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NON-JUDICIAL MEDIATION IN THE LITHUANIAN ADMINISTRATIVE PROCESS: CURRENT ISSUES

The article is the first scientific study in the cycle of extrajudicial mediation in the administrative process of Lithuania.

The purpose. *The article describes the envisaged new legal regulation of non-judicial mediation in the Lithuanian administrative law process, analyzing the works of Lithuanian scholars in this field and new draft legal acts, through the categories defined in the research tasks. The aim of the article is to briefly present and discuss the institute of non-judicial mediation in Lithuanian administrative law science and practice, its current and foreseeable development in administrative justice, to define and analyze the aims of non-judicial mediation in administrative law new legal regulation, the envisaged possibilities of non-judicial mediation as an alternative to peaceful dispute resolution in the administrative law system in Lithuania. In order to achieve the aim and objectives of the research, the analysis of Lithuanian scientists' works and basic laws and newly drafted legal acts implementing non-judicial mediation, pre-trial administrative proceedings and Lithuanian administrative legal regulation was carried out.*

Methods: *comparative, documents' analysis, systematic approach and other methods were used for research.*

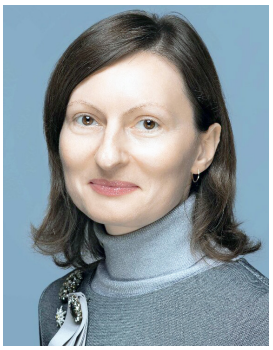
Results *of research. It can be reasonably stated that Lithuania, having regard to the successful implementation of mediation in civil law, has prepared appropriate amendments to new laws and other legal acts and created an efficient operational basis for the proper functioning of non-judicial mediation in pre-trial administrative proceedings.*

Conclusions. *Summarizing this study, it can be concluded that the legal regulation of non-judicial mediation drafted by the legislators is based on analogy with the regulation of mediation in civil law. As judicial mediation in administrative proceedings is already legally regulated, as a complete analogue to civil mediation and administrative courts already apply it in practice, it is expected that the regulation of non-judicial mediation in administrative proceedings will follow a similar model. According to the proposed non-judicial mediation model, such mediation will only be possible once the dispute has been initiated and resolved by the Lithuanian Administrative Disputes Commission or its territorial offices. Such a model is acceptable given the practical work of the commission and the existing legal regulation, and the commission could operate on the basis of the mediation model of administrative courts. However, the question of the qualifications of mediators remains unresolved, as legal theorists do not agree on what the qualifications of mediators in extrajudicial administrative proceedings should be. There is disagreement as to whether a person who has completed only a supplementary course on administrative law will acquire the necessary knowledge and qualifications, as well as whether it is necessary to have a legal education and a thorough knowledge of the principles of public administration.*

It should be noted that the successful application of non-judicial mediation in administrative proceedings is highly influenced by the nature of the dispute. It is believed that in

administrative disputes concerning material, tax relations, civil service, administration of national, European Union and foreign financial assistance, the possibility of mediation seems realistic in order to resolve the dispute and restore the balance of social peace in a manner acceptable to all parties to the dispute. The first steps have already been taken, the law stipulates that a public administration entity may not aggravate the situation of the person subject to the decision by making or modifying the decision. The drafts initiated in this way are related to the extension of the jurisdiction of the disputes dealt with by the Administrative Disputes Commission, in the hope that before the new wording of the Law on Mediation comes into force, other legal acts will be regulated to enable successful non-judicial mediation.

Key words: administrative law science, administrative law, mediation, non-judicial and judicial mediation, public administration, legal doctrine.



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1. Introduction

Mediation in the Lithuanian administrative process is not a completely new subject of research, although there are very few scientific papers on this topic. This situation is due to the fact that the majority of research works are closely related to the application of mediation in civil proceedings and the mediation in administrative process is mainly spoken of in a fragmentary manner, avoiding detailed and deeper analysis of theoretical and practical assumptions, conditions and consequences. Researchers often confine themselves to addressing the procedural issues of mediation itself, while leaving the definition and application of content to the mediation itself. The lack of such research does not allow to reveal the essential aspects of mediation in the administrative process and does not encourage scientific discourse that can directly accelerate the legal settlement and practical application of mediation in the administrative process.

Lithuanian legal scholars, while conducting scientific research, came up with the idea of mediation in Lithuanian law, drawing on the theoretical and practical aspects of the application of mediation in foreign countries, and formulated the concept of mediation. Mediation is defined as an alternative to court, a voluntary confidential dispute resolution procedure in which one or more independent third parties – mediator or mediators – help disputants reach an acceptable resolution of the dispute[1]. It has also been established that, in relation to the legal system, mediation is divided into non-judicial and judicial mediation. Scientists associate this kind of entrenchment of mediation types with the stage of dispute resolution, i. e. Although the theory provides that mediation is an alternative to court proceedings, mediation is also possible according to established practice in the case of litigation. The essential basis for the division of mediation into judicial and non-judicial proceedings is the existence of a requirement that the parties to the dispute must have instituted legal

[1] Kaminskienė, N. et al. (2013). Mediation: textbook. Vilnius: Mykolas Romeris University Publishing Center, p. 7 [Kaminskienė N., Račelytė D., Tvaronavičienė A., Mienkowska-Norkienė R., Atutienė E., Štaraitė-Barsulienė G., Saudargaitė I., Uscila R., Banys A., Langys E., Pečkys V., Špokas E., Čiuladienė G., Aleknonis G. Mediacija: vadovėlis. Vilnius: Mykolo Romerio universiteto leidybos centras, 2013. 603 p.].

proceedings in order for the appropriate form of mediation to be applicable[2]. Following the entry into force of the Law on Mediation[3] on January 1, 2019, the legislature, in accordance with the theory developed by scholars, has established in law that mediation is divided into mediators assist in the peaceful settlement of a dispute which is pending, between the parties to the non-judicial dispute (non-judicial mediation) or the litigation in court (non-judicial mediation).

As of 2019 This Regulation entered into force on 1 March, Law on Administrative Proceedings of the Republic of Lithuania (next – LOAP) № VIII-1029 Law amending Articles 2, 40, 44, 51, 56, 59, 67 and 71 and supplementing the Law with Articles 79-1[4]. This amendment to the law legalized judicial mediation in administrative proceedings. Article 2 (4) of the Act defines the concept of judicial mediation in administrative proceedings as "an administrative dispute settlement procedure in which one or more mediators assist the parties to the dispute in the amicable settlement of the dispute".

Article 51 of the Act provides that "at any stage of the proceedings, the parties to the dispute may, by reason of the nature of the dispute, settle the dispute by amicable settlement. The Settlement Agreement shall be consistent with the overriding mandatory provisions of laws and regulations, the public interest and the rights or legitimate interests

[2] Kaminskienė, N. et al. (2013). Mediation: textbook. Vilnius: Mykolas Romeris University Publishing Center, p. 231 [Kaminskienė N., Račelytė D., Tvaronavičienė A., Mienkowska-Norkienė R., Atutienė E., Štaraitė-Barsulienė G., Saudargaitė I., Uscila R., Banys A., Langys E., Pečkys V., Špokas E., Čiuladienė G., Aleknonis G. Mediacija: vadovėlis. Vilnius: Mykolo Romerio universiteto leidybos centras, 2013. 603 p.].

