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## **Administrative Courts in Lithuania: History, Evolution, the Present, and Perspectives**

### **ABSTRACT**

Judicial review of the legality of administrative acts is one of the most important elements of the rule of law. The institute of administrative justice began to develop in the 19th century: in 1872 The French Council of State was given a function of judicial review, the Administrative Court in Vienna (Austria-Hungary) was established in 1867, in Baden (Germany) in 1863, etc. After the First World War, administrative courts were established in several European countries. The law on the Supreme Administrative Court and its Jurisdiction in Czechoslovakia was adopted in 1918.<sup>1</sup> The Law for the Supreme Administrative Court in Poland was issued in 1922.<sup>2</sup> Administrative courts were also functioning in other countries (Latvia, Estonia). In Lithuania administrative courts were established for the first time in 1999, although up to fifteen draft laws on the Administrative Court were prepared in the interwar

<sup>1</sup> Zákon č. 3 ze dne 2. listopadu 1918 o nejvyšším správním soudě a o řešení kompetenčních konfliktů, [http://www.nssoud.cz/historie/3\\_1918.pdf](http://www.nssoud.cz/historie/3_1918.pdf).

<sup>2</sup> The Act from August 3rd, 1922 on the Supreme Constitutional Court, <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19220670600>.

Lithuania. This article was written on the occasion of the centenary of the Polish administrative courts. Thus, the purpose of the article is to familiarize the readers with Lithuanian administrative courts, starting with the development of the institute of administrative justice from 1918 and ending with the perspectives of judicial review formed in that time. Therefore, the authors of the article set the following objectives: to remind of the origins of administrative justice in Lithuania from 1918 to 1940; to reveal the course of the establishment of administrative courts after the Restoration of the Independence of the Republic of Lithuania in 1990, briefly discussing who and on the basis of which legal acts controlled the legality of administrative acts during the Soviet era; to provide the insights of institutional development as well as competence development of the administrative courts; to present contemporary administrative process, giving some insights about the status quo; to present the features of and the most relevant reforms of administrative process. Abbreviations used in the article are as follows: CSARL – Central State Archive of the Republic of Lithuania, MDWLLAS – Manuscript Department of the *Wróblewski* Library of the Lithuanian Academy of Sciences.

**Key words:** administrative courts, administrative justice, administrative process

## **Administrative Justice System from 1918 to 1940**

On February 16th, 1918, the Council of Lithuania proclaimed the Act of Independence of Lithuania. The institutional and legal foundations of the newly created state began to develop. This marked the beginning of discussions about the need for an administrative court. Moreover, the complaints commissions operating in the Seimas of Lithuania began to announce the facts about the officials' abuse of power regarding individuals. Almost everyone seemed to have understood the need for the judicial review of the legality of administrative acts, the necessity to establish an administrative court, and was keenly interested in the issue of the administrative court. For instance, in 1928 M. Römeris published the solid monograph "Administrative Court"<sup>3</sup> where he revealed the basics and evolution of judicial review in the world, the official doctrines of French *Le Conseil d'État*, German, Polish, Austrian, Czechoslovakian, American and British. He himself was drafting and cooperated in drafting several laws on the Administrative Court. Moreover, the former governor of the Territory of Klaipėda and the last Prime Minister of independent Lithuania A. Merkys as the head of a special commission formed by the Seimas in 1937 from 1937 to 1940 designed

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3 M. Römeris, *Administracinis teismas*, Kaunas 1928.

over ten draft laws on the Administrative Court. Moreover, the former governor of the Territory of Klaipėda and the last Prime Minister of independent Lithuania A. Merkys as the head of special commission formed by the Seimas in 1937 from 1937 to 1940 designed over ten draft laws on the Administrative Court. Unfortunately, in the period from 1918 to 1940, an the administrative court was never established in Lithuania.

However, there were efforts to replace the administrative court with other institutions. But those institutions were not judicial bodies. It means that they did not have the appropriate legal instruments to supervise the legality of decision-making of public administrative entities.

These entities were the first one established by the legislative body:

- The Complaints Commission of Lithuania of the Lithuanian Council of State (1917–1918),
- The Commission for Investigation of Illegal Government Activities (1918–1920) of the Lithuanian Council of State,
- the Complaints and Investigations Commission of the Constituent Seimas (1920–1922),
- the Complaints and Petitions Commission of the Seimas (1922–1927),
- the Petitions Commission of the Seimas (1936–1940).

Commissions were supposed to play a parliamentary oversight role. However, to some extent they supervised the legality of administrative acts. They could establish the illegality of an administrative act or the illegality of actions of the officials but as they were not judicial authorities, they could not annul illegal acts or, for example, to punish an official for taking an illegal decision. Activities of these commissions were not properly regulated. But these documents testify the first attempts to govern the procedures of supervisory bodies over the public administration entities in Lithuania.<sup>4</sup>

This Commission was also engaged in supervision of the legality of the activities of public administration.<sup>5</sup> The Commission, as an institution of executive power, has the right to settle disputes and take decisions. Because of those powers M. Römeris called it as a surrogate of the administrative court.<sup>6</sup> The Statute for the Commission was also one of the first documents attempted to govern provisions on the administrative proceedings.<sup>7</sup> However, the Commission was a judicial body because its' competence to settle disputes and take decisions could be realised only in the form of opinions. Besides, only officials could apply to it.

4 For example, the Statute of the Complaints and Investigation Commission of the Constituent Seimas, adopted on July 7, 1920.

5 Legal Advisers Agenda of the Meeting on January 20, 1920, CSARL, f. 923, ap. 1, b. 104, p. 24.

6 M. Römeris, *Lietuvos konstitucinės teisės paskaitos*, Kaunas 1937, p. 95.

7 The Commission of Legal Advisers of the Ministries, Interim Official Gazette 1920, No. 23-290.

The Commission of Legal Advisers of the Ministries was abolished in 1928 and the Council of State was established. Its legal status was established in Article 54 of the 1928 Constitution of the State of Lithuania,<sup>8</sup> and in Article 104 of the 1938 Constitution of Lithuania.<sup>9</sup> The provision that could be related to judicial review as one of the competences of the Council of State can be seen in Article 3 of the Law on the Council of State<sup>10</sup> that the Council of State had to notify the Cabinet of Ministers or the relevant minister about the observed contradiction of administrative acts with the law. Unfortunately, this monitoring function was rarely used. Besides, the Council of State was not a judicial body since those decisions were not binding to ministers.

Another type of institutions that in some cases fulfilled the competence of judicial review were the courts of general jurisdiction. For example, the Supreme Tribunal heard complaints from individuals against decisions made by approximately ten public administrative bodies. And this competence of the Supreme Tribunal was not managed by enabling law but by special legal provisions. In some administrative areas, cases were heard at lower courts. However, in some areas administrative acts were not subject to appeal to any judicial body. Almost all the activities of municipal entities were subject to judicial review by courts of general jurisdiction.

The function of the “judicial” review was also performed by certain commissions. Firstly, by the commissions where one of the commissioners should be a judge (for example, labour income tax commissions,<sup>11</sup> land management commissions,<sup>12</sup> etc.), secondly, the Cabinet of Ministers, some ministers also played the role of supervisors of the legality of administrative acts or other actions. Thirdly, various public administrative bodies, for example, the Department of Labour Inspectorate under the Ministry of Labour Social Security, the Department of Municipalities under the Ministry of the Interior, more than twenty commissions, the Commission under the Minister of the Interior to consider complaints in municipal affairs, the Department of Labour Inspectorate under the Ministry of Labour Social Security, etc.

In the Territory of Klaipėda there were specialized courts including the Klaipėda Regional Administrative Court which had the power to review administrative acts issued by territorial authorities.<sup>13</sup> The Klaipėda Regional Division of the Supreme Tribunal became the highest judicial instance for administrative cases of Klaipėda Regional Administrative Court from 1933.<sup>14</sup>

<sup>8</sup> The Constitution of the State of Lithuania, Official Gazette 1928, No. 275-1778.

<sup>9</sup> The Constitution of Lithuania, Official Gazette 1938, No. 608-4271.

<sup>10</sup> The Law on the Council of State, Official Gazette 1928, No. 283-1813.

<sup>11</sup> Law on Labour Income Tax, Official Gazette 1932, No. 388-2668.

