

SUPREME ADMINISTRATIVE COURT OF LITHUANIA

2022

Annual Report

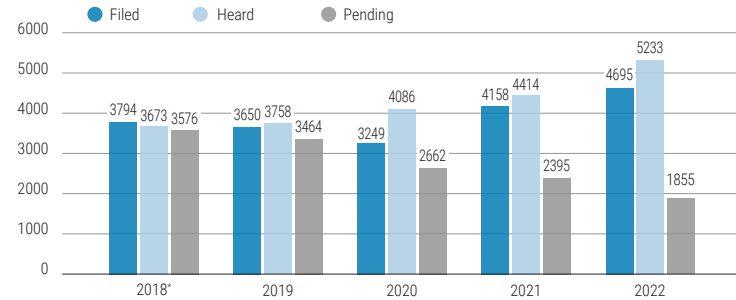


# Table of contents

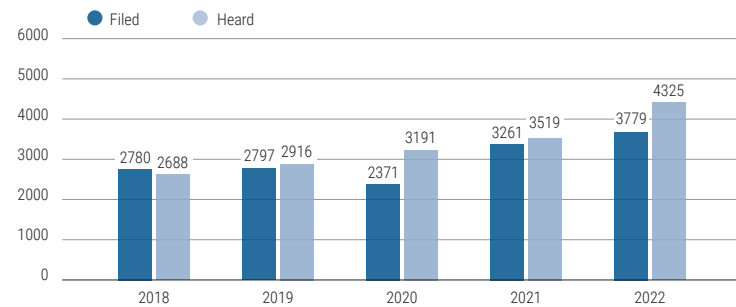
4	Role of the Supreme Administrative Court of Lithuania
8	Questions referred to the CJEU in 2022
10	Questions referred to the Constitutional Court in 2022
12	Judicial activity
14	Legislation
16	Elections
18	Legal status of aliens
20	Social protection
22	Health protection
25	Protection of professional activities
28	Environmental protection
30	Spatial planning and construction
32	Taxation
34	Competition
36	Consumer protection
38	Personal data protection
40	Covid-19
42	Civil service

# Statistics on the activities of the Supreme Administrative Court of Lithuania (SACL) in 2022

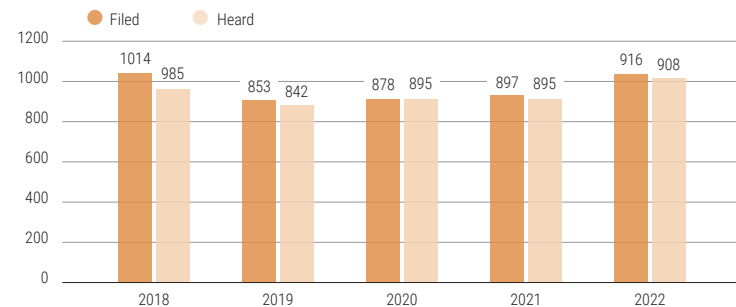
**Administrative cases filed with and heard by the SACL**



**Administrative disputes cases filed with and heard by the SACL**

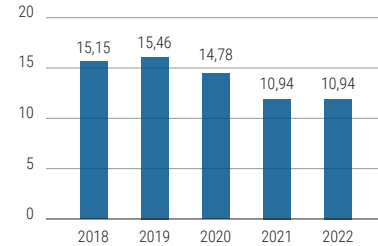


**Requests for reopening of proceedings and appeals against first instance court rulings on procedural issues filed with and heard by the SACL**

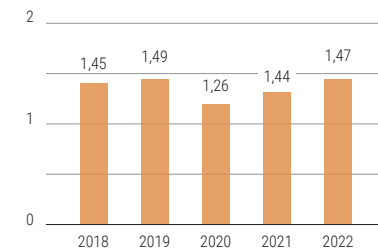


\* Cases pending in the beginning of 2018 – 3461

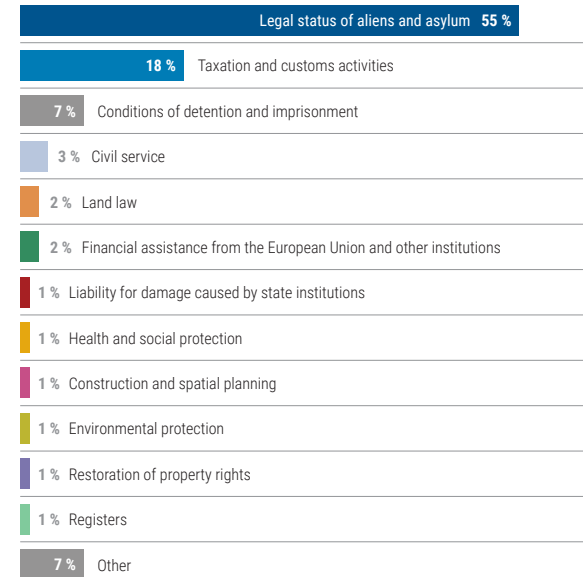
**Average duration of proceedings in administrative disputes cases (in months)**



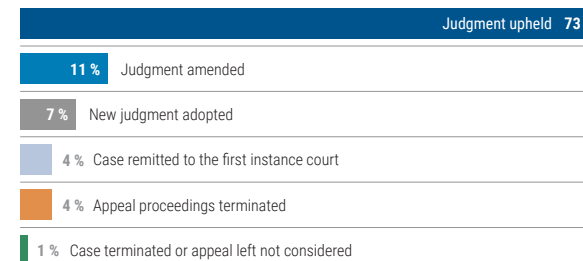
**Average duration of proceedings concerning appeals against first instance court rulings on procedural issues (in months)**



**Breakdown by category of appeals in administrative cases heard by the SACL in 2022**



**Outcomes of appeals against judgments of regional administrative courts in 2022**



## Other figures of 2022

**16** — the number of complaints received against decisions or omissions of the Central Electoral Commission

**16** — the number of requests (applications) received in 2022 to investigate the legality of normative administrative acts adopted by central state institutions

**210** — the number of cases heard by a judge-rapporteur in 2022

**32** — the number of administrative cases heard by Extended Composition Chambers

**8** — the number of cases reopened following a final judgment or ruling

**28** — the number of rulings on case jurisdiction issues that were referred through the Supreme Administrative Court of Lithuania to the Special Chamber of Judges to resolve questions on case falling within the competence of a general jurisdiction court or an administrative court (18 disputes (64%) were declared to be within the general courts' jurisdiction)

Dear All,

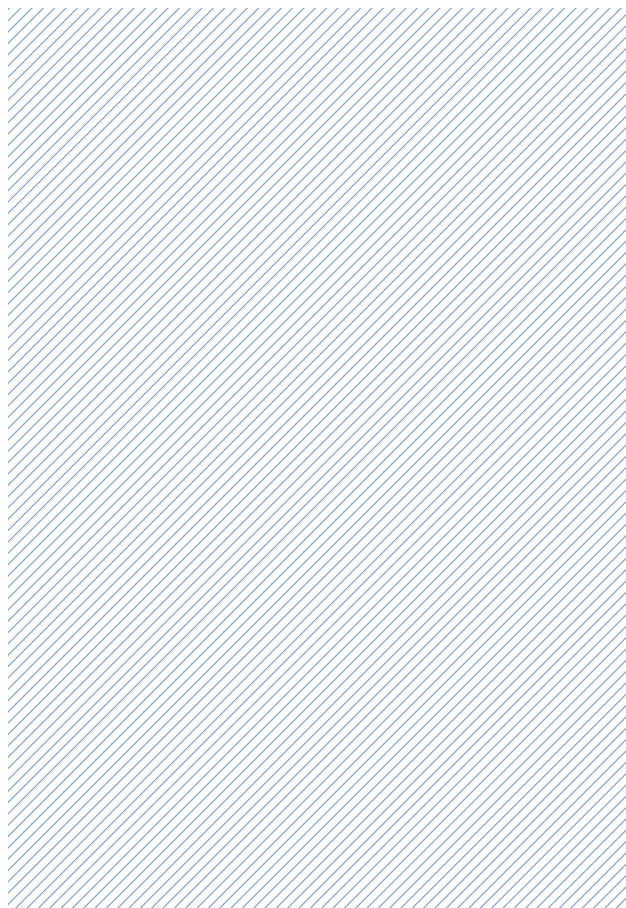
In presenting the 2022 Annual Report of the Supreme Administrative Court of Lithuania, I invite you to look back at the past year - to review the cases heard and the most important statistics, key events, new developments and challenges. The geopolitical events of 2022 - the war in Ukraine, the ongoing migrant crisis due to the influx of foreigners, and the objective increase in the number of cases concerning the legal status of foreigners and asylum - did not allow the Court to breathe a sigh of relief after a truly challenging period due to the global pandemic of the COVID-19 disease, but it did mobilize the Court's community to look for solutions in order to overcome new challenges.

