



**Seminar organized by
the Supreme Court of Estonia and ACA-Europe**

“Due process”

Tallinn, 18-19 October 2018

Answers to questionnaire: Lithuania



Seminar co-funded by the «Justice » program of the European Union



**ANSWERS TO THE QUESTIONNAIRE BY
THE SUPREME ADMINISTRATIVE COURT OF LITHUANIA**

2 Zygimantu st., LT-01102 Vilnius, Lithuania,

tel. + 370 5 2791005, fax. +370 5 268 58 75, e-mail: info@lvat.lt

Due Process

Questionnaire for the ACA Seminar in Tallinn, 26-27 April 2018

This questionnaire focuses on the limiting of a person's procedural rights based on the principle of procedural economy. First and foremost, it seeks to answer the questions whether Member States have regulated the simplification of procedure in resolving certain types of administrative disputes, and where is the line drawn between effective court procedure and the protection of a person's procedural rights.

The principle of effective judicial protection is a general principle of European Union law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and which has also been reaffirmed by Article 47 of the Charter of fundamental rights of the European Union (joined cases C-402/05 P and C-415/05 P: Kadi, p 335; C-432/05: Unibet, p 37, and the case law referenced therein). The Court of Justice of the European Union (CJEU) has stated that the principle of effective judicial protection laid down in Article 47 of the Charter comprises various elements; in particular, the rights of the defence, the principle of equality of arms, the right of access to a tribunal and the right to be advised, defended and represented (C-199/11: European Union v. Otis NV and others, p 48).

On the other hand, it is the CJEU's settled case law that fundamental rights, such as respect for the rights of the defence, do not constitute unfettered prerogatives and may be restricted, provided that the restrictions in fact correspond to objectives of general interest pursued by the measure in question and that they do not involve, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed (C-166/13: Mukarubega, p 53, and the case law referenced therein). In addition, the CJEU has stated that the principle of effective judicial protection does not only require that everyone should be able to exercise their right of access to court, but also that the administration of justice should be effective (F-3/11: Marcuccio, p 53). For instance, according to the CJEU, as long as the person can exercise their right to be heard, Article 47 of the Charter does not require an oral hearing in each case (see, for example, C-239/12 P: Abdulrahim, p 42; joined cases T-589/14 and T-772/14: Musso, p 59).

It follows from Article 52 subsection 3 of the Charter and the explanations relating to Article 47, that when defining the meaning and scope of the principle of effective judicial protection, it is also important to look at Article 6 of the European Convention for the Protection of

Human Rights and the case law of the European Court of Human Rights (ECHR) on the topic.

According to Article 6 subsection 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the principle of a fair trial also includes the format of hearing a matter. According to the case law of the ECHR, a court case generally has to be reviewed in an oral hearing by at least one court instance; however, Member States can implement simplified proceedings for smaller and less complex disputes. This can serve the interests of the parties by facilitating access to justice, by reducing costs related to the proceedings and by accelerating the resolution of disputes.

*According to ECHR case law, simplified proceedings can generally mean written proceedings, except in cases when the court deems an oral hearing to be necessary or if a party to the proceedings requests a hearing (in which case the request may be refused by the court) (see *Pönka vs Estonia*, No. 64160/11, p 30; on the obligation to hold a hearing see also: *Göç v. Turkey [Grand Chamber]*, No. 36590/97, p 47, ECHR 2002-V, and the case law referenced therein; *Miller v. Sweden*, No. 55853/00, p 29, February 8, 2005). ECHR has accepted exceptional circumstances for foregoing an oral hearing in cases where the proceedings concerned exclusively legal or highly technical questions, and which by their nature are not complex (see *Koottummel v. Austria*, No. 49616/06, p 19, December 10, 2009, and the case law referenced therein, *Allan Jacobsson v. Sweden (no. 2)*, p 49; *Valová, Slezák and Slezák v. Slovakia*, p-s 65-68, *Varela Assalino v. Portugal (dec.)*; *Speil v. Austria (dec.)*, *Schuler-Zraggen v. Switzerland*, p 58; *Döry v. Sweden*, No. 28394/95, p 41; and contrast *Salomonsson v. Sweden*, p-s 39-40; *Jussila v. Finland [GC]*, No. 73053/01, p-s 41–42 and 47–48). A case can also be heard in simplified proceedings or written proceedings if the case raises no questions of fact or law which cannot be adequately resolved on the basis of the case file and the parties' written observations (see *Döry v. Sweden*, p 37) or if written proceedings are more effective than oral ones (*Jussila v. Finland [GC]*, p-s 41–42 and 47–48).*