[3] Seimas of the Republic of Lithuania (2019). Law of the Republic of Lithuania on Mediation № X-1702 Amendment Act, Republic of Lithuania Law on Mediation in Civil Disputes № X-1702 Amendment Act № Article XIII-534 of the Law on Amending Article 2 of the Law on Administrative Proceedings of the Republic of Lithuania № VIII-1029 of the Law on Amending Articles 20, 28, 36, 40, 44, 51, 56, 59, 67, 79 and Supplementing the Law with Articles 79-1, 79-2; VIII-1031 Amendment Bill Approval Certificate. URL: http://lrv.lt/uploads/main/meetings/docs/1078023_imp_2cc53e3b5266ef87bc2b9b0feaf4fa13.pdf [Lietuvos Respublikos mediacijos įstatymo № X-1702 pakeitimo įstatymo, Lietuvos Respublikos civilinių ginčų taikinamojo tarpininkavimo įstatymo № X-1702 pakeitimo įstatymo № XIII-534 2 straipsnio pakeitimo įstatymo, Lietuvos Respublikos administracinių bylų teisenos įstatymo № VIII-1029 20, 28, 36, 40, 44, 51, 56, 59, 67, 79 straipsnių pakeitimo ir įstatymo papildymo 79-1, 79-2 straipsniais įstatymo, Lietuvos Respublikos ikiteisminio administracinių ginčų nagrinėjimo tvarkos įstatymo № VIII-1031 pakeitimo įstatymo projektų derinimo pažyma. URL: http://lrv.lt/uploads/main/meetings/docs/1078023_imp_2cc53e3b5266ef87bc2b9b0feaf4fa13.pdf].

[4] Seimas of the Republic of Lithuania (2018). Concerning the Law on Mediation in Civil Disputes of the Republic of Lithuania № X-1702 Amendment Act № XIII-534 of the Republic of Lithuania Law on Administrative Proceedings of the Republic of Lithuania № VIII-1029 of the Law on Amending Articles 20, 28, 36, 40, 44, 51, 56, 59, 67, 79 and Supplementing the Law with Articles 79-1 and 79-2; VIII-1031 to the Seimas of the Republic of Lithuania (dated November 28, 2018 № 1190). URL: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f56939b4f85611e895b0d54d3db20123?jfwid=-14itv2ko6m [Dėl Lietuvos Respublikos civilinių ginčų taikinamojo tarpininkavimo įstatymo № X-1702 pakeitimo įstatymo № XIII-534 pakeitimo įstatymo, Lietuvos Respublikos administracinių bylų teisenos įstatymo № VIII-1029 20, 28, 36, 40, 44, 51, 56, 59, 67, 79 straipsnių pakeitimo ir Įstatymo papildymo 79-1, 79-2 straipsniais įstatymo, Lietuvos Respublikos ikiteisminio administracinių ginčų nagrinėjimo tvarkos įstatymo № VIII-1031 pakeitimo įstatymo projektų pateikimo Lietuvos Respublikos Seimui (2018 m. lapkričio 28 d. № 1190). URL: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f56939b4f85611e895b0d54d3db20123?jfwid=-14itv2ko6m].

of third parties. A settlement cannot be concluded in cases concerning the legality of regulatory administrative acts, in cases of complaints concerning violations of electoral laws and referendum law. <…> The settlement may settle all or part of the dispute (separate claims)"[5]. As already mentioned, this amendment to the law finally legalized judicial mediation in administrative proceedings, the process of which is essentially based on the exercise of mediation in civil court proceedings. It is established that, at the request or with the consent of the parties to the dispute, judicial mediation in administrative courts may be carried out in accordance with the law and the procedure laid down by the Judicial Council. The mediation of a dispute may be initiated by judicial mediation or by any of the parties to the dispute. Judicial mediation may be performed by mediators who are judges included in the list of mediators of the Republic of Lithuania. Such legal regulation was based on the fact that in 2013 the Law on Administrative Proceedings of the Republic of Lithuania[6] established the settlement agreement in administrative procedure, when the possibility to settle administrative disputes by settlement, approve the settlement.

In view of the successful operation of the Settlement Institute in Administrative Courts and the possibility of conciliation between parties in administrative disputes, amendments were also made to the Law of the Republic of Lithuania on Pre-trial Administrative Dispute Resolution (hereinafter – IAGNTĮ). The law regulating the settlement agreement in the extra-judicial administrative process essentially laid the foundations for the formation of non-judicial mediation in the Lithuanian administrative process and started the development of the conception of mediation system approved by the Minister of Justice in 2015[7]. Recently, the Institute for Non-judicial Administrative Dispute Resolution is being strengthened in Lithuania in order to optimize and streamline the handling of all types of administrative disputes at all stages

[5] Seimas of the Republic of Lithuania (2018). Concerning the Law on Mediation in Civil Disputes of the Republic of Lithuania № X-1702 Amendment Act № XIII-534 of the Republic of Lithuania Law on Administrative Proceedings of the Republic of Lithuania № VIII-1029 of the Law on Amending Articles 20, 28, 36, 40, 44, 51, 56, 59, 67, 79 and Supplementing the Law with Articles 79-1 and 79-2; VIII-1031 to the Seimas of the Republic of Lithuania (dated November 28, 2018 № 1190). URL: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f56939b4f85611e895b0d54d3db20123?jfwid=-14itv2ko6m [Dėl Lietuvos Respublikos civilinių ginčų taikinamojo tarpininkavimo įstatymo № X-1702 pakeitimo įstatymo № XIII-534 pakeitimo įstatymo, Lietuvos Respublikos administracinių bylų teisenos įstatymo № VIII-1029 20, 28, 36, 40, 44, 51, 56, 59, 67, 79 straipsnių pakeitimo ir Įstatymo papildymo 79-1, 79-2 straipsniais įstatymo, Lietuvos Respublikos ikiteisminio administracinių ginčų nagrinėjimo tvarkos įstatymo № VIII-1031 pakeitimo įstatymo projektų pateikimo Lietuvos Respublikos Seimui (2018 m. lapkričio 28 d. № 1190). URL: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f56939b4f85611e895b0d54d3db20123?jfwid=-14itv2ko6m].

[6] Seimas of the Republic of Lithuania (2018). Law on Administrative Proceedings of the Republic of Lithuania. Legislative register, 2018-21856 [Lietuvos Respublikos administracinių bylų teisenos įstatymas (2018). Teisės aktų registras, 2018-21856].

[7] Minister of Justice of the Republic of Lithuania (2015). Order of the Minister of Justice of the Republic of Lithuania 1R-268 "Concerning the conception of the development of the system of mediation". Legislative register, 2015-13939 [Lietuvos Respublikos teisingumo ministro įsakymas № 1R-268 „Dėl taikinamojo tarpininkavimo (mediacijos) sistemos plėtros koncepcijos patvirtinimo". Teisės aktų registras, 2015-13939].

of the administrative process. From 2021 onwards 1 January the new version of the Law on Mediation of the Republic of Lithuania will come into force. Substantial changes to this law concern the legalization of non-judicial mediation in administrative proceedings. The mechanism of non-judicial administrative litigation is generally designed to enable individuals to enforce their right to effective, cost-effective and expeditious access to their infringed rights without the disadvantages of litigation. The Recommendation of the Committee of Ministers of the Council of Europe on Alternative Dispute Resolution between Public Administrations and Private Individuals states[8] that the benefits of an non-judicial administrative dispute settlement mechanism result in simpler and more flexible dispute resolution procedures leading to faster and cheaper dispute resolution; it allows persons with specialist knowledge to settle the dispute, does not oblige those dealing with the dispute to comply with strict and formal procedural rules, but allows greater discretion in the decision. This Recommendation proposes that alternative means of resolving administrative disputes, such as internal review of an administrative act, conciliation, mediation, settlement and arbitration, should be established and put into practice in law.