<sup>12</sup> The Law on Land Management, Official Gazette 1935, No. 494-3446.

<sup>13</sup> The Instruction of the Representative of the Cohesion States in 1920 September 21 for redevelopment by the central government, Official Gazette of the Memel Territory 1920, No. 41.

<sup>14</sup> The Judicial System Act, Official Gazette 1933, No. 419-2900.

Hence, in the interwar Lithuania administrative court was not established. But there was a certain system of bodies that attempted to replace judicial review. However, M. Römeris called such a system “microscopic.”<sup>15</sup>

Although in the official sources, during the drafting of the Constitution of Lithuanian State, the idea of an administrative court was recorded as early as 1920<sup>16</sup>, and Article 68 of the 1922 Constitution of Lithuanian State<sup>17</sup> stipulated that the court decides on the legality of the administrative orders, drafts of the law on administrative court were only started in 1930. It should be emphasized that no other constitution operating in the interwar Lithuania established judicial review except for the 1922 Constitution.

Lawyers tried to draft laws for the administrative court. M. Römeris was the very first person who sought to do this. The first attempts were made in 1928 when M. Römeris was instructed to draft the Statute of the Council of State. But his idea to give the Council of State a power to review the legality of all administrative acts that were applied by any interested party was not approved.<sup>18</sup>

Later M. Römeris tried to introduce judicial review in 1931 during the drafting of a new Judicial System Act. The idea was a failure again.<sup>19</sup> The very first draft of the Law on Administrative Court was made in 1932 by the special Commission of the Council of State.<sup>20</sup> M. Römeris belonged to this commission. This draft was his creation, but this time approved by the councillors. Unfortunately, this draft was never considered by the government.

It is interesting that in 1936 during the drafting of the new constitution, it was planned that constitutional, administrative, and statutory courts would operate in the state.<sup>21</sup>

Other (approximately) ten draft laws on administrative court were prepared by the special commission of the Seimas in the period from 1937 to 1940. A. Merkys was the head of the commission.

Despite the efforts of lawyers (especially M. Römeris and A. Merkys), the Law on Administrative Court was never adopted in the interwar Lithuania. Mykolas Römeris tried to explain the reasons for this: Lithuanian politicians did not want the judicial bodies to interfere in the affairs of the public administration.<sup>22, 23</sup>

<sup>15</sup> M. Römeris, *Administracinio teismo įstatymo projektas*, „Židinys“ 1940, No. 5/6, p. 561.

<sup>16</sup> Preparation of the Draft of Lithuanian Constitution, CSARL, f. 1557, a. 1, b. 168, p. 14.

<sup>17</sup> The Constitution of the State of Lithuania, Official Gazette 1922, No. 100-799.

<sup>18</sup> M. Römeris, *Dziennik 1926–1928*, MDWLLAS, f. 138-2258, p. 455.

<sup>19</sup> M. Römeris, *Administracinio teismo įstatymo aiškinamasis raštas*, MDWLLAS, f. 138 (*Römerio giminės aktai*), unit 2325, pp. 10-29.

<sup>20</sup> M. Römeris, *Administracinio teismo įstatymo projektas*, „Židinys“ 1940, No. 5/6, p. 563.

<sup>21</sup> Drafts of the Constitution (1936), CSARL, f. 923, a. 1., b. 989.

<sup>22</sup> M. Römeris, *Lietuvos konstitucinės teisės paskaitos*, Vilnius 1990, p. 410.

<sup>23</sup> More about the evolution of administrative justice in Lithuania 1918-1940 see: I. Deviatnikovaitė, *Administracinio teismo istorija Lietuvoje 1918–1940*, Kraków 2021.

## The Establishment of Administrative Courts after the Restoration of Independence of the Republic of Lithuania

After the restoration of independence, the Supreme Council of the Republic of Lithuania – the Restorative Seimas adopted the Law of the Republic of Lithuania “On the Provisional Basic Law of the Republic of Lithuania.”<sup>24</sup> This document in the legal doctrine is also called the provisional constitution.<sup>25</sup> The document did not regulate the establishment of administrative courts, and only section 14 discussed the general principles and foundations of judicial competence. However, it can be assumed that the beginnings of the administrative courts lay in Article 37 of the Provisional Basic Law, which establishes the right of citizens to apply to the court in accordance with the procedure established by law regarding the actions of officials that violate the law, exceed the powers, or restrict the rights of citizens.

Since there were no administrative courts in Lithuania, we will note that in accordance with the Articles 257-269 of the Code of Civil Procedure adopted on July 7, 1964 by the Supreme Council of the Lithuanian Soviet Socialist Republic disputes arising from administrative legal relations were examined in the courts of general competence.<sup>26</sup> According to Articles 16 and 257 of the Code of Civil Procedure, disputes arising from administrative legal relations were divided into three groups: “1) disputes based on complaints about irregularities in voter lists; 2) disputes based on complaints about the actions of administrative bodies; 3) disputes regarding the collection of state and local taxes and fees, mandatory premium insurance and tax surcharges from citizens.”<sup>27</sup>

The Seimas of the Republic of Lithuania on November 8, 1994 adopted the law “On Amending and Supplementing the Civil Procedure Code of the Republic of Lithuania.”<sup>28</sup> The Law entered into force on January 1, 1995. In Article 257 of this code other categories of cases arising from administrative legal relations that must be examined by the court of general competence were enumerated: 1) complaints about elections and referendum; 2) complaints regarding the imposition of administrative penalties; 3) complaints about illegal actions or omissions of the state authorities or public administration institutions and officials, restricting the rights of other persons. The list was also supplemented

<sup>24</sup> On the Provisional Basic Law of the Republic of Lithuania, Official Gazette 1990, No. 9-224.

<sup>25</sup> Žilys J., *Lietuvos Respublikos Aukščiausiosios Tarybos Prezidiumo konstitucinis statusas – santykių su vykdomąja valdžia aspektas* „Jurisprudencija“ 2002, No. 29 (21), p. 6.

<sup>26</sup> The Law of the Lithuanian Soviet Socialist Republic on the Civil Procedure Code, Official Gazette 1964, No. 19-139.

<sup>27</sup> Ibidem.

<sup>28</sup> On the Law Amending and Supplementing the Civil Procedure Code of the Republic of Lithuania, Official Gazette 1990, No. 9-224.

with a fourth category of disputes, i.e., disputes based on the complaints of the Government representative regarding municipal acts and actions of officials.

Although in the Code of Civil Procedure the relevant rules of administrative judicial procedure were withdrawn succinctly. It was possible to find certain norms of *lex specialis* intended to regulate disputes arising from administrative legal relations in the court of general jurisdiction (Article 259-269 of the Code of Civil Procedure).

Administrative courts in Lithuania were established in 1999. According to the Lithuanian legal doctrine,<sup>29</sup> it is agreed that the basis for the establishment of administrative courts is Article 111 of the Constitution of the Republic of Lithuania adopted on October 25, 1992. Article 111 of the Constitution governs the right to set up specialized courts to hear administrative, labour, family, and other categories of cases. However, it took seven years for Lithuania to implement the right to establish specialized courts registered in Article 111 of the Constitution.

In 1993 the Seimas of the Republic of Lithuania approved the Outline of the Legal Reform with the Resolution "On the Outline of the Reform of the Legal System and its Implementation" approved the Outline of the Legal Reform.<sup>30</sup> With the Resolution "On...", the Seimas offered the implementation program for the reform of the legal system until March 10, 1994. The program should have provided the stages and specific deadlines for the implementation of the reform of the legal system, the list of laws and other legal acts that must be prepared and adopted during the implementation of the Reform of the Legal System, as well as the sequence of adoption of those legal acts, creation of the necessary material technical base to implement the reform of the legal system, creation of the program for the training, retraining and upgrading of the qualifications of lawyers, other organizational measures necessary for the implementation of the Reform of the Legal System.<sup>31</sup>

On June 9, 1994, with the Resolution no. 455 "On...", the Government approved the implementation program for the Reform of the Legal System,<sup>32</sup> which was planned to be carried out in three stages. The first stage is to prepare the legal framework necessary for the Reform of the Legal System. In the second stage, the legal framework is finally formed, and the courts and law enforcement institutions are reformed. In the third stage, it is planned to put into practice an analysis

<sup>29</sup> D. Raižys, D. Urbonas, *Administracinių bylų teisenos infrastruktūrinis modelis*, „Visuomenės saugumas ir viešoji tvarka“ 2010, No 3, p. 59; J. Paužaitė-Kulvinskienė, *Administracinė justicija: teorija ir praktika*, Vilnius 2005, p. 50.

