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"Techniques for the protection of private subjects in contrast with public authorities: actions and remedies – liability and compliance"

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Answers to questionnaire: Lithuania

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LEGAL PROCEEDINGS THAT CAN BE BROUGHT BEFORE THE ADMINISTRATIVE COURT

1. In your legal system, which judges are competent to pronounce on disputes in which one of the parties is the public administration?

- An ordinary judge
- An administrative judge
- A judge who deals with special areas
- Others

In the Lithuanian legal system, the jurisdiction of the administrative court is defined by the Law on Administrative Proceedings (Art. 17). According to its provisions, administrative courts decide cases relating to lawfulness of legal acts passed and actions (or omission) performed by the entities of public administration (or delay of such actions) and hears disputes in which the Public Administration body acts by implementing special powers conferred upon it.

However, if the Public Administration body enters a legal dispute over matters of private nature (i. e. other than exercising its special powers), such cases are heard by ordinary judges of general jurisdiction courts.

2. Which actions can be brought before the administrative court in view of the exercise of administrative powers?

- Annulment of administrative acts
- Action of condemnation
- Other actions

The Law on Administrative Proceedings (Art. 17) enumerates a variety of cases (which dovetails with type of actions brought before the court) that can be tried in administrative courts (e. g. lawfulness of legal acts passed and actions (omissions or delays) performed by the entities of public / municipal administration, compensation for damage caused by unlawful actions of public administration entities; payment, repayment or exaction of taxes, other mandatory payments and levies, the application of financial sanctions and the tax disputes; office-related disputes, where one of the parties is a public or municipal servant, complaints by aliens about the refusal to issue permits for residence and work in Lithuania or withdrawal of such permits etc.). The precondition for applying to an administrative court is the legal interest of the claimant – the violation of claimant's individual rights (except for the cases where a broader public interest is protected). Therefore, cases roughly fall under three categories: cases relating to defence of one's subjective rights, cases relating to defence of legally protected interests, cases relating to breaches of election or referendum laws. There is also a separate category of cases where legality of a regulatory administrative act is challenged. Actions, therefore, can be expressed as those where claimant asks to annul the adopted administrative act (or its part), to change some part of the adopted act (e. g. to lower the imposed fine), to reimburse a loss or damages caused by unlawful actions of the administration, to oblige the authority to undertake certain actions or to review legality of regulatory administrative act.

3. From which sources can actions be brought before the administrative court?

- Law
- Public authority regulations
- Guidelines

- Supreme Court rulings
- Other

Actions that can be brought before the court are regulated by the law (see Law on Administrative Proceedings).

4. Which administrative decisions can be challenged?

- Administrative acts which have a specific recipient
- General acts and regulations
- Acts inherent to the procedure
- Political acts

Usually, it is the administrative acts with a specific recipient that are addressed in front of the court. General acts or regulations can be scrutinized only as far as they are challenged through a procedure foreseen in the Law on Administrative Proceedings which regulates a review of legality of a regulatory administrative act *in abstracto*.

It is worth noting that purely political acts (i. e. such that embody state power bestowed upon certain subjects) cannot be challenged in administrative courts (e. g. Presidential decree on state's awards). Neither can intermediate decisions issued by the Public Administration bodies (as they do not entail any autonomous legal consequences).

5. On the grounds of which defects can the annulment of an administrative act be requested?

- Breaches of the law
- Breaches of competence
- Technicalities of general principles
- Other

Any of the above can be considered a reason sufficient enough to annul the contested act. Precise grounds are enumerated in Art. 91 of the Law on Administrative Proceedings, which allows to annul a contested act (or a part thereof) if it is:
1) illegal in essence, i.e., conflicting by its contents with legal acts of superior power;
2) illegal by reason of being adopted by an entity of administration acting outside the remit of its competence;
3) illegal as it was adopted in violation of the basic procedures, especially the rules which were to ensure objective evaluation of all circumstances and validity of the decision.

Law also recognizes that the contested act (or a part thereof) may be annulled on other grounds recognised as material by the administrative court.

6. Can the judge partially annul the challenged administrative act?

- Yes
- No

Given only a part of a challenged act is deemed not to be in accordance with law, judge is entitled to annul such part and not revoke the entire act (Art. 88(2) of the Law on Administrative Proceedings).

7. Can the judge substitute the Administration by modifying the content of the administrative act?

- Yes
- No

To a certain extent. It largely depends on a case and questions raised. For example, the judge has a power to change a financial penalty charged or a measure applied (both its type and extent, e. g. in time) by the Administration, to rescind only a part of contested act.

8. When the judge annuls the challenged act, can he dictate provisions which the P. A. must abide by in the review proceedings of the subject-matter of the litigation?