Analyzing the legal regulation of non-judicial mediation in Lithuania, the problem arises whether the aspirations of the legal entities to introduce extrajudicial mediation in administrative proceedings according to the analogy of mediation in civil justice (mediation in administrative courts) will not be based on scientific research and detailed analysis of foreign experience and emerging practice in Lithuania. Situations where the introduction of non-judicial mediation in administrative proceedings will not achieve its objectives and will be discredited not because of its peculiarities as a method of dispute resolution but because of its unfavorable legal environment for its application and development.

The aim of the study is to analyze relevant changes in the regulation of non-judicial mediation in administrative proceedings in Lithuania.

Research methods. Using the comparative method, the peculiarities of the regulation of non-judicial mediation in administrative proceedings in Lithuanian and foreign law will be examined first. It will also explore the interaction between mediation and the administrative process, and analyze the main methods of regulating non-judicial mediation, including differences in the use of dispositive and imperative legal regulation.

The systematic approach will be used to examine non-judicial mediation in administrative justice, its place in the entire Lithuanian legal system in general. This approach will seek to address this type of dispute resolution as a complex process in public law. The possibilities, realization mechanism and directions of mediation in the administrative process of the so-called "legalization" in the Lithuanian legal system are analyzed.

2. Proposed legislative regulation of non-judicial mediation in Lithuanian administrative process

As far as the application of mediation in Lithuania is concerned, it is important to note that it is currently fully applicable in civil law. This can be attributed to the wide

[8] Council of Europe (2001). Recommendation Rec(2001)9 of the Committee of Ministers to member states on alternatives to litigation between administrative authorities and private parties. URL: https://rm.coe.int/16805e2b59.

range of options for a peaceful settlement, thanks to the prevailing method of regulating the law there. This approach allows participants in a regulated relationship to show initiative, autonomy in choosing one or another behavioral option[9]. The opposite is seen as the imperative model of law regulation prevailing in public law, which narrows the boundaries of a peaceful settlement. A settlement cannot conflict with imperative provisions of law, regulation or the public interest. General principles of mediation that are appropriate and directly applicable in civil law, but most of the principles are difficult to implement in the administrative process. First of all, the non-overlapping principle of mediation-specific confidentiality, i. e. public administrations have a duty to adhere to the principles of openness and accountability, which oblige them to provide the public with information relevant to their functions and the decisions they make. It is stated in the literature that, during mediation, the public administration cannot act in an ultra vires capacity, which suggests that there is a problem of interaction between the principles of voluntarism and the rule of law. On a voluntary basis, it is up to the parties to the dispute to decide to participate in the mediation procedure. However, this right of choice is restricted in the administrative procedure. This is determined by the rule of law and the imperative method of legal regulation. According to the principle of the rule of law, the competences of the public administration are defined in detail in the legislation and the decisions they make cannot conflict with the imperatives of the legislation[10].

According to the relevant case-law of the administrative courts, "in the field of public administration, the principle of the legality of decisions of public administrations applies, which is understood as meaning that a public authority cannot annul its own decisions unless such a possibility exists in the special laws governing it. A public administration entity may only correct errors in decisions which, when corrected, may not result in the imposition of less rights or obligations on the person than those imposed by the decision. The principle of legality and the binding nature of a decision taken by a public authority presuppose that a decision taken by a public authority is valid until annulled by a superior public authority (if such a possibility exists) or by a court"[11].

However, despite all possible threats and claims that mediation in the administrative process cannot be properly implemented and mediation will not be appropriate for administrative disputes, the Government of the Republic of Lithuania is preparing draft laws and setting a specific deadline of 1 January 2021 Amendments to the Law on Mediation relating to mediation in administrative proceedings must enter into force. Regulatory changes are primarily initiated to implement the European Union's

[9] Vaisvila, A. (2004). Theory of law. Vilnius: Justitia, p. 205 [Vaišvila A. Teisės teorija. Vilnius: Justitia, 2004. 376 p.].

[10] Bondy, V., Doyle, M. (2011). Mediation in judicial review: a practical handbook for lawyer. *The Public Law Project*, no. 14, pp. 45–47.

[11] Supreme Administrative Court of Lithuania (2012). Order of the Supreme Administrative Court of Lithuania of November 8, 2012 decision in the administrative case № A^{602}-151/2012 [Lietuvos vyriausiojo administracinio teismo 2012 m. lapkričio 8 d. nutartis administracinėje byloje № A^{602}-151/2012].

recommendations[12]. The concept of the development of a system of mediation provides for changes to the legal framework in order to establish clear legal bases and conditions for mediation in administrative proceedings. Taking into account the experience of foreign countries and international recommendations, it was planned to regulate the compilation of the list of conciliators (mediators), qualification requirements for persons seeking to be conciliators (mediators), procedural means of promoting conciliation mediation (mediation). The objectives of the legal regulation were to establish a detailed and clear regulation of mediation, to create legal preconditions for mediation and to promote its development in civil, criminal and administrative proceedings, to create conditions for simpler and more efficient resolution of disputes, to reduce the workload of courts. Many of the goals of the concept have already been achieved, including by providing for mediation by members of the Lithuanian Administrative Disputes Commission from 2021 onwards.

The new legal framework may, in principle, serve as a basis for the implementation of the amendments to the Law on Mediation concerning extrajudicial mediation. The concept of "administrative dispute" established by the Draft Law prepared by the Ministry of Justice of the Republic of Lithuania is understood to be a dispute adjudicated in an administrative court under the procedure established by the Law on Administrative Proceedings of the Republic of Lithuania[13]. The list of mediation management entities additionally includes the chairman of the Lithuanian Administrative Disputes Commission, which establishes the procedure for organizing and executing extra-judicial mediation in the Commission and its subdivisions, and organizes the monitoring of extra-judicial mediation in administrative disputes[14]. Pursuant to the draft law, non-judicial mediation is planned to take place at the premises of the Lithuanian Administrative Disputes Commission. If the parties choose a member of the commission as a mediator, the parties will in any case be free of mediation. The process of mediation is envisaged by analogy with the civil mediation process, with the possible specific modifications mentioned in the draft law, which may be established by the chairman of the Lithuanian Administrative Disputes Commission by the end of 2020, December 31 the procedure for organizing and executing extra-judicial mediation in the Commission and its divisions. It is also important to emphasize that peace agreements concluded during non-judicial mediation of administrative disputes will be subject to the requirements

[12] Minister of Justice of the Republic of Lithuania (2015). Order of the Minister of Justice of the Republic of Lithuania 1R-268 "Concerning the conception of the development of the system of mediation". Legislative register, 2015-13939 [Lietuvos Respublikos teisingumo ministro įsakymas № 1R-268 „Dėl taikinamojo tarpininkavimo (mediacijos) sistemos plėtros koncepcijos patvirtinimo". Teisės aktų registras, 2015-13939].