<sup>30</sup> On the Outline of the Reform of the Legal System and its Implementation, Official Gazette 1993, No 70-1311.

<sup>31</sup> Ibidem.

<sup>32</sup> On the Implementation Program of the Reform of the Legal System, Official Gazette 1994, No. 45-840.

of the new legal system and, if necessary, to improve it. Although the second phase of the Reform of the Legal System was related to judicial reforms, there was no mention of the system of administrative courts. Although the Outline of the Legal Reform from 1993 should be considered as the basis for the reform of the Lithuanian legal system, the greatest attention was paid to the reform of the court system of general competence. Administrative courts were not mentioned in this outline. Furthermore, the need for the establishment of administrative courts was not mentioned either.

The necessity of establishing administrative courts was mentioned for the first time in the Outline of the Lithuanian Administrative Process Reform prepared by the Ministry of Justice of the Republic of Lithuania in 1996.<sup>33</sup> This document was the constituent part of the Resolution of the Seimas “Regarding the Outlines of the Reform of Administrative Process and their Implementation.”<sup>34</sup> The Ministry of Justice, offered in accordance with Article 111 of the Constitution:

to establish a system of two-tier administrative courts – one administrative court in each administrative unit and the Supreme Administrative Court in Vilnius (...).” The first-tier administrative courts would hear cases of administrative law violations, complaints about the legality of decisions made by administrative (management) authorities, as well as other cases arising from administrative legal relations, which are currently heard by general courts in accordance with the Code of Civil Procedure. The Supreme Administrative Court would be the appellate and cassation instance for the decisions made by the courts of the first instance, and this court would also form a unified jurisprudence in administrative cases.<sup>35</sup>

In the Outline of the Administrative Process Reform the reasons that led to the establishment of the two-tier instance system of administrative courts were not named. However, the Explanatory Note to the draft of the Seimas Resolution on the Outline of the Reform of Administrative Process<sup>36</sup> emphasised the transfer of cases of administrative law violations to the courts. It can be concluded that the reform of administrative process was motivated by the inconsistency of the administrative law system operating at the time with the principle of separation

33 The Appendix to the resolution of the Seimas of the Republic of Lithuania: The Outline of the Lithuanian Administrative Process Reform, Official Gazette 1996, No. 2614.

34 The Decision of the Government of the Republic of Lithuania Regarding the Submission of the Draft Resolution of the Seimas of the Republic of Lithuania On the Outlines of the Administrative Procedure Reform and Their Implementation to the Seimas of the Republic of Lithuania, Official Gazette 1996, No. 1080.

35 The Outline of the Lithuanian Administrative Process Reform, Official Gazette 1996, No. 2614.

36 Explanatory Note to the Draft of the Resolution of the Seimas of the Republic of Lithuania On the Outline of the Reform of Administrative Process, Official Gazette 1996, No. 2614.



of powers, even with the Article 6 of the Convention on Human Rights and Fundamental Freedoms<sup>37</sup> which entered into force in Lithuania in 1995.

The Outline of the Lithuanian Administrative Process Reform was presented to the Seimas for consideration. The Seimas approved the Outline.<sup>38</sup> It was referred to the State and Law Committee of the Seimas. The further fate of the Outline is not known, after the document was submitted to the State and Law Committee of the Seimas. But it can be assumed that the reasons for its non-acceptance were related to the Seimas elections in 1996.<sup>39</sup>

New Outline of the Reform of the Legal System was adopted in 1998<sup>40</sup> after evaluating the inconsistencies in the outline of the legal system reform in 1993, including the fact that the previously prepared draft of the outline of the legal system reform did not mention administrative courts at all, also considering the requirements and recommendations provided to Lithuania by the United Nations Organization, the European Union, and the Council of Europe. In the reports of the European Union Commission on the progress of Lithuania, after it applied to become an European Union member, Lithuanian administrative justice system was repeatedly discussed, emphasizing the necessity of establishing specialized courts competent to control legality of the public administration actions.<sup>41</sup>

Part I of Section II of the Outline of the Reform of the Legal System arranged to establish envisaged the goal of establishing administrative courts of two instances, which were to deal with the cases regarding the legality of decisions made by administrative entities and officials and other cases arising from administrative legal relations, such as taxes etc., would belong. Thus, the goal of the Outline was to create an independent system of administrative courts.<sup>42</sup> It can be asserted that in 1998 the outline laid the foundations for the establishment of administrative courts in Lithuania.

The issue of adopting the Outline of the Reform of the Legal System was decided in the plenary session of the Seimas June 25, 1998.<sup>43</sup> The outline was adopted after 46 members of the Seimas voted in favor, 5 against and 17 abstained. After the Seimas adopted the new version of the Outline of the Legal System Reform, the Prime System Reform, the Prime Minister, by his decree, formed

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37 The European Convention on Human Rights and Fundamental Freedoms, Official Gazette 1995, No. 40-987.

38 The Transcript of the Twenty-sixth Session of the Seimas of the Republic of Lithuania; [https://e-seimas.lrs.lt/rs/legalact/TAK/TAIS.240857/#zyma\\_9s26padminteisen](https://e-seimas.lrs.lt/rs/legalact/TAK/TAIS.240857/#zyma_9s26padminteisen).

39 J. Paužaitė-Kulvinskienė, *Administracinė justicija: teorija ir praktika*, Vilnius 2005, p. 52.

40 Regarding the Outline of the Reform of the Legal System (new version) and their Implementation, Official Gazette 1998, No. 61-1736.

41 J. Paužaitė-Kulvinskienė, *Administracinė justicija: teorija ir praktika*, Vilnius 2005, p. 52.

42 Regarding the Outline of the Reform of the Legal System (new version) and their Implementation, Official Gazette 1998, No. 61-1736.

43 Minutes of the Morning Plenary Session of the Seimas of the Republic of Lithuania No. 54(217); <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.59900>

a working group of five experts (justice of the Constitutional Court K. Lapinskas, justice of the Criminal Division in the Supreme Court L. Žilienė, president of the Court of Appeal V. Milius, judge of the Criminal Division in the Vilnius regional court A. Pėstininkas, chief specialist of the Law Department of the Ministry of Justice H. Uziela).<sup>44</sup> By November 1, 1997, the working group had to draft laws on the establishment of administrative courts determining their competence and submit those drafts to the Government. The draft law on the Establishment of Administrative Courts of the Republic of Lithuania was adopted by the Seimas on January 1, 1999.<sup>45</sup>

The analysis of the Explanatory Note submitted together with the original draft law on the Establishment of Administrative Courts<sup>46</sup> allows us to distinguish two groups of reasons for the establishment of administrative courts – political and legal. Political reasons consisted of Lithuania's aspiration to create a democratic judicial system, focused on Western European countries, with the aim of joining the European Union in the future. The legal reasons regarded the need to strengthen the realization of the human right to the court and to fill the gap in the judicial system, since before the establishment of administrative courts, a small part of disputes arising from administrative legal relations were examined in the court of general competence, leaving a part of cases unexamined.<sup>47</sup>

## Institutional Development of the System of Administrative Courts

Administrative courts started operating on 1st of May 1999. Five regional administrative courts in Vilnius, Kaunas, Klaipėda, Šiauliai, Panevėžys, Higher Administrative Court and the Administrative Cases Division of the Court of Appeal began their activity. The highest instance in administrative cases was not separated from the courts of general competence, i.e. the administrative court of the highest instance was a structural part of the court of general competence – the Administrative Cases Division of the Court of Appeal.

44 Regarding the Creation of a Working Group to Draft Laws on the Establishment of Administrative Courts and Determination of their Competence, 1997, No 415; <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.42249?positionInSearchResults=0&searchModelUUID=26b88f29-f040-4a86-aa06-e0a740c3ac8b>.

45 The Draft Law on the Establishment of Administrative Courts (edited for adoption) 1999, No. P-1272 (3); the Law on the Establishment of Administrative Courts, Official Gazette 1999, No. 13-309.

