



**British Institute of
International and
Comparative Law**

COLLECTIVE REDRESS LITHUANIA



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**British Institute of
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Comparative Law**

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I. General Collective Redress Mechanism

The Lithuanian legal system provides two main collective redress mechanisms. Both are contained in the Lithuanian Civil Procedure Code (CPC): the mechanism linked to the protection of the public interest (Article 49 of the CPC) and the group action proceeding (the chapter 24/1 of the CPC). In addition to these, a joinder of claims mechanism is used.

1. Scope/ Type

The mechanism linked to the protection of the public interest and the group action proceeding are horizontal mechanisms. In practice, the protection of the public interest is used to gain injunctive relief whereas the group action proceeding is used for both injunctive and compensatory relief. As for joinder of claims, the CPC establishes two forms of joinder of claims: compulsory joinder and optional joinder. Compulsory joinder is used when claim is brought by several co-plaintiffs together or against several defendants if the subject of a claim is rights or liabilities assumed by them together in accordance with laws. Optional joinder is used when a claim is brought by several co-plaintiffs together or against several defendants if the subject of a claim is rights or liabilities of the same nature, based on the same matter on actual and legal issues, when each separate demand could be a subject of an independent claim (optional joinder).

2. Procedural Framework

a. Competent Court

The mechanism linked to the protection of the public interest is subjected to general rules of jurisdiction. Accordingly, district courts are the competent courts.

Due to the novelty and complexity of the group action proceeding, specific rules of jurisdiction are followed and regional courts are the competent courts.

Joinder of claims procedures are subjected to general rules of jurisdiction. District courts are competent.

b. Standing

Protection of public interest

Article 49 states that the claim to protect the public interest could be submitted only by a prosecutor, state, municipal authority or other persons appointed by law. Although the law does not make an exhaustive list of subjects, any other persons defending the public interest must establish that the law authorizes them to defend public interest. Therefore, only a limited number of subjects could bring this form of action. Additionally, the CPC does not indicate a set criteria that such person(s) must fulfil. As it concerns the conditions stipulated para. 4 of the Commission Recommendation, sector specific laws and cases provide the legal background for locus standi and practice. So, for example the Law on Consumer Protection indicates certain criteria for consumer organizations. The rule indicated in para 5 does not exist in Lithuania, however, if the person does not meet the criteria established in the laws, the claim will not be accepted by the court. Consumer protection is discussed below.

There are no national lists of entities authorised to defend the public interest, the court decides on locus standi of each subject in each case.

Group action

There are no specific provisions on locus standi, i.e. there are neither any explicit restrictions concerning persons able to file a group action, nor a list of subjects that are permitted to bring a group action. The specific rules only existed concerning a group representative. It should be added that a representative action cannot be brought under the rules for group actions.¹ However, the association or trade union is entitled to be a group representative, (i) if the claims provided in the form of a group action arose from the legal relationship directly

¹ The representative action described in the Recommendation, cannot be brought under Lithuanian law.

related to its objectives provided in its articles of association, and (2) if no less than ten plaintiffs of the group action are members of the association or trade union. In this case, the members of the group might not only be the members of the association or trade union. However, the association or trade union should represent the interests of all group action plaintiffs. This regulation of legal standing is considered a representative action, where a representative entity is certified to bring an action. However, what is important is that the persons who have been harmed in a mass harm situation be a party to the proceeding.

Joinder of Claims

There are no specific provisions on locus standi relevant to this mechanism.

c. Availability of Cross Border collective redress

No restrictions are indicated. As indicated below, specific provisions concerning the competence are indicated in the Law on Consumer Protection.

d. Opt In/ Opt Out

Protection of public interest

Concerning the mechanism linked to the protection of the public interest, in principle opt – in mechanism is available according to the CPC. However, it is recognized by the scholars that the consequences of the decision (res judicata) should apply to the persons who did not participated in the procedure. That conclusion is made due to the nature of the procedure – an injunction procedure.

Group action

Only an opt – in mechanism is available according to the CPC in the group action proceeding. The conditions are prescribed by law. The opt-in model signifies that the group of claimants is constituted on the basis of consent of all those claiming to have been injured or harmed. The justification for the model was based in principle on the fact that only a few European countries have started implementing an opt-out system in their national law. The opt-in principle is evident in several articles of the CPC. First, the CPC clearly states that an individual shall express in written form their consent to participate in a group action, and must submit it to the court (point 1 of Part 2 Article 441/3). Accordingly, the individual joining the group must submit a statement to the group representative (a statement should be provided in the form adopted by the Minister of Justice²). The written statements of the group action plaintiffs, together with the list of participants in the group action, shall be submitted to the court. Secondly, the group representative should publish an announcement³ with information about the group action, as well as information for the individuals who wish to join the group. Thirdly, new plaintiffs may be added to the group. When accepting the claim, the court will establish a deadline for joining the group action. After amendments to the claim are made, the court shall finally decide whether all plaintiffs may be included in the group, and confirm the final composition of the group (Article 441/7 and 441/8 of the CPC). A person is free to decide whether to join or withdraw from the group, and this right cannot be restricted. After the final confirmation of the group's composition, new plaintiffs may only be added if there exist serious grounds to do so, and only upon approval by the defendant and the group representative (Part 8 of the CPC, Art. 441/8).⁴ The application in such case is made to the court and not to the group representative. According to the Art 441/5 of the CPC each member of the group action is able to exercise his/her right to leave the group. However, he/she might realize this right before the adoption of the final decision on the composition of the group by the court (this decision must be adopted at the beginning of the procedure - admissibility and certification stage).