Simplified proceedings in the context of this questionnaire mean special arrangements in administrative court procedure (a type of procedure) that allow for the court proceedings to be carried out in a simpler or faster manner than usual (shortened proceedings, accelerated proceedings, simple proceedings or any other special arrangements for resolving an administrative case in administrative court). Simplified proceedings, their prerequisites and nature are dealt with in part A of this questionnaire. It must be noted that in part A of the questionnaire, simplified proceedings do not include written proceedings without any other simplification, nor limitations of the right to appeal. The possibilities for resolving administrative cases in written proceedings will be dealt with in part B of the questionnaire, which also briefly touches upon the possibility of conducting a hearing via videoconferencing.

If simplified proceedings do not exist as a separate type of procedure in administrative courts in your country, when answering please do consider whether there are other, specific possibilities to make procedures more effective in certain ways (for example, exceptions in taking the minutes, procedural deadlines, format requirements, delivering the procedural documents, pre-trial proceedings, the formatting of a decision, the court panel, holding an oral hearing, etc.).

Part A

Efficiency of Court Proceedings (at the Expense of Procedural Guarantees)

1. Simplified proceedings

Does your administrative procedural law provide for the possibility of resolving administrative cases in simplified proceedings: on the level of the highest administrative court and/or in lower administrative courts? (YES/NO)

- If NO, then are there any other possibilities for simplifying administrative court procedures (are there exceptions in, for example, taking the minutes, procedural deadlines, format requirements, delivering the procedural documents, pre-trial proceedings, the formatting of a decision, the court panel, holding an oral hearing, etc.)? Have there been discussions about the creation of simplified proceedings as a separate type of procedure? What are the main positions on the issue?
- If **YES**, please answer questions 2–4.

There is a pilot judgment procedure established in the Law on Administrative Proceedings since 1 July 2016. Once the pilot judgment (decision) is adopted, other similar uniform cases may be resolved in simplified proceedings according to the pilot judgment.

It could also be noted that there are some other types of cases which are decided within shorter procedural deadlines. These include cases concerning elections and referendums, legal status of aliens, breach of oath by a member of a municipal council, rulings regarding interim measures and other.

2. Prerequisites of simplified proceedings

2.1 To hear a case in simplified proceedings, is the prerequisite:

- a. that the dispute is in a specific area of law? Please specify which areas (for example, minor traffic violations, administrative fees, aliens' cases, extradition etc.);
- b. a minor infringement? Please specify criteria for which infringements are considered minor (for example, is the breach of law in question of a low priority or is the amount of the claim small; is it characterised by a monetary limit and if so, what is it?). If possible, please submit the legal definition of a minor infringement or a small claim, as well as examples or definitions from case law;
- c. that the solution to the case is clear and obvious;
- d. something else (please specify)?

Pilot judgment procedure is available when there are many very similar cases (in terms of both facts and law) which originate due to an administrative regulatory act being held infringing the Constitution or laws. Usually that would be after the Constitutional Court decides that a particular law infringes the Constitution, e.g. during the economic crisis in 2009-2010 there were laws adopted reducing old-age pensions and salaries of civil servants and judges which were later to an extent found to be unconstitutional by the Constitutional Court. Because of that there were thousands of similar cases claiming the unlawfully unpaid pensions or salaries. However, it should be noted that the pilot judgment proceedings have

been established in the Law on Administrative Proceedings of the Republic of Lithuania only since 1 July 2016, and have not been applied so far.

Pilot judgment proceedings may be applied if there are more than 20 uniform cases pending in administrative courts.

Uniform cases are heard in simplified proceedings only if the pilot case is heard in the Supreme Administrative Court of Lithuania (i. e. if it is heard as a pilot case in both regional administrative court and the Supreme Administrative Court of Lithuania or if it is heard as an ordinary case in a regional administrative court but is heard as a pilot case in the Supreme Administrative Court of Lithuania).

