Access to justice in environmental matters

Lithuania

I. Constitutional Foundations

There is no right to a clean, healthy, favorable, etc. environment directly enshrined in the Constitution. But this right can be derived from other Articles of the Constitutions. The concept of environmental protection is mentioned in several Articles of the Constitution: "The State and each individual must protect the environment from harmful influence“(Article 53 (3)); "The State shall concern itself with the protection of the natural environment, its fauna and flora, separate objects of nature and particularly valuable districts, and shall supervise the moderate utilization of natural resources, as well as their restoration and augmentation. The exhaustion of land and elements of the earth, water and air pollution, the production of radiation, as well as the impoverishment of fauna and flora, shall be prohibited by law” (Article 54). The Constitution guarantees access to justice: “Any person whose constitutional rights or freedoms are violated shall have the right to appeal to court” (Article 30 (1)). Citizens can initiate administrative or judicial procedures because of the environmental violations. But they cannot directly invoke the constitutional right to environment. The international treaties ratified by the Parliament (Seimas) are a constituent part of the legal system (Article138 (3)). In the case of conflict, international agreements have primacy over national law (Article11 (2) of the Law on International Treaties). Parties can rely directly on international law. The Aarhus Convention is effective without any additional national legislation. Administrative bodies and courts have to implement this treaty.

II. Judiciary

Lithuania has a dual judicial system with ordinary courts of general jurisdiction and administrative courts of special jurisdiction. The courts of general jurisdiction, dealing with civil and criminal matters, are the Supreme Court of Lithuania (1), the Court of Appeal of Lithuania (1), and, at the first instance level, the regional courts (5) and the district courts (54). District courts also hear some cases of administrative offenses from within their jurisdiction by law. The regional courts, the Court of Appeal and the Supreme Court of Lithuania have a civil division and a criminal division. The Supreme Court of Lithuania is the court reviewing judgments, decisions, rulings and orders of the other courts of general jurisdiction. It develops a uniform court practice in the interpretation and application of laws and other legal acts. The Supreme Administrative Court of Lithuania (1) and the regional administrative courts (5) are courts of special jurisdiction hearing disputes arising between citizens and administrative bodies from administrative legal relations. The Supreme Administrative Court is a first and final instance court for administrative cases assigned to its jurisdiction by law. It is an appeal instance court for cases concerning decisions, rulings and orders taken by regional administrative courts, as well as for cases involving administrative offenses decided by district courts. The Supreme Administrative Court is also an instance Court for hearing, in cases specified by law, petitions on the reopening of completed administrative cases, including administrative offences. The Supreme Administrative Court develops a uniform practice of administrative courts in the interpretation and application of laws and other legal acts. There are no specialized courts competent to hear specific types of administrative disputes. Some specialization exists only at the level of pre-trial investigation institutions (e.g. the Commission on Tax Disputes). The special pre-trial investigation institutions are the municipal administrative disputes commissions (savivaldybių visuomeninės administracinių ginčų komisijos) and the Chief administrative disputes commission (Vyriausioji administracinių ginčų komisija). Applications to Administrative dispute commissions or to the Commission on tax disputes prior to bringing a case to an administrative court is not compulsory, save for the matters provided by laws. There are no special courts, tribunals, or environmental boards in Lithuania. Administrative dispute commissions and administrative courts carry out full review of all administrative acts including acts in environmental matters. District courts of general jurisdiction are dealing with environmental damage cases. Some state institutions under the authority of the Ministry of Environment can act as a pre-trial investigation institution in environmental matters in cases foreseen by the law (e.g. the State Inspectorate for Territorial Planning and Construction, and the State Service for Protected Areas). Only administrative courts can hear administrative disputes in environmental matters. There is no possibility to apply to another court. There is only the possibility to apply to an administrative dispute commission prior bringing the case to an administrative court. There is no general rule, that administrative acts must be challenged before a higher administrative authority or an independent dispute body before applying to a court. The internal control of administrative acts/omission is compulsory only in certain kinds of administrative disputes (e.g. in social security disputes, or tax disputes). Applications to Administrative dispute commissions or to the Commission on tax disputes prior bringing a case to an administrative court can be selected on a voluntary basis. Only in the matters provided by laws this special pre-trial procedure is compulsory. Every interested person can apply to a court for the protection of his/her infringed or contested right or interest protected under law (Article 5 of the Law on Administrative Proceedings (LAP)). Every applicant who challenges an administrative act has to demonstrate a particular interest in the annulment of this act. Only an application to an administrative court as an individual in order to protect his/her own infringed or contested right or interest is admissible (Article 5 LAP). It is possible to bring a

complaint to protect the State or other public interest laid down for the prosecutor, entities of administration, state control officers, other state institutions, agencies, organizations or natural persons, but only in the cases prescribed by law (Article 56 LAP). A complaint/petition may be filed with the administrative court, within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission), within two months from the day of expiry of the time limit set by a law, or any other legal act for the compliance with the demand. If the public or internal administration entity delays the consideration of a certain issue and fails to resolve it within the due date, a complaint about the failure to act (in such delay) may be lodged within two months from the day of expiry of the time limit set by a law or any other legal act for the settlement of the issue. No time limits shall be set for the filing of petitions for the review of the lawfulness of administrative legal acts by the administrative courts. The decision taken by an 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 to an administrative court within 20 days after the receipt of the decision (Article 33 LAP).