- Yes
- No

Although usually it is not flat out stipulated as provisions that P. A. must follow, often there definitely is a guidance for future act in case the challenged act (or its part) is rescinded. For example, the court might point out certain principles, legal institutes or concepts of law that must be born in mind and adhered to in the new attempt of reasoning P. A.'s decision.

9. When do the effects of the jurisdictional annulment of an administrative act become applicable?

- From the date of the adoption of the act (*ex tunc*)
- From the date on which the judgement becomes final (*ex nunc*)
- Other

According to the Law on Administrative Proceedings (Art. 94) the annulment of the contested legal act (action) shall signify restoration in a certain specific case of the *status quo* which existed before the making of the contested act (action), i. e., the claimant is granted restoration of the infringed rights or lawful interests. However, the legal power of another legal act in effect before the annulled act shall not be restored *per se*.

That is not the only rule though – in cases where court reviews legality of a regulatory administrative act, such act, as a rule, may not be applicable from the day of official announcement of the effective decision of the administrative court on the recognition of the relevant regulatory administrative act (a part thereof) as illegal. Nevertheless, having regard to the specific circumstances of the case and having assessed the possibility of negative legal consequences, the administrative court may establish in its decision that the annulled regulatory administrative act (or a part thereof) may not be applicable from the day of its adoption (the Law on Administrative Proceedings, Art. 118(2)). Such situation may also arise if court temporarily grants suspension of the validity of the regulatory administrative act as a precautionary measure.

10. Can the judge modulate the effects over time of the ruling of annulment of an administrative act?

- Yes
- No
- Other

In a specific instance. For example, when the court assesses legality of a regulatory administrative act *in abstracto*, the announcement of decision on the Register of Legal Acts may be postponed. This effectively means that the contested act will not be rescinded until that date, even though court has already found it to be incompatible with the law. As the Law on Administrative Proceedings states (Art. 118(3)), the administrative court may suspend the validity of the regulatory administrative act (or part thereof) recognised illegal until the coming into effect of the court decision.

11. Can the act of ordering payments for damages be proposed autonomously or must it always be proposed together with other kinds of actions?

- Yes
- No
- Only in certain cases

Compensatory actions in cases where the state's unlawful actions have caused damage to the claimant can be brought autonomously.

12. In the light of what kind of behaviour is the compensatory action for damages feasible when dealing with a Public Administration?

- Implementation of an illegal and detrimental administrative act
- Non-observance of the deadline of the procedure
- Lesion of good faith and trust
- Resultant behaviour of the public administration
- Other

Compensatory action for damages can be brought to court if authorities (i. e. Public Administration bodies) failed to act in accordance with requirements laid out in law. This entails not only ignorance of strictly imperative rules, but also use of discretion conferred upon the authority in other than law-prescribed manner. That is, a Public Administration body has to commit a quite glaring breach of discretionary power (either through action or omission thereof) which might manifest itself as a violation of obvious legal norms or legal principles.

However, the mere fact that certain procedure of administrative offence has been terminated does not in itself suggest that actions leading to it were unlawful.

13. Which are the different kinds of reimbursable damages?

- Material damage
- Non-material damage
- Loss of opportunity

14. Does the omission of lodging an action of annulment result in elision or reduction of the compensatory damages?

- Yes
- No
- Other

According to the Civil Code, one of the prerequisites of civil liability is unlawful actions. Therefore, whenever claim for damages is brought to the court, it has to be established whether particular actions of the Public Administration body did fall under the category of "unlawful". If an institution failed to perform certain actions and did so unlawfully, the mere fact of claimant's passiveness in not pursuing higher instances to mitigate outcomes of such behaviour does not mean that the actions (or the lack of thereof) are deemed lawful. However, if certain damages are related not only to P. A. B.'s, but also claimant's actions, damages awarded to the latter can be reduced.

15. In order to award compensatory damages, is proof of the responsibility of the public administration required? If your reply is affirmative, which party is obliged to provide said proof?

- Yes
- No

There are 3 conditions that have to be present in order to award compensatory damages: unlawful action(s), damage and a causal link between the two. Authority is liable even in the voidness of any guilt.

16. Can the judge convert *ex officio* one action into another?

- Yes
- No

To an extent which manifests in the outcome of a trial. There are certain situations, e. g. where the claimant asks to rescind the act of the Public Administration body, but court obliges P. A. B. to reconsider the matter all over again instead.

17. Is there a time-limit for the proposition of the compensatory action?

- Yes
- No

According to the Civil Code (Art. 1.125(8)), there is a limitation period of 3 years.