[13] Seimas of the Republic of Lithuania (2018). Law on Administrative Proceedings of the Republic of Lithuania. Legislative register, 2018-21856 [Lietuvos Respublikos administracinių bylų teisenos įstatymas (2018). Teisės aktų registras, 2018-21856].

[14] Seimas of the Republic of Lithuania (2018). Law of the Republic of Lithuania on Mediation in Civil Disputes X-1702 Amending Law № XIII-534 Amendment Bill [Lietuvos Respublikos civilinių ginčų taikinamojo tarpininkavimo įstatymo № X-1702 pakeitimo įstatymo № XIII-534 pakeitimo įstatymo projektas, 18-4796(3)].

set forth in the Law on Pre-trial Administrative Dispute Resolution and other laws of the Republic of Lithuania.

The draft law[15] is accompanied by an explanatory memorandum specifying the requirements for persons seeking to mediate in administrative disputes. Under the guidance provided, non-judicial mediation mediators may be individuals who meet the general qualification requirements for mediators on the list of mediators. Such intended regulation means that there will be no separate requirements for mediators (except for hearing a short training program on mediation in administrative disputes) in administrative proceedings. Even the members of the Lithuanian Administrative Disputes Commission, who will have the right to mediate in accordance with their duties, will have to meet the general requirements for mediators – to pass the mediator qualification examination, to be compulsorily enrolled, and to be of good repute. Thus, under the proposed legal framework, mediators could mediate not only administrative but also civil disputes. Whether this is the appropriate solution, and certainly because of the specificity of the administrative process and the dispositive regulation of disputes arising therefrom, it is not mandatory that only mediators with specific knowledge and practical experience in the administrative process will be discussed later in this study.

As already mentioned above, one of the basic principles of the activities of public administration entities, established in Article 3 of the Law on Public Administration of the Republic of Lithuania (LPA), is the principle of the rule of law, which stipulates that decisions and activities relating to the exercise of the rights and obligations of individuals must always be based solely on the law[16]. When drafting laws on the regulation of non-judicial mediation in administrative proceedings, it was emphasized that "a public administration entity may correct only errors in decisions which, when corrected, may not result in less rights or obligations for the person than those established in the decision. The principle of legality and the binding nature of a decision taken by a public administration entity imply that the decision taken by the public administration entity is valid until annulled by a superior public administration entity (if available) or

[15] Seimas of the Republic of Lithuania (2018). Concerning the Law on Mediation in Civil Disputes of the Republic of Lithuania № X-1702 Amendment Act № XIII-534 of the Republic of Lithuania Law on Administrative Proceedings of the Republic of Lithuania № VIII-1029 of the Law on Amending Articles 20, 28, 36, 40, 44, 51, 56, 59, 67, 79 and Supplementing the Law with Articles 79-1 and 79-2; VIII-1031 to the Seimas of the Republic of Lithuania (dated November 28, 2018 № 1190). URL: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f56939b4f85611e895b0d54d3db20123?jfwid=-14itv2ko6m [Dėl Lietuvos Respublikos civilinių ginčų taikinamojo tarpininkavimo įstatymo № X-1702 pakeitimo įstatymo № XIII-534 pakeitimo įstatymo, Lietuvos Respublikos administracinių bylų teisenos įstatymo № VIII-1029 20, 28, 36, 40, 44, 51, 56, 59, 67, 79 straipsnių pakeitimo ir Įstatymo papildymo 79-1, 79-2 straipsniais įstatymo, Lietuvos Respublikos ikiteisminio administracinių ginčų nagrinėjimo tvarkos įstatymo № VIII-1031 pakeitimo įstatymo projektų pateikimo Lietuvos Respublikos Seimui (2018 m. lapkričio 28 d. № 1190). URL: https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/f56939b4f85611e895b0d54d3db20123?jfwid=-14itv2ko6m].

[16] Seimas of the Republic of Lithuania (2019). Law on Public Administration of the Republic of Lithuania. Legislative register, 2019-10362 [Lietuvos Respublikos viešojo administravimo įstatymas (2019). Teisės aktų registras, 2019-10362].

by a court"[17]. The legislature does not provide for the direct insurance body to annul or invalidate an administrative act of its own, conferring certain rights on a person. However, subject to the provisions of Article 6 (2) and (3) of the LPA, public authorities shall have the power to issue administrative acts only in accordance with the statutory powers[18].

Starting January 1, 2020 Paragraph 3 of the LPA was supplemented with paragraph 14, which introduced a new principle of public administration – the prohibition against bad faith (non reformatio in peius). The introduction of this new principle is a very relevant amendment to non-judicial mediation in administrative proceedings, as it is now legally mandated that the public administration be prohibited from taking or altering a decision taken in the wrong direction (non reformatio in peius). Article 34 (1) of the Law is also amended as follows: "A public administration may not, in adopting a decision on an administrative proceeding, aggravate the situation of the person subject to the administrative proceedings. The person subject to the administrative procedure shall be notified in writing within 3 working days of the date on which the decision on the administrative procedure was taken, stating the facts established during the examination of the complaint, the legal acts governing the administrative procedure and the decision, the procedure for appeal <…>". Thus, such an amendment of the law conditionally determines the competence and powers of the public administration entities in relation to the annulment or amendment of their own decisions, i. e. they shall have the right to review and amend any decision taken, in accordance with the principle that the position of the person subject to the administrative decision should not be aggravated. Likewise,

[17] Supreme Administrative Court of Lithuania (2012). Order of the Supreme Administrative Court of Lithuania of November 8, 2012 decision in the administrative case № A^{602}-151/2012 [Lietuvos vyriausiojo administracinio teismo 2012 m. lapkričio 8 d. nutartis administracinėje byloje № A^{602}-151/2012].

Supreme Administrative Court of Lithuania (2012). Order of the Supreme Administrative Court of Lithuania of March 12, 2012 decision in the administrative case № A^{602}-227/2012 [Lietuvos vyriausiojo administracinio teismo 2012 m. kovo 12 d. sprendimas administracinėje byloje № A^{602}-227/2012].

Supreme Administrative Court of Lithuania (2014). Order of the Supreme Administrative Court of Lithuania of May 15, 2014 decision in the administrative case № A^{502}-1017/2014 [Lietuvos vyriausiojo administracinio teismo 2014 m. gegužės 15 d. sprendimas administracinėje byloje № A^{502}-1017/2014].