If it is recognized that the time limit for filing a complaint has not been observed for a good reason, at the claimant's request, the administrative court may grant restoration of the *status quo ante*. The petition for the restoration of the *status quo ante* shall indicate the reasons of failure to observe the time limit and present the evidence confirming the reasons of failure to observe the time limit. There are no special screening procedures before administrative courts. Only the compliance of the complaint with the formal requirements and the time limits for lodging a complaint are verified in order to decide whether a complaint is acceptable. The Article 23 of the LAP sets minimal standards of the complaint to administrative courts. Except for cases provided for by law, complaints /petitions shall be received and heard by the administrative courts only after the payment of the stamp duty. The assistance of a lawyer is not compulsory in administrative courts. The parties to the proceedings can defend their interests in court themselves or through their representatives. The administrative court can quash the contested administrative act (sometimes part thereof). The court can also obligate the appropriate entity of administration to remedy the committed violation or carry out other orders of the court (Article 88 LAP). The administrative court can't change the administrative act but it can obligate the state institution to elaborate (pass) a new administrative act. The decision of the court may contain this new administrative act. There are no special rules in the Law on Administrative Proceedings about cases in environmental matters. There is a possibility of petition for the protection of the State or other public interests, including environmental matters. The right to bring a case to a court in environmental matters is enshrined by the Aarhus Convention. There is no limitation for natural or legal persons to bring a case before an administrative court. There is a possibility to bring a complaint in order to protect state or another public interest laid down for the prosecutor, entities of administration, state control officers, other state institutions, agencies, organizations or natural persons, but only in the cases prescribed by law (Article 56 LAP). And that is also possible in the field of environmental matters. Administrative courts can also decide cases relating to disputes between public administrations, which are not subordinated to one another, concerning competence or breaches of laws, except for civil litigation cases assigned to the courts of general jurisdiction. Public entities are not entitled to challenge their own administrative acts before administrative courts. If an unlawfulness of an administrative act violates public interest, only the prosecutor or other persons, in the cases prescribed by law, may bring this case before a court. Normally judges do not have the right to initiate a case. But if a judge has information about a criminal action, he has the obligation to inform the prosecutor (Article 109 LAP). Once the case is ongoing, the court can „actively" participate in the proceeding by asking for evidence, appointing witnesses, experts, etc.

III. Access to Information Cases

An applicant who considers that his request for environmental information has been ignored, wrongfully refused or inadequately answered has access to a review procedure before an administrative disputes commission. The commission may be appealed within a month after the receipt of the information or within a month from the date of the information has been made available. The decision of the commission may be appealed to the administrative court within 20 days after the day of the receipt of the decision. In the case of refusal, the public administration entity must adopt an individual administrative act, which must contain, clearly formulated, all rights and duties and the specific appeal procedure (Article 6 and 8 of the Law on Public Administration). The reasons for a refusal should be provided to the applicant within 14 days after the receipt of this demand by the public authority (Article 19 Order on Public Access to Environmental Information, Approved by Government Resolution Number 1175). The request can be written or oral. The information can be given oral if the applicant doesn't ask for a written answer. The requirements for the written request are:

the name,
the contact data,
the requested information,
the form of giving the information.

The applicant doesn't have to state an interest. When an applicant requests to make information available in a specific form (including in the form of copies), the public authority shall make it so available (there are some exceptions foreseen in the Article 9 of the Order on Public Access to Environmental Information). The information shall be made available to an applicant within 14 calendar days after the receipt by the public authority. This term can be extended to at least 14 calendar days. An Application to an administrative dispute commissions prior to applying to an administrative court is compulsory in this case. All information must be provided to the court if the court requests it. This information can influence the court decision. One of the types of judgments in administrative courts is to meet the complaint (grant the application) and rescind the contested act (or a part thereof), or to obligate the appropriate entity of administration to rectify the committed violation or to comply with any other order of the court (Article 88 (2) LAP). Courts can order information to be disclosed.