² An example of the form of written statement is approved by the Minister of Justice (The Order of the Ministry of Justice No 1R-378, 2014-12-22).

³ An example of the form of the announcement is approved by the Minister of Justice (The Order of the Ministry of Justice No 1R-378, 2014-12-22).

⁴ It is not applied in case where the individual claim was provided before the final confirmation of the group. In that case the claimant shall withdraw the claim on the basis of the Article 139 of the CPC and become the member of the group.

In case the number of plaintiffs in the group falls below the minimum requirement (see e. Main procedural rules below), it is at the discretion of the court to decide whether the action should go forward according to the rules of the collective group action, taking into account the effectiveness, suitability, and expediency of the process (Article 441/11 of the CPC).

e. Main procedural rules

Protection of public interest

Locus standi is checked by the judge.

Group action

The main procedural peculiarities of the group action under Lithuanian law are related to (i) the rules concerning admissibility and certification of the group, (ii) the role of the court, (iii) the requirement to publish information, (iiii) rules on the allocation of the litigation expenses (discussed above) and (iv) rules relating to amendment of the group and the realization of the procedural rights and obligations of the group.

In case of group action proceeding the main requirements are indicated in the law:

- the group should be formed. The formation of the group depends on two factors: numerosity and commonality. The minimum number of the members of the group should be 20 plaintiffs. As it was mentioned if the number of the members falls below the mandatory threshold, it is at the discretion of the court to decide whether to pursue the claim. The list of the members of the group and the written consent to participate in a group action must be submitted to the court. The commonality factor requires the members of the group to share common questions of law or fact, including protection of rights and interests;
- the group should be represented by adequate representative. The arguments proving the legitimacy of the representative should be indicated in the statement of the group claim. Accordingly, the court, while considering the issue of admissibility of the case, should consider the legitimacy of the group representative, by evaluating the fairness of the representative, their reputation, whether the representative is competent to take on the role, their experience and behavior in similar cases, and whether a conflict of interest exists between the group representative and the group members. The principle of proper representation requires the court to suggest that the group change its representative if it finds that the representative does not act properly on behalf of the group;
- the group should be represented by a lawyer (mandatory group representation principle);
- the arguments justifying that the group action is more purposive, effective and proper way to solve the dispute than the individual process should be submitted;
- the evidence proving the fulfillment of an out – of court procedure should be submitted to the court. The group action is subject to mandatory out-of-court negotiations, and the court will only accept the group action if the parties have failed to resolve their dispute peacefully by prior mutual agreement.

The group action proceeding in principle is a multi-stage process. The acceptance of the claim is very important stage of the procedure, where admissibility and certification issues are solved. Before acceptance of the claim, court provides the claim for the defendant indicating seven days for submission of reply. The reply should reflect the opinion of the defendant concerning the acceptance of the claim. If the court accepts the claim, this acceptance should be appealed within seven days of acceptance. After acceptance of the claim court shall indicate the term for the final formation of the group. The term may vary from 60 to 90 days taking into account the essence of the case and the size of the group. The additional 30 days may be indicated according to the request of the group representative. The representative of the group should within 14 days submit to the court the renewed list of the group and, if necessary, renewed claim. The defendant has a right to submit the opinion concerning these documents. The court should decide on the acceptance of renewed claim and list of group and should adopt the final list of the group.

As the group is formed, the claim after preparation stage of the case could be examined in the court hearing. In principle, general procedural rules are applied for the preparation and examination of the case. Several specific rules of group action case management are indicated in the CPC. There are specific rules on litigation expenses (on the payment of the official fee and division of litigation expenses between members of the group). The procedural documents are delivered to the representative of the group or advocate. The court should be active if the proper representation principle is breached. In case of wrongly representation of the advocate or representative of the group the court may propose to the representative or the group or the members of the

group (accordingly) to change the advocate or the representative of the group. The court may decide to invite the members of the group to the hearing if it is needed for the duly examination of the case. If the group is reduced, the court may decide on further examination of the case according to the rules of group action proceeding.

The publicity requirement is directed at both the group action's representative and to the court. The representative of the group action is obliged to publish an announcement inviting potential plaintiffs to join the group action proceedings. The court is obliged to publish on a specific website the information about any developments in the group action (after its acceptance), whether the group has been ordered to replace its representative, information concerning the group's disapproval of the candidate for representative of the group, or any other developments, such as when the group does not have a representative, if the plaintiffs propose to change the representative of the group upon the recommendation of the court who has determined that the representative acts improperly, or information concerning the replacement of the representative during the appeal process.

There are no specific rules on interim measures and discovery in case of group action proceeding.