[18] Seimas of the Republic of Lithuania (2019). Law of the Republic of Lithuania on Mediation № X-1702 Amendment Act, Republic of Lithuania Law on Mediation in Civil Disputes № X-1702 Amendment Act № Article XIII-534 of the Law on Amending Article 2 of the Law on Administrative Proceedings of the Republic of Lithuania № VIII-1029 of the Law on Amending Articles 20, 28, 36, 40, 44, 51, 56, 59, 67, 79 and Supplementing the Law with Articles 79-1, 79-2; VIII-1031 Amendment Bill Approval Certificate. URL: http://lrv.lt/uploads/main/meetings/docs/1078023_imp_2cc53e3b5266ef87bc2b9b0feaf4fa13.pdf [Lietuvos Respublikos mediacijos įstatymo № X-1702 pakeitimo įstatymo, Lietuvos Respublikos civilinių ginčų taikinamojo tarpininkavimo įstatymo № X-1702 pakeitimo įstatymo № XIII-534 2 straipsnio pakeitimo įstatymo, Lietuvos Respublikos administracinių bylų teisenos įstatymo № VIII-1029 20, 28, 36, 40, 44, 51, 56, 59, 67, 79 straipsnių pakeitimo ir įstatymo papildymo 79-1, 79-2 straipsniais įstatymo, Lietuvos Respublikos ikiteisminio administracinių ginčų nagrinėjimo tvarkos įstatymo № VIII-1031 pakeitimo įstatymo projektų derinimo pažyma. URL: http://lrv.lt/uploads/main/meetings/docs/1078023_imp_2cc53e3b5266ef87bc2b9b0feaf4fa13.pdf].

the person who is the subject of an administrative proceeding has a discretion, the public administration entity must inform the person of the commencement of the administrative procedure within 3 days, and the person, having received such information and in order to resolve a possible dispute with the public administration entity, may propose to initiate non-judicial mediation.

The scope of the decision of the public authority as a result of the decision is extended so that it can not only rectify the manifest errors of the decision but can also review the decision, possibly in the public interest or other public interest, without worsening the existing situation of the person subject to the administrative procedure. Given that the public administration entity acquires the right without compromising the ability of the person subject to the administrative decision to review it, a prerequisite for mediation arises[19].

It should be noted that the successful application of mediation in the administrative process is strongly influenced by the nature of the dispute. It is believed that in administrative disputes concerning material, tax relations, civil service, administration of national, European Union and foreign financial assistance, the possibility of mediation seems realistic in order to resolve the dispute and restore the balance of social peace in a manner acceptable to all parties to the dispute. It is important to note that this type of conflict usually arises from the annulment of the decision, the obligation to take action, and in some cases this includes the claim for pecuniary and non-pecuniary damage. Mediation could be used to resolve various disputes in which the public administration has the discretion to review the decision and to resolve the dispute at its own discretion. Such an opportunity would enable the institution to take account of the situation and to assess, on the basis of the principle of proportionality, whether the means employed were fit for purpose[20]. A working group of administrative law specialists was established by the Ministry of Justice of the Republic of Lithuania on the extension of the competence of the Lithuanian Administrative Disputes Commission. This working group has prepared a package of proposals for amendments to the ABT, IAGNT, the Civil Service Law, the Penal Enforcement Code, the Law on the Legal Status of Aliens and the Law on Tax Administration (hereinafter – the LAA). The proposals submitted contain conclusions on the establishment of a mandatory pre-litigation procedure in administrative proceedings.

Proposed to the legislature on January 1, 2021 to expand the competence of the Lithuanian Administrative Disputes Commission by making complaints as a mandatory pre-trial administrative disputes commission:

Compensation for damage caused by unlawful actions of state administration entities and municipal administration entities (Article 6.271 of the Civil Code of the Republic of Lithuania).

[19] Jakaite, A. (2016). Settlement agreement between the supervisory authority and a financial market participant: only theoretical possibility or achievable reality? *Money Studies*, no. 1, pp. 54 [Jakaitė A. Taikos sutartis tarp priežiūros institucijos ir finansų rinkos dalyvio: tik teorinė galimybė ar pasiekiama realybė? *Pinigų studijos*. 2016. № 1. P. 50–60].

[20] Meskys, L., Mazvydas, G. (2015). Is there a possibility of mediation in administrative proceedings in the Republic of Lithuania? *Law review*, no. 1(12), pp. 141 [Meškys L., Mažvydas G. Ar galima mediacija administraciniame procese Lietuvos Respublikoje? *Teisės apžvalga*. 2015. № 1(12). P. 130–158].

Labor disputes, where one of the parties to the dispute is a civil servant or official, as well as complaints about the recognition of a misconduct by a public servant and the determination of the official penalty to be imposed on him, unless otherwise provided by law Dispute resolution procedures.

Complaints against a decision to refuse to issue, change or revoke a temporary residence permit in the Republic of Lithuania or a long-term residence permit in the European Union, as well as appeals against a decision to refuse to issue or revoke a work permit in the Republic of Lithuania.

Such an extension of the competence of the Lithuanian Administrative Disputes Commission and the procedure established by the Commission for Compulsory Pre-trial Dispute Settlement of Administrative Disputes, the object and object of which is substantive relations (indemnification, service dispute, etc.) would be very useful and relevant for extrajudicial mediation in administrative proceedings. While so far both administrative law scholars and practitioners have unequivocally argued that mediation in administrative proceedings is a difficult method of resolving a dispute, the specificity of the dispute itself, since the dispute at issue has no substance and renders the parties' ability to reach agreement very limited or impossible. The introduction of a mandatory pre-trial investigation of administrative disputes would also fulfil one of the objectives of the state – to reduce the workload of administrative courts, thus ensuring the fastest, simpler and less costly resolution of administrative disputes.

3. Undertakings for non-judicial mediation

According to the newly drafted legal regulation, the subjects of implementation of extra-judicial mediation in administrative proceedings will be the pre-litigation dispute resolution institutions – the Lithuanian Administrative Disputes Commission, and for disputes arising from tax legal relations – the Tax Disputes Commission (hereinafter – MGK)[21]. It is reasonable to say that the choice of entities for the non-judicial mediation was very logical in the sense that such a model of pre-trial dispute resolution institutions was already approved by the Supreme Administrative Court of Lithuania in 2010 shaping the practice of administrative courts in Lithuania. "In the Lithuanian system of administrative justice, the classification of non-judicial administrative dispute resolution bodies according to whether it is necessary to resolve an administrative dispute before an non-judicial institution is probably the most relevant. On this basis, a distinction is made between mandatory and optional non-judicial redress procedures for administrative disputes. Mandatory pre-litigation administrative litigation implements the principle and the goal of the administrative justice system that the court be the last resort for the protection of infringed rights and can only be approached after all other remedial measures are available"[22]. The conduct and proper enforcement of pre-

[21] Whitehead, S. (ed.) (2018). The Tax Disputes and Litigation Review. Sixth Edition. London: Law Business Research Ltd. 450 p.

[22] Case law of the Supreme Administrative Court of Lithuania, a summary of the application of the rules governing the non-judicial settlement of disputes (part 1) [Lietuvos vyriausiojo administracinio teismo praktikos, taikant išankstinio ginčų nagrinėjimo ne per teismą tvarką reglamentuojančias teisės normas, apibendrinimas (I dalis), psl. 457].

trial mediation and its further development are fully justified. According to the activities of the Lithuanian Administrative Disputes Commission for twenty years, it is clear that the process of resolving disputes is expeditious, disputes are resolved quickly and there is no need for representation in the Commission, because the process of litigation is quite simple and straightforward. Among other things, it is free for parties, i. e. there is no stamp duty and the parties do not have to bear each other's costs. Another important advantage is the status of the commission itself and its members. The Commission is an independent pre-litigation body. In performing its administrative dispute resolution function, the Commission acts as an independent quasi-court and acts in accordance with the laws of the Republic of Lithuania on Administrative Litigation and Administrative Dispute Commissions of the Republic of Lithuania. When solving administrative disputes, the Commission shall apply both the laws and regulations of the Republic of Lithuania and the legal regulation of the European Union in the respective field, taking into account the case law of the European Court of Justice and the Supreme Administrative Court of Lithuania. Legislation does not confer on the Commission the status of a managing authority, but is a law enforcement authority that contributes to the administration of justice. Accordingly, according to the proposed legal framework, this commission could, after the change of legislation, carry out extrajudicial mediation in administrative justice, taking into account the model of the mediation system.