IV. Access to Justice in Public Participation

The administrative procedure is regulated by the Law on Public Administration for all matters of administrative law including environmental matters. The main law in environmental matters is the Law on Environmental Protection. Other laws and legislative acts regulating the environmental protection are adopted on the basis of this law. The Law on Environmental Protection foresees the main principal for the economic activities – the permit. There are a lot of kinds of permits (construction permit, EIA permit, IPPC permit and others) which are regulated in special laws and other legislative acts (in these acts are written the requirements for such permit, the institutions who are responsible for that, sometimes specific rules concerning the procedure) but the basic rules for the administrative procedures are written in the Law on Public Administration. The appeal to a superior administrative authority against an administrative decision can be an obligation (only it the cases foreseen in the law) or an alternative (the person can choose between the appeal to an authority or to the court). There is a possibility to apply to an administrative dispute commission prior to bringing the case to an administrative court. First instance administrative decision can be taken by a court directly. Applications to administrative dispute commissions prior to bringing a case to an administrative court is not compulsory, save for the matters provided by laws. In the absence of specific rules provided by law about the necessity of an administrative claim prior to bringing a case to an administrative court, administrative decisions can be brought to an administrative court directly. The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations when they are considered belonging to the decision. The legality of administrative planning is controlled by the administrative courts. The conditions regarding legal standing, rules of evidence, rules on hearing or extent of review by the court are not specific for the cases in environmental matters. Natural or legal persons have the right to lodge a complaint (application) concerning an administrative act when their rights have been infringed upon. In the cases prescribed by law it is possible to

bring a complaint in order to protect the state or another public interest (including environmental interest). Agencies, organizations, and groups may lodge an appeal against the measures affecting their own interests (existence, estate, activity, operating conditions) as well as asking for damages for the material and moral damage they suffer. But they also may go to court to defend the public interest of those they represent, insofar as the regulatory or individual disputed measure harms this public interest. In administrative litigation, as in private legal proceedings, the burden of proof bears on the plaintiff. However, this principle sees mitigation in administrative litigation, notably when the elements of proof are in the hands of the administration or, in the case of liability, in the hypothesis of presumptions exempting the petitioner from establishing the fault he/she alleges and obliging the administration to prove that it committed no error. Considering the inquisitorial nature of the proceeding, the administrative judge, who has significant investigatory powers, actually contributes significantly in establishing the facts. If need be, he/she may impose the communication of documents or proceed by him/herself to certain investigations by directly examining acts or documents, by visiting locations, by attending hearings or expert assessments. Judges must actively participate in the collection of evidence. Article 8 (1) of the Law on Administrative Proceedings enshrines the principle that proceedings shall be held in a public hearing.
The administrative judge has full control of an administrative act. An administrative act (part thereof) must be rescinded if it is:
illegal per se, i.e., contradicts by its contents the legal acts of higher order;
illegal by reason of having been adopted by an incompetent entity of administration;
illegal because it was adopted in violation of the principal established procedures, especially in breach of the rules intended to ensure an objective evaluation of all circumstances and the validity of the decision. A contested act (part thereof) may also be rescinded on other grounds recognized as material by the administrative court (Article 89 LAP).
The EIA screening and scoping decisions are administrative decisions and can be reviewed by courts. The conditions regarding legal standing, rules of evidence, rules on hearing or extent of review by the court are not specific for these cases. The EIA final decision is also an administrative decision and can be reviewed by courts. The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations when they are considered as belonging to the decision. The Environmental Impact Study is controlled because it is the main aspect of the procedural legality. The requirement of a necessary interest to have the power to act is at the very head of the conditions for an appeal's admissibility. It is not necessary to participate in the public consultation phase of the EIA procedure or to make comments to have a standing before administrative courts. The public concerned has the right to lodge a complaint (application) concerning an EIA administrative act in order to protect the public interest (Article 15 of Law on Environmental Impact Assessment of the Proposed Economic Activity). There are no special rules applicable to EIA procedures. The injunction relief is available in administrative cases in all matters. According to the Article 71 of the Law on Administrative Proceedings, the court or the judge may, upon a motivated petition of the participants in the proceedings or upon his/its own initiative, take measures with a view to securing a claim. The claim may be secured at any stage of the proceedings if failure to take provisional measures to secure a claim may impede the enforcement of the court decision or render the decision unenforceable. There are no special rules applicable to EIA procedures. All administrative decisions can be reviewed by administrative courts. IPPC decisions and other decisions concerning authorizations can be reviewed by administrative courts too. The conditions regarding legal standing, rules of evidence, rules on hearing or extent of review by the court are not specific for these cases. The administrative courts review the procedural legality and the substantive legality of IPPC decisions as well as the legality of all administrative decisions. They have also to study the material, technical findings, calculations and the IPPC Documentation if these elements are considered to belong to the decision. It is not necessary to participate in the public consultation phase of the IPPC procedure or to make comments to have a standing before administrative courts. The public concerned has the right to lodge a complaint (application) concerning an IPPC administrative act in order to protect the public interest (Article 87 of Rules on issuance, renewal and cancellation on IPPC permits, Approved by Ministry of Environment of Lithuania Order Number 80 in 2002). According to the Article 71 of the Law on Administrative Proceedings, the court or the judge may take measures with a view to securing a claim. There are no special rules applicable to IPPC procedures.