2.2 Have the possibilities of hearing a case in simplified proceedings been exhaustively defined in law or is it case law instead that has a decisive role in whether it is used (for example, a discretionary decision)?

The possibility of using pilot-judgment proceedings has been exhaustively defined in law (the Law on Administrative Proceedings of the Republic of Lithuania).

2.3 Can the court use simplified proceedings regardless of whether the parties to the proceedings agree to it?

Yes.

2.4 Can a person appeal the implementation of simplified proceedings separately from the final court decision?

Once a pilot-judgment procedure is started (one case is examined as the pilot case), other uniform cases are suspended. A court's decision to suspend examination of a uniform case may be appealed against but only on the ground that the case does not fulfil the criteria of a uniform case according to the law.

2.5 Can simplified proceedings be carried over into general procedure and vice versa?

After the pilot judgement is adopted, other uniform cases are heard in simplified proceedings. However, the court can decide to hear a case (that falls under the category of uniform cases) in ordinary proceedings. If a uniform case had a bench of judges assigned to it, once the case is reopened, on the proposal of the bench of judges the President of the court wherein the case is heard may assign one judge to hear the case.

3. Nature of simplified proceedings

3.1 Which rules of administrative court procedure are mandatory in simplified proceedings (for example, hearing the parties, general principles of administrative court procedure, etc.)?

The pilot case is heard by a panel of three judges in regional administrative court and by a five-judge bench or the Full Court in the Supreme Administrative Court of

Lithuania (the latter rule departs from the general rule as ordinary cases are heard by three judges in the Supreme Administrative Court of Lithuania).

Administrative courts take measures to hear the pilot case as promptly as possible. Other uniform cases are suspended while the pilot case is being heard.

The uniform cases that are decided after the pilot judgment is adopted, may be examined in written proceedings by one judge (both in a regional administrative court and in the Supreme Administrative Court of Lithuania). However, the case is heard in an oral court hearing if a party to the case so requests within seven working days after the party to the case is informed that the case will be heard in simplified proceedings. The court can decide to hear the case in oral proceedings at any time.

3.2 Which general rules of administrative court procedure do not need to be followed in simplified proceedings (are there exceptions, for example, in taking the minutes, procedural deadlines, format requirements, delivering the procedural documents, pre-trial proceedings, the formatting of a decision, the court panel, holding an oral hearing, public announcement etc.)?

A court decision in simplified proceedings (in uniform cases that are decided after the pilot judgment is adopted) consists only of the introductory and operative parts, as well as a short reasoning.

Another specificity concerns a case when the outcome of the pilot judgment is to dismiss the action. In that case the parties to the uniform cases are informed about the outcome of the case, and that their case would be filed and no further actions would be taken unless they submit a request to reopen the examination of their case. If such a request is submitted within one month after receiving the court note regarding the outcome of the case in the pilot judgement, examination of that case is reopened.

3.3 Are there differences in using simplified proceedings across the court instances?

No. However, the simplified proceedings apply only when the pilot-case is heard by the Supreme Administrative Court of Lithuania (i.e. if the pilot-judgment proceedings are applied when the case is already being heard on appeal in the Supreme Administrative Court of Lithuania or when the pilot-judgment proceedings are applied in the first instance court (regional administrative court) but the case is then appealed against and heard in the Supreme Administrative Court of Lithuania).

3.4 What are the limitations on the right to appeal in case of simplified proceedings? Can an administrative case that is resolved in simplified proceedings be appealed up to the highest instance? If there are differences compared to general procedure, please describe how a case for which simplified proceedings are used moves through the court system (for example, the appeal might be submitted directly to the highest court, etc.).

There are no limitations to appeal against a decision of the first instance court in a case that is heard in simplified proceedings. Such decision can be appealed against just like any other case.

3.5 In simplified proceedings, can a court issue a judgment without the statement of reasons? (YES/NO)

- If NO, then why is such a possibility not provided?

As mentioned above, a court decision in simplified proceedings (in uniform cases that are decided after the pilot judgment is adopted) consists of the introductory and operative parts, as well as a short reasoning. According to the jurisprudence of the Constitutional Court of the Republic of Lithuania (e. g. Constitutional Court decision of 16 January 2006), each court decision must be based on legal reasoning; the legal reasoning must be rational – it must contain arguments that are sufficient to substantiate the court decision; a court decision should not have omission of arguments, non-specified circumstances that play a role in adopting a just court decision.