Non-judicial mediation of administrative disputes, under the new legal framework, will only be possible once the dispute has already been initiated and resolved by the Commission or its territorial offices. The choice of legislators is logical, bearing in mind that the Lithuanian Commission on Administrative Disputes is intended as a mediation management entity that will ensure the organization and proper administration of non-judicial mediation in administrative proceedings. It is also suggested that the mediators in the extra-judicial mediation process be members of the dispute commission or of their choice by other mediators on the list maintained by the State-guaranteed Legal Aid Service. However, this is where the first problem arises, which can have a major impact on the further development of non-judicial mediation in Lithuania's administrative process. The current and prospective qualification requirements for mediators require that they all meet the common requirements, have a high school education, take a 40-hour course, be of good repute and pass the mediator qualification requirement. There are no additional qualifying requirements for the area of mediation in which it will take place, be it family or other civil, administrative, criminal, etc. The only intended extension, following the entry into force of the amendments to the Law on Mediation from 2021 onwards, is the possible addition of a short course on administrative law and its process to the training of mediators, as well as a qualifying examination in administrative law. I believe that such a provision is open to criticism because, as already mentioned, there is no requirement for mediators to have a legal background, it can be for anyone with a university degree, and there is no requirement to have specific knowledge in a mediated

Republic of Lithuania Government (2010). Republic of Lithuania Government Resolution "On bodies under the ministries" (dated October 20, 2010 № 1517). URL: https://www.infolex.lt/ta/139863 [Lietuvos Respublikos Vyriausybės „Dėl įstaigų prie ministerijų" (2010 m. spalio 20 d. nutarimas № 1517). URL: https://www.infolex.lt/ta/139863].

dispute. Legal theorists and practitioners are unanimous in agreeing that administrative proceedings are imperatively regulated legal proceedings and that disputes arising from administrative disputes are resolved only in the manner prescribed by law. Among other things, one party to an administrative dispute will always be a public administration or an entity whose organizational structure, activities, decisions made on the basis thereof and their implementation are governed by law. Therefore, when conducting mediation in this area of law, the mediator needs special knowledge and experience in this area of law in order to properly mediate the dispute and not violate the general principles of mediation.

The other issue is also not further explored, which is neither the scientific literature nor the draft legislation on the rules for non-judicial mediation in administrative proceedings, which should provide space for mediation (if a mediator is selected from a list rather than a member of the ADR panel)) whether a mediation deadline should be set and what it should be (presumably, failure to set a mediation deadline would have the effect of delaying the completion of the administrative procedure).

Another problem that has not been called into question is the payment of non-judicial mediation in administrative proceedings. As one of the parties to the dispute will always be a state or municipal authority, or both parties may be subordinate to the public administration, it is unclear how mediation will be settled. In a situation where the parties agree to share or the costs of mediation should be borne by the public administration, the public administration would not be required to carry out the procurement procedures under the law on public procurement first in order to select the appropriate service provider mediator. In that case, the wish of the other party to use the mediator and list he wishes would be rendered unworkable by the imperative statutory procedure of mandatory procurement procedures. There would be no problem if the mediation was conducted by members of the Administrative Disputes Commission, because then the mediation could be done free of charge as the premises would be used by the Dispute Commission, Dispute Commission members, and no additional remuneration shall be payable to them. However, choosing a mediator from the list would cause the aforementioned problems, since choosing a mediator on the list requires you to agree with him/her on the price of the mediation service, other terms and conditions such as rent, facilities and payment for mediation services. Another alternative to free mediation would be the introduction of mandatory mediation for individual administrative disputes. In such a case, it is provided that the State shall ensure the use of compulsory mediation free of charge, y. by financing it from the state budget. In this case, the parties to the dispute, or one of them, must contact the State Guaranteed Legal Aid Office and up to 4 hours of mediation will be provided free of charge to the parties to the dispute through compulsory mediation.

It has already been discussed in this study that, according to the proposed model for the introduction of non-judicial mediation, mediation would be initiated in those disputes that have been referred to the Administrative Disputes Commission. However, the question is whether such a model will be appropriate and whether the basic principles of mediation, i. e. whether a person's written offer for non-judicial settlement of the dispute should be submitted and mediated during the administrative procedure, or whether such submission and mediation should exist as an independent institute. It is considered that

non-judicial mediation as an independent institute could not function properly and is due to the imperative of the administrative process. Such a position is formed on the basis that non-judicial mediation is primarily a matter of regulation of the Law on Public Administration and must be assessed in accordance with that law.

Under the current legal framework, the pre-litigation procedure is initiated after the chairman of the Lithuanian Administrative Disputes Commission or a member of the commission appointed to resolve the issue of acceptance of the complaint. In doing so, the panel first determines whether the complaint is properly considered to be a matter of dispute within the meaning of administrative law, and refuses to admit the complaint after stating the deficiencies or the ineligibility of the complaint. In this case, if it were decided that non-judicial mediation would be an independent institute and the mediation would be conducted by non-administrative law practitioners, in practice there would be many situations where non-judicial mediation for disputes other than administrative disputes would occur. The Supreme Court of Lithuania appealed an administrative case regarding a citizen's request to award damages to a public administration entity due to unlawful acts of state authorities, which must be compensated by the state from the state budget despite the fault of a particular civil servant or other employee. The Court of First Instance examined the case essentially, finding that there were no binding civil liability rules on the basis of which the non-pecuniary damage claimed by the applicant could be awarded. However, in the SACL case, it found that the court of first instance misapplied the procedural rules and failed to clarify whether the defendant was eligible in the present case and, finding that it did not meet the public service entity requirements of the LPA[23]. According to this jurisprudence, it would appear that extra-judicial mediation would be most efficiently and fairly conducted in administrative proceedings if the mediators were selected by administrative law professionals who, having already agreed to mediate, identify the dispute as administrative, know the subtleties of public administration

The status of the Tax Disputes Commission has been upheld by the Court of Justice of the European Union (CJEU) in its judgment of October 21, 2010 in case № C385/09 Nidera Handelscompagnie BV v State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania[24]. The CJEU noted that MGK is indeed affiliated with the Ministry of Finance of the Republic of Lithuania, to which it is required to submit annual reports and with which it is obliged to cooperate. The CJEU has stated that it takes into account all circumstances, y. whether the body is established by law, is operating on a permanent basis, has binding jurisdiction, has an adversarial process,

[23] Supreme Administrative Court of Lithuania (2019). Order of the Supreme Administrative Court of Lithuania of June 5, 2019 decision in the administrative case № A-1764-624/2019 [Lietuvos vyriausiojo administracinio teismo 2019 m. birželio 5 d. nutartis administracinėje byloje № A-1764-624/2019].