Since taking office as the President of the Supreme Administrative Court of Lithuania, I consider the most important task of the Court to be the swift and full quality administration of justice, the promotion and development of the value of effective judicial protection of individual rights in accordance with the standards of the European Union and international law. I would also like to emphasise the special role of the Supreme Administrative Court of Lithuania in ensuring the application of European Union law and the fundamental values on which it is based in administrative cases. Of course, the speed with which cases are dealt with cannot mean that the quality of the judgments is compromised. It is therefore essential to ensure that the quality of the Court's decisions is high and that the public is properly informed about them. I consider transparency, openness and publicity to be fundamental principles of the Court's work, which undoubtedly increase public confidence.



**Skirgailė Žalimienė**

President of the Supreme Administrative Court of Lithuania



I welcome the focus and constructive cooperation of all branches of government in taking decisions on the temporary transfer of three judges of the Supreme Court of Lithuania and two judges of the Court of Appeal of Lithuania to the Supreme Administrative Court of Lithuania in March 2022, in order to ensure the proper functioning of this Court. I will remind that the need for the transfer of the judges arose from the high volume of cases that reached Lithuanian administrative courts in the period 2021-2022, related to the influx of migrants from Belarus into the Republic of Lithuania. This temporary transfer of judges is also distinctive because for the first time the mechanism provided for in Article 63(7) of the Law on Courts of the Republic of Lithuania on the temporary transfer of a judge when the situation hinders the proper functioning of the court was applied. This measure allowed the stabilisation of the court's work and the speeding up of the administration of justice in cases concerning the legal status of aliens and asylum.

Looking at the main figures of the Court's activity, we can state that the number of appeals received and examined by the Supreme Administrative Court of Lithuania is constantly growing. In 2022, the Supreme Administrative Court of Lithuania heard as many as 5233 administrative cases of all types. It is important to note that the average duration of proceedings in administrative cases in 2022, despite the large number of cases received, did not increase - it lasted around 11 months. On the other hand, the performance of the Supreme Administrative Court of Lithuania can no longer be measured solely by the number of cases heard in a given period, even if it is very impressive in 2022.

It is equally important that the Court has the capacity to prioritise the principle of the sustainable administration of justice, which relates to the court's ability and willingness to listen, to analyse the case file and to resolve fairly the conflict between the individual and the state. I hope that there will be a gradual return to a balanced workload at the Court in 2023, and I sincerely thank my colleagues and the entire staff for the excellent work they have done in this unusually difficult year. The European Union Justice Scoreboard 2022 shows that Lithuania is one of the leading countries in the European Union in terms of the length of proceedings in administrative cases.

We should continue on this path, ensuring that cases are dealt with more quickly and preserving the quality of judgments. In this context, it should be recalled that in June 2022 the further reform of the administrative courts of first instance was definitively approved by a resolution adopted by the Seimas of the Republic of Lithuania. As of 1 January 2024, the new Regional Administrative Court will replace the two regional administrative courts. I believe that this reform will enable the regional administrative courts to continue to optimise their work and improve their efficiency, unify the workload of judges and speed up the processing of cases. Moreover, the rules of jurisdiction, which are more favourable for individuals and will come into force on 1 January 2024, will make it much more convenient and easier for a person to access the court and to participate effectively in its proceedings. Looking ahead to 2023, I wish you a responsible approach to the most important task of the Court - the administration of justice, protecting and defending the rights of the individual.

Peace to us all!

# Role of the Supreme Administrative Court of Lithuania

*Supreme Administrative Court of Lithuania is the institution that administers justice on behalf of the Republic of Lithuania in administrative cases. Judgments of the Supreme Administrative Court of Lithuania are final and not subject to appeal. The Supreme Administrative Court of Lithuania has two missions – to resolve disputes between citizens and public authorities and to guarantee respect for the rule of law in the area of public administration.*





### Corrects possible errors of the first instance court in administrative cases

- hears appeals from first instance administrative courts
- hears appeals from district courts in migrant detention cases



### Hears cases on requests for reopening of proceedings in administrative cases which have been closed by a final judgment or ruling

- proceedings in a closed case are reopened in exceptionally rare cases for the purpose of ensuring uniform administrative case-law, rectification of an obvious and fundamental error of substantive law, after examination of a constitutional complaint, after a judgment of the European Court of Human Rights, and in other cases provided for by law.



### Guarantees respect for the rule of law in cases regarding lawfulness of legislation, election, referendum, violation of oath of office by local government members

- is the sole and final instance court in cases concerning lawfulness of regulatory administrative acts adopted by state-level public administration bodies
- is the final instance court in cases concerning complaints for breaches of the Electoral Code
- is the sole and final instance court in cases concerning complaints for breaches of the Constitutional Law on Referendum
- is the sole and final instance court in cases concerning requests by a municipal council for a ruling on whether a member of a municipal council, a member of municipal council – a mayor, for whom a procedure for the loss of office has been initiated, has violated their oath of office and (or) has failed to exercise the authority conferred on them by law



### Establishes uniform case-law of administrative courts in interpreting and applying laws and regulations

- interpretations of laws and regulations contained in the Court's judgments and rulings are taken into account by public authorities and other institutions, as well as by other persons, when applying the same laws and regulations.
- in order to develop and ensure uniform interpretation and application of the law in administrative courts, the Court analyses case-law of national, European Union and international courts, other sources of law, prepares summaries and reviews of case-law, and publishes information on its activities.

88

employees

21 judges

27 judicial assistants

40 other employees

43,5

average age

12

PhDs in social sciences

### Self-governance institutions in which judges of the SACL participate

- Judicial Council
- Judicial Court of Honour
- Judicial Ethics and Discipline Commission
- Commission for the Examination of Candidates to Judicial Office
- Selection Commission of Candidates to Judicial Offices
- Association of Judges of the Republic of Lithuania
- Judicial System Awards Commission



From left to right (sitting) – Virginija Volskienė, Jolanta Malijauskienė, Iveta Pelienė, Dalia Višinskienė, Skirgailė Žalimienė, Veslava Ruskan, Rasa Ragulskytė-Markovienė, Milda Vainienė, Beata Martišienė

From left to right (standing) – Arūnas Dirvonas, Ramūnas Gadliauskas, Artūras Drigotas, Arūnas Sutkevičius, Ričardas Piličiauskas, Rytis Krasauskas, Ernestas Spruogis, Audrius Bakaveckas, Dainius Raižys, Laimutis Alechnavičius, Gintaras Kryževičius, Egidijus Šileikis

# Questions referred to the CJEU in 2022

1. In administrative case No A-1091-822/2022, a dispute was examined concerning detention of an alien who had illegally entered the territory of a Member State pending the adoption of a decision on the alien's legal status in Lithuania. The SACL referred the case to the CJEU for an interpretation of Article 7(1) of the Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection, and of Article 8(2) and (3) of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection. The Supreme Administrative Court of Lithuania asked the Court of Justice of the European Union to clarify whether the abovementioned European Union legislation should be interpreted as (a) precluding rules of national law, which, in the event of a declaration of martial law, a state of emergency or also a declaration of an emergency due to a mass influx of foreigners, do not in principle allow a foreigner who has entered and remains unlawfully in the territory of a Member State to lodge an application for international protection, and (b) precluding rules of national law under which, in the event of a declaration of martial law, a state of emergency or also a declaration of an emergency due to a mass influx of foreigners, an asylum applicant may be detained merely because he or she entered the territory of the Republic

of Lithuania by crossing the State border of the Republic of Lithuania unlawfully.

