



THE SUPREME ADMINISTRATIVE COURT OF LITHUANIA

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Alternative dispute resolution in administrative matters:

Introductory questions:

1. How do you define alternative procedures? How do you distinguish them from jurisdictional procedures and arbitration procedures?

The Lithuanian law does not enshrine generic definition for alternative procedures in administrative matters. Nonetheless, alternative procedures can be differentiated from jurisdictional procedures by their flexibility (i.e. absence of regulation as of how alternative procedures ought to be conducted), stakeholders (i.e. alternatives procedures are not conducted by judges) and for the most part – optional character (i.e. disputing parties are free to choose alternative procedures by mutual consent and the court cannot order them to opt for it except for mandatory preliminary administrative appeal prescribed by the law).

The only form of alternative dispute resolution (or rather, its outcome) arising directly under Lithuanian administrative law is settlement agreement¹. The law does not explicitly define settlement agreement in administrative proceedings either². Therefore, throughout this questionnaire the focus will be placed on the settlement agreement, as the only *ex lege* form of alternative dispute resolution.

2. Do alternative procedures such as those defined above exist in your country? If no alternative procedures exist in your country, do you plan to create such procedures? Can you articulate your current thinking in this domain?

Please refer to Section III Question 2 for the listing of alternative procedures available under Lithuanian law in the broad sense, i.e. including the preliminary extrajudicial investigation of administrative disputes.

The legislative initiative to further the development of alternative dispute resolution in Lithuanian administrative procedure is apparent from the Decree of Minister of Justice of Lithuania³ whereby an analytical study on the subject was commissioned. There is no data available about the upshot of this commission, but Lithuanian academics constantly highlight

¹ The possibility to bring administrative dispute to an end by means of reaching settlement agreement is regulated in Article 52¹ of Law on Administrative Proceedings of Lithuania.

² The only express legal definition of settlement agreement can be deduced from Article 6.983 of Civil Code of Lithuania wherein it is *inter alia* stated that: „by the peaceful settlement agreement the parties shall resolve, by making mutual allowances, an existing judicial dispute, preclude a judicial dispute in the future, resolve an issue of enforcement of the court judgement or any other controversial matters“.

³ The Decree of Lithuanian Minister of Justice No. 1R-256 of 23d November, 2010.

the need to create and apply alternative procedures, such as mediation and conciliation, in Lithuanian administrative proceedings⁴.

I. The goals and the scope of alternative procedures

1. With what objectives are these procedures deployed? What advantages and benefits are expected to result from them?

The main objectives, advantages and benefits of settlement agreement can be extracted from *travaux préparatoires* of the relevant Amendment of the Law on Administrative Proceedings of Lithuania by which this legal measure was established. Therein the legislator expressed its principal position that the settlement agreement in administrative proceedings ought to promote procedural promptness and flexibility to disputing parties in order to enable them to restore social and legal peace.

2. Are alternative procedures used in your country in administrative matters? Since when? What factors contributed to their development and what is the proportion of administrative disputes that are resolved each year by suenablech procedures?

The legal amendment providing for the settlement agreement in Lithuanian administrative proceedings came into effect on August 1, 2013. Before this date, administrative courts had to take recourse to the legal analogy, i.e. refer to the Code of Civil Procedure, thus enabling parties to resolve their dispute by concluding settlement agreement and terminating judicial proceedings.

As can be seen from *travaux préparatoires*, the introduction of new provisions concerning the settlement agreement was influenced by the wide variety (heterogeneity) of administrative disputes. The legislator expressed its position that some types of administrative disputes (such as those concerning non-contractual liability of public administration by state or municipal institutions, agencies, services and their employees or office-related disputes, where one of the parties is a public or municipal servant possessing the powers of public administration, etc.) could be best resolved by concluding a settlement agreement. Some academics also cite the growing backlog of administrative cases and the need to transform the “litigation mentality” prevalent in the Lithuanian society to a “compromise mentality” as influencing factors⁵.

Please refer to Section IV Question 2 for statistical data on how extensively in terms of percentage this legal measure is applied.

3. Do rules restricting recourse to alternative procedures in administrative procedures in administrative matters exist in your country? In your opinion, what are the types of litigation for which these procedures would not be appropriate?