V. Access to Justice against Acts or Omissions

According to Article 7 (8) of the Law on Environmental Protection the public concerned, one or more natural or legal persons, have the right to bring a claim before courts and:
to insist upon the punishment of persons guilty of endangering the environment, and of officers, whose decisions have infringed their rights or interests;
to take the appropriate action to avoid or minimize environmental damage or to restore the original state of the environment.
Legal and natural persons who cause damage to the environment must compensate all losses, and, if possible, must restore the environmental state (Article 32 Law on Environmental Protection). The right to make claims for damages belongs to:
legal and natural persons whose health, property or interests have been damaged;
officers of the Ministry of Environment or other officers when damage has been done against the interests of the state (Article 33 (1) Law on Environmental Protection).
Legal entities are subject to civil liability, regardless of their guilt, for any environmental damage or actual threat thereof, resulting from their economic activities (Article 34 (2) Law on Environmental Protection). Claims for the protection of the environment can be submitted directly to the administrative courts against decisions or omissions of public bodies (the state or local public authorities). The administrative court can revoke the contested administrative act (part thereof), or obligate the public body to remedy the committed violation, or carry out other orders of the court. The administrative court can satisfy the complaint (the application) and an order for damages caused by illegal actions from public bodies. The state administration of environmental protection shall be carried out by the Government of the Republic, the Ministry of Environment, the Environmental Protection Agency, the Regional Environmental Protection Departments, other special state authorities (e.g. State Territorial Planning and Construction Inspectorate, General Forest Enterprise, State Protected Areas Service, National Parks Directorates) and the local governments. The administrative procedure is regulated by the Law on Public Administration for all matters of administrative law. There are no specific rules for environmental matters. The administrative procedure shall be completed and the decision on the administrative procedure shall be adopted within 20 working days from the beginning of the procedure. This term can be extended for a period not longer than 10 working days (Article 31 Law on Public Administration). A person shall have the right to appeal against a decision on the administrative procedure adopted by an entity of public administration, at his own choice, either to an administrative disputes commission or to an administrative court in accordance with the procedure set forth by laws (Article 36 Law on Public Administration). The administrative court can revoke the decisions made by competent authorities (part thereof) or obligate the competent authority to remedy the committed violation or carry out other orders of the court (Article 88 LAP). There are no specific rules concerning environmental liability matters for the procedure before administrative courts. The ordinary courts are dealing with cases concerning the environmental liability. The possibility to claim for compensation of damage is foreseen in the article 32-34 of the Law on Environmental Protection. There are several possibilities to enforce the environmental liability. Each possibility is based on specific conditions. The person can ask the competent authority to act if the environment is damaged. The decision made by competent authority can be appealed before the administrative court. Legal and natural persons whose health, property or interests have been damaged can make direct claims for damages before ordinary courts. Competent officers can make such claims when damage has been done to the interests of the State.

VI. Other Means of Access to Justice

All general court proceedings, administrative, civil or criminal are likely to be applied in environmental matters. There are no specific rules in this area. The Seimas of the Republic appoints the Seimas Ombudsman, a state official who protects human rights and freedoms, investigates the complainants' complaints about abuse of office by or bureaucracy of officials and seeks to upgrade public administration. The complainant has the right to file a complaint with the Seimas Ombudsman about the abuse of office by bureaucracy of officials if s/he believes that his rights and freedoms have been violated thereby (Article 5, 13 (1) Law on the Seimas Ombudsman). Having completed the investigation the Seimas Ombudsman shall decide to:
recognize or declare the complaint as justified;
dismiss the complaint;
discontinue the complaint investigation (Article 22 (1) Law on the Seimas Ombudsman).
The institution and agency or official, to whom this proposal (recommendation) is addressed must investigate the proposal (recommendation) of the Seimas Ombudsman and inform the Seimas Ombudsman about the results of the investigation (Article 20 (3) Law on the Seimas Ombudsman). According to the Law on the Prosecutor, the public prosecutor's office is a state institution headed by the Prosecutor General. The public prosecutor's office is comprised of the Prosecutor General's Office and territorial prosecutor's offices (regional prosecutor's offices and district prosecutor's offices). All prosecutors' offices shall defend the public interest, including environmental matters. Article 19 of the Law on the Prosecutor comprehensively regulates the defense of the public interest. The state institutions responsible for the environmental protection including the Ministry of Environment, the Environmental Protection Agency, the Regional Environmental Protection Departments, and other special state authorities (e.g. State Territorial Planning and Construction Inspectorate, General Forest Enterprise, State Protected Areas Service, National Parks Directorates and the local governments) can initiate the case in the administrative court for the defense of public interest. Some territorial police bodies have special departments for the environmental violations (e.g. in the capital in Vilnius). Other territorial police bodies have police officers responsible for investigating environmental violations. They have competence for criminal matters and administrative violations. The Code of Criminal Procedure provides cases under the Criminal Code of Republic of Lithuania, when criminal proceedings can be initiated, when there is a complaint of the victim or his legitimate representative (Article 407 of the Code of Criminal Procedure). In these cases pre-trial investigation is not conducted. There are no example cases in environmental matters. There are several possibilities of claims before the administrative courts in cases of administrative inaction or inappropriate action:
the action for annulment against an unlawful administrative decision;
the action to oblige the state institution to pass an administrative decision;
the action for damages against a public authority when it is shown that this inaction or inappropriate action caused a damage.
There is a possibility to bring a complaint in order to protect the State or other public interest laid down for the prosecutor, entities of administration, state control officers, other state institutions, agencies, organizations or natural persons, but only in the cases prescribed by law (Article 56 of the Law on Administrative Proceedings).