*(Case C-72/22)*

2. In administrative case No eA-990-492/2022, a dispute was heard on the legality of dismissal of a prosecutor from the service of the Prosecutor's Office. The SACL referred the case to the CJEU seeking an interpretation of Article 15(1) of the Directive of the European Parliament and of the Council concerning the processing of personal data and the protection of privacy in the electronic communications sector. The SACL asked the CJEU to clarify whether the above-mentioned provision of European Union law may be interpreted as prohibiting the competent public authorities from using data retained by providers of electronic communications services which may provide information on the data of, and communications made by, a user of a means of electronic communications, in investigations into corruption-related misconduct in office, irrespective of whether access to those data has been granted, in the particular case, for the purposes of combating serious crime and preventing serious threats to public security.

*(Case C-162/22)*

### 3. In the administrative case No eA-464-552/2022,

a dispute concerning revocation of a payment institution's licence granting the right to provide payment services was examined. The SACL referred the case to the CJEU for interpretation of Article 4(3) and (5) of the Directive of the European Parliament and of the Council on payment services in the internal market and Article 2(2) of the Directive of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions. SACL asked the CJEU to clarify whether, where a payment institution accepts funds without a specific payment order to transfer them on the same or following business day and the funds remain in the payment institution's account intended for carrying out payment transactions for longer than the time limits for the execution of the payment service laid down by the legislation, are the actions of the payment institution to be regarded as a part of a payment service or a payment transaction or the issuance of electronic money.

*(Case No C-661/22)*



# Questions referred to the Constitutional Court in 2022

## 1. On the constitutionality and lawfulness of restrictions on the provision of beauty and dental services during the quarantine period, approved by Government Decision

By its ruling of 2 March 2022 in administrative case No eA-995-525/2022, the SACL decided to refer to the Constitutional Court of the Republic of Lithuania the request to examine whether points 3.2.8 and 3.4.4 of the Lithuanian Government Decision of 14 March 2020 ‘On declaration of quarantine in the Republic of Lithuania’ did not contravene the constitutional principle of the rule of law, Article 46 of the Constitution of the Republic of Lithuania, and Article 21(1) of the Law on Prevention and Control of Contagious Human Disease of the Republic of Lithuania (as amended by the Law of 13 December 2001, No IX-649).

*The Constitutional Court issued a ruling on 24 January 2023.*

## 2. On the constitutionality of a provision of the Internal Service Statute limiting the right of a person who has been exempted from criminal liability to be an internal service officer for a specified period of time

By its ruling of 26 January 2022 in administrative case No eA-4136-438/2021, the SACL decided to

refer to the Constitutional Court of the Republic of Lithuania a request for a judgment on whether the provisions of the Internal Service Statute of the Republic of Lithuania, adopted by the Law on the Approval of the Internal Service Statute of the Republic of Lithuania (as amended by the Law of 29 June 2018, no. XIII-1381) are compatible with the Constitution of the Republic of Lithuania. In particular, a question was submitted on whether the Internal Service Statute Article 9(2)(2) provision “has been exempted from criminal liability in accordance with the procedure laid down by law (with the exception of exemption from criminal liability when the offence has become no longer dangerous) and three years have not passed from the day of exemption from criminal liability” is compatible with the provision of Article 33(1) of the Constitution of the Republic of Lithuania which states that “Citizens shall have <...> the right to enter on equal terms the State Service of the Republic of Lithuania”, the provision of Article 48(1) “Everyone may freely choose a job”, as well as the constitutional principles of proportionality, fairness, and equal treatment.

*The Constitutional Court issued a ruling on 20 October 2022. The Supreme Administrative Court resolved the dispute by judgment of 14 December 2022 in administrative case No eA-1586-1047/2022.*

### 3. On the constitutionality of a provision of the Internal Service Statute limiting the right of a person who has been exempted from criminal liability to be an internal service officer for a specified period of time

By its ruling of 12 January 2022 in administrative case No eA-4135-629/2021, the SACL decided to refer to the Constitutional Court of the Republic of Lithuania a request to decide whether provisions set out in Article 9(2)(2) of the Internal Service Statute of the Republic of Lithuania (as amended by the Law of 29 June 2018, No XIII-1381) complies with Article 33(1) and Article 48(1) of the Constitution of the Republic of Lithuania, and with the constitutional principle of the rule of law (the principles of proportionality, fairness and equal treatment deriving from it).

*The Constitutional Court adopted a ruling on 20 October 2022. The SACL resolved the dispute by judgment of 28 December 2022 in administrative case No eA-1164-629/2022*





## Judicial activity

*An overview of judicial activity in cases from a wide variety of areas of law shows that 2022 cannot be considered as a representative year for the discussion of trends in the case-law of the Supreme Administrative Court of Lithuania. The development of case law has mainly focused on decisions on the legal status of foreigners in the context of the continuing state-level emergency situation in the country due to the massive influx of foreigners from July 2021. In the context of appeals concerning detention of aliens, the Court has given particularly significant interpretations in this area, concerning the procedure for applying for asylum and the restriction of liberty of persons unlawfully present on the territory of a Member State.*

Over 4 000 administrative cases heard clearly show that the Court is trusted to deal with a wide range of issues of importance to citizens, businesses and the State. Anyone familiar with the Court's case-law can notice the breadth and diversity of the topics analysed and the work assigned to the Court. In the context of this intense activity of the Court, several important trends in its jurisprudence stand out. The first trend, which is a continuous one, is the increase in the number of cases decided in which the interpretations of the Court of Justice of the European Union are applied. For the first time, the Supreme Administrative Court of Lithuania has developed case-law relating to the right of a person exercising the free movement of persons within the European Union to acquire a profession, the right to deduct VAT where there is no fraud or abuse of rights, the protection of public health, and especially the health of children, in the field of food and products similar to food. The second trend confirms the potential for further fostering the partnership between the administrative courts and the Constitutional Court dealing with issues of general interest. It is necessary to mention the strengthening of the protection of human rights in administrative cases, both after the Court's referrals to the Constitutional Court and after reopening of cases following examination of individual constitutional appeals. In this regard, the Court emphasised that, in applying the legal consequences of a Constitutional Court judgment based on an individual constitutional complaint, the

judgment of the administrative court must ensure effective, real and comprehensive elimination of the unconstitutional legal consequences - full restoration of the infringed rights of the person concerned and/or fair compensation for damages caused by an unconstitutional act. A third trend can be seen in the review of administrative cases relating to the consequences of the 2020 health crisis. Like many courts in the European Union during this period, the Supreme Administrative Court of Lithuania has dealt with issues related to the consequences of the COVID-19 pandemic in the field of State aid and other areas.

The fact that a similar number of cases (more than 30) have been referred to the extended chamber in 2022 as in previous years is a clear indication that, despite the challenges posed by the Court's intense work, some important jurisprudential novelties have emerged. In this respect, the overview of the Court's judgments once again shows the significance of responsible governance and good administration, and the importance of creating a simple, clear, stable and predictable regulatory framework for citizens, businesses and public servants by actions of all the branches of government in the country. As every year, this chapter provides an overview of the main trends in the development of case-law in the following areas: legality of regulatory administrative acts, taxation, health and social protection, legal status of foreigners, competition, environmental protection, protection of personal data, etc.