- If YES, then:
 - a. what kind of information does that judgment have to contain?
 - b. do the parties to the proceedings have the right to demand for the judgment to be supplemented with the statement of reasons?

4. Simplified proceedings in court practice

4.1 What is the share of cases resolved in simplified proceedings out of all resolved cases? (%)

So far, the pilot-judgment procedure has not been applied, as it has only been established in the Law on Administrative Proceedings of the Republic of Lithuania since 1 July 2016.

4.2 Has the case law in your country pointed to any problems related to simplified proceedings, and if it has, what kinds of problems were they? Please give up to 3 examples.

-/-

Part B

Right to Public Hearing

1. Are there any types of administrative cases or any court instances in which only oral proceedings are allowed (i.e. written proceedings are prohibited)?

Cases are heard in oral proceedings in the first instance court (regional administrative court), except of those cases when the parties to the case do not appear in the court hearing, and they have been properly informed about the date and the place of the court hearing. A case can also be heard in written proceedings in the first instance court when one of the parties requests that, and the other parties to the case do not object within a term set by the court. When a case is heard in oral proceedings, on request by one of the parties or by the court's initiative and with agreement of all the parties to the case the court may decide to continue examining the case in written proceedings.

There are certain types of cases that are heard in the Supreme Administrative Court of Lithuania at first instance, e. g. cases concerning lawfulness of normative administrative acts (e. g. orders of ministers), cases concerning breach of oath by a member of the municipal

council. These cases are heard in oral proceedings. The same exceptions when these cases are heard in written proceedings concerning failure to appear in the court hearing, request by a party (or the court's initiative) to examine the case in written proceedings with agreement of all the parties to the case apply when a case is heard in the Supreme Administrative Court of Lithuania at first instance.

2. Under which circumstances may cases be resolved in written proceedings? Can the justification be, for example:

- a. exclusively legal questions;
- b. highly technical questions;
- c. the case raises no questions of fact or law that cannot be adequately resolved on the basis of the case file and the parties' written observations;
- d. other bases, for example at the request of one of the parties to the proceedings?

As described above, cases are usually heard in oral court hearings when they are heard at first instance. A different rule applies on appeal (in the Supreme Administrative Court of Lithuania), where the cases are as a rule examined in written proceedings, except when the court decides that it is necessary to hear a case in oral proceedings. A party to the case may request the Supreme Administrative Court of Lithuania to hear the case in oral proceedings but the Court does not have to approve this request. The reasons that the Court takes into account in practice in deciding whether to examine the case in oral proceedings usually relate to complexity of the case (both legal and factual) and the need to hear more explanations, clarifications from the parties to the case.

3. Can oral proceedings also be carried out via videoconferencing (i.e. in a manner where either a party to the proceedings or their representative or counsel can be in a different place during the hearing and carry out procedural acts in real time, through an audiovisual transmission)? (**YES/NO**)

- If NO, then has the creation of such a possibility been discussed? What were the main positions on the issue?
- If YES, then:
 - a. what are the legal limitations (for example, in which kinds of cases is it not permitted)?

There are no limitations provided in national law regarding types of cases. A participant to the case may submit a request to the court to be heard via videoconferencing, and the court adopts a decision in that regard. Oral proceedings via videoconferencing may also be initiated by the court.

The Law on Administrative Proceedings of the Republic of Lithuania states that a reliable identification of the participants of the case must be ascertained, as well as objectiveness of explanations, testimonies, questions and requests.

- b. have the risks of videoconferencing and the protection of a person's rights been discussed? What were the main positions on the issue?

-

4. Can oral proceedings also be carried out outside the court-room (in prison, hospital etc)? In which circumstances is this possible?

Oral court proceedings can take place outside the court-room if it is easier to examine the case elsewhere or when the court costs can be saved compared to hearing the case in the court-room.

That could be the case, e. g. when a participant to the case may not attend a court hearing (e. g. due to health reasons) and it is not possible to hear them via videoconference, or when it is necessary to assess immovable evidence, or when the participants to the case are so numerous that the court-room is too small to seat them.

Thank you!