VII. Legal Standing

According to the Law on Administrative Proceedings every interested person can apply to a court for protection of his/her infringed right, contested right, or interest protected under law. Every applicant who challenges an administrative act has to demonstrate a particular interest in the annulment of this act. Only applications to protect an individual's infringed or protective right to an administrative court is admissible (Article 5 of the Law on Administrative Proceedings). These main rules are applicable for different types of procedures and different actors. However, it is possible to bring a complaint in order to protect the State or other public interest. The actors for this possibility include the prosecutor, entities of administration, state control officers, other state institutions, agencies, organizations or natural persons. But this possibility can be used only in the cases prescribed by law (Article 56 of the Law on Administrative Proceedings). E. g. according to Article 7 (8) of the Law on Environmental Protection the public concerned, one or more natural or legal persons, have the right to bring a claim before courts. So if there were a complaint in order to protect the public interest connected with the protection of environment this complaint should be admissible because it is prescribed by Law on Environmental Protection. This rule is used for all matters (not only for environmental matters). Sometimes additional rules of law provide whom and in which cases there is access to the court e.g. cases concerning EIA and IPPC. Article 15 of Law on Environmental Impact Assessment of the Proposed Economic Activity provides the possibility for the public concerned to bring a claim before courts in the case of EIA. Article 87 of Rules on issuance, renewal and cancellation on IPPC permits, Approved by Ministry of Environment of Lithuania - Order Number 80 in 2002 provides the possibility for the public concerned to bring a claim before courts in the case of IPPC. There are additional rules regarding the possibility for the public concerned to bring a claim before courts in the case of EIA (Article 15 of Law on Environmental Impact Assessment of the Proposed Economic Activity) and IPPC (Article 87 of Rules on issuance, renewal and cancellation on IPPC permits, Approved by Ministry of Environment of Lithuania - Order Number 80 in 2002). There is no "actio popularis" in Lithuania. The Ombudsman cannot bring a claim before the administrative court against the individual administrative decision. But he can apply to the administrative court with a request to investigate the legality of the legal statutes adopted by the entities of state administration or municipal administration. He can recommend that the prosecutor apply to the court according to the procedure prescribed by law for the protection of public interest. The public prosecutors can defend the public interest before administrative courts. Other state institutions have legal standing to act before administrative courts either when it is in their own interest to claim or to defend, or when they defend the public interest. There are additional rules for legal standing of individuals/NGOs and access to justice for environmental matters in the fields of EIA and IPPC procedures

VIII. Legal Representation

Parties can represent their interests in administrative courts themselves or through representatives. In administrative courts, the participation of lawyer is compulsory in judicial procedures (including in environmental matters). A lawyer is also compulsory before the cassation court (Supreme Court of Lithuania) (e.g. in the cases of environmental damage or in the criminal cases). Parties and/or their representatives must have a degree in law before the Court of Appeal. Generally, compulsory participation is required in criminal proceedings in all courts of general jurisdiction. There are specialized law offices in environmental matters (usually the biggest law offices). It is possible to find the lists of the lawyers in the following websites:
http://www.advoco.lt/
http://www.infolex.lt/
There are several NGOs whose aim is to defend the public interest in environmental matters, such as the Lithuanian Fund For Nature and Lithuanian Green Movement. The Lithuanian Environmental Coalition was established in 2004. There are 9 members in this Coalition at the moment.