Joinder of Claims

Joinder of claims mechanism has several specific rules in the CPC. The commonality requirement is applied (Article 43 of the CPC). Each and every participator acts on his/her own behalf, however participators may agree to have the case conducted by one of the participators. Each and every participator shall have the right to independently conduct a case. All participators, for whom the case is not closed, shall be summoned to a court session. The specific rule for delivery of court documents is indicated - in case of joinder of claims when no one single representative has been appointed by the participators, the court shall be entitled at the request of the opposing party or on its own initiative to recommend to the co-parties that they appoint one of their number or another entity as the authorised representative to receive the court documents connected with the case. If the participators fail to appoint the authorised representative, the court shall be entitled, at the request of the other party or on its own initiative, to appoint by a ruling an authorised representative at the expense and risk of the co-parties if in this way the course of the procedure will be expedited and streamlined. The ruling may be amended or annulled by the court if the participators state that they have a legal interest to not be represented by one person. In case of joinder of claims, copies of the court documents shall be submitted to the court for all the co-parties/participators.

Accordingly, the CPC establishes the consequences of the procedure of the mechanism of joinder of claims – in case of compulsory joinder, the outcome of all procedural actions performed by participators that participated in a hearing shall also be applied for those participators that failed to appear in the hearing without a sound reason. Agreement of all participators (co-plaintiffs or co-defendants) is mandatory to conclude a settlement, waive a claim or accept the same.

3. Available Remedies

As mentioned above, the protection of the public interest mechanism is, in practice, used for injunctive relief. Other types of collective redress mechanism might be applied for all types of damages. All types of mechanisms (with exception the mechanism linked to the protection of the public interest, which is designed for the injunction action) allow to seek an injunction and compensation within one single action. The enforcement of final injunctive orders is supported by the imposition of criminal liability where a party has failed to adhere to that order. Where a preliminary injunctive order is sought, the regular procedure is expedited.

The specific regulation existed in case of group action proceeding. If compensatory claim is submitted to the court according to the rules on group action proceeding, the claim concerning damages is examined as individual claim. Therefore, no specific rules existed concerning allocation of damages between claimants for compensatory claims.

Punitive or extra-compensatory damages are not allowed according to the Civil Code of the Republic of Lithuania. The skimming-off/ restitution of profits scheme is not available in Lithuania.

There are no specific rules concerning limitation periods in collective redress mechanisms.

4. Follow-on claims

There are no general rules on follow - on cases. Only specific rules exist in the competition area. There is the possibility to rely on an injunction in a separate follow-on individual or collective damages actions. However, there are no clear rules on this. The prejudicial of facts rule exist in Lithuania. Para. 2 of Article 182 of the CPC indicates that circumstances established in effective judgements in other civil or administrative proceedings where participants were the same persons except in cases when the judgement causes legal consequences for other persons not involved in the proceedings shall be considered indemonstrable. No specific general rule concerning prejudicial facts exist in case the person was not involved in the proceeding is provided in the CPC. There is also no specific requirement that the subsequent private proceedings start only after the conclusion of the public authority action. There are no special limitation rules in follow-on cases.

5. Costs

Similar to many European Union Member States, the loser pays principle is the prevailing practice in the Lithuanian civil procedure. The regulation of the group action mechanism does not overrule this principle.

As it was mentioned, the CPC establishes special rules for the split of litigation costs between the group members. The dominating principle is equality; litigation expenses incurred by the party in whose favour the judgment was made shall be awarded by the court to the group action plaintiffs in equal parts.

6. Lawyers' Fees

The financing issues of the group action mechanism were not taken into account and regulated when the group action mechanism was introduced into the Lithuanian legal system. The success fee was enacted in 2004 through the adoption of a new Law on the Bar.⁵ The Article 50 of this law establishes that in civil cases a party is allowed to agree that the advocate's fee would depend on the outcome of the case, unless agreeing on a success fee would contradict the rules governing the practice of lawyers. Theoretically, this can lead to abusive and/or frivolous claims. However, there is no practical evidence to date. This rule was not changed or amended with the enactment of the group action in Lithuanian law. The Code of Professional Conduct for the Advocates of Lithuania does not address success fee matters, nor does it explain exceptions to the rule. In principle, the lawyer's fees system does not create an incentive to litigate. The general understanding is that it is rather exception when the rule that the court will award the whole amount of the expenses related to lawyers' fees. In the Lithuanian legal system, lawyer's fees are regulated by the courts. The courts are able to rely on the recommendation adopted by the Minister of Justice. The courts take into account the circumstances of the case (including the complexity of the case).

7. Funding

The CPC does not regulate either financing of the litigation, or contingency or success fees. It only provides that the expenses that are reasonable and necessary for the group representative shall be ascribed to the litigation expenses. The expenses pertaining to legal assistance are included in the litigation expenses, in accordance with the general rules of the CPC. The representative of the group is charged with the surveillance of the allocation of the litigation expenses between plaintiffs of the group. Furthermore, a claimant party is not required to declare the origin of any funding to the court at the outset of proceedings.

However, there are no indications or restrictions in the CPC as to financing from third parties. Similarly, there are no specific rules on whether a court is allowed to stay proceedings if the instances outlined in para. 15 of the Recommendation exists.

8. Enforcement of collective actions/settlements

There are no specific rules on enforcement in case of collective redress mechanisms.

⁵ The Republic of Lithuania Law on the Bar. Law No IX-2066 of 18 March 2004.