Disputing parties are legally barred from concluding a settlement agreement in cases concerning the legality of regulatory administrative acts. Apart from that, parties are free to reach settlement agreement irrespective of the case type. However, an implied limitation to reaching a settlement agreement is apparent from the conditional wording of Article 52¹ of

⁴ See Jurgita Paužaitė-Kulvinskienė. Kiti ginčo sprendimo būdai administracinių bylų teisenoje ir jų praktinio taikymo problemos. *Teisė*. 2013 (86), p. 36 – 56; Salvija Kavalnė, Ieva Saudargaitė. Mediation in Disputes Between Public and Private Parties: Comparative Aspects. *Jurisprudencija*. 2011 18 (1), p. 251 – 265; Aurimas Banys. Neteisminė mediacija Lietuvos administraciniame procese: koncepcija ir plėtros kryptys. *Jurisprudencija*. 2014 21(4), p. 1117 – 1139.

⁵ Jurgita Paužaitė-Kulvinskienė, *op. cit.*, p. 36, 38.

the Law on Administrative Proceedings of Lithuania: “parties may terminate the case in any procedural stage by concluding settlement agreement, *if the nature of a dispute allows them so*”. Thus, it is probable that this legal measure would not be appropriate in cases of peremptory character, i.e. where entities of public administration must strictly adhere to the legal provisions and are not free to enter into lax settlement agreements (for example, in cases dealing with complaints about the status of the refugee since supranational laws or concerns over national security may preclude public bodies from deviating from peremptory rules).

4. Do instruments organizing the use of administrative procedures in administrative matters exist in your country? If so, are these instruments legally binding (hard law/soft law)?

As already mentioned, the settlement agreement is regulated in the Law on Administrative Proceedings of Lithuania, which is the main, legally-binding piece of legislation concerning administrative procedural law in the country. There is no generic hard law or soft law regulation over how the settlement agreement should be reached procedural-wise⁶.

5. If your State is a member of the European Union, how was the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters transposed into national law? (Caution! This question is only asked insofar as the said directive can weigh on “administrative” matters in accordance with your domestic law)

The Directive 2008/52/EC is briefly cited in the previously mentioned Decree of Minister of Justice No. 1R-256 of 23d November, 2010 by which, among other things, the analytical study on the possible development of alternative dispute resolution in Lithuanian administrative procedure was commissioned. However, since the material scope of the said directive encompasses civil and commercial disputes, no special measures for its transposition in administrative matters were taken.

II. The stakeholders in alternative procedures

1. What categories of natural and legal persons have recourse to alternative procedures? Can all legal persons governed by public law use them?

The recourse to alternative procedures is generally open to all natural and legal persons.

2. Can the parties to an administrative dispute entrust the conducting of a mutual agreement procedure to a third party? What role is this third party called upon to fulfil?

There is no legal prohibition to entrust the third parties with conducting a settlement agreement. Once parties give their general consent to try to reach a settlement agreement in judicial proceedings, procedural-wise they may negotiate to this end as they see fit.

3. Do standards regulating the activity of these third parties exist in your country (required qualifications, continuing vocational training, remuneration, deontology, etc.)? Do authorities with responsibility for the supervision of compliance with these standards

⁶ Nevertheless, some sporadic sub-statutory legislation has emerged. Namely – National Commission for Energy Control and Prices, which is an independent national regulatory authority (in the European Union law's sense) regulating activities of entities in the field of energy and carrying out the supervision of state energy sector, adopted the Rules of Conciliation in 2012.

exist (public bodies, professional organisations, non-profit organisations – possibly operating under license, etc...?)

There are neither standards, nor authorities responsible for the supervision of compliance with these standards. Whereas in Lithuanian civil law the third parties, who are willing to mediate disputes, are subject to legal scrutiny, in administrative law this area remains not regulated.

4. Can the administrative courts invite or oblige parties to litigation brought before them to pursue an alternative procedure? Can the administrative court entrust a mediation mission to a third party?

According to Paragraph 1 (6) of Article 68 (Preparation for the Hearing of Administrative Cases in Court) and Paragraph 7 of Article 82 (Procedure of the Court Hearing) of the Law on Administrative Proceedings of Lithuania, administrative court may offer parties to initiate negotiations for a settlement agreement if it sees a possibility to end judicial proceedings in such way. The court cannot oblige parties to try to reach settlement agreement, if they do not give their consent thereto. Once consent from the parties has been obtained, pursuant to Article 52¹ of Law on Administrative Proceedings of Lithuania, the court may “take measures” in order for them to conclude settlement agreement. The law does not specify (neither orders, nor prohibits) whether administrative court can entrust the third party with the task of mediating the dispute.

5. Can the administrative court itself conduct mediation proceedings? In your opinion, what are the advantages and drawbacks of a mutual agreement procedure conducted by a judge? In what types of litigation does the direct intervention of a judge appear most appropriate?

As of now, there is no legal possibility for administrative court to conduct mediation proceedings by itself.

III. The procedures of alternative procedures

1. Can you detail the different alternative procedures applicable in administrative matters in your country? How do the parties choose between the various alternative procedures available?