## Legislation

*The Supreme Administrative Court of Lithuania oversees how ministers and municipal councils exercise the right to legislate granted by law. A clear, stable and predictable regulatory framework for citizens and businesses are the cornerstones of case law on lawfulness of regulatory acts.*

In a packaging waste management case, the Supreme Administrative Court of Lithuania held that an order adopted by the Minister for the Environment was unlawful. The Minister had imposed an obligation on municipalities to pay from the municipal budget a share of the costs of management services of packaging waste and secondary raw materials generated in the municipal waste stream. However, such an obligation on municipalities does not arise from the provisions of the laws on which the Order of the Minister for

the Environment was based. The municipal budget, which includes local charges, is used only for those functions which are assigned to municipalities by the Constitution or by laws. The Minister for the Environment has not been assigned the function of reallocating the municipal budget.

*Judgment of the extended chamber of 21 December 2022 in administrative case No I-11-822/2022*

The Supreme Administrative Court of Lithuania ruled that the Minister's Order, which determined the size of protection zones for artificial water bodies on the basis of the sole criterion of area (in this case 0.1 ha), was not in compliance with the constitutional principle of responsible governance. The Minister for the Environment did not justify that it was necessary and appropriate to establish a procedure according to which the size of an artificial water body alone determines the public's right of access to that water body and the restrictions imposed on landowners. The principle of responsible governance imposes a duty on the legislator to determine these areas in a responsible manner, weighing up the balance between the aforementioned public interest in access to and use of water bodies and the restriction on the individual's property and freedom of economic activity.

*Judgment of the extended chamber of 23 June 2022 in administrative case No eI-7-552/2022*

Having received a citizen's application to examine the lawfulness of an order of the Minister for the Environment on the calculation of the amounts of compensation for environmental damage, the Supreme Administrative Court of Lithuania stressed that, according to the law, an application by the public concerned must be linked specifically to environmental protection objectives.

However, the applicant had indicated that the Environmental Protection Department had filed a civil action in a criminal case, requesting that he be ordered to pay compensation for environmental damage. Having found that the applicant's interest was based solely on the impact on his personal property interests, which were not related to the protection of the environment and the objectives of the Aarhus Convention, the Court declined to hear the application.

*Judgment of 5 October 2022 in administrative case No eI-14-556/2022*

The Supreme Administrative Court of Lithuania considered whether the Minister for Agriculture was justified in entrusting the functions of the certification body for organic production to a single control authority – the public body Ekoagros. It was established that the Ministry of Agriculture acted within the limits of the discretion conferred on it by the European Union regulations and did not infringe the constitutional principles of freedom of individual economic activity, freedom of fair competition and the constitutional principle according to which the law prohibits the monopolisation of production and the market.

*Judgment of the extended chamber of 27 October 2022 in administrative case No eI-9-492/2022*



## Elections

*According to the Constitution, elections can only be held if the contest for a seat is free and fair, and if voters are able to express their will freely and without control during the voting process. The Supreme Administrative Court of Lithuania decides on election disputes – complaints from individuals regarding infringements of the Electoral Code. The Court is also entrusted with the task of ensuring that the citizens of the Republic of Lithuania have legal opportunities to exercise their referendum rights.*

Following an advisory opinion of the European Court of Human Rights, the Supreme Administrative Court of Lithuania examined a dispute concerning the exercise of the right to stand for election by a person who had been removed from the office of a Member of the Seimas by impeachment procedure. The Court found that the actions of this person, which led to the impeachment, and their conduct after the impeachment were incompatible with respect for the country's Constitution, laws and institutions. The circumstances of the case did not confirm that all the circumstances which led to the restriction of the candidate's right to stand for election had disappeared since the impeachment procedure in 2014.

*Judgment of 29 June 2022 in administrative case No R-1-602/2022*

The Supreme Administrative Court of Lithuania ruled that the referendum steering group should have been granted an extension of the deadline for collecting citizens' signatures. During the period set for the collection of signatures the citizens' referendum steering group was faced with a situation in which the court proceedings concerning the exercise of the right of the citizens' referendum steering group to initiate a referendum had not been concluded. This situation, characterised by legal

uncertainty, obliged the court to refer directly to the Constitution in order to ensure the possibility of effective exercise of the referendum right.

*Judgment of 20 January 2022 in administrative case No R-4-415/2022*

The Supreme Administrative Court of Lithuania ruled on judicial remedy in relation to negative political advertising. The court was asked to annul the decision of the Chief Electoral Commission by which the publication 'Viso gero, Valdemarai?' had been found to be a negative political advertisement of the Electoral Action of Poles in Lithuania - Christian Families Alliance. The Court stressed that the powers of the High Electoral Commission are limited to the control of political parties and political organisations and the financing of political campaigns. The Court ruled that the decision did not lead to any material legal consequences for the producer of public information - the public enterprise 'Laisvės TV'. The negative political advertisement produced by 'Laisvės TV' was not related to the dissemination of information in the interests of political actors.

*Judgment of 30 March 2022 in administrative case No eA-183-502/2022*



## Legal status of aliens

*The year 2022 can be described as the peak of the critical situation caused by the massive influx of foreigners: in that year, the Supreme Administrative Court of Lithuania heard about 70% more cases on the legal status of foreigners than in 2021. Administrative courts are obliged to deal with appeals on asylum, residence permits and other issues related to the legal status of foreigners as a matter of urgency – within 2 months. The special urgency procedure applies in cases where the issues are related to restrictions on the freedom of movement of foreigners. The Supreme Administrative Court of Lithuania shall examine an appeal against a decision to detain a foreigner within 10 days at the latest.*

Following an interpretation by the Court of Justice of the European Union, the Supreme Administrative Court of Lithuania has ruled that it is not allowed to detain an asylum seeker in the event of a massive influx of foreigners, simply because he or she is in the country illegally. European Union law also does not justify situations in which an application for international protection of a

third-country national who is unlawfully present in the country is not accepted on the sole ground that he or she has entered the country illegally. In the present case, it was established that the alien had made oral and written requests for asylum. The extended chamber of judges held that the alien, although he did not comply with the procedure laid down in the law, had submitted an application

for international protection to the competent authorities and must therefore be regarded as a person with the status of an asylum seeker.

*Judgment of the extended chamber of 28 July 2022 in administrative case No A-1091-822/2022*

On 24 January 2022 the Seimas Ombudsperson's Office of the Republic of Lithuania adopted a report "On Ensuring the Human Rights and Freedoms of Aliens in the Kybartai Alien Registration Centre of the State Border Guard Service under the Ministry of the Interior of the Republic of Lithuania". In cases concerning detention of aliens, in the absence of sufficient data collected by the competent state authorities to cast doubt on the findings of the report, the administrative courts have repeatedly taken into account the data recorded in the report on the conditions of accommodation of aliens (material reception conditions, nature of supervision/control, severe restrictions on freedom of movement, duration of accommodation, etc.). In the case-law, it has often been held that the alleged accommodation of aliens without the right to free movement in the Republic of Lithuania must be regarded as de facto detention.

*Judgment of 3 February 2022 in administrative case No A-1221-520/2022; judgment of 31 March 2022 in administrative case No A-1805-756/2022*

Among the most significant asylum issues are the administrative cases on the duty of the competent authorities to assess the situation of the minor children of aliens when examining an asylum application submitted by aliens and their minor children. The Supreme Administrative Court of Lithuania has emphasised in its case-law that, when deciding on the qualification of children as beneficiaries of international protection, it must be stated and assessed whether the best interests of the child would be adequately safeguarded if international protection was not granted. In cases where the Migration Department did not examine all the legally relevant circumstances for the applicants' asylum application in relation to the protection of the best interests of the children, the Court held that the issues had to be re-examined. That re-examination must also take into account whether the parents were aware of the nature and purpose of the asylum procedure and had sufficient knowledge to be able to put forward arguments, not only in relation to the situation of their family (in the general sense), but also in relation to the situation of the child who forms part of it.

