CONSEIL D'ÉTAT

ACA EUROPE

Seminar organized by the Council of State of France and ACA-Europe

"The Judicial review of Regulatory Authorities"

Paris, 6 December 2021

Answers to questionnaire: Lithuania

Co-funded by the European Union

ACA-Europe symposium
Disputes concerning acts by regulatory authorities

Regulatory authorities have gradually emerged as one of the new forms of State intervention. In addition to the Regal State or the State as a supplier of goods and services, the regulatory authorities, in the broad sense, cover a wide range of administrative activities: they may be authorities responsible, in a given sector or across the board, for correcting market imbalances in a context of opening up markets to competition, or for ensuring that free competition is reconciled with other general interest objectives; in the broadest sense, regulatory activities may refer to any administrative activity that seeks to reconcile interests that may be contradictory or to organise access to scarce resources in a manner consistent with general interest objectives. In this broadest sense, this notion can refer as much to the transversal authorities responsible for enforcing competition law (e.g. the French Competition Authority) as to sectoral authorities (electronic communications, transport, energy, etc.), including national data protection authorities or authorities responsible for the marketing or evaluation of health products.
The symposium planned for December 2021 should be an opportunity to examine the specific issues that disputes concerning acts taken by these regulatory authorities may raise in the administrative courts. These questions arise from certain characteristics of the acts of these authorities, characteristics over which they do not have a monopoly compared with other forms of administration, but which combine or take on a particular role. These characteristics are at least three in number: firstly, the use of a wide range of acts or intervention tools, from flexible laws and codes of conduct to more traditional regulatory acts or sanctions, via a variety of communication media (press releases, public statements, FAQs, etc.); secondly, the degree of expertise and technicality of the decisions taken in a given activity sector (energy, health, electronic communications, etc.) and/or a certain technological context (personal data protection, cyberspace, etc.); finally, integration into complex economic and social ecosystems, often with a significant European or even international dimension, and likely to have a high media profile.
In this context, from the particular object of study that is disputes concerning the acts of these regulatory authorities, the symposium planned for December 2021 will make it possible to address the important challenges that these appeals raise for the effectiveness and credibility of the court's intervention.

Answers to the Questionnaire
The Supreme Administrative Court of Lithuania

Courts with competence to hear disputes concerning regulatory authorities

1. Does your supreme administrative court have competence to hear appeals against acts by regulatory authorities? Yes/no
If yes:
Without being exhaustive, could you present the main regulatory authorities in your country whose acts are brought before your supreme administrative court, specifying if these appeals are subject to several levels of jurisdiction? Please distinguish, if necessary, according to the nature of the acts concerned (in the event, for example, that individual acts taken by these authorities are subject to separate jurisdictions from their general acts, notably regulations).

Co-funded by the European Union

Yes. Complaints concerning the acts of regulatory authorities are subject to general procedural rules laid down in the Law on Administrative Proceedings. The Supreme Administrative Court of Lithuania is the appellate instance for cases heard by the regional administrative courts as courts of the first instance. Mostly administrative courts deal with the cases in the sectors of competition, data protection, financial industry, electronic communications, energy market, waste management, food industry and alcoholic beverages. However, around 60 authorities are tasked with supervisory functions of business in accordance with pertinent laws regulating their activities.

With regard to regulatory administrative acts, one should also note that the Supreme Administrative Court is the first and final instance for the legality of normative administrative acts. All in all, it can be said that the main questions regarding the activities of regulatory authorities fall into the jurisdiction of administrative courts.

2. In particular, can any of these authorities themselves impose sanctions (including fines)? Yes/no
If yes:
is it possible to challenge them before your supreme administrative court?

Yes. The Supreme Administrative Court is the appellate instance for all administrative acts, including the ones concerning the administrative sanctions adopted by the regulatory authorities and imposed on business entities. In this regard, one should note that in the Lithuania's legal order, the model of administrative liability is based on a dichotomy. It is established that the Code of Administrative Offences is applied to administrative offences carried out by natural persons. Meanwhile, administrative liability for business entities is stipulated by the Law on Public Administration and specialized laws. Having regard to this, the jurisdiction of administrative courts concerns only the administrative liability applied to business entities.

3. Are any of these regulatory authorities subject to judicial review by civil courts, for some or all of their acts? Yes/no
If yes:
Please give examples.