Where a settlement has been reached, there is no particular rule on whether the courts verify whether the rights and interests of all parties are protected. The general rules of the CPC are applied to settlements. According to the general rules and the court practice the court shall check the settlement agreement concerning capability, imperative norms and public interests.

9. Number and types of cases brought/pending

Several attempts were made to initiate the group action proceedings, however, they were not successful (4 cases were initiated including the old case concerning non-possibility to apply Article 49 for group actions). Therefore, there has not been adopted any decision within the framework of the group action proceeding yet. By the same time, it means that Lithuania has no court practice in the area of compensatory decisions. Taking into account that the cases pursuant group action proceedings rules were not examined, they are not involved in the Case examples below. The grounds for non – accepting the claims as group action claims were: (i) there is no commonality between requirements, therefore common decision is not possible; (ii) there was no proper out of court procedure.

10. Impact of the Recommendation/Problems and Critiques

It should be noted that the Recommendation was not specifically transposed into Lithuanian laws. There is no clear information whether the Recommendation was taken into account in the process of the adoption of the Amendments to the CPC by introducing the group action proceeding: neither the wording of these Amendments, nor their *travaux préparatoire* provide reference to it.

Even though no reference was made to the Recommendation when the group action mechanism was enacted in Lithuanian law, the Lithuanian group action model corresponds in essence to the concept indicated in the Recommendation because it reflects the main safeguards established in the Recommendation.

Certain instruments stated in the Recommendation are not transposed into the Lithuanian legal system.

First, Lithuanian law does not have rules regulating third party funding, a demand which may arise in the future. Further, the Lithuanian regulation allows a success fee and does not provide any particular restrictions on this for group actions. It should be considered whether the general restriction referring to the ethical principles will be an appropriate safeguard ensuring the party right to full compensation.

Secondly, Lithuanian regulation does not clarify the relationship between public enforcement and private enforcement. In order to correctly comply with the Recommendation concerning the consistency of public enforcement of the collective redress mechanism, the regulation of all administrative processes which are designed to protect individual rights consecrated in EU law should be reviewed, and the Lithuanian regulation on collective redress should establish clear rules regarding those mechanisms, whilst ensuring the mechanism's effectiveness.

Thirdly, the law does not indicate any criteria or method of the announcement provision relating to the information, which can be furnished by the group representative.

Finally, Lithuania has not created the registry for the collective redress actions, neither for claims realized through the protection of public interest, nor for group actions.

Additional practical issue might be noticed that the requirement to implement obligatory out of court procedure is not coordinated with the out of court procedure pursuant to the sectoral laws. The ADR procedure established in the sectoral laws does not allow group actions or collective redress actions.

As it was mentioned, there were only several attempts to initiate group actions proceedings and have not been any decisions adopted pursuant to the group action proceedings yet. By adopting the concept on Group action, the Government considered that there is a risk that group action mechanism might be used in practice for abuse purposes and might be dangerous for business. Current situation reveals that this mechanism actually does not work in practice. However, ex post evaluation on the implementation of the group action proceeding mechanism is not fulfilled and there is no clear reasons why the group actions proceeding does not attract of consumers organizations or other persons as a measure for the protection of their rights. The scholars are discussing that the group action proceeding mechanism is too complicated and too much discretion belongs to judges. By the same time, it is recognized that there are no expectations that the group action proceeding will be frequently used in practice.

Theoretically, there might be the situation where the members of a group action might be the members of association/trade union and non-members may be inadequately represented. Such a situation might create some difficulties. In case such difficulties would be asserted, the question of proper representation might be raised. As we do not have any actions initiated by these subjects it is very difficult to comment

II. Sectoral Collective Redress Mechanism(s)

A. Competition sector

1. Scope/ Type

The Law on Competition establishes two instruments:

- Injunctive actions in the field of unfair competition (Article 16 of the Law on Competition). This mechanism shall be regarded as an action for the protection of public interest.
- Compensatory and injunctive claims for infringement of competition law was introduced into Lithuanian legal system by transposition of the Damages Directive (infringement of competition law is described as in the Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union Text with EEA relevance (hereinafter – the Damages Directive)) (Articles 43-53 of the Law on Competition). The new regulation came into force from 1 February, 2017. According to the specific rules of the Law on Competition, the court is encouraged to apply the joining of cases mechanism. It does not mean that group action and joinder of claims mechanisms could not be apply. These instruments would be applied according to the rules indicated in the CPC.

2. Procedural Framework

a. Competent Court

For the injunctive actions – a district court would have the jurisdiction to hear the case.

For the compensatory and injunctive actions claims in infringement of competition law – special jurisdiction rule is established in the Law on Competition: Vilnius regional court has jurisdiction to hear the case.

b. Standing

For the injunctive actions – the actions can be brought by organizations representing the interests of undertakings or consumer.

For the compensatory and injunctive actions claims in infringement of competition law -no specific rules on locus standi (with exception of the rules indicated in the Damages Directive concerning indirect purchasers)

c. Availability of Cross Border collective redress

No specific rules are established (with exception of the rules related to the decisions adopted in another Member States).

d. Opt In/ Opt Out

General rules are applied.

e. Main procedural rules

The general rules indicated in the CPC are applied. Several peculiarities are indicated in the Law on Competition. Firstly, follow – on rule is established as required by the Damage Directive (Article 9 of the Damage Directive). Secondly, the court obligation to announce about the initiation of the case is indicated in the law. The announcement should be made after acceptance of the claim on the internet site of the court. The aim of the announcement is to create the conditions for the persons join the case. Thirdly, there is indicated the obligation of the court to join the cases if it has been emerged that more claims are submitted to the court for the same defendant.

