA-2996-438/2018*) of whether the provisions of the **Republic of Lithuania Internal Service Statute** and the **Republic of Lithuania Law on Criminal Intelligence** which provide that criminal intelligence can be used in investigating service misconduct are not in conflict with the Constitution, insofar as these provisions do not establish a procedure for the use of criminal intelligence about activities which display signs of criminal acts of a corruptive nature in deciding on the issue of service liability in accordance with the Internal Service Statute (constitutional justice case No 9/2017).

On projects of national importance

The question was presented (administrative case *No A-2998-492/2018*) of whether point 1 of Resolution No 865 of 19 July 2000 of the **Government of the Republic of Lithuania on Recognition of the Economic Project for the Kariotiškės Cadastral Location in Trakai District, Moluvėnai Village as a Project of National Importance** is not in conflict with the Constitution (constitutional justice case No 14/2017).

On the criteria for determining the right to a fishing quota

The question was presented (administrative case *No eA-2997-575/2018*) of whether the provision of the *Republic of Lithuania Law on Fisheries* is not in conflict with the Constitution insofar as it entrusts the Ministry of Agriculture with establishing the criteria for the selection, evaluation and quota allocation for economic entities who have submitted applications for a quota for commercial fishing in a certain body of inland water, and a formula is not established (inter alia, its variables and the meaning (points) assigned to each of them) according to which the winner of the auction on the rights to fishing quotas in inland waters is determined (constitutional justice case No 15/2017).

On the conditions for allocating secondary legal aid

The question was presented (administrative case *No A-2999-575/2018*) of whether the provision of the **Republic of Lithuania Law on State-Guaranteed Legal Aid** is not in conflict with the Constitution insofar as it establishes that secondary legal aid is not provided if the applicant was given secondary legal aid in another case but did not pay for the specified cost of secondary legal aid or part thereof by the deadline given, even when ensuring the provision of effective (free) legal aid to the sentenced person is necessary in the interest of justice (constitutional justice case No 17/2017).

APPLICATIONS TO THE COURT OF JUSTICE OF THE EUROPEAN UNION

As it had doubts regarding the interpretation or validity of European Union law, the Court carried out its duty to request the Court of Justice of the European Union to give a preliminary ruling and submitted the following questions to this judicial authority in 2017:

On the establishment and operation of electronic money institutions

A request was submitted for clarification of Article 5(2) of **Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions** amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC (case No C-389/17), in order to investigate a dispute regarding violations established by the Bank of Lithuania related to the amount of equity capital of an electronic money institution (administrative case *No eA-384-502/2018*).

On the imposition of excise duties on alcohol and alcoholic beverages

A request was submitted for clarification of Article 27(1) (b) of **Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages** (case No C-567/17), in order to investigate a dispute regarding the decision of the State Tax Inspectorate to impose the excise duty applicable for alcoholic beverages on mouthwash (administrative case *No eA-392-556/2018*).

On the imposition of excise duties on manufactured tobacco

A request was submitted for clarification of Article 4(1) of **Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco** (case No C-638/17), in order to investigate a dispute regarding a decision of the State Tax Inspectorate to not treat specific tobacco products imported by one company as cigars and cigarillos (administrative case *No eA-168-556/2018*).

On evaluation of the PSO scheme as state aid

A request was submitted to clarify whether the system established under national law for the provision of public service obligation (PSO) funds in the electricity sector and the measures for the financing (compensation) thereof (the PSO scheme) that was in force in 2014 or part thereof is **considered state aid** (a state aid scheme) within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union. The application was made in investigating a dispute regarding Resolution No O3-704 of the National Commission for Energy Control and Prices of 11 October 2013, which established the PSO funds for 2014 for PSO suppliers as well as the PSO price for Lithuanian electricity (final) consumers (administrative case *No A-1465-525/2018*).

OTHER COURT ACTIVITIES

COURT BULLETINS

In order to ensure uniform interpretation and application of the law, the Court publishes bulletins every year.

Bulletin No 32 (July–December 2016) presents the most significant procedural decisions of the Court, a summary of practice in applying **legal norms regulating health** protection, rulings of the special panel of judges deciding on issues of specific jurisdiction of the reviewed case, and decisions of international and foreign courts relevant to administrative justice. The administrative law doctrine column featured an article by Agnė Kalinauskaitė, LL.M. and Justice Skirgailė Žalimienė entitled **"Searching for Balance Between Fundamental Human Rights and Internal Market Freedoms in the Case Law of the Court of Justice of the European Union"** as well as a speech on **"The Practice Formed by the State Council in Cases Concerning the Protection of Fundamental Rights"** made by Marc el Nouchi at the "Administrative Courts – Defenders of Human Rights" conference organised by the Court.

Bulletin No 33 (January–June 2017) contains, in addition to the most relevant case law of the Court, the special panel of judges, and international and foreign courts, an overview of European Court of Human Rights case law concerning **establishment of the burden of proof in asylum cases** according to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms as well as an article by Justice Dalia Višinskienė and Dr Justina Nasutavičienė entitled **"A Look at the Gazprom Case. The Aspect of Concentration Modification Measures"** and an article by Prof. dr. hab. Marek Zirk-Sadowski and Dr Tomasz Grzybowski entitled **"Institutional Relations Between Administrative Courts, Courts of General Jurisdiction and the Supreme Court in the Context of Practice on the Right to Public Information"**.

PRACTICE REVIEWS

Like every year, the Judicial Research Department, which is a division of the Court, periodically compiled and distributed reviews of Court case law and summaries of the judgments of the European Court of Human Rights and the Court of Justice of the European Union most relevant to administrative jurisprudence. All of these reviews can be found in the *Court Practice* section of the Court website *www.lvat.lt*.

EXPERIENCE AND COOPERATION

In 2017, judges of the Court shared their experiences with colleagues from abroad and acquired new knowledge at international events. Of note were two events that were organised by the Association of the Councils of State and Supreme Administrative Jurisdictions of the EU (ACA-Europe): the **Public Order, National Security and the Rights of Third-Country Nationals in Immigration and Citizenship Cases** seminar (Cracow) and the **Administrative Sanctions in European Law** seminar (Ljubljana).

Judgements of foreign courts in the aspects relevant to administrative jurisprudence are an important source of inspiration in looking for answers to question on application and interpretation of the law. The year 2017 was important for the fact that the Court joined two new international judicial cooperation networks: the **Superior Courts Network**, which was created by the European Court of Human Rights to ensure the effective exchange of information with national superior courts on case-law related to application of the Convention for the Protection of Human Rights and Fundamental Freedoms; and the **European Judicial Network** *(Réseau Judiciaire de l'Union Européenne)*, which is meant to strengthen judicial cooperation between the participating courts, to provide information about preliminary rulings and national court judgements in the application of European Union law, and to facilitate the use of other tools of comparative law.

Photograph of the President of the Supreme
Administrative Court of Lithuania by Kęstutis Vanagas

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