Yes. Having regard to the dual model of administrative liability, as described above, it is entirely possible that particular decisions adopted by the regulatory authorities and concerning administrative liability of natural persons are the object of judicial review in the courts of general competence. This is due to the change of allocation rules that occurred in 2011. In 2011, it was decided to transfer the application of administrative liability of natural persons to the jurisdiction of general courts. The legislative initiative was based on the statement that the methods used for the regulation of administrative offences were much closer to criminal liability rather than public administration. It was claimed that the proceedings for the application of administrative liability of individuals (natural persons) were identical to criminal procedure and not related to administrative justice; therefore, cases involving administrative offences should fall into the jurisdiction of general courts.

4. Are the courts with competence to hear the acts of regulatory authorities:
- specifically identified by the texts in force, by way of derogation from the normal rules of territorial or material competence?
- or do they result from the application of the general rules on the distribution of competences?

The Law on Administrative Proceedings sets out that administrative courts hear disputes arising in the sphere of public administration. The Law on Public Administration defines the scope and content of the notion "public administration. Among other things, it encompasses the legal relations concerning administrative supervision of business entities. In addition to this, in most cases, lex specialis expressly and directly provides rules on the appeal procedure. For example, it is established practice to specify that the decisions of respective regulatory authority shall be appealed under the procedure laid down by the Law on Administrative Proceedings.

Is there any specific distinction in relation to the rules of competence applicable to equivalent acts of other administrative authorities in your country? Yes/no
If yes:
Please explain.

No, it does not appear so. Certain specific distinction applies to the jurisdiction of administrative liability of natural persons as described in the answer to Question 3.

5. Are the remedies available against the acts of these authorities of the same nature as those available against the equivalent or similar acts of other administrative authorities? Yes/no

Yes. In case unlawful conduct attributable to the state institution, including regulatory authorities, is established, the Supreme Administrative Court has the power to revoke administrative acts or to set an injunction to do or not to do something. It can also impose on the State a non-contractual liability including compensation in kind.

If no:
Please explain.

Admissibility of appeals against regulatory acts

6. In your view, do disputes concerning "hard law" acts (regulatory acts, sanctions, individual authorisation decisions, etc.) of these authorities raise particular issues of admissibility? Yes/no

If yes:
Please explain.

No. It does not appear so, at least to the extent of significant differences. Nevertheless, there are indications that it entails increased number of motions to apply provisional or protective measures.

7. Are "soft law" acts (opinions, recommendations, warnings, position papers) of these authorities and, more broadly, their various positions on the behaviour to be adopted by the actors in their field of

intervention (whatever form they take: code of conduct, guidelines, etc.) liable to be the subject of a direct action for annulment? Yes/no
If yes: under what conditions? Make any distinction you think useful according to the degree of normativeness of the acts.

Under a general rule, any acts adopted by the administrative authority, whatever their form, that are intended to have binding legal effects are potentially challengeable acts. The "soft law" acts are likely to fall short on the account of having binding legal effects since they implement the key feature – they are not binding in the traditional sense. That being said, it should be borne in mind that in the case-law of the Supreme Administrative Court, the "soft law" acts are interpreted in accordance with the binding provisions which they seek to supplement. Therefore, the nature of "soft law" acts cannot alter their certain legal effect and completely exclude them from the judicial review. In this regard, recent administrative case heard by the extended panel of judges may be of particular interest (administrative case No. eA-663-822/2021). It concerned the supervision of financial markets and the legal effect of ESMA Guidelines on Alternative Performance Measures (ESMA/2015/1415). The Lithuanian legislator chose to set out in the law that the business entities must take account of ESMA Guidelines. Failure to follow that requirement led to the administrative sanction imposed on the respective business entity. Under these circumstances, the extended panel of judges of the Court did not agree that failure to follow a soft law act should lead to administrative liability despite the imperative reference to the guidelines set out in the law. It considered that the legal obligation imposed on business entities to refer to the ESMA guidelines, which in principle is an act of non-binding nature, was not sufficiently precise to enable the entities to assess beforehand with sufficient legal certainty whether the failure to follow these guidelines can be considered as breach of law leading to fines.