*Judgment of 19 May 2022 in administrative case No eA-2421-520/2022; see also judgment of 13 April 2022 in administrative case No eA-2000-520/2022*



## Social protection

*Social protection measures must ensure that citizens can work, study and enjoy basic guarantees at an advanced age optimally and without fear for the future. The Supreme Administrative Court of Lithuania, in resolving disputes on the granting of benefits, makes an important contribution to drawing attention to existing assistance gaps, in order to further strengthen social protection and social integration.*

In a case concerning the conditions for granting annuities to former athletes, the Supreme Administrative Court of Lithuania defended the applicant's rights and emphasised the obligation of the Lithuanian Deaf Sports Committee to collect the relevant evidence necessary for the Ministry of Education, Science and Sport to take a decision on

the granting of annuities. Formal and bureaucratic exercise of public administrative functions is not in line with the principle of good administration.

*Judgment of 29 June 2022 in administrative case  
No eA-659-1047/2022*

As in previous years, the Supreme Administrative Court of Lithuania dealt with issues related to the recovery of overpayments of social insurance widows' pensions, which were mostly decided in favour of the applicants.

The applicant brought a complaint before an administrative court against a decision taken by 'Sodra' to recover an overpayment of widows' pension in excess of EUR 1 000 on the ground that she had failed to inform of her new marriage in 2007. The administrative dispute was examined and it was decided to uphold the applicant's complaint and to annul the decisions taken to recover the overpayment. According to the administrative courts, declaration that the decision to grant a widows' pension was unlawful after thirteen years was a disproportionate measure. This was particularly so in view of the fact that there was no evidence in the case file that 'Sodra' had in any way verified the data submitted earlier than 2020. The entire burden of annulment of an administrative decision could not be shifted to the pension recipients, since such a decision depended not only on their conduct but also on the specific features of the institution's activities and the administrative practice applied by the institution.

*Judgment of 2 February 2022 in administrative case No eA-11-442/2022; judgment of 26 October 2022 in administrative case No A-695-552/2022*

The Supreme Administrative Court of Lithuania protected the applicant's rights by referring the question of granting and payment of the survivor's pension back to the competent institution for a fresh examination. It was established in the case that the relevant circumstance of the applicant becoming a full-time postgraduate student was not properly assessed. The dispute in the case was whether it was justified to terminate the applicant's survivor's pension from 1 July 2020 to 31 August 2020. The applicant argued that he should have been granted a survivor's pension during the abovementioned period as well, since, after acquiring his bachelor's degree on 29 June 2020, he concluded a study contract with Kaunas University of Technology on 11 July 2020, enrolling in a master's programme, i. e. the first year of the postgraduate course of studies 'Biomedical Engineering'. According to the Court, from the date of signing the study agreement, the applicant became a full-time student at the university and, in accordance with settled case-law, became entitled to a survivor's pension.

*Judgment of 12 January 2022 in administrative case No A-545-602/2022*



## Health protection

*A high level human health protection is one of the key objectives of public interest legislation. In 2022, the Supreme Administrative Court of Lithuania heard important cases related to the protection of public and children's health. In order to ensure uniform application of European Union legislation, the Supreme Administrative Court of Lithuania has also referred cases to the Court of Justice of the European Union for preliminary rulings in this area.*

The Supreme Administrative Court of Lithuania has ruled on the liability for placing unsafe food on the market. On the basis of the interpretation provided by the Court of Justice of the European Union in this case, the Court held that the EU rules prohibiting the presence of specific *Salmonella* serotypes in fresh poultrymeat do not justify the conclusion that fresh poultrymeat contaminated with *other Salmonella* serotypes should accordingly be considered safe. Thus, the competent control authority has the power to declare fresh poultrymeat as non-compliant with food safety requirements if the detection of *Salmonella* serotypes other than those listed in Regulation (EC) No 2073/2005 in such poultrymeat leads that authority to suspect that such food is unsafe.

*Judgment of 4 July 2022 in administrative case No eA-955-575/2022*

The Supreme Administrative Court of Lithuania has heard a dispute concerning decisions of the State Consumer Rights Protection Authority, which banned a company from placing cosmetic products similar to confectionery (cake-like bath bubbles) on

the market and ordered it to remove them from the market. Following an interpretation by the Court of Justice of the European Union, the Court pointed out that, in order to classify products as products presenting a risk to consumers, it is not sufficient to establish the visual similarity of the product under inspection to a food product. It is also necessary to establish the risk to consumer safety or health posed by the confusion of the products with food. According to the interpretation of the Court of Justice of the European Union, such an assessment of non-food products must be based, in particular, on the objective characteristics of the products in question, taking into account characteristics such as the substances and composition of the non-food product, which, where appropriate, must be indicated by the person marketing the product, and on the vulnerability of the categories of persons and of the consumers likely to be exposed to products with the appearance of a food product, in particular children.

*Judgment of 7 December 2022 in administrative case No eA-953-463/2022*



## Protection of professional activities

*The issue of freedom to choose an occupation and the right to work is not new in the case law of administrative courts. Disputes concerning social guarantees for employees in the event of incapacity for work, conditions of professional activity of civil servants, as well as wage issues are frequently raised before the Supreme Administrative Court of Lithuania. However, 2022 cannot be considered as a typical year in terms of trends in this area. The Court dealt with new issues arising in exceptional cases involving unprecedented circumstances. For the first time, the Supreme Administrative Court of Lithuania has developed case-law on the right to acquire a profession of a person exercising the free movement of persons within the European Union, on the elimination of the consequences of unjustified compulsory membership in a professional self-governance association, and on the issue of the workload of judges.*

A judgment in favour of the applicant was adopted in a case concerning recognition of the professional qualification of pharmacist. Due to complex personal circumstances the applicant did not fulfil the necessary requirements for qualification as a pharmacist in a single EU Member State, as is usual, but in two EU Member States, as she was exercising a fundamental freedom of the EU, namely the free movement of persons. Following an interpretation by the Court of Justice of the European Union, the Supreme Administrative Court of Lithuania ruled that the Ministry of Health had failed to take due account of the applicant's acquired competences, which she had acquired when exercising her right to free movement within the European Union as an EU citizen. The solutions proposed by the authority (firstly, to return to the United Kingdom to complete the remaining six months of the traineeship required under United Kingdom law; and secondly, to apply to one of the institutions of science and education in

Lithuania which award professional qualification of a pharmacist and to complete the relevant study programme there from the first year of studies) were considered to be a disproportionate burden to the applicant.

*Judgment of 5 January 2022 in administrative case  
No eA-694-822/2021*

The Supreme Administrative Court of Lithuania has decided on restoration of violated individual rights related to the compulsory membership in the Chamber of Architects by judgments of an administrative court after examination of an individual constitutional complaint. The Constitutional Court stated that the compulsory membership in the Chamber of Architects was unconstitutional. Following the Constitutional Court's ruling, the Supreme Administrative Court of Lithuania examined the applicant's request to be

removed from the list of members of the Chamber of Architects, as well as to refund the membership fee paid. The Court emphasised that when applying the legal consequences of the Constitutional Court's judgment adopted after examination of an individual constitutional complaint provided for in the Constitution, the judgment of the administrative court must ensure effective, real and comprehensive elimination of the unconstitutional legal consequences - full restoration of the rights of the person that have been violated and/or fair compensation of the damages caused by an unconstitutional act. In the view of the Chamber of Judges, the applicant's rights had to be protected by ordering the Chamber of Architects to consider that the applicant was not a member of the Chamber and by awarding the applicant the amount of the fees paid by him.