3. Available Remedies

As it was mentioned compensatory claims and injunctive claims are allowed. In the field of unfair competition three types of remedies are allowed. Firstly, termination of the illegal actions, secondly, imposition of an obligation to make one or several statements of specific content and form, refuting the previously submitted incorrect information or providing explanations as to the identity of the undertaking or its goods and thirdly, seizure or destruction of the goods, their packaging or other means directly related to unfair competition, unless

the infringements can be eliminated otherwise. In case of infringement of competition law, termination of illegal actions and claim for damages are possible.

No specific rules indicated concerning allocation of damages between claimants for compensatory claims and there is no necessity for such rules.

As established by the Damage Directive, there is no availability of punitive or extra-compensatory damages. The same idea is established in Lithuania law. The rules on calculation and proving of damages, limitation period correspond to the provisions of the Damage Directive. As mentioned above, follow-on rule is established in relation to compensatory claim as required by the Damage Directive.

4. Costs

General rules are applied.

5. Lawyers' Fees

General rules are applied.

6. Funding

General rules are applied.

7. Enforcement of collective actions/settlements

General rules are applied.

8. Number and types of cases brought/pending

The injunction mechanism has not been used in practice (where locus standi belongs to associations).

Due to novelty of the regulation no cases existed in the field of compensatory claims.

B. Consumer protection sector

1. Scope/ Type

Lithuanian law provides for two consumer collective redress mechanisms:

- the general protection of public interest of consumers may be applied when seeking certain remedies - recognition or change of legal relationship, prohibition (termination) of certain actions, omissions of a seller or service provider whereby legitimate common interests of consumers are being infringed upon and which are unfair from the consumers' viewpoint, activities not in compliance with fair business practices, or are in conflict with the provisions of the Lithuanian Civil Code, infringements of the Law on Consumer Protection or any other legislative acts (Chapter 7 of the Law on Consumer Protection);
- the State Consumer Rights Protection Authority controls standard terms and conditions contracts law and therefore may contest unfair terms and conditions of consumer contracts.

It should be noted that these mechanisms cannot be considered a group action, instead it may be regarded as an action for the protection of public interest. The group action, as it was mentioned, is available pursuant to general rules of the CPC.

Only injunctive claims can be submitted to the court within the framework of mentioned mechanisms.

2. Procedural Framework

a. Competent Court

General rules are applied.

b. Standing

Locus standi belongs to consumer associations and the State Consumer Rights Protection Authority. The law establishes certain requirements for the consumer associations. Pursuant the Article 31 of the Law on Consumer Protection consumer associations shall have the right to protect public interests of consumers, provided such associations meet the following conditions: 1) are registered in the Register of Legal Entities; 2) the purpose of

operations, indicated in the founding documents, is representation and protection of consumer rights and lawful interests; 3) at least 20 members comprise an association. In the event that the members of an association are other consumer associations, the total number of the members of these associations shall be no less than 20; 4) are independent of business interests and other interests which are related to the protection of consumer rights. When filing a claim or a complaint for the protection of public interests of consumers, a consumer association shall present to the court the evidences that it corresponds to the mentioned conditions.

c. Availability of Cross Border collective redress

Foreign plaintiffs are able to defend the public interest of consumers using this mechanism. Given that natural persons are altogether prohibited from bringing this action, only certain foreign legal persons are allowed. The institutions or organizations of the member states of the European Union which are included by the European Commission in the list provided for by Directive 98/27/EC of the European Parliament and of the Council on injunctions for the protection of consumers' interests and published in the Official Journal of the European Communities, have the right to bring an action in the courts of the Republic of Lithuania for an injunction to cease activities of the sellers (suppliers) of goods or services which infringe public interests. It must be noted that these foreign plaintiffs have to meet certain criteria. Firstly, they may act only when the activities of the sellers (suppliers) of goods and services, functioning in Lithuania, infringe the legal acts of the European Union, the list of which shall be approved by the Minister of Justice of the Republic of Lithuania. Secondly, they have an obligation to consult in writing with the State Consumer Rights Protection Authority. Furthermore, foreign plaintiffs likewise have to apply to the seller or service provider before bringing the claim before the court.

d. Opt In/ Opt Out

General rules are applied.

e. Main procedural rules

Two stages may be identified. Firstly, obligatory out-of-court dispute resolution. Potential plaintiffs must conduct obligatory out-of-court negotiations. Upon having established that the public interests of consumers were infringed, plaintiffs must apply to the seller or service supplier and propose that the seller or service supplier cease the infringement of the public interests of consumers within 14 days from the receipt of the proposal. If the infringement of the public interests of consumers does not stop, plaintiffs have a right to file a claim or complaint to the court in order to defend the mentioned interests.