These cases must be separated from the questions concerning warnings. In accordance to the constitutional jurisprudence of 2017, warning of the possible suspension of the validity of a licence is understood as an independent measure, which may be appealed against in a court (Ruling of 30 May 2017). The Constitutional Court emphasised that, under the impugned legal regulation, the validity of a licence may be revoked only in those cases where the preceding two warnings are legitimate and reasonable, i.e. they have not been annulled by a court decision. Only if the impugned and related legal regulation is interpreted in this way (i.e. if a warning of the possible suspension of the validity of a licence is understood as an independent measure, which may be appealed against in a court and must not be imposed for minor infringements), can the impugned provision be considered not in conflict with the principle of proportionality. This led to the change in the case-law of administrative courts with the result that warnings are in principle classified as challengeable acts. In other words, in order to access administrative court, the entity cannot be compelled to infringe a legal rule or obligation or to be subject to the penalty attached to that offence.

8. Can positions taken by these authorities, possibly with little or no formality (press release, website section, FAQ, etc.) be challenged in court? Yes/no

No. The measures in question are true recommendations, that is to say measures which, even as regards the persons to whom they are addressed, are not intended to produce binding effects. Consequently, they cannot be a direct object of appeal. Nevertheless, they can create certain rights

upon which individuals may rely before a national court where they contribute to legitimate expectations of individuals concerned.

9. Who can challenge the acts of regulatory authorities? Specify the criteria for assessing the interest in bringing proceedings, making any useful distinction according to the type of act (soft law act; individual decisions of a non-repressive nature; sanction; etc.).

According to Article 5 of the Law on Administrative Proceedings, every interested entity shall be entitled to apply to the court, in the manner prescribed by law, for the protection of his/her infringed or contested right or interest protected under law. Only measures the legal effects of which are binding on and capable of affecting the interests of the applicant by having a significant effect on his legal position are measures against which proceedings for annulment may be brought. In the case of acts or decisions drawn up in a procedure involving several stages, particularly an internal procedure, only measures definitively laying down the position of the institution on the conclusion of that procedure may be contested, and not intermediate measures intended to pave the way for the final decision.

It must be noted that a small circle of entities may directly approach the Supreme Administrative Court with an abstract application regarding the examination of the lawfulness of the regulatory administrative acts adopted by the central public administration entities (where the politicians – the members of the Seimas – are the most active). Meanwhile, individuals may challenge regulatory (normative) administrative acts once the individual proceedings concerning their infringed rights and legitimate interests are started.

10. Please indicate any other particularities that you consider relevant to the admissibility of appeals against the acts of these authorities (interest in bringing proceedings, time limits for appeal, specific means of appeal open to State authorities, etc.).

In terms of procedural requirements, the general rules of administrative proceedings apply.

11. Can the general acts of a regulatory authority, whether "hard law" or "soft law", be challenged by way of exception in an appeal against an individual decision (sanction, follow-up to a complaint, etc.) taken by that same authority and applying that general act (for example, if a sanction imposed on an economic operator refers to previously issued guidelines or recommendations to set out the applicable legal rules and the authority's interpretation of the texts in force)? Yes/no
If yes, to what extent? Will the plea of illegality against this general act, if upheld, lead to the (retroactive) annulment of this act?

Yes. The Law on Administrative Proceedings sets out incidental proceedings regarding the petition for reviewing the legality of a regulatory administrative act in relation to an individual case. It is established that every interested entity shall have the right to petition the administrative court to review conformity of a regulatory administrative act (or part thereof) with the law when a specific case regarding infringement of their rights is heard before the court. The court of general jurisdiction or court of special jurisdiction shall have the right to suspend the investigation of a case and apply to the administrative court by an order requesting to review conformity of a specific regulatory administrative act (or a part thereof) applicable in the case being heard with the law. It must be emphasized that the petition has

to be directly connected with the specific case heard before the court. The plea of illegality against the regulatory administrative act leads to retroactive annulment of individual administrative act (administrative sanction).