IX. Evidence

Parties and other persons present the evidence for the proceedings. The parties must prove the circumstances on which they base their claims and responses. In administrative and civil proceedings the evidence includes: explanations of the parties and third parties (given directly or through representatives), witness evidence, written evidence, real evidence, statements of examination, expert evidence. The parties and other participants submit evidence to the court. If necessary, the court can allow those persons to submit additional evidence on the person's request or, on its own initiative, may demand the necessary documents, or request submissions from the officials. In civil proceedings the court has the right to collect evidence on its own initiative only in exceptional cases prescribed by the law, such as in family cases and labor cases. The court may also demand and obtain evidence from the other party or third parties at another party's request. No evidence before the Courts has a predetermined value. The court evaluates the evidence according

to its own inner conviction based on a thorough, comprehensive, and objective examination of the facts in accordance with the law, as well as justice and reasonableness criteria. In administrative proceeding parties can introduce new evidence until the end of the hearing on merits. Judges must actively participate in the collection of evidence, in the establishment of all significant circumstances of the case, and must make a comprehensive and objective examination thereof. In civil proceedings parties can introduce new evidence until the end of the preparation for hearing on the merits. In civil proceedings the court has the right to collect evidence on its own initiative only in exceptional cases prescribed by the law, such as in family cases or labor cases. Parties can submit expert opinions with other evidence to the court. Specialist explanations, opinions or conclusions gathered by the parties to the proceedings on their own initiative are not admitted as expert evidence. They are regarded as pieces of written evidence. The court decides either on its own initiative or at the request of the parties whether to order an expert examination in the proceedings. Usually an expert is ordered to examine certain issues arising in the case when the Court needs special scientific, medical, artistic, technical or professional knowledge. Expert opinions, as other evidence, do not have a predetermined value for the court. They are not binding on judges.

X. Injunctive Relief

The appeal or the action submitted to the court against the administrative decision does not have a suspensive effect. Only the court might suspend the administrative decision in the way of applying interim measures. Usually administrative decisions can be immediately executed after their adoption (enforcement), irrespective of an appeal. Only the court can apply interim measures. When the administrative decision in the form of the legislative act was adopted by the government or the municipality the enforcement is connected with the publication in the official journal or other date which can be foreseen in the legislative act. There are no specific rules for the injunctive relief in judicial procedures in environmental matters. The claim may be secured at any stage of the proceedings if failure to take provisional measures to secure a claim may:

a) impede the enforcement of the court decision; or

b) render the decision unenforceable.

The request for the interim measures must be filed prior to the commencement of the hearing of the case on the merits. According to the practice of the Supreme Administrative Court of Lithuania, the court, while deciding on the interim measures (in Lithuanian administrative process they are called “measures securing the claim“), must preliminarily take into account the nature of the claim (that is requested to be secured), the indicated factual basis for the claim, the rights, granted by the contested act, and actual realization of these rights. Only then the court can decide whether the requirement for interim measures under the circumstances of the application would be adequate to the purpose and whether the principle of proportionality and the balance of the interests of the parties and the public interest wouldn’t be violated. According to the principle of fairness, when considering the requirement of interim measures, the court has to answer the question whether interim measure would actually help to restore the previous legal position if the main claim would be satisfied. The petition for securing the claim might be accepted only if the main complaint is accepted. There is no possibility of asking for interim measures, without asking for challenging the administrative act or omission. There is no cross-undertaking in damages prior to granting interim relief. There is the appeal against the decision of the court regarding injunction possible. But it has not the suspensive effect and the court can continue the proceeding (Article 71 (5) LAP).

XI. Costs

In administrative courts, the applicant should pay a court fee. There are exemptions, however, in cases about complaints in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omission in the sphere of public administration, for example. Other litigation-related costs include:

costs paid to witnesses, experts, and expert organizations;

costs relating to the publication of hearing time and place in the press;

transport costs;

costs for the rental accommodation in the place of the court;

other necessary and reasonable expenses.

In civil courts applicants have to pay a court fee. There are exemptions in the cases concerning compensation for material and moral damage in relation to a physical personal injury, death, in the cases concerning the defense of the public interest under the claim of the prosecutor, public institutions or other persons. Other litigation-related costs include:

costs paid to witnesses, experts, authorities and expertise of interpreters and the costs associated with on-site inspections;

costs for the searching for the defendant;

costs associated with the service of delivery of documents;

costs related to enforcement of judgments;

costs related to the salary of the curator;

costs for the lawyers or lawyer’s assistants;

costs associated with the application for interim relief;

other necessary and reasonable expenses.

Under the Law on Administrative Proceedings, each complaint (application) in administrative court is subject to a stamp duty in the amount of LTL 100 (excluding the exceptions). An appeal for the review of a court judgment must be subject to a stamp duty at the 50% rate payable upon the lodging of the complaint (application) with the first instance court. Under the Code of Civil Procedure, stamp-duties in pecuniary disputes are as follows:

Amount of the claim	Stamp-duty
for claims up to LTL 100 000	3% of claimed amount + indexation (The minimum stamp-duty - LTL 50)
for claims up to LTL 300,000	LTL 3,000 plus 2% of claimed amount exceeding LTL 100,000 + indexation
for claims over LTL 300,000	LTL 7,000 plus 1% of claimed amount exceeding LTL 30,000 + indexation (The maximum stamp-duty - LTL 30,000)

