



Seminar organized by the Supreme Administrative Court of  
the Czech Republic and ACA-Europe

Limits of judicial guarantee

Brno, 9 September 2019

Answers to questionnaire: Lithuania



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## ACA-Europe Seminar on Measures to Facilitate and Restrict Access to Administrative Courts

September 9, 2019

Nejvyšší správní soud Brno  
(Supreme Administrative Court Brno)

### *Questionnaire*

#### **Introduction:**

The role of the administrative judiciary determines the conditions under which administrative courts work. These include the limits on the right of access to these courts, as well as the rules on such cases potentially progressing further within the judicial hierarchy. It is an area defined by an ongoing tension between two principles: the right to a fair trial that would speak in favour of opening the gates of judicial review, with the efficiency of judicial review pulling in exactly the other direction, namely of limiting access to administrative courts, in particular the higher ones.

The seminar to be held in Brno, the Czech Republic, on September 9, 2019 at the Supreme Administrative Court, follows the path opened by the seminars in Dublin and Berlin. It shares the objective of contributing to mutual understanding of the scope of judicial review of administrative cases. Consequently, it broadens and deepens the topic of access to the courts. The seminar therefore deals with the issue before the administrative judiciary as a whole, including the administrative courts of lower instances. It covers both formal and material measures which either facilitate or restrict access to the courts.

The seminar attempts to merge the principles of fair trial and efficiency. Based on shared knowledge of member states, it aims to describe the areas where the administrative judiciary should remain open to litigants and to analyse those where it may constrain its current role or, on the contrary, may exceed it. In other words, it examines the proportionality of restrictions on access to the administrative courts.



## Answers to the questionnaire by the Supreme Administrative Court of Lithuania

### I. The structure of the administrative judiciary

a. Please describe briefly the structure of the administrative judiciary, i. e. how many instances your administrative judiciary (including all specialized jurisdictions, e. g. financial or social security) consists of and the relations of superiority and subordination between them, unless this information is available and up to date at the ACA-Europe webpage, Tour of Europe file.

*The administrative judiciary consists of regional administrative courts as the courts of first instance and the Supreme Administrative Court of Lithuania as the court of: 1) first and final instance for administrative cases assigned to its jurisdiction by law, for example - the cases relating to the complaints against the decisions or omission of the Central Electoral Committee etc.; 2) the appellate instance for cases heard by the administrative courts as courts of the first instance.*

*The decisions of regional administrative courts, adopted when hearing the cases in the first instance, may be appealed against to the Supreme Administrative Court of Lithuania within thirty calendar days from the pronouncement of the decision.*

b. How many administrative courts and judges are in each of the instances? Please give numbers relevant at the end of the year 2018.

*(Note: if your administrative judiciary consists of two instances, use columns I. and II.; if it consists of more than three instances, please adjust the table. The same applies to all the tables used in this questionnaire.)*

Instance	I.	II.	III.
Name	<i>Regional administrative court</i>	<i>Supreme Administrative Court of Lithuania</i>	
Number of courts	2	1	
Number of judges	44	19	

c. How many judges are in all jurisdictions (i. e. administrative, civil and penal) altogether? Please give numbers relevant at the end of the year 2018.

758 judges.

**Note: In all the subsequent sections please give answers for each of the instances of the administrative judiciary, even if it is not specifically mentioned in the question.**

## II. Fees and access to the court

a. Is access to the administrative court subject to a judicial (filing) fee? Please indicate the general principle (for exceptions see questions e., f. and g.). Answer yes/no.

Instance	I.	II.	III.
Judicial fee	yes	yes	

b. If you answered *yes*, what is the amount of this fee (in euro)?

*The amount of the fee before regional administrative courts is 30 euro.*

*The amount of the fee before Supreme Administrative Court is 15 euro.*

*The amount of fee for the request for the renewal of proceedings is 30 euro.*

*If the petition is submitted to the court only by electronic means 75 percent of fee is payable.*

c. Is the amount of the fee in each of the instances flat or can it differ? If the amount can differ, under what conditions and how (e. g. when the petitioner is required to correct or eliminate faults in the petition, the fee rises)?

*The amount is flat.*

d. In what phase of the proceedings does the petitioner have to pay the fee (e. g. with the petition, after the proceedings commence, after the decision of the court is delivered)? What are the consequences of not fulfilling the duty to pay the fee?

*The petitioner shall pay the fee at the same time as filing the petition (with a fee stamp or by bank transfer). If he does not fulfil his duty to pay the fee, the court shall pass a ruling and set a time-limit to eliminate the shortcomings of the petition. If the shortcomings are not eliminated, the the complaint (petition, statement) shall be deemed not to have been filed and shall be returned to the claimant by virtue of a court ruling. The same applies to both instances.*

*The court shall leave the complaint/petition unconsidered if it appears during the hearing of the case in the court of first instance that the stamp duty has not been paid. On this ground, the complaint (petition, statement) may be left unexamined only if the claimant fails to eliminate the shortcomings within the time-limit set by the court.*

e. Are any petitioners (e. g. a public authority) or areas of disputes exempt by law from the duty to pay the fee?