12. Where the actions of these authorities have harmful consequences, should liability claims be brought:
- against these authorities? *No.*
- or against the State on whose behalf they may have acted? *Yes.*

Lithuanian law recognizes the state liability for the damages caused by the state institutions and their officials where they fail to act in accordance with law. The duty to remedy the damage is a constitutional principle. National law contains no provisions concerning the degree of illegality limiting the right of the person affected to claim damages. Legal regulation expressly and specifically does not establish that actions for damages are limited by the factors such as serious illegalities. However, administrative courts in their jurisprudence have developed different tests for state liability depending upon whether the administrative agency exercises discretion. Where the contested administrative decision concerns a failure by the administrative agency to fulfil its legal obligation it is normally suffice to show illegality per se. The seriousness of the breach may be taken into account while calculating the compensation; however, it cannot exclude the state from incurring the non-contractual liability. As regards the state liability stemming from discretionary acts, administrative courts in Lithuania use similar test to the one developed in the ECJ's more recent jurisprudence. The system of rules which the administrative courts have worked out in relation to discretionary powers of the administrative authorities takes into account, inter alia, the seriousness of the breach. Where the legal measure is relied on the exercise of discretionary powers, that measure, in order to be capable of causing the state to incur non-contractual liability, must constitute a sufficiently serious breach of a rule of law. The decisive criterion in that regard is whether the administrative authority concerned manifestly and gravely disregarded the limits on its discretion. The rules on the state liability are equally applied to regulations and individual decisions since the non-contractual liability of the state depends on the nature of the measure rather than the legal form in which it is expressed. If the illegality of individual decision is concerned, finding that the contested individual decision is in conflict with the rule of law may give rise to compensation to the aggrieved individual. The same applies where the illegitimacy of normative acts and even failure to adopt them is concerned.

Internal organisation of the courts and hearing of appeals

13. Are cases concerning these authorities assigned, within the courts and more particularly within the supreme administrative court, to panels specifically dedicated (to the authority concerned, or more generally to regulatory litigation), in order to allow for an increase in the level of competence or a critical mass of cases? *Yes/*no
If yes: please explain and give examples.
- Or is it a distributed dispute with no particular allocation rule? Yes/no
Please indicate, in a more general way, any notable particularities in the internal organisation of your courts that may be relevant.

In the Supreme Administrative Court, the administrative cases are assigned to respective judges in accordance, among other things, with their specialisation approved by the President of the Court. The law has become so complex or specific in some fields that a proper consideration of cases in these fields demands a higher degree of specialisation. The judges specialize in sectors of competition, communications, energy, alcoholic beverages and tobacco, data protection, supervision of financial markets, environment protection and others. The rest of the cases, inter alia concerning various disputed acts adopted by the regulatory authorities, fall into the general category of administrative cases. In other words, the specialization of judges is based on the complexity of the matter rather than the institutional criterion.

14. What investigative or examination techniques can you use in particular in the examination of particularly technical cases:
- oral inquiry hearing in the presence of the parties,
- expert's report,
- amicus curiae,
- solicitation of a reference expert administration,
- other?
Please explain, where applicable by giving some examples from your experience.
Do you feel that these regulatory cases require a particular method? Yes/no
If yes:
Please explain.

General procedural rules apply to regulatory cases. According to the Law on Administrative Proceedings, the factual data of administrative case shall be established with the help of the following means: explanations of the parties to the proceedings and their representatives, the testimony of witnesses, explanations of specialists and opinion of experts, physical evidence, documents and other written, electronic, audio and visual evidence. Specialists are invited where, special knowledge is required in the court in the course of the investigation of the case for examining and evaluating documents, articles or actions. If questions arise in the administrative case which require special knowledge in the sphere of science, art, technology and crafts, the court or the judge shall appoint an expert or charge an appropriate expert institution to carry out the expert examination.

As a general rule, in the Supreme Administrative Court the administrative cases are heard in the written procedure. The court may hold the oral hearing of the case where it receives reasoned request by the parties to the proceedings or on its own motion. It does not appear that cases concerning individual administrative acts of regulatory authorities are more often than not heard in oral proceedings. Meanwhile, normative review of regulatory administrative cases is always carried out in oral proceedings.

An amicus curiae brief is mostly submitted to the Supreme Administrative Court upon request of the Court itself. In most cases, amicus curiae briefs are submitted by the representatives of academia; however, those requests are very rare in practice.

15. What is the role of the traditional administrations (especially when the act of an independent administrative authority, distinct from the ministry concerned, is at issue) in the examination of appeals against regulatory authorities:
- are they invited to comment? Yes/no
- or do they remain outside the case? Yes/no

Normally, it is the regulatory institution that have adopted the disputed administrative act alone that is the party to the proceedings. Nevertheless, in practice there have been non-standard administrative cases where the Ministry of Energy has been given the status of third interested party due to the fact that it is responsible for the formulation of energy policy. In these cases, the applicant directly challenged the decision adopted by the national Regulatory Energy Council regarding the pricing for heating production.