The Law on Consumer Protection states that the plaintiff has an obligation to apply to the seller or service provider before bringing the claim before the court. Additionally, consumer associations and other state and municipal institutions and legal entities defending the public interests of consumers have an obligation, not later than within 5 working days from acceptance of a claim or petition (complaint), to notify the State Consumer Rights Protection Authority about this.

The Law on Consumer Protection does not provide any additional rules regarding evidence or discovery. Consequently, general rules of procedure apply.

3. Available Remedies

As it was mentioned, pursuant to the Law on Consumer Protection this mechanism is designed only for injunctive claims. There are no specific rule concerning follow – on actions and limitation periods in these claims. Several types of remedies are available: (i) plaintiffs may seek recognition or change of legal relationship, prohibition (termination) of certain actions, or omissions of a seller or service provider; (ii) as to the unfair terms and conditions of consumer contracts, the State Consumer Rights Protection Authority may seek invalidation or amendment of unfair terms and condition.

There is no clear rule on *res judicata* effect. The doctrine expressed the position that if the court satisfies the claim, the *res judicata* effect of the judgement applies to all the consumers having clauses in their contracts that have been declared void.

Pursuant to the general rules of the CPC the facts settled in the judgement become prejudicial facts and cannot be contested - therefore persons with the same or very similar factual circumstances may benefit from the decision of the court. As to the unfair terms and conditions of consumer contracts, though the court declares the terms and conditions of the standard consumer contract unfair, due to the contractual nature of the standard consumer contract, it has to be amended individually. For example, a consumer may demand an

amendment of the contract with reference to the judgement of the court declaring the particular terms and conditions unfair.

4. Costs

General rules are applied.

5. Lawyers' Fees

General rules are applied.

6. Funding

There are no specific rules on this matter.

7. Enforcement of collective actions/settlements

There are no specific rules on this matter.

8. Number and types of cases brought/pending

Since 2004-04-30, when the amendment of Law on Consumer Protection introducing the protection of public interest of consumers came into effect, several actions were brought to court. According to the publicly available information only 12 cases are accounted. However, it should be noted that the State Consumer Rights Protection Authority in its reports on its activity from 2007 till 2016⁶ indicates 37 cases initiated by the State Consumer Rights Protection Authority. Such difference in number of cases might be due to the reason that the decisions of district courts are not publicly available. Moreover, it should be noted, that the State Consumer Rights Protection Authority does not indicate information about the cases initiated by consumer associations.

However, it should be noted that regarding the unfair terms and conditions of consumer contracts, the State Consumer Rights Protection Authority has competence to control the unfair terms in administrative way. Therefore, it actively issues decisions that certain consumer contracts have unfair terms and conditions.

The court practice shows that the issues existed by interpreting the public interests in the consumer area and what the status of the consumers in such case should be. Moreover, it is obvious that there is no clear understanding on the delineation between the abstract control of unfair terms and individual control.

9. Impact of the Recommendation/Problems and Critiques

Please see comments to General part.

Legal scholars rarely address issues of this mechanism. Even so, this institute lacks legal clarity, which would allow potential plaintiffs to take advantage of it. As it is appeared from the court practice there is no clear understanding how "public interests" should be interpreted, what is the abstract control of unfair contract terms and whether all consumers in the status of third party should be involved in the case. It could be additionally noticed that the consumer associations are not sufficiently encouraged to initiate actions for the protection of consumer interests.

C. Environmental sector

1. Scope/ Type

This mechanism may be used only for the protection of public interest in the field of the environment and environmental protection as well as utilization of natural resources (Article 7 of the Law on Environmental Protection).

⁶ <http://www.vvtat.lt/index.php?2267040817>

2. Procedural Framework

a. Competent Court

Regional Administrative Courts would be competent to hear the case (Article 18 of the Law on Administrative Proceedings). If the requirements in the case involve both requirements of administrative and civil nature and the civil nature prevail, the case might be examined in the general competence courts pursuant the rules established in the CPC. In that case the claim is filed according to Article 49 of the CPC.

b. Standing

Proceedings may only be brought by the public concerned. Associations and other public legal persons (with the exception of the legal persons established by the State or a municipality or institutions thereof) established in accordance with the procedure laid down by law and promoting environmental protection shall in any case be held as the public concerned. Additionally, according to the practice of Lithuanian administrative courts, associations or other public legal persons must have been established before the adoption of decisions, acts or omissions that are being contested.

c. Availability of Cross Border collective redress

d. Opt In/ Opt Out

The law does not specify whether this mechanism is based on the opt-in or opt-out procedure, however general rules of administrative proceedings apply. It should be noted, that the fact that the court decides on the persons that did not participate in the proceedings, would be grounds for the revision of the judgement. Furthermore, due to the nature of the remedies that can be sought, there are no major problems regarding *res judicata*.

e. Main procedural rules

The Law on Environmental Protection does not provide for any additional procedural rules, consequently general rules of administrative proceedings apply.

Given that there is no specific regulation, the general three-stage administrative proceedings procedure is applied. Firstly, there is the opening of proceedings, during which the court *inter alia* checks the general content requirements of procedural documents. Secondly, the preparation of proceedings, during which the court *inter alia* sends the copy of the claim to the other parties and sets the term for the statement of defence. Thirdly, the proceedings on the merits, during which the court examines the evidence and issues a judgment.