The procedure of the conclusion of settlement agreement in administrative court proceedings is not regulated in detail. The Law on Administrative Proceedings of Lithuania in this framework only indicates that the parties may terminate the case by concluding the settlement agreement at any stage of the proceedings if it is possible in view of the nature of the dispute, as well as sets the conditions and substantial requirements for the settlement agreement’s form and content. In addition, it should be mentioned that the court shall take measures to reconcile the parties only when the consent by disputing parties is given. The settlement agreement shall be approved by the court’s order. By the same order, the court proceedings shall be terminated (Paragraph 2 of Article 52¹). Consequently, the parties are basically free to decide by which manner and means they are willing to reach the amicable settlement of the administrative dispute and the court in this regard has no active role.

Concerning the out of court mediation in administrative disputes, namely the conciliation procedures at the Ombudsman of the Parliament, the Lithuanian legal regulation does not provide for the rules of such procedure either. The Ombudsman is entitled only to give recommendations to the parties on the substantial resolution of the particular dispute.

Since the Lithuanian legal system does not provide a variety of alternative administrative dispute resolution procedures and legal regulation is incomplete in this regard, it would be difficult to note any well-established criteria or circumstances that could determine the particular choice of the parties.

2. Do administrative appeals, mandatory prior to referral to the administrative court, exist in your country? Do optional such appeals exist? How are they organised? Does the lodging of an administrative appeal modify the conditions governing the filing and review of subsequent recourse to the court? For example, can the parties present arguments, not produced during a prior administrative appeal, before the administrative court?

The Lithuanian legal system provides for both mandatory and optional pre-litigation procedures. According to the Law on Administrative Proceedings, before applying to the administrative court, individual legal acts adopted by public administration entities provided for by law as well as their acts/omission may be and in the cases established by the law must be contested by applying to the institution for preliminary extrajudicial investigation of dispute (Paragraph 1 Article 25).

For example, the following administrative disputes shall be examined in the course of mandatory pre-litigation procedures: tax disputes (must be appealed to the State Tax Inspectorate under the Ministry of Finance); disputes against the State Enterprise Centre of Registers territorial department's administrative decisions (must be appealed to the State Enterprise Centre of Registers); disputes regarding the conditions of arrest and imprisonment (must be appealed to the authority or the head of the appropriate institution); disputes against the Disability and Work Capacity Assessment Office's administrative decisions (must be appealed to the Settlement Commission of Social Security and Labour) and others. In cases of mandatory pre-litigation procedures, certain body of pre-trial investigation generally belongs to the internal organizational system of particular institution of public administration and the examination of administrative disputes is one of its functions.

In cases of optional pre-litigation procedures, the individual is given the freedom of choice. An appeal may be lodged before the body for preliminary extrajudicial investigation or directly before the administrative court. The key authorities of such pre-trial investigation in Lithuania are municipal commissions on the administrative disputes and the Chief Administrative Disputes Commission.

The municipal commissions are formed for 4 years by the decision of the Municipal Council and consists of 5 members. The Chairman and the Secretary must have higher legal education. Municipal commissions shall consider complaints regarding the individual administrative acts adopted by the municipal entities of public administration.

The activities of the Chief Administrative Disputes Commission are regulated by the Law on Administrative Disputes Commission. The Chief Administrative Disputes Commission is composed by the Government of the Republic of Lithuania for the period of 4 years. This commission consists of 5 members having higher legal education. The Chief Administrative Disputes Commission shall consider complaints on the individual administrative acts adopted by central state administration bodies and their actions, as well as their refusal or delay to take action within the competence.

The complaints submitted to the Administrative Disputes Commission shall be examined and the decision adopted within 14 days of their receipt at the latest. The decision is usually adopted by consensus in the presence of at least 3 members.

Under a general rule, complaint may be submitted to the administrative court within one month while the decision of a relevant administrative disputes commission or any other institution for preliminary extrajudicial investigation of disputes, adopted after investigating an administrative dispute in accordance with the extrajudicial procedure, may be appealed against to the administrative court within 20 days of its receipt.

Administrative dispute commissions are not regarded as public administration entities but are independent and separate bodies composed for the sole aim of resolving disputes of administrative nature.

In the Lithuanian administrative jurisprudence the priority of the right to a court is promoted, among other aspects, based on the accessibility of judicial protection and its universality. In order to ensure the right to appeal, the possibility to present arguments or/and evidence before the court which were not produced during the pre-litigation procedure, is normally not restricted.

3. What are the general principles regulating alternative procedures (adversarial principle, impartiality, rules of confidentiality, time limits, etc.)? How much autonomy do parties have with regard to the organization of the deployment of an alternative procedure?