16. More generally, when examining appeals against acts with a high socio-economic impact issued by these authorities, in particular those in charge of a field of economic regulation, does the court collect (on the initiative of the court or the interested organisations) observations from other stakeholders? Yes/no
If yes:
Please explain.

Normally not.

17. What role does orality play, even before the hearing, in the investigation of complex cases, in particular those involving regulatory acts?

Please refer to the answer to Question 14 for further details.

18. Do you have, in one form or another (specialisation of magistrates, continuing education, expert decision support unit to assist magistrates, etc.) internal resources in your courts enabling you, if necessary, to familiarise yourself with or master sectoral but also transversal expert subjects (technologies protecting privacy, communication technologies in the case of audiovisual or electronic communications regulators, role and architecture of social networks, etc.)? Yes/no
If yes:
Please explain and give examples.

No, in so far as transversal expert subjects are concerned. The judges specialize in certain categories of administrative cases and engage into continuous professional development. To this end, they attend national and international seminars, trainings, conferences on various issues of law and the latest legislative changes. In fulfilling the jurisdictional functions, the judges are also assisted by the Legal Research and Documentation Department. The department is a structural unit with the task of supporting technically and analytically the judicial activities. Multidisciplinary team, with different profiles (judge assistants, advisers, academicians and other legal professionals), is responsible for ensuring the consistency of case-law and supplying opinions and information on various legal issues arising in the application and interpretation of administrative law. It is often the case that the complex matters related to the sectors of competition, supervision of financial markets and energy are

transferred to the senior legal advisers for additional legal analysis and preparation of the case materials.

The extent of the judge's control, the court decision

19. What are the main categories of grounds that can be invoked and relied upon against the acts of regulatory authorities? Based on your experience and the case law of your country, do you find that appeals against acts of independent authorities raise particular problems (real independence in decision-making, impartiality, etc.) compared with disputes concerning acts taken by other administrative authorities? Please share any relevant analysis you may have

There are no significant substantial differences between the judicial review for acts of regulatory authority and acts adopted by other administrative authorities. Under a general rule, administrative courts carry out a full review of administrative acts. This means that national administrative court will conduct examination for compatibility with legal acts as well as respective principles of law in both cases while ruling on the legality of administrative act adopted by typical administrative authority and while reviewing a certain decision issued by the regulatory authority. The judicial review of administrative acts is based on both, the legality of the decision and also on factual questions and circumstances. Regulatory authorities have certain discretion attributed to them by different special laws and the administrative courts can also review how that discretion is exercised.

The question of impartiality appears to be a problematic one. The Law on Public Administration sets out a principle of separation of functions. This principle shall mean that inspections and applications of sanctions are carried out by different officials of a supervising entity or units of a supervising entity, or that the said functions are assigned to different entities of public administration. However, the Law on Public Administration also sets out that this principle shall not apply if other laws and legal acts regulating the supervision assign the functions of inspection and application of sanctions to a single official (unit). It is quite common for the parties to the dispute to invoke the arguments of this kind and to claim that the separation of functions is a general principal of law that must be applied at all times despite the rules provided in the lex specialis. The Supreme Administrative Court has not accepted that position (e.g. administrative case No. eA-663-822/2021). Moreover, currently, the Supreme Administrative Court has formed an extended panel of judges that, among other things, should decide whether independence of essential functions of an infrastructure manager of rail transport is ensured (administrative case No. A-2230-968/2021).

20. Does your court consider itself bound by the technical or economic assessments made by the regulator? Or does it feel entitled to control them? In the latter case, is this control complete or only limited to the manifest error of assessment?)

Judicial review includes assessments of technical or economic kind to certain extent and the Court should not replace the assessment carried out by the regulatory authority with its own assessment due to the principle of separation of powers. Therefore, it is considered that judicial review is limited to the assessment whether the regulatory authority has not exceeded its discretion, has not made a manifest error and has not misused its powers. The courts also review whether the regulatory authority has

followed procedural rules and has duly assessed factual circumstances (decision of extended panel of judges in administrative case No. A-502-72/2009).