For appeals, cassation appeal, and applications for renewal of the proceedings shall be paid the same amount of stamp duty. An estimation of expert fees and other litigation-related fees, except from lawyer fees and costs, associated with the application for interim relief are regulated by Government Resolution Number 344 from 2002. There is a recommendation from Minister of Justice and the Chairman of Bar concerning lawyer fees (Ministry of Justice Order Number 1R-85 from 2004). Recommended maximum remuneration sizes are calculated using the coefficients which are based on the Lithuanian Government approved the minimum monthly salary. The minimum monthly salary (MMS) from 1st August 2012 is LTL 850. E.g. the coefficient for one hour for representation in court is 0,15. An estimation of lawyer fees in the case of the legal aid is regulated by Government Resolution Number 60 from 2001. The remuneration for lawyers constantly providing secondary legal aid is 8.18 MMS per month. Working hour salary for lawyers who are not constantly providing secondary legal aid equal to 0,05 MMS. There are differences between administrative and civil proceedings. In the administrative proceedings, in the case of

an injunctive relief or interim measure a deposit (cross-undertaking in damages) is not needed (it is not foreseen in the Law on Administrative Proceedings). In the civil proceeding the request for application of interim measure shall be taxable only when it is claimed before filing a lawsuit. In this case the applicant must pay half of the stamp-duty payable for this prospective claim. The Code of Civil Procedure establishes the court's right to require a deposit for applying the interim measures from the applicant. The deposit is intended to secure the defendant against losses of the interim measures applied to him. The deposit could also be the bank guarantee. The amount of the deposit depends on the case and it is quite difficult to evaluate it generally. The general rule is that the losing party has to bear all costs, including stamp duties and costs related to initial court proceedings. The party shall be also obliged to reward the costs of the winning party. The stamp-duty, expenses for correspondence, expert costs, and other costs usually are paid in full. But the legal costs for legal representation during the court proceeding are reduced as recommended by the Minister of Justice and the Chairman of Bar. However these amounts are only recommended and depend on the complexity of the court proceeding, case material, and other factors. Nevertheless, in the absolute majority of civil and administrative cases, state courts reduce parties' requested legal expenses for their legal assistance according to the recommended amounts and reasonableness.

XII. Financial Assistance Mechanisms

There are no specific rules concerning litigation costs of proceedings in environmental matters. Complaints/petitions shall be received and heard by the administrative courts only after the payment of the stamp duty prescribed by the law. Several exemptions from the stamp duty are foreseen in Article 40 of Law on Administrative Proceedings:

complaints/petitions relating to the delay by the entities of public administration to perform the actions assigned within the remit of their competence, awarding of or refusal to award pensions,

violations of election laws and the Law on Referendum,

petitions by state servants and municipal employees when they concern legal relations in the Office,

compensation for damage inflicted upon a natural person or organization by unlawful acts/omission in the sphere of public administration, and

complaints relating to the protection of public interests and some other complaints/petitions.

There is a legal aid available in Lithuania. The current legal aid scheme is governed by the Law on Legal Aid. Legal aid is divided into primary and secondary legal aid. Primary legal aid includes legal information and legal consultations outside the judicial procedure and is accessible to all citizens, EU citizens, and foreigners, irrespective of their financial resources. Secondary legal aid includes preparation of procedural documents, representation in courts, waiver of the stamp duty and other procedural costs. Access to secondary legal aid depends on the level of estate and income and covers 50 or 100 percent of all procedural costs. Some groups of persons (i.e. recipients of social allowance) can receive legal aid independent of their income. Legal aid is granted through special services, which are accountable to the Ministry of Justice. The refusal to grant legal aid is subject to appeal before administrative courts. Legal aid is also available in environmental matters without any specific rules. Legal aid is subject to requirements as to resources, nationality, residence and admissibility. You are entitled to primary or secondary legal aid if you are a Lithuanian national, a citizen of the EU, or a foreigner who is lawfully residing in Lithuania or in another EU state. Legal aid is given if the action is not manifestly inadmissible or devoid of substance. The additional condition for secondary legal aid is that the party's property value and annual income does not exceed the property value and income levels set by the Government of the Republic of Lithuania. Legal aid for NGOs is not foreseen. Law firms do not provide pro bono legal assistance in Lithuania. All legal clinics deal with environmental cases. There are no specific environmental legal clinics. These legal clinics are:

Legal clinic of Vilnius University: http://www.teisesklinika.lt

Legal clinic of Mykolas Romeris University: http://www.mruni.eu/lt/universitetas/fakultetai/teises_fakultetas/teisines_pagalbos_centras/apie_centra/

The legal clinics are responsible for primary legal aid. The primary legal aid is also given by the municipalities and by Ministry of Justice Information Bureaus in several cities (Kaunas, Klaipėda, Šiauliai, Druskininkai and other).