*Judgment of 25 May 2022 in administrative case No eA-128-520/2022*

The Supreme Administrative Court of Lithuania heard a dispute concerning a judge's claim for payment of an unpaid part of her remuneration allegedly resulting from an increase in her workload due to vacant positions of judges in the same court. The Court pointed out that, notwithstanding the special status of judges and the nature of the functions they perform in the administration of justice as enshrined in the Constitution, there is no reason to treat the legal situation of judges in terms of the amount of hours of work and rest as being different from that laid down in international conventions, European Union instruments and the national legislation adopted in implementation of

those instruments, which establishes the working time in the private and public sectors. A judge's normal working time, expressed in units of time, cannot be unlimited and must be understood as a standard of five working days (40 hours of work) with two days of rest per week. However, it is not only the increase in the workload of a particular judge in general, but also the ratio of that workload to that of a judge of the same court system and court of the same level, that is important in deciding on the right of a judge to fair remuneration, thus ensuring not only that the judge's workload is balanced, but also that judges of the same court system and court of the same level are not discriminated against and not privileged in the payment of their salaries. It was established in the case that the workload in the district court in which the judge was serving was lower than the average workload of judges in all district courts in the same year. Account has also been taken of the totality of legal norms and organisational practices which make it possible to harmonise the workload of judges, as well as the payment of judges for overtime work and for work on rest days and public holidays, where such work is allocated. For those reasons, it was decided that the applicant's workload as a judge in the present case was not such as to warrant additional remuneration.

*Judgment of the extended chamber of 28 December 2022 in administrative case No eA-595-575/2022*



## Environmental protection

*One of the main objectives of environmental protection is to preserve the quality of the environment, prevent pollution, protect human health and ensure rational use of natural resources. Problems related to the implementation of these objectives are also brought to the Supreme Administrative Court of Lithuania in the form of court disputes, which in 2022 in the field of environmental protection mostly dealt with disputes related to the issues of state control of environmental protection and rational use and protection of natural resources.*

The Supreme Administrative Court of Lithuania stated that the applicant UAB Ekologistika, in order to continue its desired waste treatment and storage activities, was obliged to submit an application for amendment of the pollution permit on its own initiative to the authority authorised by the Minister for the Environment. It was pointed out that, as a result of the fire at the production premises of UAB Ekologistika, the conditions of operation of the

equipment and of the waste treatment and storage activities performed using the waste management equipment had changed, so that the storage and production activities could no longer be carried out under the conditions and in the locations provided for in the existing pollution permit.

*Judgment of 9 November 2022 in administrative case No A-435-525/2022*

In the field of waste prevention and management, the Supreme Administrative Court of Lithuania has dealt with the question of annulment of certificates issued by a licensed organisation to producers and importers proving the management of packaging waste, which were issued on the basis of documents that were found to be unlawful. It was held that the Department of Environmental Protection was entitled to declare those certificates unlawful. However, certain inconsistencies in the data on the basis of which the contested decision of the defendant was adopted were established in the case, and that justified the annulment of the decision, not in its entirety, but only in part. Moreover, since it was found that the certificates issued by the applicant to producers and importers on the basis of one of the documents proving the management of waste which was partially declared unlawful, were annulled in the order of sequence for that amount of waste, that part of the defendant's decision was amended by stating that those certificates should be declared to have been issued unlawfully and should be annulled proportionately.

*Judgment of the extended chamber of 23 November 2022 in administrative case No eA-927-525/2022*

In a case in the field of state control of environmental protection, the Supreme Administrative Court of Lithuania examined whether the instructions of environmental protection officers to the company Raguvilė, on whose territory the

ash and slag generated after waste incineration at Klaipėda power plant were brought from the landfill and stored, were lawful and justified. The Court upheld the legitimacy of the orders imposed on the applicant UAB Raguvilė, which obliged the applicant to remove 1 455.44 tonnes of ash and slag from the site of UAB Raguvilė to undertakings authorised to use or dispose of the ash and slag or to put in place measures to ensure compliance with the environmental protection legislation when storing the ash-slag on the site of UAB Raguvilė.

*Judgment of 9 March 2022 in administrative case No eA-329-789/2022*

The Supreme Administrative Court of Lithuania has also ruled on compensation for damage caused to the environment by the unlawful felling of trees following an unlawful felling permit. The Court found that the Kaunas City Municipality Administration had unlawfully, exceeding its power and the functions assigned to it by legislation, issued the permit on the basis of which the trees were felled. It was established that the unlawful felling of the trees caused damage to the environment in the amount of EUR 5 868.15, which was ordered to be paid by the Kaunas City Municipality Administration to the Department of Environmental Protection.

*Judgment of 26 October 2022 in administrative case No eA-976-789/2022*



## Spatial planning and construction

*Disputes over spatial planning and construction are usually complex and therefore often involve balancing competing values. The Supreme Administrative Court of Lithuania emphasises that, in order to protect the public interest, public authorities may apply sanctions provided for in the law to encourage compliance with legislative requirements and elimination of the consequences of construction which violate legal requirements. However, such measures must be implemented in accordance with the principle of proportionality and with the legitimate interests of residents and businesses.*

The Supreme Administrative Court of Lithuania has ruled on the right of an authority exercising state supervision over construction to apply to the court to annul decisions on the assignment of a building for residential use after the builder has sold the building (apartments) to other persons. The Court emphasised that the change of the use of the disputed premises and the building from residential to non-residential would have (negative) consequences for the purchasers of the premises (apartments). However, in its claims before the court, the authority exercising state supervision over construction did not take this into account and did not seek to amend the sale and purchase transactions of the apartments and to compensate the owners for the resulting losses. In these circumstances, it was considered that the application for the protection of the public interest did not comply with the consistent case-law of the administrative courts, which requires that an application to the courts should not be an end in itself.

*Judgment of the extended chamber of 30 March 2022 in administrative case No eA-989-502/2022*

The Supreme Administrative Court of Lithuania decided on a dispute regarding the requirement to extend the deadline for compliance with a mandatory order, which obliged the applicant to eliminate the consequences of an unauthorised construction. The Court stressed that neither the Law on State Supervision of Spatial Planning and Construction, nor any other legislation provides for the suspension of the deadlines for the execution of a mandatory order in the event of an appeal against its lawfulness. The initiation of proceedings before a court of general jurisdiction concerning the lawfulness of a mandatory order does not, in itself, suspend the deadline for compliance with the mandatory order. The applicant applied for an extension of the deadline after the expiry of the deadline for compliance and the law does not provide for the possibility to extend it.

*Judgment of 28 September 2022 in administrative case No eA-818-624/2022*



## Taxation

*Taxation of legal and natural persons is an area of legal relations where, in the event of disputes, it is necessary not only to take into account the national legal framework, but also to ensure the effectiveness of European Union rules in order to minimise the differences in taxation between Member States. During the year under review, the Supreme Administrative Court of Lithuania provided significant interpretations on the taxpayer's obligations in the calculation and payment of corporation tax, as well as on the issues of value added tax and excise duties.*

The Supreme Administrative Court of Lithuania has stated that the possibility for a corporate taxpayer to deduct (carry forward) losses from the previous tax period and thus reduce the taxable profit is a right granted by the legislator, therefore, the burden of proving that the conditions for exercising this right exist lies with the taxpayer. It must be able to justify the deductions (the amount of the deductions) in the tax period in which the right is exercised, and for a reasonable period of time thereafter. In turn, the tax authority may, first, require the taxpayer to provide documentation to substantiate the loss (its amount) deducted (carried forward) for the tax period and, second, verify the correctness and justification of the amounts by which the taxable profit has been reduced for the tax period under examination.