As it was mentioned above, the legal regulation in Lithuania does not provide for the precise rules of the alternative dispute procedures (namely conclusion of settlement agreement or mediation by the Ombudsman) hence the parties' autonomy regarding the organization of the deployment of an alternative procedure is not strictly limited.

Under these circumstances it should also be noted that the procedure of administrative dispute commissions to a certain extent reflect the judicial procedural rules and shall examine the administrative dispute observing the principles of impartiality, publicity and other main principles of dispute resolution procedure.

4. Does the initiation of an alternative procedure allow the suspension or interruption of periods of limitation? And of time limits for judicial appeals?

Under a general rule, filing the application before the institution for preliminary extrajudicial investigation of disputes interrupts the period of limitation.

Pursuant to Paragraph 1 of Article 80 of the Law on Administrative Proceedings, where the parties are willing to reach the settlement agreement, the court may adjourn court proceedings once. If this is the case, the matter is pending for the period of the parties' negotiation. This limitation for the court to adjourn the court proceedings only once is set out in order to prevent any abuse of administrative procedure.

5. Can the court intervene, even partially, during the course of an alternative procedure? If so, in what way?

The court's role is only to propose to the parties to resolve a dispute by concluding the settlement agreement. If the agreement is reached, the court reviews it and approves it by the Court's order.

IV. The efficacy of alternative procedures

1. Do you consider that alternative procedures are faster and/or less costly than court procedures? Can you provide a quantitative comparison?

The settlement agreement without a doubt can make the litigation before a court much faster and less costly compared to the regular court procedures. As already mentioned, the parties may terminate the case by the settlement agreement at any stage of the court proceedings, if the settlement agreement may be concluded in view of the nature of the dispute. The national legislation provides for an opportunity for the judge even in preparatory stage for the court hearing to invite the parties to consider the possibility of concluding a settlement agreement, if he or she finds that the settlement agreement is within the reasonable reach. Moreover, the settlement agreement results in 50% concession of a court fee duty, once successfully accepted by the court.

2. What is the proportion of administrative disputes that are definitively resolved by alternative procedures? What are the factors in success, or failure?

As for the approximate statistics, in 2013 – 2 out of 2135, in 2014 – 10 out of 1953 and in 2015 (until December) – 20 out of 2117 cases before the Supreme Administrative Court of Lithuania were concluded by the settlement agreement. It shows modest, yet growing tendency to terminate judicial proceedings by means of alternative procedure.

It should be noted that there is no particular category of administrative disputes that is definitely resolved by alternative procedures at all times; there is a great variety of cases that tend to be concluded by the settlement agreement.

The non-exhaustive list of factors for successful resolution of the dispute by alternative procedures may include the nature of the dispute, the shorter length of the court proceedings, lower court fees, flexibility, possibility to reach mutually advantageous agreement, and others.

Accordingly, the factors of failure could be as follows: limited freedom for parties to influence the content of the settlement agreement due to the general principle of prohibition in administrative law (all that is not permitted is prohibited); the subject of the dispute can be the conflict of the public and private interests; in most cases the parties are linked by subordinate legal relations; novelty and unpopularity of the settlement agreement procedure. As noted before, there is also a restriction setting out that the settlement agreements shall not be concluded in cases concerning the lawfulness of regulatory administrative acts.

3. What is the legal standing of an agreement reached by means of an alternative procedure? Can such an agreement be referred to the administrative court for approval?

The settlement agreement has to be approved by the court's order. By such order the court approves the settlement agreement and also terminates the case. The legal standing of the settlement agreement equates to the legal standing of the court's decision and must be executed.

4. What instruments and procedures are available to the parties in the case of a violation of the agreement reached by means of an alternative procedure, potentially approved by the administrative court?

Approved settlement agreements are executed by the order established in the Code of Civil Procedure of the Republic of Lithuania.

If the settlement agreement approved by the court is not executed, any party to the dispute may apply to the court, which examined the case, with a request to issue a writ of execution. The court may change the execution's order according to the terms set by the parties if it does not change the essence of the previously concluded agreement. A writ of execution is served to a bailiff to execute.

5. Do you consider it necessary to further develop alternative procedures in your country? Why? In what form?

Having regard to the benefits attached to the alternative procedures, which were also emphasised by legal commentators, one can note that the alternative dispute resolution is meant to be further developed. There is no doubt that the alternative procedures enable the implementation of the principles of procedural economy and procedural promptness. Most importantly, alternative procedures focus on developments of the social dialogue between citizens and administrative decision-makers and also on finding solutions acceptable to all interested parties.