Given that there is no specific regulation, general evidence or discovery rules of the Law on Administrative Proceedings apply.

3. Available Remedies

There are several remedies that the public concerned may seek. Firstly, it may contest the substantive or procedural lawfulness of decisions, acts or omissions in the field of the environment, environmental protection and utilization of natural resources. Secondly, the public concerned may seek an injunction of harmful effects on the environment of the economic operators. Thirdly, to file, in accordance with the procedure laid down by law, a complaint demanding to take appropriate action to prevent or minimize environmental damage or restore the environment to its baseline condition and demanding to punish the persons guilty of causing a harmful effect to the environment and the officials whose decisions or acts (including omissions) has violated the rights of citizens, the public concerned, other legal and natural persons or the interests protected under the law. Lastly, to appeal to the court where it believes that its application, filed in the accordance with the procedure laid down by the legal acts regulating the right to obtain information on the environment has been; unlawfully dismissed, provided with a partially or completely inappropriate response, or has not been given proper regard in compliance with the legal acts regulating the right to obtain information on the environment.

4. Costs

General rules of costs are applied. The Law on Administrative Proceedings states that litigation expenses consist of the official fee, other expenses related with hearing of the case and representation expenses. It should be noted, that reimbursement of representation expenses is settled in accordance with the CPC. Moreover, regarding remuneration of litigation costs, the party for which the judgement has been rendered is entitled to the payment by the other party of the costs incurred by it. Attention should be drawn to the fact that the sum

awarded would be proportionate to the claims met. Furthermore, neither the Law on Administrative Proceedings nor the CPC supplies any provisions regarding the funding of this action.

5. Lawyers' Fees

General rules are applied.

6. Funding

General rules are applied.

7. Enforcement of collective actions/settlements

General rules are applied.

8. Number and types of cases brought/pending

Only 11 claims were filed to the courts. The main issues were considered in the court practice were (i) whether the association has a locus standi. The courts maintains a narrow interpretation of public interests taking into account that associations has a right to submit the claim only in the area of environmental protection and was not inclined to expand this area. The court has a notion that the area of public interests are described by the law, the competence stemmed from the law, therefore the competence area of the subject should be interpreted in the narrow way; (ii) how the term for the submission of complaint for the protection of public interests should be calculated. The interpretation that the calculation of term for submission of the complaint for the protection of public interests should be calculated from a date either when the claimant received sufficient data/information about the breach of public interests or when the data/information about the breach of public interests ought to be or might be collected, has prevailed. However, the court practice where the court decided that the term should be calculated taking into account the knowledge of the persons who is protected but not the knowledge of the person who submits the claim, existed as well.

9. Impact of the Recommendation/Problems and Critiques

Please see General Part.

III. Information on Collective Redress

As it was mentioned, no national registry was created in Lithuanian legal system.

Information on collective claims is distributed in principle in two ways, either through the announcement published by the representative, or through the website dedicated to the group action. Naturally, the media may publish certain information about interesting cases at its own initiative.

IV. Case summaries

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| <p>Case name</p> <p>Court of Appeal of Lithuania, 2009-06-02, 2-492/2009</p> <p>Reference</p> <p>Subject area</p> <p>General provisions</p> | <p>Keywords</p> <p>liability for damage - unlawful preliminary investigation - lack of regulation</p> <p>Summary of claims/Findings</p> <p>Third parties Z. M. and B. G. filed a claim for declaration that officials conducting the preliminary investigation violated the public interest and inflicted damage for a large group of people. The court of Appeal of Lithuania stated that the law should provide a right for a person to defend the public interest. However, in this case the law does not provide the plaintiff with such right. Therefore, plaintiffs have a right to defend their infringed rights individually. Moreover, the law does not provide for the subjects that can bring a group action, what kind of action can be declared a group action, content requirements of a group action, <i>res judicata</i> effect of the judgment, the procedure of group action. Consequently, without additional legal regulation it is currently impossible to bring the group action in Lithuania.</p> <p>Outcomes</p> <p>Settlement: No</p> <p>Remedy: Damages were claimed however the case were not solved</p> <p>Amount of damages awarded: N/A</p> <p>Distribution of damages: N/A</p> |
| <p>Dispute resolution method</p> <p>Group action</p> | |
| <p>Court or tribunal</p> <p>Court</p> | |
| <p>Cross-border character/ implications, if any</p> <p>N/A</p> | |
| <p>Opt-in/out</p> <p>N/A</p> | |
| <p>Type of funding</p> <p>N/A</p> | |
| <p>Costs</p> <p>General principles applied.</p> | |
| <p>Abusive litigation</p> <p>No</p> | |