The secondary legal aid is granted through 5 special services (in Vilnius, Kaunas, Klaipėda, Panevėžys and Šiauliai), which are accountable to the Ministry of Justice. There are environmental organizations responsible for the defense of the environment in Lithuania. They are available for the public. There are some other organizations that give free legal advice via internet. There are no specific environmental lawyers who would be available for the public for free.

XIII. Timeliness

An administrative organ shall complete the administrative procedure and adopt the decision of the administrative procedure within 20 working days from the beginning of the procedure. The public entity initiating the administrative procedure may extend the period up to 10 extra working days where, due to objective reasons, the administrative procedure cannot be completed within the set time limit. A person shall be notified about the extension of the time limit for the administrative procedure in writing or by e-mail (where the complaint has been received by e-mail) and the reasons for the extension (Article 31 of the Law on Public Administration). An administrative court may initiate responsibility of a public authority when the administrative organ does not adopt the decision during the time limit and it has resulted in damage to the claimant. In several fields, the law established a regime of tacit acceptance. The silence of the administration causes the appearance of a tacit acceptance within the period fixed by law. There are no special time limits set by law for judicial procedures in environmental matters. The general rules apply. Usually, the preparation of administrative cases before the court must be completed no later than one month after the date of the complaint (application). The proceedings before the administrative court must be completed and a decision made in the first instance no later than two months after the order for the case to the court hearing date, if the law doesn't provide shorter duration.

Where appropriate, the trial period may be extended up to one month. In cases concerning the legality of normative acts of the administration the time period may be extended up to three months. The judgment shall be drawn up and communicated to the public generally on the same day after hearing the case. Judgments relating to the legality of administrative acts and other complex cases may be passed and announced later than but not more than 10 days upon the completion of the hearing of the case (in the practice, it's used in almost all cases). When the right to a judicial decision within a reasonable time has caused damage, the person can obtain compensation for the damage. This possibility is foreseen in the Law on Compensation of Damage caused by Public Authorities.

XIV. Other Issues

Every applicant who challenges an administrative act must demonstrate a particular interest in the annulment of the act. An action for the annulment of an administrative act shall only be admissible if it produces legal effects – when it infringes the rights and obligations of applicant. A writ that only occurs in the context of a procedure for developing a subsequent main decision or simple information does not create rights or obligations for the person and cannot be challenged before an administrative court. All these general rules are applicable in environmental matters. The right of access to environmental information is ruled by general principle issued by the Law on Environmental Protection and the implementing Order on Public Access to Environmental Information, Approved by Government Resolution Number 1175 from 1999. Alternative Dispute Resolution currently is not prevalent in administrative litigation in Lithuania. But the newest jurisprudence of the administrative courts indicates an intention to use the peace treaty to settle disputes (also in environmental matters). Mediation is not really used in the practice; but, this idea is slowly getting value in Lithuania.

. XV. Being a Foreigner

Article 29 of the Lithuanian Constitution proclaims the principle of equality before the law for all citizens regardless of gender, race, nationality, language, origin, social status, belief, convictions, or views. Many laws have extended this article of the Constitution. Article 6 of Law on Administrative Proceedings provides that justice in administrative cases is implemented only by the courts, according to equality before the law and the court, regardless of gender, race, nationality, language, origin, social status, religion, beliefs or attitudes, activities and nature, residence and other circumstances. Only the Lithuanian language should be used in the courts. Article 9 of Law on Administrative Proceedings provides that in the process of administrative cases, decisions are made and published in the Lithuanian language. All documents submitted to the court must be translated into Lithuanian. Persons who do not speak Lithuanian shall be guaranteed the right to use the services of an interpreter. The interpreter is paid from the state budget (Article 9 of Law on Administrative Proceedings).

XVI. Transboundary Cases

Article 32 Law on Environmental Protection provides that disputes between legal and natural persons of the Republic of Lithuania and foreign states shall be settled in the manner established by law of the Republic of Lithuania, unless international agreements of the Republic of Lithuania provide otherwise. The admissibility of an action before a Lithuanian court is possible under conditions in Law on Administrative Proceedings or in Civil Proceedings Code. The concept of public interest is not specific in a transboundary context. The general rules are applicable (especially about the admissibility of requests through the concept of legal interest). The Lithuanian administrative law recognizes equal access to administrative courts for persons or NGO's residing abroad on the same basis that the applicants residing in Lithuania use. An EU citizen or a foreigner who is lawfully residing in Lithuania or in other state of the EU can get legal aid. A jurisdiction clause is possible in civil matters. It takes the form of a contractual provision whereby the parties agree to entrust the settlement of a dispute to a court which does not normally have jurisdiction. This may concern the subject matter jurisdiction or territorial jurisdiction. This clause may relate only to disputes arising from the contract. But, this mechanism is not used for administrative law litigations before administrative courts. The possibility to choose between courts could be possible in an international agreement.

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