In addition to this, it should not evaluate the disputed administrative acts from the point of view of political or economic expediency. As it is prescribed by the Law on Administrative Proceedings, the court shall not offer assessment of the disputed legal acts and acts (omission) from the point of view of political or economic expediency. In this regard, it is stated in the case-law that administrative courts shall only establish whether or not there has been in a particular case a violation of a law or any other legal act, whether or not the regulatory authority has acted within the limits of its competence, also whether or not the legal act or action (omission) complies with the objectives and tasks for the purpose whereof the institution has been set up and vested with powers. It has been also noted in the jurisprudence of the Constitutional Court that, as such, an assessment of the content (inter alia, priorities), measures and methods of the state economic policy (regardless of who assesses them), including the aspect of their reasonableness and expediency, even if it turns out later that there were better alternatives for choosing the economic policy (thus, also the fact that this economic policy formulated and carried out previously might reasonably be assessed negatively from the aspect of reasonableness and expediency) cannot be a reason to question the compliance of the legal regulation of an economic activity conforming to the said economic policy (formulated and carried out before) with higher-ranking legislation, inter alia, with the Constitution (also by initiating the respective constitutional justice cases at the Constitutional Court). The exception includes the situation where such legal regulation already at the time of its setting forth in legal acts is clearly directed against the welfare of the nation, the interests of the State of Lithuania and its society and clearly denies the values defended and protected by the Constitution (Ruling of 22 September 2015).

21. If you receive an application against an act of a regulatory authority or against a sanction imposed by it, is your court only competent to annul the act or sanction or can it also modify the sanction imposed?

In practice, administrative courts in rare cases amend and modify the appealed decision themselves, e.g. if the administrative sanction imposed on business entity is too severe, it can be changed to the milder one. In addition, some laws regulating economic activity and establishing specific offences for which administrative responsibility may be invoked, provide for the possibility of imposing a smaller penalty than the specified minimum of the law. It should be noted that according to the jurisprudence of the Constitutional Court of Lithuania, the legislator provided for the possibility to invoke liability which is less strict than the minimum penalty provided by law, notably, such a possibility is also accepted in cases of the application of other types of sanctions in the same specific area of economic activity. The court, even when dealing with cases, for instance, associated with a violation of law invoking a license cancellation, has to take into account the nature of the offence, the extent of mitigating circumstances, other significant factors and the principles of justice and reasonableness, to decide whether a penalty should or should not be applied because of certain very important circumstances it may be obviously disproportionate (inadequate) to the committed violation of law. In this sense, a court has the right to decide whether additional sanctioning is necessary and whether the disputed administrative act should be annulled or amended (the Constitutional Court of the Republic of Lithuania, the ruling of 21 January 2008). Different interpretation of the law would mean the infringement of the principles of proportionality and the rule of law. However, the exceptional non-

applicability of a sanction provided by law is only possible when it is evidently disproportionate to the committed offence and consequently is unjust.

22. Have you been confronted with the problem of an independent authority in your country taking into account a foreign element such as an opinion given by an authority in another country or a decision by a European authority (for example, in the context of the mechanisms set up by the GDPR between the European data protection authorities, which lead these authorities to submit some of their decisions to the European Data Protection Committee for approval)? Yes/no
If yes: what kind of legal treatment? Please explain and give examples.

No, to our knowledge, we have not dealt with the matters of this kind.

23. Are these cases a particular field of preliminary questions to the Court of Justice of the European Union? Yes/no
If yes:
Please explain and give examples.

Yes, it appears that in the experience of the Supreme Administrative Court of Lithuania, the assumption is correct. The Supreme Administrative Court has referred a substantial number of preliminary questions to the Court of Justice of the European Union in the field of activities of regulatory authorities comprising around 1/4 of all preliminary references. In this context, it is also interesting to note that administrative cases regarding the activities of regulatory authorities are not high in their number. What is more, it seems that it is gaining its momentum in view of the fact that this year the Court has already submitted three preliminary questions in the field of food industry and competition. In this regard, one should not the following statistics: in 2019, preliminary questions were submitted in the field of electronic communications (C-87/19); in 2017 – in the field of energy sector (C-706/17), in 2016 – in the field of consumer protection (C-357/16); in 2014 – in the field of competition (C-74/14); in 2013 – in the field of energy sector (C-423/13); in 2012 – in the field of financial sector (C-515/12).