46 Explanatory Note to the Draft Laws No. P-1271-P-1275, 1998, No. P-1271 <https://e-seimas.lrs.lt/portal/legalAct/lt/TAK/TAIS.58719?jfwid=-py58q4158>

47 More about the establishment of administrative courts see: B. Jacevič, *Administracinių teismų kūrimosi prielaidos ir raida Lietuvoje*, Magistro baigiamasis darbas, Vilnius 2022.

The Supreme Administrative Court of Lithuania began its activity on 1<sup>st</sup> of January 2001.<sup>48</sup> The Higher Administrative Court and the Administrative Cases Division of the Court of Appeal of Lithuania were abolished. The administrative courts of five regions were left to function. Thus, since 1999 to 2000 the system of administrative courts was not completely separated from the system of courts of general jurisdiction. The administrative courts' system was three-tiered.

Since January 1, 2001 a two-instanced administrative courts system began to operate. It was completely separated from the system of courts of general jurisdiction. Thus, January 1, 2001 the highest level in the system of administrative courts consisted of the Supreme Administrative Court of Lithuania. The lower level consisted of five district administrative courts. Such a system of administrative courts operated until January 1, 2018.

As a part of the judicial reform, the regional administrative courts were reorganized and from 1<sup>st</sup> of January 2018 there were no more four regional administrative courts, as they were merged into the Regional Administrative Court.<sup>49</sup>

Since January 1, 2024 there will be one Regions Administrative Court together with the Supreme Administrative Court of Lithuania.

#### Change of the Administrative Court System in Lithuania 1999–2024

1999-05-01 – 2001-01-01	2001-01-01 – 2017-12-31	Since January 1, 2018	Since January 1, 2024
Administrative Cases Division of the Court of Appeal	Supreme Administrative Court of Lithuania	Supreme Administrative Court of Lithuania	Supreme Administrative Court of Lithuania
Higher Administrative Court	Five Regional Administrative Courts	Vilnius Regional Administrative Court	Regions Administrative Court
Five Regional Administrative Courts		Regional Administrative Court	

<sup>48</sup> The Law on the Implementation of the Law on Amending and Supplementing Articles 2, 3, 4, 5, 6 of the Law on the Establishment of Administrative Courts of the Republic of Lithuania and the Law on Amending the Law on Administrative Cases, Official Gazette 2000, No. 85-2568.

<sup>49</sup> The Law on the Establishment of Administrative Courts of the Republic of Lithuania No. VIII-1030 Law amending Article 2 and repealing Article 3, Official Gazette 2016, No. 17975.

## Development of the Competence of Administrative Courts

According to the Part 1 of Article 1 of the Law on the Establishment of Administrative Courts<sup>50</sup>, specialized administrative courts were established to examine the complaints regarding administrative actions (acts, omission; failure to fulfil duties) performed by the public administration entities. In general, the competence of Lithuanian courts is determined by the Law on Courts,<sup>51</sup> in which from February 3, 1999 until May 1, 2002 was a rule that the competence of administrative courts is determined by the Law on Administrative Proceedings (hereinafter – LAP).<sup>52</sup> Although this provision was changed by detailing the competence of the regional administrative courts and the Supreme Administrative Court of Lithuania, until now the Part 2 of Article 1 of the Law on the Establishment of Administrative Courts was in force. This legal provision expressly establishes that the competence of administrative courts is determined by the LAP and other laws. Therefore, the development of the competence of administrative courts is presented in the main legal amendments, which led to the fundamental changes in competence of administrative courts.

### Period from 1999 to 2001

Although in this time the laws regulating public administration lacked juridical clarity, in order to define the limits of the competence of administrative courts, it can be summarized that administrative courts were assigned to hear disputes regarding the activities of public administration entities (the execution of the granted powers, the administration of public services, the assurance of the independent functioning, etc.).

During this period, the basic rules were established in order to define the limits of the competence of administrative courts, primarily thus cases cannot be attributed to the competence of administrative courts. Administrative courts cannot deal with the cases assigned to the competence of other courts, investigate the activities assigned to the President of the Republic, the Seimas of the Republic of Lithuania, members of the Seimas, the Prime Minister, the Government of the Republic of Lithuania, auditors of the Seimas of the Republic

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<sup>50</sup> The Law on the Establishment of Administrative Courts of the Republic of Lithuania, Official Gazette 1999, No. 13-309.

<sup>51</sup> The Law on Courts of the Republic of Lithuania, Official Gazette 2002, No. 17-649.

<sup>52</sup> The Law on Administrative Proceedings of the Republic of Lithuania, Official Gazette 1999, No 13-308; 2000, No 85-2566; 2016, No 2016-16849.

of Lithuania, judges of the Constitutional Court of the Republic of Lithuania, the Supreme Court of Lithuania and the Lithuanian Court of Appeal; interfere with other actions of other judges, prosecutors, officers, court bailiffs, and cases regarding administrative offenses, which were examined in the first instance by district courts and other institutions.

In the period in question, the list (with changes presented) of cases assigned to the competence of administrative courts was formed. For instance, it concerned cases regarding the legality of normative administrative acts, the legality of legal acts and actions adopted by public administration entities, public institutions and non-governmental organizations, the refusal or delay of public administration entities to perform actions assigned to their competence (omission), compensation for damages caused to a natural person or legal person by illegal actions or omission of the public administration entities, taxes, other mandatory payments, fees and tax disputes, service disputes and other disputes in the civil service, disputes between independent public administration entities due to competence or violation of laws, elections, appeals of a decision in an administrative offenses case, the legality of general acts adopted by public organizations, associations, political parties, political organizations or associations.

We can distinguish the main features of the competence of administrative courts created in this period. Regional administrative courts were assigned to examine cases in which the party to the dispute is a territorial (municipal) public administration entity. The Higher Administrative Court, which at the time was the appellate instance for the decisions of the regional administrative courts, was assigned as the first instance to examine cases when the party is a central public administration entity and tax cases. The Administrative Cases Division of the Lithuanian Court of Appeals was the appeal instance for cases examined by the Higher Administrative Court as a court of first instance, and the final instance in matters of jurisdiction in administrative cases. Also the Administrative Cases Division of the Lithuanian Court of Appeals was assigned to have authority over the uniformity of the case-law.

### **Period from 2001–2002**

During the period from 2001 to 2002 the separate two-tier system of administrative courts was established, which led to the fundamental changes in the field of the administrative courts' competence.

The competence of the Higher Administrative Court was chosen to be divided between Vilnius Regional Administrative Court with additional competence, and the Supreme Administrative Court of Lithuania.

The competence of the Regional Administrative Courts and Vilnius Regional Administrative Court was divided according to the principle that is linked to the status of the party to the dispute. Regional Administrative Courts were assigned cases in which the party to the dispute is a territorial (municipal) public administration entity whose territory of operation coincides with the territory of operation of the Regional Administrative Courts. The Vilnius Regional Administrative Court was assigned cases in which the party to the dispute is not only a territorial (municipal) public administration entity whose territory of operation coincides with the territory of operation of the Vilnius Regional Administrative Court, but also a central public administration entity (with the exception of cases regarding the legality of normative administrative acts adopted by the central public administration entity, and cases regarding the legality of general acts adopted by public organizations, associations, political parties, political organizations or associations which were assigned to the Supreme Administrative Court of Lithuania as the only and final instance).

The Vilnius Regional Administrative Court was additionally assigned cases regarding the decisions of the Chief Official Ethics Commission and disputes regarding the termination of service relations with civil servants, the refusal to issue a permit to live or work or the cancellation of such a permit, as well as complaints regarding the non-granted refugee status, the insurance of the execution of the decisions of the Chief Administrative Disputes Commission, the Tax Disputes Commission, and others.

The list of the administrative cases assigned to the regional administrative courts was supplemented with cases regarding the application of financial sanctions and the requests to ensure the execution of decisions of administrative dispute commissions.

This period, due to the aforementioned creation of the new system of administrative courts, symbolizes the beginning of the competence of the Supreme Administrative Court of Lithuania.

The Supreme Administrative Court of Lithuania was assigned not only the role of the appellate court regarding the decisions of the regional administrative courts, but also to be the first and the final instance for cases assigned to its exclusive competence or for the examination of specific requests in cases established by law (for instance, requests for renewal of the process). The competence of the Supreme Administrative Court of Lithuania as a court of the final instance was supplemented by cases based on complaints about the administrative decisions or omission of the Central Electoral Commission of the Republic of Lithuania, except for those assigned to the competence of the

Constitutional Court. It is worth mentioning that in cases when the Supreme Administrative Court of Lithuania is the first and final instance, the right to appeal the court's decision is eliminated.