18. Can the judge rule that the Administration implement an administrative act? If your reply is affirmative, what are the prerequisites for implementation?

- Yes
- No

A judge can rescind the contested act and instruct the Administration to repeat its evaluation and adopt a new decision. He or she can also oblige the Administration to adopt an administrative act if it unjustifiably was not done before.

SPECIAL PROCEDURES

1. Does your administration have provisions for special procedures?

- Yes
- No

The Law on Administrative Proceedings describes several different cases categories derogating from the usual rules. E. g. review of a regulatory administrative act (Art. 112), application to submit a conclusion regarding members of municipal council or a mayor (Art. 120), filing petition on the decision of the EU (pertaining to the legal protection of personal data. Art. 122^1), complaints about the infringement of the electoral and referendum laws (Art. 123), group complaints (Art. 126^1), model judicial proceedings when there are numerous individual homogenous proceedings (Art. 127), application for a court order (pertaining to collection of debts. Art. 131^1). Certain set of rules also apply to the renewal of proceedings (Art. 156) or ruling on provisional measures (Art. 70).

2. What do the specialities consist of?

- Ways of introducing the appeal
- Procedure time-limits
- Jurisdiction of the court
- Other

It mostly has to do with imposed time limits, jurisdiction (e. g. only the Supreme Administrative Court can submit a conclusion regarding breach of an oath of a mayor), types of procedure that is followed and types of decisions that can be rendered etc.

3. The special rites are established:

- According to subject (for example, tenders, procedures of expropriation, independent administration authorities)
- According to actions
- Both of the above

As it can be seen from the answer No. 1 above, each of the special procedures is linked with the subject of such procedure.

4. Does your system provide for appeals against the silence of the Administration at the request for an administrative provision presented by a private individual?

- Yes
- No

Though not as in some sort of "special procedure", claimant might bring forward a complaint if a Public Administration body fails to undertake certain actions that it is obliged to perform by law. Unduly delay or flat out omission to perform those actions suffices for judicial review. The Law on Administrative Procedure provides a rule (Art. 92) that in the cases relating to omission by an entity of public administration, i.e., failure to perform official duties or in the cases regarding delay in performing actions, the administrative court may adopt a decision obligating the appropriate entity of administration to make a relevant decision or comply with any other court order within the prescribed time limits.

5. Do the Administrations comply spontaneously with the decisions of the administrative courts?

- Yes, always
- No, never
- In the majority of cases, in any case more than in 50% of cases
- Hardly ever, in any case less than 50% of cases

6. In your legal system, is there a special procedure for ensuring the integral execution of the sentence?

- Yes
- No

The Law on Administrative Proceedings provides rules for execution of the decision (Art. 99). If the entity of public administration (or any other person) fails to perform the decision within 15 calendar days or within the time-limit set by the court, at the request of the claimant, the administrative court which adopted the decision issues a letter of enforcement by also ordering the enforcement thereof by the bailiff. Where the sums are recovered to the state budget or in case of recovery of damage resulting from illegal actions of entities of public administration, as well as in case of recovery of sums associated with office-related legal relations or payment of pensions, the court shall issue a letter of enforcement to the recovering entity without the request thereof.

7. Are the judge's decisions which are not of the last resort immediately enforceable?

- Yes

- No

The Supreme Administrative Court renders decisions that are not subject to appeal.

8. **Following the annulment of a decision characterized by discretionary power, the interested party is forced to challenge each of the ulterior negative decisions which have been deemed illegitimate by dint of defects which are different to those identified by the judge or, in alternative, are there certain mechanisms of "reduction" of the aforesaid discretionary power which ensure the definition of the litigation once and for all?**
   - Yes
   - No

PRECAUTIONARY MEASURES

1. **Does the proposition of an appeal automatically suspend the effectiveness of the administrative act?**
   - Yes
   - No

The mere fact of lodging an appeal does not in itself entail suspensive effects.

2. **In your legal system, are precautionary measures provided for?**
   - Yes
   - No

The Law on Administrative Proceedings regulates measures securing the claim (Art. 70). A judge can take provisional measures to ensure the claim by the reasoned application of the participants in the proceedings or on its own initiative. The claim can be secured at any stage of the proceedings as long as the participant in the proceedings reasons the claim and failure to take provisional measures may lead to irreparable or difficult to repair damage.

3. **What kinds of decisions can the judge apply as a precautionary measure?**
   - The suspension of the challenged act
   - (if the subject of the challenge is the refusal of an application) a positive measure which provisionally anticipates the effects of the administrative act being contested
   - The order to the administration to re-examine the application on the strength of indications contextually provided by the judge
   - Whatever measure necessary to satisfy, in each case, the precautionary requests presented by both parties

The Law on Administrative Proceedings stipulates provisional measures as follows (Art. 70(3)):
1) granting an injunction restraining from certain actions;
2) halt of execution under the writ of execution;
3) temporary suspension of the validity of disputed individual legal act, even if it grants subjective rights to other person (not the claimant);
4) other measures applied by the court or the judge.