[24] Supreme Court of Lithuania (2010). Nidera Handelscompagnie BV against State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania: Judgment of the Court (Third Chamber), dated October 21, 2010. URL: http://curia.europa.eu/juris/liste.jsf?language=lt&jur=C,T,F&num=C-385/09&td=ALL [Nidera Handelscompagnie BV prieš Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos: Teisingumo Teismo (trečioji kolegija) sprendimas (2010 m. spalio 21 d.). URL: http://curia.europa.eu/juris/liste.jsf?language=lt&jur=C,T,F&num=C-385/09&td=ALL].

applies legal rules and is independent (Judgment of 17 September 1997, Dorsch Consult, C 54/96, ECR I 4961, paragraph 23 and the case-law cited). The CJEU has stated that it is clear from Article 148 (2) of the CISA that the purpose of MGK is to objectively investigate a taxpayer's complaint and to reach a lawful and reasoned decision. Pursuant to Article 148 (4) of the CISA, the members of this panel shall be appointed for a term of six years and shall be of good repute. Pursuant to Article 148 (6) of the CCIP, its members may serve only on that panel. Finally, paragraph 26 of the MGK Regulations provides for the procedure for the removal of the members of that panel in the event of a conflict of interest. The CJEU has held that these provisions provide MGK with the necessary independence to be treated as a "court" for the purposes of Article 234 EC. However, the ECJ noted that this analysis is not called into question by the fact that this panel is linked to the organizational structure of the Ministry of Finance and is required to submit annual reports to it. Thus, the aforementioned judgment of the ECJ underlined the importance of MGK's independence from the Ministry of Finance, which exercises the rights and obligations of the owner of the tax administrator (Customs Department and State Tax Inspectorate).

MGK regulations state that this commission shall consist of 5 members, one of whom shall be the chairman of the commission. The Chairman of the Commission and its members shall be appointed by the Government of the Republic of Lithuania on a joint proposal of the Minister of Finance and the Minister of Justice for a term of six years. The new separate law must ensure the selection and status of MGK and MGK members that will guarantee the independence of this quasi-judicial body from the executive. MGK must become an independent quasi-court to hear tax disputes. The concept of tribunal is a common law tradition in countries where there are many different types of administrative dispute committee[25]. Tribunal means a specialized quasi-judicial body in which the settlement of disputes is less formal than in court and in which the litigants are not judges. Tribunals have broader functions than just dispute resolution – they also offer mediation and alternative dispute resolution. Basically, considering the above mentioned goals and objectives of MGK, this commission is already there. Thus, mediation in tax disputes is possible because there are potential peace treaties in this area. The MA provides for some discretion of the tax authority, which allows for choice of solutions, which would be a prerequisite for mediation. Mediation can also have an educational-informational function, y. to help the taxpayer understand the offense and find ways to remedy it. MGK could be the administrator of mediation services and its members as mediators, but certain conditions are required. MGK members should comply with the requirements set out in Article 6 of the Law on Mediation: first, they must be on the list of Lithuanian mediators and, secondly, if mediation fails, they should not be able to deal with the same dispute in substance. Such provisions shall be set out in the Law on Mediation and in a separate law, if any, for the activities of MGK. These laws should establish and apply similar rules to those applicable to judicial mediation. It is noteworthy that in tax disputes, mediation could be more widespread (mediator-style mediator intervenes more by giving recommendations or opinions to the parties as to what would happen if the dispute was resolved in court). Expressing their views

[25] Tribunal. *Collins vocabulary*. URL: https://www.collinsdictionary.com/dictionary/english/tribunal.

on the merits or demerits of the dispute), since the specificity and complexity of legal regulation require the mediator to have specialist knowledge in the field.

However, the Ministry of Finance commented on MGK's proposed changes to the MLA regarding mediation, stating that "The bill proposes that parties to the dispute would no longer be able to sign an agreement under Article 71 of the MGA after the administered by MGK. Against this background, the proposed legal framework, by limiting the scope of the agreement provided for in Article 71 of the LPA, would not fully achieve the purpose of the bill to promote peaceful dispute resolution in tax disputes and reduce the workload for administrative courts. It is advisable to improve the current Article 71 of the LPA and to provide for the possibility of using non-judicial mediation in tax assessment and/or tax investigations, as well as at any stage of the tax dispute resolution process. In order to achieve a better balance between the rights of the parties to the dispute, to further facilitate a peaceful settlement of tax disputes by reducing the potential predominance of the tax authority in the settlement, Article 71 of the LPA suggests that parties (taxpayer and and mediators included in the list of mediators of the Republic of Lithuania drawn up and maintained by the State-guaranteed Legal Aid Service"[26].

The current Article 71 of the LPA defines the institute on the level of the fee. Currently, Article 71 (1) of the LPA already provides for the possibility of a friendly settlement of the dispute. The tax authority and the taxpayer may sign an agreement on the amount of the tax and related amounts (hereinafter referred to as the agreement) if neither party has sufficient evidence to justify its calculations. When such an agreement is signed, the taxpayer loses the right to challenge the correctness of the tax assessment and the tax authority loses the right to calculate the amount specified in the agreement. The said agreement may be signed during tax investigations or tax audits, as well as during all stages of the tax dispute resolution process.

The agreement between the taxpayer and the tax authority is reached through direct communication between the taxpayer and the tax authority. Such an agreement can also be reached through mediation. Mediation – helping the parties to a dispute to reach an agreement. The purpose of mediation is to create the conditions for the parties themselves to find solutions and reach peaceful agreements where possible. The mediation process is managed and coordinated by an independent, impartial mediator. The European Code of Mediation emphasizes the need for the mediator to be independent, neutral and impartial. It is MGK members who are independent and impartial in tax disputes, so they could not only be arbitrators as they are now, but also mediators. By establishing a separate law and the Law on Mediation, the possibility of mediation in the settlement of disputes at MGK and the granting of permission to MGK members to be mediators would be more effective in settling tax disputes and would ensure greater peaceful settlement. The assistance of mediators would facilitate communication between the parties to the dispute and increase the number of peaceful settlements.

[26] Republic of Lithuania Government (2019). Government of the Republic of Lithuania Resolution № 886 of the Republic of Lithuania on Tax Administration Law № Ix-2112 Amending Articles 2, 71, 155, 156 and Supplementing Articles 711, 712 and 713 of Bill I XIIIP-2303 (dated August 28, 2019). URL: https://www.infolex.lt/ta/548329 [Lietuvos Respublikos Vyriausybės nutarimas № 886 „Dėl Lietuvos Respublikos mokesčių administravimo įstatymo № Ix-2112 2, 71, 155, 156 straipsnių pakeitimo ir įstatymo papildymo 711, 712 ir 713 straipsniais įstatymo projekto № XIIIP-2303" (2019 m. rugpjūčio 28 d.). URL: https://www.infolex.lt/ta/548329].

4. Conclusions

To sum up, it can be concluded that it would be expedient to reorganize and reform the pre-litigation dispute settlement system and institutional system in order to strengthen the status of MGK and expand its competence. MGK must become a fully independent quasi-judicial body dealing with all types of tax disputes, not just tax disputes. There is a separate special law for tax litigation, consisting of two main parts regulating MGK's status and selection of members, ensuring MGK's independence from the executive (especially the Ministry of Finance, which also controls tax administrations), commission members, and labor rights, the pre-litigation procedure for tax disputes. MGK must become the only mandatory quasi-judicial body for pre-litigation tax disputes, since the current practice of handling such disputes by the tax authority itself is flawed and contrary to the principles of independence and impartiality.