During this period, more detailed forms of implementing the functions of the Supreme Administrative Court of Lithuania to form a uniform practice of administrative courts were formed, determining that this function is performed by publishing the court publication (Lt. Biuletėnis), providing recommendations on the interpretation and application of laws and other legal acts, consulting regional administrative courts in interpretation and application of the laws and of other legal acts.

It is worth revealing that in this period, the competence of administrative courts was supplemented with a new competence – to perform the other functions. The assignment of *the other functions* as additional competence for administrative courts (especially regional administrative courts), as we will see later, was the reason that in *other (special)* laws a new type of *the judicial procedures* have been established. These judicial procedures have their own representative features. For instance, only the public administration entity and the administrative court are the participants in these *judicial procedures*. These *judicial procedures* are not related to a specific case, because while these *judicial procedures* are being carried out, there is no dispute. It could be stated that the list of cases assigned to the competence of administrative courts became non-exhaustive, due to the legal possibility to fill it up *ad hoc* in the other (special) laws.

## 2004

This period is singled out due to the changes in the field of the competence of administrative courts, directly related to the process and legal consequences of Lithuania's accession to the European Union. During this period, the right of the Regional Administrative Courts and the Vilnius Administrative Court and the duty of the Supreme Administrative Court of Lithuania to apply to the competent judicial institution of the European Union with a request to submit a preliminary ruling were imposed. Also, the Supreme Administrative Court of Lithuania was assigned with the duty, according to the interpretations of the judicial institutions of the European Union, to analyze and summarize the case-law of the application of European Union legal provisions, make recommendations regarding the cooperation between administrative courts and the judicial institutions of the European Union in ensuring the uniform interpretation and application of European Union legal acts.

## Period from 2007 to 2014

This period marks several autonomous changes in the field of the competence of administrative courts. The scope of disputes arising from the field of public administration was expanded, after the Law on Public Administration<sup>53</sup> had established that the public administration includes, among other things, the provision of administrative services.

Since the beginning of the establishment of the administrative courts, administrative courts have been examining many cases regarding the administrative offenses. This was particularly criticized by the scholars of the law, who claimed that the cases of administrative offenses should have been heard in courts of general competence.<sup>54</sup> Criticism has been heard because since January 1, 2011 the cases of administrative offences have been referred to the courts of general jurisdiction.

During this period, the list of cases assigned to the Supreme Administrative Court of Lithuania was supplemented by case regarding requests from municipal councils to provide conclusions due to the fact of breaking the oath and (or) non-fulfilment of the powers provided for by law by a member of the municipal council or the mayor for whom the procedure for the loss of powers has been initiated.

## 2016

When the new wording of the LAP entered into force, the additional competence of the Vilnius Regional Administrative Court was abolished, by abandoning the discussed rules, according to which the competence of the regional administrative courts depended on the status of the party to the dispute and according to which the cases *expressis verbis* were assigned to the competence of the Vilnius Regional Administrative Court. However, at the same time, a new legal provision of the LAP was adopted, according to which the Vilnius Regional Administrative Court examines other cases in the first instance, assigned to its competence according to the applicable laws. It proves that the additional competence of the Vilnius Regional Administrative Court actually was maintained.

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53 The Law on Public administration of the Republic of Lithuania, Official Gazette 1999, No. 60-1945.

54 D. Raižys, *Administracinių teisės pažeidimų bylų teismoingumo problemos*, [in:] *Administraciniai teismai Lietuvoje: nūdienos iššūkiai*, Vilnius 2010, p. 348; J. Paužaitė-Kulvinskiene, *Administracinė justicija: teorija ir praktika*, Vilnius 2005, pp. 97-98.



## Period from 2018 to 2022

Although the institutional reform of administrative courts that took place in 2018 did not significant changes in the area of the competence of administrative courts, but changes in the competence of administrative courts were carried out autonomously, which further expansion of the scope of the competence of administrative courts.

Regional administrative courts started to handle cases regarding the disputes arising from material liability and retroactive claims.

During this period, together with the new procedure for handling cases, the competence of the Supreme Administrative Court of Lithuania was supplemented by the type of cases regarding the requests of the State Data Protection Inspectorate to apply to the competent judicial institution of the European Union, regarding the European Commission's decisions. So, even though the Supreme Administrative Court of Lithuania is considered to be an appellant instance court, obliged to harmonize case-law of administrative court, the court is also the only and the final instance for cases or requests from those indicated in the LAP or other laws.

The competence of the regional administrative courts was supplemented by cases regarding the complaints of transferable persons, regarding the non-granted or cancellation of the transferable person status.

After the adoption of the Election Code, which codifies separate election laws, and the Constitutional Law of the Republic of Lithuania on the Referendum, the competence of the administrative courts regarding cases on elections was specified.

## Nowadays and the Near Future

After all the changes that modified the competence of administrative courts, it can be summarized that the general exhaustive list of the competence of regional administrative courts, the Vilnius Regional Administrative Court and of the Supreme Administrative Court of Lithuania has been established in the LAP. Other laws determine the jurisdiction of the Vilnius Regional Administrative Court, which can be divided into two types: *exclusive jurisdiction of cases*<sup>55</sup> and

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<sup>55</sup> For instance, cases regarding: a tax dispute; the resolutions of the Competition Council, which prevent the further investigation of the violation of the Competition Law or which terminate the examination of the notification on concentration; decisions to revoke a residence permit issued to a foreigner or his right to reside in the Republic of Lithuania, decisions to revoke a refugee status, additional or temporary protection; the decisions of the Chief Official Ethics Commission; the decisions of the Lithuanian Radio and Television Commission on the imposition of a fine; the decisions made by the Coordination Commission for the Protection of Objects Important for Ensuring National

*exclusive competence of other functions.*<sup>56</sup> Also other laws provide for additional competence of the regional administrative courts by assigning *cases*<sup>57</sup> and *other functions*.<sup>58</sup>

This developed competence of administrative courts will be amending institutionally (see the chapter: *the Institutional Development of the System of Administrative Courts*).

## Contemporary Administrative Process: Developments and Insights about the *Status Quo*

In Lithuania, there are two functioning concepts of administrative process: the broad concept, which includes not only judicial and pre-trial examination of administrative disputes, but also, decision-making (application of administrative responsibility), and the narrow concept, which includes only judicial and preliminary examination of administrative disputes.<sup>59</sup> Considering the purpose

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Security; the resolutions of the Notary Attestation Commission; the decisions of the court of honour of property or business appraisers and the institution authorized by the Government to perform state supervision of property or business appraisers and property or business appraisers; the actions (omission) of the heads of the General Commissioner of the Lithuanian Police or the Director of the Prisons Department; the citizenship; the decisions of the executor of the Crime Victims' Fund program regarding compensation for damages caused by violent crimes; the actions of specialists or experts used by the administration of the the National Commission for Energy Control and Prices for the inspection of civil servants and employees; the decision of the Commission for Determination of Harm to Patients' Health to refuse to consider the request; the conclusions of the Prosecutors' Selection Commission or the Chief Prosecutors' Selection Commission, which indicate the data of/ concerning on the candidates for prosecutors who participated in the selection of the most suitable candidates; the Competition Council's decision to apply temporary measures; the decision of the public institution Rural Business and Market Development to apply temporary measures.

<sup>56</sup> For instance, examination of applications for issuing a permit to perform actions that have not yet been performed or actions that have already been performed; examination of applications for temporary protection measures; examination of requests to sanction decisions; examination of requests to enter residential premises of natural persons; examination of requests to authorize permit to use the coercive measures indicated in the Regulation (EC) No 1/2003; examination of requests for temporary seizure of property; appointment of independent experts.

<sup>57</sup> For example, a case regarding the planning of the organizer's refusal to accept proposals for the territorial planning document of a project important to the state; a case regarding the decision of the National Land Service to start the procedure of acquiring land for public needs or not to start it, regarding a decision on land consolidation approval of the project.