4. **What are the conditions for the acceptance of a precautionary request?**
   - The probable validity of the action
   - The probable validity of the action together with a serious prejudice

- The prevalence of public or private interest, based on the results of the equilibrium/assessment
- The required prerequisites of trial law to accord precautionary measures vary according to the different types of litigation
- Other prerequisites (please specify)

There are two main prerequisites necessary for a precautionary request to be accepted: firstly, participant has to reasonably base his motion (i. e. provide information (and evidence to support it) which would assure court that the final decision in participant's favour is feasible). Secondly, circumstances have to show that failure to take provisional measures may lead to irreparable or difficult to repair damage. Application of such measures must be adequate for the pursued purpose, proportional and not undermine public interest. Also, court only accepts those requests that are directly linked to claims already admitted by the court.

5. Can the judge force the petitioner to pay bail?

- Yes
- No
- If yes, in which cases?

6. Are precautionary measures generic?

- Yes
- No – are there some subjects in which precautionary measures are not admitted? Which?

7. Can a precautionary request be introduced autonomously before the presentation of the main trial proceedings (*ante causam*)?

- Yes
- No

Court only accepts those requests that are directly linked to claims submitted to the court (thus precautionary request can be introduced together with complaint or afterwards).

8. In the event of cautionary request *ante causam*, does the precautionary decision of the judge lose effectiveness?

- Yes, in the event that the interested party does not initiate main trial proceedings within the mandatory time-limit
- No, its effectiveness remains intact even if the main trial proceedings have not been initiated within the mandatory time-limit or even if the time-limit has expired

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9. When dealing with the precautionary request, does your legal system provide specific procedure?

- Yes
- No

There are specific rules when it comes to time limits. According to the Law on Administrative Proceedings (Art. 70(4)), the judge or the court shall hear the petition for securing the claim no later than within 3 business days from the receipt thereof, without notifying the respondent and other participants in the proceedings. If such a petition is filed together with the

complaint/application/petition, it shall be heard no later than within 3 business days from the acceptance of the complaint/application/petition.

However, where the court or the judge considers it is necessary to receive the opinion of the respondent and/or other participants, such application shall be examined within 10 business days from the day of its receipt or acceptance of the complaint/application/petition. In such case, the respondent and/or other participants in the proceedings are notified on the examination of the application for provisional measures and the time limit is set during which the respondent and/or other participants in the proceedings have to submit their opinions.

A separate appeal may be filed against the court order on the issues regarding the securing of claims. The court order to secure the claim shall be executed without delay.

It is also worth noting that where the injunctions are not complied with, the guilty persons shall be imposed with a fine by a court order in the amount of up to 300 EUR.

10. Is the precautionary decision taken unilaterally or collegiately?

- Unilaterally
- Collegiately
- Collegiately, but in the event of extreme urgency, the precautionary decision can be taken temporarily by means of a simple unilateral decree

When the request is assessed by the judge of the first instance, it can be done unilaterally (if it is lodged together with a complaint or before the chamber of judges is composed). However, when the Supreme Administrative Court hears such case, the chamber composed of 3 judges renders a decision on the precautionary measures.

11. During the discussion of the precautionary request, can the judge directly define the judgement on the merit?

- Yes (explain in which conditions)
- No

Merits of the case remain untouched while decision on precautionary measures is evaluated. Application of one of precautionary measures only temporarily captivates *status quo* of certain legal relationship, but in no way influences the actual development of a trial.

12. Can precautionary measures be challenged before the Supreme Court /Council of State?

- Yes
- Yes, but only if they pass a test of eligibility
- No

As the administrative courts in Lithuania exist within a frame of a two-tier system (a regional administrative court and the Supreme Administrative Court), one can lodge an appeal to the Supreme Administrative Court if a regional administrative court's decision on precautionary measures did not meet one's expectations.

13. Can the Supreme Administrative Court / Council of State, as a precautionary measure, suspend the judgements on the merit of a judge of a lower level?

- Yes
- No

14. On average, how many precautionary decisions are taken every year by the Supreme Court/ Council of State in comparison to the overall number of decisions taken?

Over the period of the last two years (2019-2020) the Supreme Administrative Court of Lithuania rendered 204 decisions in cases regarding precautionary measures. The total number of cases heard in those two years amounted to 7981. That makes it less than 3 % of the overall decisions.