24. Does the drafting of court decisions raise particular issues related to the technical nature or media exposure of some of these cases? Yes/no
If yes:
Please explain and give examples.

In general – yes. The majority of administrative cases under consideration usually receive higher workload points due to their inherent complexity. This, in turn, results in a regulated workload for respective time period, e.g. lower number of complex cases is assigned to be heard at the same time when the judge is deciding the case of higher complexity. In addition to this, a support team consisting of senior legal advisor and linguist is formed. This, at least in part, ensures that due attention is paid to the quality of legal argumentation while drafting the decision.

The judge in the regulatory ecosystem

25. Are judgments on such appeals subject to any particular publicity or accompanying measures (press release)? Yes/no

If yes:
Please specify.

Disputes regarding the activities of regulatory authorities are considered particularly newsworthy and often press releases follow after the delivery of judgment in the field under discussion. Despite the fact that the administrative cases concerning the activities of regulatory authorities are not high in their number, the review of the case-law developed in the sectors of competition, energy, supervision of financial markets and others is included in the Court's Annual Reports. In addition to this, while developing and ensuring the uniform interpretation and application of law, the Supreme Administrative Court of Lithuania also publishes case-law summaries, reviews and bulletins. The bulletins of the case-law drawn up and published by the Court provide the most relevant summaries of the case-law in a specific area and the most significant interpretations given by the Court to the public in a concise manner. This is particularly important as regards the activities of regulatory authorities in view of the fact that the case-law on these matters are often complex and the summaries are aimed at providing a better understanding of the Court's reasons for the decision to the public and other legal professionals.

26. Are regulatory authorities entitled to challenge acts or decisions taken by other public persons on the grounds that they impinge on their competence?

The Law on Administrative Proceedings sets out that administrative courts shall decide cases relating to disputes between the entities of public administration which are not subordinate to one another concerning competence or breaches of laws. However, to our knowledge, there have been no cases concerning potentially conflicting competences between regulatory authorities and other public persons yet.

27. Independently of a particular case, do your court or its members regularly participate in general exchanges bringing together professionals (regulatory authorities, operators, doctrine, ministries, etc.) from the regulatory sectors concerned? Yes/no
If yes:
Please specify.

The judges and judicial personnel take part in various national and international training courses, competition sector being the most popular. The National Courts Administration on the advice of Judicial Council prepare training programmes and courses. For example, prior the pandemic, the National Courts Administration organized judicial training events regarding the sectors of competition and banking. In addition to this, ad hoc round-tables concerning specific issues arising in respective sector may be organized by the Court itself. Representatives of various state institutions, regulatory authorities, courts, the bar and the academic community are invited to share their insights; however, these events are not organized on a regular basis.

28. Are the judges in your courts, or more generally the staff of your investigating and registry departments, sometimes led in their careers to take up activities in regulatory authorities, and are such careers encouraged where appropriate? Yes/no
If yes:
Please explain.

There were few rear cases where legal personnel (i.e. judge assistants) were continuing their careers at the regulatory authorities; however, this does not point to a wide-spread practice or the trend.

Quantitative data
29. What is the number of cases concerning regulatory authorities registered before your supreme administrative court in 2020?
30. What is the number of cases concerning regulatory authorities settled by your supreme administrative court in 2020?
31. What is your estimate of the percentage of cases concerning regulatory authorities in the total number of cases registered before your supreme administrative court in 2020?
32. What is your estimate of the percentage of cases concerning regulatory authorities in the total number of cases settled by your supreme administrative court in 2020?
33. What percentage of applications against the acts of regulatory authorities were annulled, in whole or in part, by your supreme administrative court in 2020?

The database does not provide for automated statistics regarding the number of administrative disputes related to the activities of regulatory authorities or other aspects referred in this section. Considering the total of around 3 000 administrative cases heard in 2020 by the Supreme Administrative Court of Lithuania, the disputes related to the activities of regulatory authorities are not high in their number. One can name a few examples related to the specific sectors of law: in the field of competition 15 cases were resolved; in the field of energy – 15 cases resolved; in the field of communications – 2 cases; in the field of supervision of financial markets – 4 cases; in the field of personal data protection – 17 cases; in the field of control of alcoholic beverages and tobacco – 50 cases resolved and others.