*Judgment of the extended chamber of 6 April 2022 in administrative case No eA-158-575/2022*

The Supreme Administrative Court of Lithuania, having referred to the Court of Justice of the European Union for a preliminary ruling, has clarified that a creditor cannot be accused of being involved in a VAT fraudulent transaction in cases where, after a failed auction of property in the presence of a bailiff, the creditor acquires the debtor's property in the knowledge, or with

reasonable grounds to know, that the debtor will not be able to pay VAT. Such behaviour is justified by the desire to recover the claim or part of the claim and is normal practice in the course of economic activity. The knowledge by the creditor who has purchased the debtor's property of the seller's financial difficulties is a circumstance inherent in auction sales which is not in itself sufficient for the tax authorities to refuse the right to deduct VAT.

*Judgment of the extended chamber of 30 November 2022 in administrative case No eA-958-968/2022*

The Supreme Administrative Court of Lithuania, after receiving a reply from the Court of Justice of the European Union, has ruled that the obligation to pay excise duty and import VAT on excise goods illegally imported into the territory of the country remains even if these goods are confiscated and later destroyed. With the entry into force of the new Union Customs Code, no customs duty is payable in the event of confiscation of such goods, but the obligation to pay excise duty and import VAT remains unchanged.

*Judgment of 15 June 2022 in administrative case No A-935-442/2022*



## Competition

*National and EU rules prohibit agreements between competitors and abuse of dominant position, control mergers and supervise public sector compliance with competition rules. In 2022, the Supreme Administrative Court of Lithuania assessed the issues of delimitation of the competence between the Competition Council and the Communications Regulatory Authority, and decided on the issues of liability of a head of an undertaking that committed a competition infringement, as well as actions of an employee of such an undertaking.*

The Supreme Administrative Court of Lithuania has stated that the Communications Regulatory Authority, while planning, coordinating and managing electronic communications resources, is obliged to assess the potential impact of its decisions on competition, but the Competition Council is entrusted the supervision of competition in the field of electronic communications which it exercises by carrying out investigations provided for in the Law on Competition. The Communications Regulatory Authority cannot take over this function assigned by law to the Competition Council. Therefore, the Communications Regulatory Authority was not obliged to provide separate reasoning as to whether the decision to grant authorisation to transfer radio frequencies (channels) complied with the Law on Competition.

*Judgment of 19 October 2022 in administrative case No eA-521-821/2022*

The fact that the head of a company authorises other persons to participate in the company's business activities does not eliminate his or her

liability for infringements of competition law committed by the undertaking, as it is the head of the company who must ensure that the company does not commit such infringements. The Supreme Administrative Court of Lithuania has held that a sanction may be imposed on the head of an undertaking even if he or she does not directly (actively) contribute to the infringement of law.

*Judgment of 17 February 2022 in administrative case No eA-105-822/2022*

The Supreme Administrative Court of Lithuania has clarified that the actions of a company's employee in committing an infringement of competition law are attributable to the company, and therefore there is no requirement to prove that the owner or the manager of the legal person knew about the infringement of competition law or encouraged it.

*Judgment of 2 February 2022 in administrative case No eA-1697-822/2021*



## Consumer protection

*The right of consumers to receive fair and comprehensive information about goods and services is a key value protected in administrative courts. In 2022, the Supreme Administrative Court of Lithuania issued several important judgments strengthening the protection of consumer interests.*

The Supreme Administrative Court of Lithuania has ruled that a pharmacy chain's advertising of discounts for senior citizens violates the law. An advertisement containing audio and textual information relating to essential conditions that contradict each other and mislead its consumers as to the true substance of the offer, is not allowed. It has been established that the target group of consumers in this case, senior citizens, may have overlooked or failed to read the essential information due to the size of letters or due to timing and therefore may have been misled.

*Judgment of the extended chamber of 17 March 2022 in administrative case No eA-1057-822/2022*

The Supreme Administrative Court of Lithuania has stated that the law prohibits not only the advertising of tobacco, but also the advertising of related products, such as electronic cigarettes and their refills. In the case, it was held that the company, by posting information about the above-mentioned products on its website and social networking accounts, encouraged consumers to purchase and/or consume them, and therefore disseminated prohibited advertising about these goods.

*Judgment of 27 October 2022 in administrative case No eA-362-822/2022*

The Supreme Administrative Court of Lithuania ruled that the same prohibitions (e.g. the prohibition to hide the sender on whose behalf the information is being sent) apply to text messages sent for direct marketing purposes by e-mail as well as to SMS messages sent by mobile phone. SMS messages do not have to specify the name of the sender, a legal person, but the commercial information contained in the messages must be such as to allow to understand, in the light of the circumstances of the particular situation, on behalf of which legal person the information is sent. In the present case, it was acknowledged that the brand name 'BITĖ' in the SMS message sent to the long-term customer provided sufficient information to identify the sender.

*Judgment of 9 February 2022 in administrative case No eA-223-525/2022*



## Personal data protection

*The protection of personal data is an area whose relevance grows every year along with public awareness and technological developments. In 2022, when examining cases in the field of legal protection of personal data, the Supreme Administrative Court of Lithuania sought to ensure an appropriate balance between the public's right to know, the necessity to disclose certain information and the need to protect personal data.*

The judgment of the Supreme Administrative Court of Lithuania, which stated that the provisions of the General Data Protection Regulation had not been violated when the portal 'Atvira Klaipėda' published information about the family relationship between the sole shareholder of the company that won a public procurement and an employee of the municipality-managed company that organised the public procurement, has attracted considerable public interest. In this case, the Court carefully weighed the legitimate interest of the applicant (i.e., freedom of expression and freedom of information), the necessity of the extent of information published in order to contribute to a debate of general interest regarding the proper use of public finances, and, finally, the balance of interests to be struck in situations of this kind. The Court emphasised that the receipt and use of public funds falls within the scope of the general public interest and that, where there are data or suspicions that there may have been irregularities in the procedures of organisation or conduct of public procurement, public interest in such activities is justified.

*Judgment of the extended chamber of 3 February 2022 in administrative case No eA-51-822/2022*

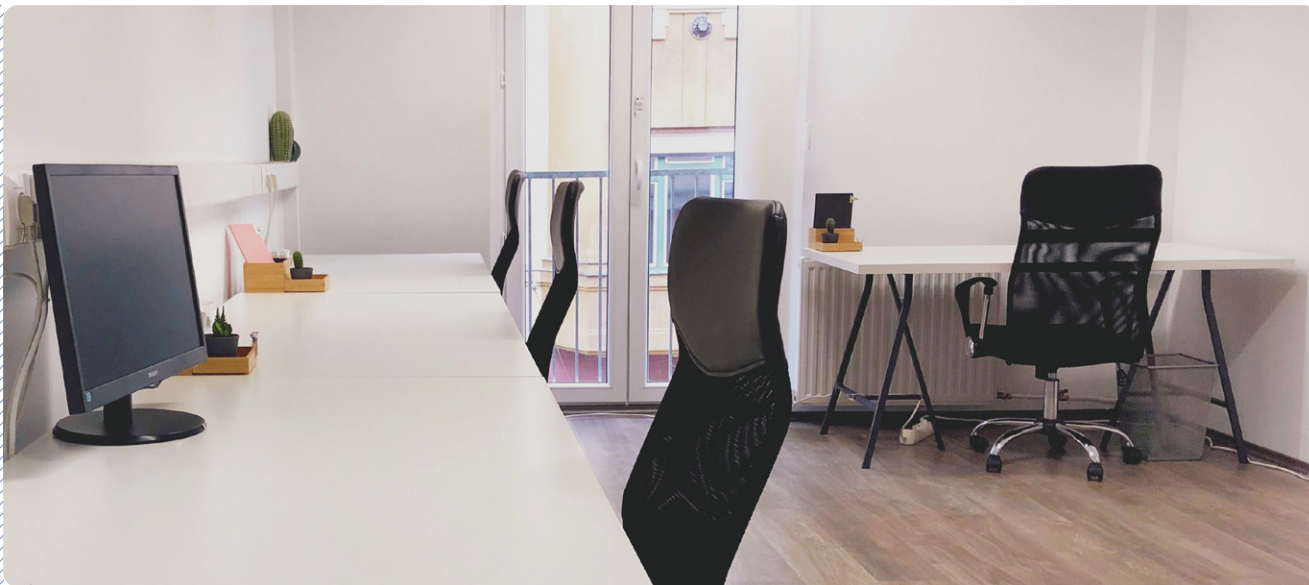
The Supreme Administrative Court of Lithuania has recognised that attorneys have the right to receive data processed in the Real Estate Register

that is necessary for the provision of legal services, i.e., both for legal consultations (advice on legal issues), preparation of legal documents, representation in legal matters, defence and representation in court proceedings.