The legal regulation of non-judicial mediation in the administrative process, prepared by the legislators, is based on analogy with the regulation of mediation in civil law. As judicial mediation in administrative proceedings is already legally regulated, as a complete analogue to civil mediation and administrative courts already apply it in practice, it is expected that the regulation of non-judicial mediation in administrative proceedings will follow a similar model. However, it is important to note that legal practitioners do not see, or at least hope to avoid, many of the threats to the application of the law and other interferences that may affect the improper implementation of extrajudicial administrative proceedings. The imperative model of public law prevailing in public law, in effect, narrows the boundaries of a peaceful agreement in public law, and the settlement agreement between the parties cannot in any way conflict with the imperative provisions of law, regulation or the public interest. The general principles of mediation, which are appropriate and directly applicable in civil law, make most of the principles difficult to implement in the administrative process.

According to the proposed non-judicial mediation model, such mediation will only be possible once the dispute has been initiated and resolved by the Lithuanian Administrative Disputes Commission or its territorial offices. Such a model is acceptable given the practical work of the commission and the existing legal framework, and the commission could operate on the basis of the mediation model of administrative courts. However, the immediate question arises as to whether non-judicial mediation is only possible after the initiation of an administrative dispute with a particular public authority. Critics comment that the principle of the protection of individual rights and freedoms is violated because a person cannot directly apply to a public administration entity, whose decision is subject to administrative dispute. In this way, the principles of voluntary mediation and confidentiality of mediation are not implemented, because the dispute triggers litigation, the preparation of pleadings, the need to have a representative and many other nuances that may render extrajudicial mediation less attractive. It follows, inter alia, that no separate rules are laid down for the exercise of non-judicial mediation in administrative proceedings, but that the existing rules on non-judicial mediation in civil proceedings cannot be used because of the contradiction with the fundamental principles of mediation. The question of the qualifications of mediators remains unresolved, as legal theorists do not agree on what the qualifications of mediators in extrajudicial administrative proceedings should be. There is disagreement as to whether a person

who has completed only an additional course on administrative law will acquire the necessary knowledge and qualifications, as well as whether it is necessary to have a legal education and a thorough knowledge of the principles of public administration. In this case, the problem of qualification would be resolved if the mediators in the non-judicial mediation process were members of the dispute commission, but the problem again arises whether all the members of the panel will want to become mediators, whereas, under the current legal framework, there is no qualification requirement for the members of a dispute panel other than having a legal education, nor is there a mandatory requirement to become a member of a panel, to be a mediator.

It should be noted that the successful application of non-judicial mediation in administrative proceedings is highly influenced by the nature of the dispute. It is believed that in administrative disputes concerning material, tax relations, civil service, administration of national, European Union and foreign financial assistance, the possibility of mediation seems realistic in order to resolve the dispute and restore the balance of social peace in a manner acceptable to all parties to the dispute. It is important to note that this type of conflict usually arises from the annulment of the decision, the obligation to take action, and in some cases this includes the claim for pecuniary and non-pecuniary damage. The first steps have already been taken, the law stipulates that a public administration entity may not aggravate the situation of the person subject to the decision by making or modifying the decision. The drafts initiated in this way are related to the extension of the jurisdiction of the disputes dealt with by the Administrative Disputes Commission, which gives hope that before the new version of the Law on Mediation comes into force, other legal acts will be regulated to allow successful non-judicial mediation.

ПОЗАСУДОВА МЕДІАЦІЯ В АДМІНІСТРАТИВНОМУ ПРОЦЕСІ ЛИТВИ: АКТУАЛЬНІ ПИТАННЯ

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Стаття є першим науковим дослідженням у циклі робіт щодо позасудової медіації в адміністративному процесі Литви.

Мета. *У статті охарактеризовано нове правове регулювання позасудової медіації, передбачуване в адміністративному процесі Литви, на основі аналізу робіт литовських науковців у цій*

галузі та нових проєктів нормативно-правових актів через категорії, визначені в дослідницьких завданнях. Мета статті – стисло представити та обговорити інститут позасудової медіації в науці й практиці литовського адміністративного права, а також його сучасний і передбачуваний розвиток у системі адміністративного судочинства; визначити та проаналізувати цілі позасудової медіації в новому адміністративному правовому регулюванні, передбачувані можливості позасудової медіації як альтернативи мирному вирішенню спорів у системі адміністративного права Литви. Для досягнення мети й завдань дослідження проаналізовано роботи литовських учених, основні закони та нові нормативно-правові акти, які реалізують позасудову медіацію, досудове адміністративне провадження та адміністративно-правове регулювання Литви.

Методи. *У дослідженні використано порівняльний аналіз та аналіз документів, системний та інші методи.*

Результати *дослідження. Є досить підстав стверджувати, що Литва, з огляду на успішне впровадження медіації в цивільному праві, підготувала відповідні зміни до нових законів та інших правових актів, а також створила ефективну оперативну базу для належного функціонування позасудового посередництва в досудовому розгляді справ про адміністративні правопорушення.*

Висновки. *Підсумовуючи результати дослідження, можна зробити висновок, що правове регулювання позасудової медіації, розроблене законодавцями, базується на аналогії з регулюванням медіації в цивільному праві. Оскільки судова медіація в адміністративному судочинстві вже законодавчо врегульована як повний аналог цивільній медіації, яку адміністративні суди вже застосовують на практиці, передбачається, що регулювання позасудової медіації в адміністративному судочинстві буде дотримуватися такої ж моделі. Згідно із запропонованою моделлю досудової медіації вона стане можливою лише після ініціювання та вирішення спору Комісією з питань адміністративних спорів Литовської Республіки або її територіальними управліннями. Така модель є прийнятною з огляду на практичну роботу комісії та наявне правове регулювання (комісія могла би здійснювати діяльність на основі моделі посередництва адміністративних судів). Однак питання професійної кваліфікації медіаторів залишається невирішеним, оскільки правознавці не дійшли згоди в тому, яку саме кваліфікацію повинні мати медіатори в позасудовому адміністративному судочинстві. Розбіжності виникають у питаннях про те, чи здобуде людина, яка закінчила лише додатковий курс з адміністративного права, необхідні знання й кваліфікацію, а також чи потрібно мати юридичну освіту та ґрунтовні знання принципів державного управління.*

Варто зазначити, що характер спору значно впливає на успішне застосування позасудової медіації в адміністративних провадженнях. Вважається, що в адміністративних спорах, які стосуються матеріальних, податкових відносин, державної служби, управління національною фінансовою сферою, допомогою Європейського Союзу та іноземною фінансовою допомогою, реалістичною видається можливість посередництва для вирішення спору та відновлення балансу соціального миру прийнятним для всіх учасників спору способом. Перші кроки вже зроблені. Так, закон передбачає, що суб'єкт державного управління не може погіршувати становище особи, приймаючи чи змінюючи рішення, яке має вплив на таку особу. Проєкти, ініційовані в такий спосіб, пов'язані з розширенням юрисдикції спорів, які розглядаються Комісією з питань адміністративних спорів, з метою набуття чинності новою редакцією Закону про медіацію, а інші нормативно-правові акти, які сприятимуть успішному позасудовому посередництву, будуть урегульовані.

Ключові слова: наука адміністративного права, адміністративне право, позасудова та судова медіація, публічне адміністрування, правова доктрина.