*Exempt from stamp duty shall be complaints (petitions, statements) relating to:*

*1) delay by the entities of public administration to perform the actions;*

- 2) *awarding of pensions or refusal to award the same;*
- 3) *violations of election laws and the Law on the Referendum;*
- 4) *petitions by public servants and officers when they concern legal relations in the office;*
- 5) *petitions by tax administrators and their officers concerning recovery of taxes and other payments into the budget, also their petitions concerning tax disputes; petitions by officers about the recovery of levies;*
- 6) *petitions by state and municipal control officers relating to the recovery into the State or municipal budgets of unlawfully received income or misappropriated grants, subsidies and allocations;*
- 7) *petitions, in the cases provided for by laws, by the prosecutors, entities of public administration, organisations or natural persons, relating to the protection of public interest or State, municipal and individuals' rights, as well as the legally protected interest;*
- 8) *referral by the Seimas Ombudsmen in accordance with the Law on the Seimas Ombudsmen;*
- 9) *petition by the Government representative concerning the legal acts adopted by municipal institutions, agencies, services as well as unlawful actions of their staff members;*
- 10) *compensation for damage inflicted upon entities of public administration by unlawful acts (Article 6.271 of the Civil Code);*
- 11) *submission of conclusions whether the member of the municipal council, the member of the municipal council - the mayor against whom the procedure of the loss of powers has been initiated broke an oath and/or failed to perform the powers established by the laws (as specified in the application);*
- 12) *application of the State Data Protection Inspectorate according to the Law on the Legal Protection of Personal Data of the Republic of Lithuania (hereinafter – the Law on the Legal Protection of Personal Data).*

*Exempt from the duty to pay the fee are other petitions to the administrative court by the entities of public administration which are directly related to public administration functions performed by them.*

*Exempt from the duty to pay the fee are also separate appeals by the parties to the proceedings, as well as petitions by entities, contesting the legality of an administrative act or other act of general character.*

*The same applies to both instances.*

**f.** Are non-governmental organizations exempt from the duty to pay the fee?

*There is no special regulation that would exempt non-governmental organizations from the duty to pay the fee.*

**g.** Can a petitioner be exempt from the duty to pay the fee by decision of the court? What are the conditions for the exemption?

*Having regard to the property status of a natural person or group of natural persons, the administrative court may grant them a full or partial exemption from stamp duty. The petition for exempting the natural person from stamp duty must be justified and substantiated by appropriate evidence. Besides, the court shall have the right to demand the stamp duty be paid by the persons who abuse the right to legal remedy (i.e. who appeal to the court without a valid reason or more than once a month).*

*The same applies to both instances.*

**h.** Under what conditions is the fee returned to the petitioner (e. g. in case of the withdrawal of the petition)? Is the fee returned in full or partially?

*The fee in full is returned to the petitioner in case of overpayment in excess of the amount prescribed by law; if the claimant withdraws his petition; when the petition (or appeal) is found to be not receivable or when it is returned to the claimant; in the event of dismissal of the case where the case is not subject to investigation by the court or when the claimant has not observed the procedure of preliminary extrajudicial settlement of dispute prescribed for the cases of the particular category and it is no longer possible to use the procedure; when the petition is not admissible for*

*bearing unless the claimant makes use of the possibility to follow the procedure of preliminary extrajudicial dispute settlement prescribed for the cases of the particular category where there is still an opportunity to make use of the same procedure; when the petition is not admissible for hearing where the petition has been filed by a legally incapacitated person or the person not authorised to conduct the proceedings. The court shall return the fee to a person who was not obliged to fulfil the duty to pay. If the court approves the settlement agreement concluded by the parties to the dispute, 50 percent of the fee is refunded.*

*The same applies to both instances.*

**i.** May a petitioner be required to pay a deposit before the proceedings commence? If you answered *yes*, please explain under what conditions.

*No, the petitioner cannot be imposed to pay a deposit before the proceedings commence.*

*The same applies to both instances.*

**j.** Are frivolous petitions penalized? Please explain how and under what conditions.

*No, frivolous petitions are not penalized.*

*The same applies to both instances.*

**k.** Finally, is there any analysis (based on empirical studies or just your personal assessment) of the correlation between the amount of the fees payable within your system of administrative justice and the degree of any incentive or dissuasive effect those fees have on petitioners (in general or particular groups thereof) bringing or not bringing an action?