<sup>58</sup> For example, examination of applications for issuing a permit to perform actions that have not yet been performed; examination of applications to enter inspected structures and (or) premises; examination of applications to enter residential or non-residential buildings or other territories.

<sup>59</sup> J. Paužaitė-Kulvinskiene, *Administracinio proceso modelio paieškos Lietuvos moksle*, [in:] *Ketvirtis amžiaus tiriant ir reformuojant Lietuvos teisinę sistemą. Recenzuotų mokslinių straipsnių rinkinys*, Vilnius 2016, pp. 348-349.

and scope of this article, this part covers the main and essential features of judicial review by using the terms “administrative process” or “judicial administrative process”.

Part 2 of Article 1 of the LAP (was in force from May 1, 1999 until December 31, 2000) determined that when examining cases, the administrative process was guided by the provisions of the LAP, and in cases not regulated in the LAP the administrative process is guided by the provisions of the Code of Civil Procedure. Since the 1<sup>st</sup> January, 2001 after the new wording of the LAP has come into effect, this legal provision was changed. Until now it is determined that only when LAP directly indicated, the administrative process can be guided by the provisions of the Code of Civil Procedure. This change marks the recognition of the autonomy of the administrative process.

However, the duality of the administrative process still exists in Lithuania. Since January 1, 2003 the provision of the LAP has entered into force, it stated that if one of the claims in the case is related to an individual administrative act and its legality is questionable, in this case the court of general competence can decide about the legality of such an act. Faced with situations where the court of general competence and the administrative court refused to hear the same case, the legislator decided to create the Special Chamber of Judges, which makes the rulings on the jurisdiction of the dispute non appealable and final. Together with these changes, the previously aforementioned legal provision stating that the court of general competence can decide about the legality of an individual administrative act when examining a case was abolished. However, until now the provision of the Law on Courts, according to which the court of general competence, when examining a civil case, can also decide about the legality of an individual administrative act, is in force. Such duality of the administrative process leads to the process in which the same laws regulating the adoption of individual administrative act can be interpreted and applied differently by different courts, which is guided by the different dispute resolution procedure. Legal scholars have been criticizing this by suggesting that the assignment of the dispute to the administrative court should be linked exclusively to the status of the party to the dispute, or all disputes arising from administrative legal relations should be examined only in administrative courts.<sup>60</sup> There are still no changes regarding this matter.

Speaking about the different dispute resolution procedures, it is worth marking that one of the essential features of the administrative process is the active role of the administrative court, which manifests itself through the duty to

<sup>60</sup> D. Raižys, D. Urbonas, *Administracinių bylių teisenos infrastruktūrinis modelis*, „Visuomenės saugumas ir viešoji tvarka“ 2010, No. 3, pp. 58-63.

investigate the circumstances of the case comprehensively and objectively. After the new wording of the LAP in 2016, the active role of the administrative court has been further strengthened, after determining that, if necessary, the court can investigate *ex officio* the circumstances of the case by collecting evidence, the court determines the scope of such an investigation and is not bound by the requests of the participants of the administrative process.

Another feature of the administrative process is directly related to the limits of the competence of the administrative court. With the introduction of the first version of the LAP, it was established that administrative courts do not assess the administrative act and actions (or omission) by public administration entities from the point of view of political or economic expediency. Administrative courts, when examining disputes, determine only whether (I) the law was not violated in a specific case, or (II) the public administration entity did not exceed its competence (*ultra vires* doctrine), or (III) the act (activity) of the public administration entity does not contradict the goals and objectives, due to which the public administration entity was established and received the relevant powers, or (IV) the court decides that there is another basis that the court recognizes as important. The administrative court can reject the complaint, uphold the complaint, annul the legal act (part thereof) and (or) oblige the public administration entity to stop the violation, or execute another court order, satisfy the complaint, oblige the public administration entity to implement the law, satisfy the complaint and resolve the dispute in a different way, to satisfy the complaint and make up for the damages caused by illegal actions of public administration entities.

As we can see, the administrative court is given wide discretion to decide on the outcome of the dispute resolution which assisting to fulfil the obligation to administrative court to hear cases actively. However, in other (special) laws we can find restrictions on this discretion. Accordingly legal regulation is another aspect that distinguishes the administrative process.

According to Part 1 and 3 of Article 1 of the LAP, the administrative process is established in the LAP and may also be regulated by the other laws. Since January 1<sup>st</sup>, 2001 the legal rule for the application of laws in the examination of administrative cases states that – if there are contradictions between the legal provisions of the LAP and other laws (except for special laws), the court must be guided by the legal provisions of the LAP. This legal norm encodes the *lex specialis derogat legi generali* rule, which is applicable when the procedure for examining administrative cases is placed in the special laws. This rule as it seen does not apply to other laws. LAP and also legal doctrine does not define what special laws are and what other laws are. According to the case-law, if the laws do not regulate the judicial powers of the court when examining administrative

cases, such laws are considered to be the other laws, and if the laws determine the process of examining administrative cases, such laws considered being the *special laws*.<sup>61</sup> So this means that the legal framework of administrative process consists of the LAP and the special laws. In practice can be seen that the legal framework of the administrative process is more focused on specialized areas of public administration, which is not systematically coordinated. This leads to the fragmentation of administrative process.

Overall, these aforementioned features of the administrative process not only mark the uniqueness of the administrative process, but also the legal effects to the implementation of the goal of the effective and operative control of the activities of public administration entities. This aim also greatly benefits from the amendments to the LAP, allowing administrative cases to be examined more efficiently and promptly. For example, since the 1<sup>st</sup> August, 2013 the legislator established the possibility of concluding a peace agreement which has been in force since then; in 2016 by the new wording of the LAP, as mentioned, the active role of the administrative court was strengthened, a 10-year deadline for appealing an administrative decision was introduced; a new sub-process and a model court process, which could help the administrative courts to examine more than 20 similar cases brought to court, arising from the same legal relations that were determined by economic and social phenomena in the state governance, was established; since 28<sup>th</sup> June 2017 the institute of a group complaint when the claim is made by at least 20 natural or legal persons has been introduced; in 2019 the possibility of transferring the dispute to be resolved by meditation was established. On 1<sup>st</sup> January 2020 the legislator introduced a new sub-process the court order (*in Lithuania: teismo įsakymas*) for the awarding (recovery) of unpaid (unreturned) amounts to the state, municipal budgets or state monetary funds from a natural or legal person (debtor).

However, in practice the administrative cases have become more and more complex over time. Therefore, even the innovative procedural measures established in the LAP not always help to avoid problems related to the workload, quality, clarity, comprehensibility, and enforceability of the administrative court decisions. For instance, due to the lack of the systematicity of the legal regulation

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<sup>61</sup> The Law on Amendments to the Law on Administrative Cases of the Republic of Lithuania, Official Gazette 2000, No. 85-2566. 18 October 2000 decision of the Constitutional Court of the Republic of Lithuania; September 10, 2002 decision case No A-11-00888-02 of the Supreme Administrative Court of Lithuania; December 21, 2006 decision case no N-469-2076-06 of the Supreme Administrative Court of Lithuania; March 15, 2008 decision of the Constitutional Court of the Republic of Lithuania; January 21, 2008 decision of the Constitutional Court of the Republic of Lithuania; September 21, 2016 decision case No. AS-714-261/2016 of the Supreme Administrative Court of Lithuania.

of the activity of public administration entities (administrative procedures), public administration entities are still facing problems even after obliging to submit to the administrative court all the case material that was used in decision-making process.<sup>62</sup> Systematization of the administrative process in the broad sense could be one of the possible solutions to improve the effectiveness of the administrative process in the narrow sense.

## The Most Relevant Reforms of the Administrative Process Model in Lithuania

Based on what has been discussed, it can be stated that even though there are no longer any demands for fundamental reforms in the field of institutionalization of administrative justice, there is a continuous improvement of the activity of the established administrative justice institutions. For instance, the dualistic model of handling administrative disputes in Lithuania with quasi-courts<sup>63</sup> (quasi-judicial institutions) and administrative courts is unique in the European context. Constitutional jurisprudence sets clear standards for the system of pre-trial examination of administrative disputes,<sup>64</sup> recognizing that the non-judicial administrative process can neither replace the judicial examination nor be an alternative to it.<sup>65</sup> Quasi-judicial institutions are being strengthened by expanding the scope of the hearings of administrative disputes, like in 2021, the Tax Disputes Commission appointed to examine disputes regarding the environmental tax obligations.