*Judgment of 12 October 2022 in administrative case No eA-649-968/2022*

The Supreme Administrative Court of Lithuania has stated that it is unlawful to collect evidence of the reason for non-attendance at a nursery school (documents received from the parents' employer regarding holidays, work schedule, etc.) in order to calculate the fee payable for the child's meals at the nursery school. It has been established that the purpose of the processing of personal data, i.e., to calculate the fee for meals of the child in the nursery, can be achieved by other means without collecting excessive data, i.e., it is sufficient to collect only the personal data necessary to identify the child and to identify the reason for non-attendance, without requesting additional data to substantiate the reason for the absence rather than to identify that reason.

*Judgment of the extended chamber of 21 December 2021 in administrative case No A-3301-968/2022*



## Covid-19

*The 2020 health crisis was also reflected in the jurisprudence of the Supreme Administrative Court of Lithuania. Like many courts in the European Union during this period, the Supreme Administrative Court of Lithuania has dealt with issues related to the consequences of the COVID-19 pandemic in the field of State aid and other areas.*

The Supreme Administrative Court of Lithuania has dealt with issues of State aid related to the outbreak of Covid-19 under the measure “Interest Compensation for Small and Medium-sized Enterprises”. Taking into account the development of the regulatory framework for the measure, the Court stated that the conditions for interest compensation do not necessarily have to be met by the entire loan agreement, but that the assessment

of the loan agreement must take into account the individual parts of the loan agreement, with the interest being compensated for that part of the loan which satisfies the established compensation conditions.

*Judgment of 26 October 2022 in administrative case No eA-653-442/2022*

In a dispute concerning the lawfulness of reduction of State aid for cattle, the Supreme Administrative Court of Lithuania ruled on the application of the European Commission's Communication on State aid measures to support the economy in response to the outbreak of Covid-19, and the application of national legislation. The Court noted that the national legislation had been authorised by the European Commission and the European Commission had adopted a legally binding European Union legal act addressed to the Republic of Lithuania, i.e., a decision not to raise objections in relation to State aid, thus there was no legal basis for disregarding the national legislation and for directly applying the provisions of the Communication, which should be considered as soft law.

*Judgment of 2 May 2022 in administrative case No eA-318-575/2022*

In a case concerning the granting of a benefit to self-employed persons where the person did not actually engage in self-employment before the date of the declaration of quarantine (16 March 2020), the Supreme Administrative Court of Lithuania clarified that the legislator's intention was to assist self-employed persons affected by the quarantine who had been self-employed for at least 3 months before the date of the declaration of quarantine,

and who had also been self-employed until the date of the declaration of an emergency by the Government of the Republic of Lithuania and the date of the declaration of quarantine. However, in the case at hand, it was established that there were exceptional circumstances in which the applicant's self-employed activity ceased not because she sought to end her self-employed activity, but because of objective reasons, a planned operation and temporary incapacity for work due to illness. In the light of the above, the competent authority was obliged to re-examine the applicant's claim for the benefit.

*Judgment of 29 June 2022 in administrative case No A-322-822/2022*

Among the cases in this category in 2002, the Court also had to deal with claims by persons in detention related to the management of the Covid-19 pandemic. In administrative proceedings the applicants claimed compensation for non-material damage as a result of allegedly unlawful acts/omissions of detention facilities in failing to adequately control and ensure that the spread of the Covid-19 virus did not occur in detention centres.

*Judgment of 27 April 2022 in administrative case No TA-158-756/2022; Judgment of 14 September 2022 in administrative case No TA-659-442/2022*



## Civil service

*In 2022, the Supreme Administrative Court of Lithuania developed administrative case-law in disputes arising from civil service legal relations, as well as closely related disputes concerning adjustment of public and private interests in the civil service. Significant new interpretations have been provided in the areas of application of the principles of non-discrimination and equal treatment, assessment of the content of legal bases for dismissal of civil servants, procedures for suspension and dismissal of civil servants, lawfulness of data used in an investigation of misconduct, and others.*

The Supreme Administrative Court of Lithuania stated that the Customs Department had the right to establish different position categories of heads of customs posts. The mere fact that two position descriptions were in force at the same time, which laid down different categories of this position, did not in itself infringe the principles of non-discrimination and equal treatment, since heads of posts could take up higher category positions of heads of posts under the same conditions, that is to say, following a competition procedure or an (extra-)ordinary evaluation.

*Judgment of the extended chamber of 7 April 2022 in administrative case No eA-992-789/2022*

The Supreme Administrative Court of Lithuania has ruled that the Minister for Defence was justified in adopting an order dismissing a soldier serving in the North Atlantic Treaty Organisation (NATO) mission in Afghanistan from professional military service for being drunk during his service. As regards the procedures for determining a serviceman's drunkenness, the Chamber of Judges clarified that the national procedure for checking alcohol consumption and drunkenness was not applicable in the legal situation at issue, since the applicant's place of service in an international operation was subject to a specific standard operating procedure for the military unit, established by the commander of the international operation military unit, which laid down zero tolerance of alcohol.

*Judgment of the extended chamber of 23 December 2022 in administrative case No eA-4008-415/2022*

When considering the question of the use of information gathered in the course of criminal intelligence in the investigation of official misconduct for acts that have elements of a corruption offence, the Supreme Administrative Court of Lithuania did not find any violation of the applicant's rights and (or) legitimate interests. All criminal intelligence information was declassified, the applicant had access to it, had the opportunity to comment on it and to challenge the validity of the data assessment. It was established that this information was lawfully used in the investigation of the applicant's official misconduct for acts and omissions which had elements of corruption offences.

*Judgment of 1 June 2022 in administrative case No eA-2300-415/2022*

The Supreme Administrative Court of Lithuania found that a civil servant had been unjustifiably suspended from her duties until the conclusion of the criminal proceedings, when she was suspected of criminal offences. It was established that the suspension was based on legislation declared unconstitutional by the Constitutional Court. Moreover, the contested order was adopted without taking into account the applicant's individual situation, without ensuring that she could benefit from social protection granted by the State in the event of unemployment, as provided for by law, and without ensuring that the applicant's minimum socially acceptable needs were met.

*Judgment of 15 June 2022 in administrative case No eA-1932-552/2022*

The Supreme Administrative Court of Lithuania stated that the former Health Minister violated the Law on the Adjustment of Public and Private Interests in the Civil Service by failing to inform about the conflict of interest and by failing to exclude himself from the decision-making process when allocating funds to the unit of the Hospital of Lithuanian University of Health Sciences Kaunas Clinics, in which his spouse worked. The circumstances established in the case have confirmed that the actions of the applicant (the Minister) in signing the contested orders were not merely related to his spouse's workplace as an institution providing certain personal health care services in the general sense, but specifically to a structural unit thereof, where, during the period at issue, the applicant's spouse held a post directly related to the acquisition of the new advanced equipment, which was acquired under the contested orders signed by the applicant, and the acquisition of which was closely linked to the possibilities of work and training for the doctors who use such equipment in their professional activities, i.e. it entailed non-financial benefits for those doctors, including the applicant's spouse.

*Judgment of the extended chamber of 10 May 2022  
in administrative case No A-1423-756/2022*





© 2023 SUPREME ADMINISTRATIVE  
COURT OF LITHUANIA

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



CAREER  
AT THE COURT