*No, there is not. However, a small fee makes it possible to make an unequivocal conclusion that it has no dissuasive effect.*

### **III. Costs of proceedings**

**a.** Can the court adjudicate the compensation of costs of proceedings to the participant? If you answered *yes*, please explain under what conditions?

*Yes, if a party had full or partial success in the proceedings. The rule that costs follow the event applies.*

*The same applies to both instances.*

**b.** Can the court adjudicate the compensation of costs of proceedings to the public authority? If you answered *yes*, please explain under what conditions? In particular, are there any cases/situations where by default, the costs incurred by the public authorities are not recoverable, even if the (private) petitioner was not successful (and, following the normal rule that costs follow the event, a costs order should normally be awarded in favour of the public authority)?

*The Law on Administrative Proceedings of Republic of Lithuania does not preclude the adjudication of the compensation of costs of proceedings to the public authority. Although the administrative courts, hearing the request for compensation of costs of proceedings, evaluate whether the participation in proceedings falls under the scope of common official activity of the public authority, as well as the ability to ensure proper representation of the case*

through the civil service capacity. It means, for example, that the costs of legal representation might not be reimbursed, because it is considered that the activity may be carried out by the personnel of the public authority. The same applies to both instances.

**c.** Can the court decide not to adjudicate the compensation of costs of proceedings, although the conditions described in answer to question a. are fulfilled? If you answered yes, please explain under what conditions?

*The court can decide not to adjudicate the compensation of cost only when extraordinary reasons are given, for example if the compensation of costs is unfair or unreasonable. The court considers each case individually. The same applies to both instances.*

**d.** Are there any specific areas of administrative law where different rules to those discussed in this section apply? What areas are those and how and why do the rules applicable therein differ?

*General rule described in answer to question a. does not apply in the proceedings concerning review of the legality of an administrative act or other act of general character. The reason for this exemption is that in these proceedings a judgment given by a court cannot be regarded as a decision made in favour of a particular party to the proceedings, i.e. in such a case there is neither a "winning" nor a "losing" party. The same applies to both instances.*

**e.** How does the court determine the amount of the costs of legal representation as a part of compensation of costs? Is it defined by a tariff (in that case describe the principal method of calculation), or is it based on a price stipulated between an attorney and his client (in that case describe also whether there is any limitation)?

*The amount of the costs of legal representation (by an attorney or an assistant advocate) is defined by the particular coefficients of legal services, which are stated by the Minister of Justice of the Republic of Lithuania in the Recommendations on Compensation for the Assistance in Civil Cases of an Attorney or an Assistant Advocate. The recommendations set forth the maximum amount of the fee for assistance provided by an attorney or an assistant advocate (legal services such as representation in court, preparation of different court documents, etc.). In the particular situation according to the specific circumstances the administrative court can award a bigger amount of costs of legal representation than the maximum amount specified in the Recommendations, as well as lower the amount, even if it does not reach the maximum amount specified in the Recommendations. The same applies to both instances.*

#### **IV. Representation**

**a.** Does a party have to be represented by a legal professional? Answer yes/no.

Instance	I.	II.	III.
Representation of petitioner	no	no	
Representation of opposing	no	no	

- b.** Does your legal order provide free legal aid for participants (e. g. representation appointed at the request of a participant)?

*Yes, but this is not a matter of administrative court competence. We have the State-guaranteed Legal Aid Service that is a state budgetary institution tasked with the examination of applications of individuals and decision-making in relation to the provision of secondary legal aid. The Service is responsible for the appointment of lawyers and for contracts with lawyers. The mission of the Service is to ensure state aid for persons unable to exercise their rights to judicial defence due to their social situation so that everybody has equal opportunities to seek justice.*

- c.** What are the forms and conditions of free legal aid? Please explain for all instances.

*This is not a matter of administrative court competence (see answer IV. b). The State-guaranteed legal aid consists of Primary legal aid and Secondary legal aid. Primary legal aid is 100% state-funded regardless of the financial situation of the applicant and is provided in every municipality of the country. Here people receive legal advice on legal issues. Secondary legal aid includes drafting of procedural documents, defence or representation in court, exemption from court fees, coverage of other litigation costs. A person can receive the secondary legal aid in case the value of his assets and annual income does not exceed the levels of assets and income.*

- d.** Is there any connection between exemption from the duty to pay the judicial fee and the right to free legal aid?

*Such a link can only occur if a person meets certain low asset and income conditions (see answer IV. c).*

## **V. Exclusions and immunities**

*(Note: If you answer yes to any question in this section, please provide details.)*

- a.** Are there any mandatory steps after the public authority delivers its final decision and prior to filing a petition to an administrative court (e. g. mediation)?