The most relevant reforms remain more effective in creating the administrative process<sup>66</sup> therefore, both the planned and already implemented changes in legal regulation are related to this, primarily taking into account the experience of the crises that have occurred, for example, the COVID-19 forced the use of digital

<sup>62</sup> 30 November, 2015 decision No eA-718-602/2015 of the Supreme Administrative Court of Lithuania, 3 July, 2019 decision No eA-1510-602/2019 of the Supreme Administrative Court of Lithuania, 10 November, 2021 decision No eA-2684-602/2021 of the Supreme Administrative Court of Lithuania.

<sup>63</sup> L. Paškevičienė, *Išankstinio administracinių ginčų nagrinėjimo ne teisme institutas Lietuvoje: teisinio reguliavimo aiškinimo problematika*, „Teisė“ 2019, no. 111, pp. 67-91. L. Paškevičienė, *Išankstinio administracinių ginčų nagrinėjimo ne teisme institutas Lietuvoje: idėjiniai ir vertybiniai pagrindai*. „Teisė“ 2018, No. 108, pp. 51-69.

<sup>64</sup> 2 June 2002 decision of the Constitutional Court of the Republic of Lithuania; 4 March 2003 decision of the Constitutional Court of the Republic of Lithuania; 7 February 2005 decision of the Constitutional Court of the Republic of Lithuania; 13 December 2004 decision of the Constitutional Court of the Republic of Lithuania.

<sup>65</sup> F. Schoch, E. Schmidt-Assmann, R. Pietzner, *Kommentar VwGO, I Band*, München 2003, pp. 16-17.

<sup>66</sup> J. Paužaitė-Kulvinskiene, *The principle of effective legal protection in administrative law in Lithuania*, [in:] *The principle of effective legal protection in administrative law: a European perspective*, Abingdon 2017, pp. 190-217.

technology solutions more intensively in the handling of administrative disputes,<sup>67</sup> whereas the increased flow of illegal migrants from third countries (Belarus, Russia) to Lithuania, in the context of the geopolitical war crisis, encourages the search for new procedural institutes that would speed up the processing of cases and at the same time would not reduce the quality standards of legal protection.

The reform of the stage of the appeal process, which is currently under discussion, should be mentioned as well. In the administrative doctrine, the first insights regarding the unlimited right of appeal in the administrative process were expressed as early as in 2006,<sup>68</sup> however, more intensive discussions regarding the right to file an appeal in the administrative cases in Lithuania began in 2019, after the registration of the amendments of LAP, which contain a proposal to introduce a limited appeal for cases, that have been examined in the mandatory pre-trial procedure. The amendments of LAP suggest to establish three criteria for the admissibility of an appeal to the Supreme Administrative Court of Lithuania: (I) clear and consistent practice of the dispute of the Supreme Administrative Court of Lithuania has been formed on the issue of the dispute, from which the court of the first instance deviated when adopting the decision appealed by appeal; (II) there is an obvious error in the application of law in the decision of the administrative court of the first instance; (III) it is necessary to ensure the formation of uniform practice of administrative jurisprudences. Agreeing<sup>69</sup> with the position of the Constitutional Court of the Republic of Lithuania in the context of the principle of effective judicial protection, we should emphasise that the constitutional jurisprudence postulates that a person would have only one possibility to have a dispute or her dispute reviewed in at least one higher judicial instance in an appeal procedure is postulated in the constitutional jurisprudence. Therefore, *a priori*, the institute of limited appeal in the administrative proceedings cannot be considered contrary to the Constitution of the Republic of Lithuania. However, when establishing the model of limited appeal as a significant limitation of the right to appeal to a higher court, the norms governing the appeal process cannot artificially restrict or unreasonably complicate the possibility of exercising this right. This means that, when determining the procedure for appealing the decision of the

<sup>67</sup> E. Bilevičiūtė, B. Pranevičienė, *Nuotolinio administracinio proceso ypatumai*, [in:] *Administracinės teisės novelos*, Vilnius 2022, pp. 257-281.

<sup>68</sup> G. Ambrasaitė, *Apeliacija administraciniame procese: teisės kreiptis į Lietuvos vyriausiąjį administracinį teismą ribojimo galimybės*, „Jurisprudencija“ 2006, No. 6 (84), pp. 41-47; G. Ambrasaitė, *Apeliacija Lietuvos administraciniame procese: pagrindinės reformos kryptys*, „Jurisprudencija“ 2006, No. 4(82), pp. 13-20.

<sup>69</sup> J. Paužaitė-Kulvinskienė, *Teisės į apeliaciją paradigmė kaita: link ribotos apeliacijos modelio administracinių bylų teisenoje*, [in:] *Administracinės teisės novelos*, Vilnius 2022, pp. 236-256.

first instance court to the court of appeal, the grounds, terms, and conditions for filing an appeal, which would make it extremely difficult to apply to the court of appeal or it would be impossible to appeal the final decision of the court of the first instance to the court of appeal, cannot be established.

Therefore, on the one hand, the development of the mandatory pre-trial stage of administrative disputes is a reasonable and consistent direction for the improvement of the Lithuanian administrative process model, but on the other hand, using this stage as an argument, justifying the model of limited appeal, gives rise to certain insights into constitutional incompatibility. It can be considered that according to the constitution, it would not be permissible to equate pre-trial examination institutions with a “court” and in this way to disregard the approach of constitutional jurisprudence established to this day, in which the term “at least one higher instance” is clearly perceived as a “court” in the sense of Article 111 of the Constitution of the Republic of Lithuania.

In addition, the three criteria for the admissibility of an appeal listed in the amendments on the LAP draft can be improved in terms of legislative technique, since the proposed limited appeal model would *de facto* expand the quasi-cassational functions of the Supreme Administrative Court of Lithuania. Considering that the appeal process and the right of a person to appeal to a higher court regarding the decision of the court of the first instance is one of the essential constitutional procedural guarantees, it can be assumed that its reformation would be a serious intervention in the constitutionally defined model of judicial protection, when the model of limited appeal would possibly coincide with the functions of the cassation instance.

Recently, the legislator has introduced alternative forms of administrative dispute resolution in the administrative process. In the Lithuanian administrative doctrine<sup>70</sup> already a decade ago, it was proposed to consider the possibilities of applying alternative methods and to carry out investigations of mediation<sup>71,72</sup>

<sup>70</sup> J. Paužaitė-Kulvinskiene, *Administracinė justicija: teorija ir praktika*, Vilnius 2005, pp. 149-151; S. Šedbaras, *Administracinio proceso teisinio reglamentavimo problemos Lietuvos Respublikoje*, Vilnius 2006; V. Valančius, R. Norkus, *Nacionalinis teisinis diskursas dėl administracinio proceso*, „Jurisprudencija“ 2006, No. 3(81), pp. 91-99; D. Poška, *Asmens teisė į teisminę gynybą ir jos įgyvendinimo probleminiai aspektai Lietuvos administraciniuose teismuose*, Daktaro disertacija, Socialiniai mokslai, teisė (S 01), Vilnius 2007; J. Paužaitė-Kulvinskiene, *Kiti ginčo sprendimo būdai administracinių bylų teisenoje ir jų praktinio taikymo problemos*, „Teisė“ 2013, No. 86, pp. 36-56.

<sup>71</sup> S. Kavalnė, I. Saudargaitė, *Mediation in disputes between public authorities and private parties: comparative aspects*, „Jurisprudencija“ 2011, No. 18 (1), pp. 251-265.

<sup>72</sup> U. Trumpulis, *Teorinės ir praktinės mediacijos taikymo prielaidos sprendžiant administracinius ginčus Lietuvoje*, „Jurisprudencija“ 2012, No. 19 (4), pp. 1423-1437.