*In general, no, but in some cases stipulated by Law on Administrative Proceedings of Republic of Lithuania complaint (petition, statement) shall be, first of all, filed with the administrative disputes commission or other institution of preliminary extrajudicial examination of disputes.*

- b.** Are there any final administrative acts of a public authority which are not reviewable at all?

*No, there are not.*

- c.** Is there any particular public authority whose administrative acts are not subject to judicial review (e. g. acts of a head of state)?

*Investigation of the activities of the President of the Republic, the Seimas, members of the Seimas, the Prime Minister, the Government (as a collegial body), judges of the Constitutional Court, the Supreme Court of*

*Lithuania and the Court of Appeals of Lithuania, procedural actions of judges of other courts, also of prosecutors, investigators, persons conducting an inquiry and court bailiffs, connected with the administration of justice or investigation of a case as well as the execution of decisions, also of ombudsmen of the Seimas, children rights protection ombudsman, shall be outside the remit of competence of administrative courts*

**d.** Are there any final acts of a public authority which are reviewable by a (state or other) authority other than the administrative court?

*Yes, there are many of them in various legal relations (e. g. environmental disputes, tax disputes etc.). For this reason, there are many pre-trial institutions and various inspectorates. However, it should be emphasized that all final acts can be subject to judicial review.*

**e.** Are there any cases which are reviewed by the administrative courts other than review of administrative acts of a public authority (e. g. review of elections, dissolution of a political party)?

*Yes, there are some specific cases concerning: the legality of regulatory administrative act (both instances - cases relating to lawfulness of regulatory administrative acts adopted by the territorial entities of administration or entities of municipal administration, appellate instance - cases relating to the lawfulness of regulatory administrative acts adopted by the central entities of state administration); the petition to submit a conclusion whether the member of the municipal council, the member of the municipal council - the mayor against whom the procedure of the loss of powers has been initiated broke an oath and/or failed to perform the powers established by the laws (appellate instance); petition for application to the competent judicial authority of the European Union regarding the decision of the European Commission (appellate instance); complaints about infringement of the electoral and referendum laws (both instances – for the cases relating to complaints against the decision of the district electoral committee or the decision of the district committee for the Referendum on the mistakes made in the voter list or in the list of citizens entitled to participate in the Referendum, appellate instance - for the cases relating to the complaints against the decisions or omission of the Central Electoral Committee).*

**VI. Selection by lower and higher jurisdictions**

**a.** Do the administrative courts have power to select cases? Answer yes/no.

Instance	I.	II.	III.
Power to select cases	No	No	

**b.** If you answered *yes*, under what conditions can they select cases? Are there any objective criteria stated in the legislation/case law of the court or is the selection a matter of full discretion?

**c.** Is the power to select cases restricted to certain fields of law? Please give details.

**d.** Does the court have power to select cases that fall under administrative criminal law? If it does, are the conditions for selection the same as in others fields of law? Please give details.

**e.** Please specify who selects the cases to be heard and how. Is there a special judicial panel or case selection procedure for that purpose? Is that procedure only a matter for the higher

jurisdiction that will ultimately hear the case, or do the lower courts also somehow participate in that selection?

- f. If the court decides to select/not to select a case, is it obliged to notify a petitioner? If it is, does it deliver a formal decision (e. g. rejects the petition) or does it notify a petitioner by an “informal” letter?
- g. Is the court obliged to give reasons when it decides not to select a case?
- h. If a lower court decides not to select its own case, is the decision reviewable by a higher court? Please give details.
- i. Does a lower court have power to select cases of a higher court? If it does, is its selection reviewable by a higher court? Please give details.
- j. Does a judge determine the order of the cases to decide?

**VII. Other measures**

- a. Does your legal order have other measures which simplify or restrict access to the courts? Please explain.

*Yes, but such measures would be more procedural. As a measure which simplifies access to the court may be considered the use of electronic communication technologies and other technical means in the court. Complaints (petitions, statements etc.) may be filed in an electronic form and submitted by means of electronic communication which allows to generate electronic cases. Another measure which simplifies access to the court is database of templates for court documents also the prepared detailed recommendations on a right to apply to the administrative court with an application to investigate the legality of regulatory administrative act. It should be noted that currently, there are no restrictions on access to the administrative courts, but draft laws on the implementation of certain restrictions are being prepared.*

**VIII. Statistics**

- a. Please give exact numbers of case load and number of cases decided for the years 2016, 2017 and 2018 in each of the instances of the administrative judiciary (including all specialized jurisdictions, e. g. financial or social security).

Instance	I.	II.	III.
Case load 2016	14917	4290	
Cases decided 2016	21503	4087	
Case load 2017	11699	4139	
Cases decided	13220	3814	

2017			
Case load 2018	14899	3817	
Cases decided 2018	13042	3693	