<sup>73</sup> I. Saudargaitė, A. Sutkevičius, *Taikos sutartis administracinių teismų praktikoje*, Vilnius 2012, pp. 578-598; J. Paužaitė-Kulvinskiene, *Taikos sutarties sudarymo problemos ir perspektyvos Lietuvos administraciniame procese*, [in:] *Nepriklausomos Lietuvos teisė: praeitis, dabartis ir ateitis: recenzuotų mokslinių straipsnių rinkinys*, Vilnius 2012, pp. 292-308.



as well as to involve the settlement agreement institute<sup>73</sup> in the administrative process. Consistently, developing new narratives of procedural legal culture, Lithuania began to look for more constructive and innovative methods of dispute resolution in the administrative process as well. According to the Mediation Directive,<sup>74</sup> special attention was focused on the search for individualized justice in administrative disputes, on how to create better opportunities for alternative dispute resolution and to promote peaceful dispute resolution by encouraging the use of mediation and ensuring a balanced relationship between mediation and the court process. Although the scope of the directive covers only civil and commercial disputes, a few European Union member states, including Lithuania, France, Germany, Portugal, chose to extend the scope of the directive regarding administrative disputes through national legislation and initiated legal reforms regarding the search for alternative administrative disputes. The main factor that is not particularly favourable for the application of alternative dispute resolution mechanisms is the doctrinal point of view, that the legal regulation of the administrative process per se is not focused on the restoration of individualized social peace (individualized justice) between the parties to the dispute. On the contrary, in the case of an administrative dispute, the aim is formal application of the principles of the rule of law and legality, preferential establishment of public interest. In addition, the application of mediation in administrative disputes raises doubts as to how the confidentiality of the mediation process is compatible with the principle of transparency of public administration, whether it is possible to reconcile the public interest with the private one in mediation in such a way to serve the public interest rather than to harm it, for which the public administration entity agreed to enter into a settlement agreement in compromise terms, is not harmed. At the beginning, the settlement agreement was applied *mutatis mutandis* in the administrative process of Lithuania, as an institution of civil process, and later the LAP itself was supplemented with the settlement agreement institute (since 2013) as well with the mediation as a form of dispute resolution both in administrative courts and in quasi-judicial institutions (since 2019).

However, the application of non-formalized rules in the administrative process raises several doctrinal questions, since the intensifying legal regulation of mediation can have both negative and positive consequences for the

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<sup>74</sup> Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters, which aims to encourage the use of alternative methods of dispute resolution, particularly the use of mediation, to ensure a balanced relationship between mediation and judicial proceedings, does not apply to disputes regarding the revenue, customs or administrative matters, the liability of an EU country for acts and omissions in the exercise of State authority and disputes where one or more parties is domiciled or resident in Denmark.

<sup>75</sup> S. Boyron, *Mediation in administrative law: the identification of conflicting paradigms*, "European Public Law" 2007, No. 13(2), pp. 263-288, others.

administrative process, as evidenced by the active scientific discourse.<sup>75</sup> Although Lithuania intensively legalizes the mediation process in administrative disputes, and court practice<sup>76</sup> forms the essential criteria, significant for the peaceful resolution of an administrative dispute through mediation, however, it is not clear to this day whether mediation, as a form of dispute resolution, has become a fully functional part of the administrative process.

One of the atypical cases of the competence for administrative courts – the participation of administrative courts in the field of political responsibility and removal of the municipal government representatives from the office, meaning *the participation of the administrative court in the quasi-impeachment process*, when the Supreme Administrative Court of Lithuania renders a conclusion on the violation of the oath of a member of the municipal council or the mayor or non-fulfilment of powers.

The emergence of this institute is *inter alia* related to the introduction of directly elected mayors (in 2015) and the correction of the Article 119(1) of the Constitution of the Republic of Lithuania, adopted accordingly (in 2022). The recall of elected municipal government representatives in the local self-government is basically a vote that directly gives voters the power to remove an elected politician. However, the participation of judicial institutions is not foreseen in this process.<sup>77</sup> In addition, only a few examples can be found in Europe, when taking into account constitutional traditions, it is allowed to recall local politicians. Nevertheless, it is a relatively rare legal instrument for the implementation of responsibility, used by the local self-government. Meanwhile, in Lithuania, the participation of the administrative court was also used to ensure its implementation, and the number of cases in this category has been increasing recently and will probably increase, after giving the local mayor more executive powers.

In addition, after the introduction of the institute individual constitutional complaint in Lithuania (on September 1, 2019), an even more intense trend of *instrumental constitutionalization of the administrative process is observed*<sup>78</sup> when the provisions of the administrative process are changed due to their opposition to the Constitution after an inspection in accordance with the Constitutional Court of the Republic of Lithuania. This measure is particularly characteristic of Eastern and Central European countries, where the administrative justice system and administrative process laws that started functioning at the beginning of the 21<sup>st</sup> century, had several deficits in legal regulation: the ambiguous or

<sup>76</sup> December 1, 2021 decision case No eA-73-822/2021 of the Supreme Administrative Court of Lithuania.

<sup>77</sup> Europos komisijos „Demokratija per teisę“ (Venecijos komisijos) pranešime apie merų ir vietos atstovų atšaukimą. See: CDL-AD (2019) 011rev (coe.int)

<sup>78</sup> T. Birmontienė, E. Jarašiūnas, E. Kūris, M. Maksimaitis, *Lietuvos konstitucinė teisė*, 2 leid. Vilnius 2002, pp. 105-106.

insufficiently clear content of the norms of the applicable administrative procedure contradicted the constitutional standard of effective judicial defence.

## Conclusions

Administrative court was not established in the interwar Lithuania. However, there were efforts to replace the body of judicial review with other institutions. But those institutions were not judicial entities, for example, complaints commissions of the legislative body, the Commission of Legal Advisors of the Ministries, the Council of State, various other commissions as a structural body of public administration agencies. Some contemporaries assumed that the Supreme Tribunal and other courts of general jurisdiction heard disputes related to the legality of administrative acts. This competence of general courts was insufficient. Drafts of the Law on the Administrative Court are of the biggest value within the framework of evolution of administrative justice in Lithuania.

After the Restoration of the Independence of the Republic of Lithuania, administrative courts were established in 1999. Before that, certain administrative cases were heard by the courts of general competence in accordance with the Code of Civil Procedure. The necessity of establishing administrative courts was mentioned for the first time in the Outline of the Lithuanian Administrative Process Reform prepared by the Ministry of Justice of the Republic of Lithuania in 1996. Finally, the draft law on the Establishment of Administrative Courts of the Republic of Lithuania was adopted by the Seimas on January 14, 1999.

Initially, the system of administrative courts was not completely separated from the courts of general jurisdiction. The highest instance for administrative cases was the Administrative Cases Division in the Court of Appeal. Since 2001 the system of administrative courts is separated from the courts of general competence and consists of two instances.

Lithuanian administrative courts as the latest part of the judicial system, confront atypical conflicts (disputes) arising in social life dealing with not only classic disputes in the field of public administration, but also, for instance, quasi-impeachment cases arising in the field of municipal law. Additionally, administrative courts are not only a judicial institution that resolves disputes, but also acting in the intermediate decisions-making process during the administrative procedures.

The evolution of administrative process from being ignored to being recognized as necessary reflects the evolution of the quality of the state governance itself. The specialization and significance of the administrative process directly determined the uniqueness of this process, characterized by its representative features (active judging while examining administrative cases, limits of the competence of the administrative court, legal regulation based on the principle

*lex specialis derogate legi generali*). However, the innovative legal measures seeking to ensure the effectiveness of the judicial administrative process, neither solve the duality of the administrative process, nor minimize the legal effects rising from the loopholes or inconsistency of the legal regulation of the activity of public administration entities (administrative procedures).

Historical developments of the idea of the administrative courts that led to the establishment of the administrative courts and contemporary administrative process, established reforms of the administrative justice reveal the significance of the administrative courts for the state in seeking to ensure the rule of law in the state governance.

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#### SUMMARY

### **Administrative Courts in Lithuania: History, Evolution, the Present, and Perspectives**

The legislator prepared around 15 drafts of the Law on the Administrative Court. Nonetheless, administrative courts were not established in the interwar period. There were efforts to replace the body of judicial review with other institutions such as complaints commissions of the legislative body, the Commission of Legal Advisors of the Ministries, the Council of State, various other commissions as a structural entity of public administration agencies. The Supreme Tribunal and other courts of general jurisdiction heard disputes related to the legality of certain administrative acts. However, this competence of general courts was insufficient. After the Restoration of the Independence of the Republic of Lithuania, administrative courts were established in 1999. Contemporary administrative process, established reforms of the administrative justice highlighted the significance of the administrative courts for the state itself in seeking to fulfil the requirements of the rule of law in state governance.