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| <p>Case name</p> <p>Supreme Court of Lithuania, 2009-07-30, 3K-3-333/2009</p> <p>Reference</p> <p>Subject area</p> <p>Consumer</p> | <p>Keywords</p> <p>State Consumer Rights Protection Authority – legislation effect in time – protection of public interests</p> <p>Summary of claims/Findings</p> <p>The State Consumer Rights Protection Authority filed a claim against insurance company Ergo Lietuva seeking recognition of insurance rules as unfair and an amendment of them. Firstly, the Supreme Court of Lithuania recalled the existing jurisprudence concerning the protection of public interest by a prosecutor and stated that distinction should not be made in case where public interest is protected by the State Consumer. In both cases, the existence of public interest should be acknowledged by the court hearing the case. Secondly, the fact that during the proceedings, the insurance rules had already been amended annulled the existence of an infringement of the public interest.</p> |
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| Dispute resolution method Protection of public interests. | <p>Moreover, the plaintiff did not prove the existence of any consumers which would be subject to an application of the initial insurance rules. For these two reasons the Court concluded that there was no public interest.</p> <p>Outcomes Settlement: No</p> <p>Remedy: N/A</p> <p>Amount of damages awarded: N/A</p> <p>Distribution of damages: N/A</p> |
| Court or tribunal Court | |
| Cross-border character/ implications, if any N/A | |
| Opt-in/out N/A | |
| Type of funding N/A | |
| Costs General principles | |
| Abusive litigation [yes][no] | |

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| Case name Vilnius District Court, 3-03-2017, e2S-770-431/2017 | <p>Keywords State Consumer Rights Protection Authority – protection of public interests- involvement of third parties in the case</p> <p>Summary of claims/Findings The State Consumer Rights Protection Authority filed a claim against Auto City Group concerning recognition of the terms of a contract for renting a car unfair and void. The first instance court decided that the State Consumer Rights Protection Authority should involve all consumers as third parties in the case. The Vilnius district court ruled out the decision of first instance court and decided that it is no necessity for that because the State Consumer Rights Protection Authority initiated the case in the framework of control of unfair terms in abstracto.</p> <p>Outcomes Settlement: No Remedy: N/A Amount of damages awarded: N/A Distribution of damages: N/A</p> |
| Reference | |
| Subject area Consumer | |
| Dispute resolution method Public interest case | |
| Court or tribunal Court | |
| Cross-border character/ implications, if any N/A | |
| Opt-in/out N/A | |
| Type of funding | |

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| N/A | |
| Costs General principles are applied | |
| Abusive litigation No | |

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| Case name Supreme Administrative Court of Lithuania, 2013-10-15, A/146-585/2013 (very similar case Supreme Administrative Court of Lithuania, 2013-08-19, A/502-580/2013) | Keywords Protection of public interests, locus standi of consumer association |
| Reference | Summary of claims/Findings The case were initiated concerning the contracts related to pensions funds and obligation of SODRA to pay additional money to the participants of the system of pensions funds. However, the essence of the court decision was decision on locus standi of the Association of the Participants of the Pensions Funds. Court decided that this association could not be considered as consumer association. |
| Subject area Consumer. | Outcomes Settlement: No Remedy: N/A Amount of damages awarded: N/A |
| Dispute resolution method Protection of Public interests case | Distribution of damages:N/A |
| Court or tribunal Court | |
| Cross-border character/ implications, if any N/A | |
| Opt-in/out N/A | |
| Type of funding N/A | |
| Costs General rules were applied. | |
| Abusive litigation No | |

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| Case name | Keywords |
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| <p>Appeal Court of Lithuania, 2014-12-01, 2A-1461/2014</p> <p>Reference</p> <p>Subject area Consumer</p> | <p>State Consumer Rights Protection Authority – consumer contract – unfair terms - nullity of contract terms</p> <p>Summary of claims/Findings</p> <p>State Consumer Rights Protection Authority initiated the case against bank SNORAS concerning recognition of the contract terms as unfair terms and its nullity. The claim was satisfied.</p> <p>Outcomes</p> <p>Settlement: No</p> <p>Remedy: Injunction</p> |
| <p>Dispute resolution method Public interest protection</p> <p>Court or tribunal Court</p> | <p>Amount of damages awarded: N/A</p> <p>Distribution of damages: N/A</p> |
| <p>Cross-border character/ implications, if any N/A</p> | |
| <p>Opt-in/out N/A</p> | |
| <p>Type of funding N/A</p> | |
| <p>Costs General rules applied.</p> | |
| <p>Abusive litigation No.</p> | |

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| <p>Case name</p> <p>Vilnius Regional Administrative Court, 2015-12-23, 3-61-3-03631-2015-4</p> <p>Reference</p> <p>Subject area Environment</p> | <p>Keywords</p> <p>Public interest, locus standi of association (association acting in environmental area)</p> <p>Summary of claims/Findings</p> <p>Association „Baldžio bendruomenė“ initiated case concerning obligation to dismantle equipment from the strand of the lake. The court decided that the community association does not act in the field of environmental protection, therefore has no locus standi in this case. The court environmental protection area interpreted as the area related to the environmental protection as described in the Law on Environmental Protection, territory planning and other issues on the landscaping.</p> <p>Outcomes</p> <p>Settlement: No</p> <p>Remedy: N/A</p> |
| <p>Dispute resolution method Protection of public interest</p> <p>Court or tribunal Court</p> | |

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| Cross-border character/ implications, if any N/A | Amount of damages awarded: N/A Distribution of damages:N/A |
| Opt-in/out N/A | |
| Type of funding N/A | |
| Costs General rules applied. | |
| Abusive litigation No. | |

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| Case name Supreme Administrative Court of Lithuania, 2014-04-10, A/146-342/2014 | Keywords Protection of public interests, locus standi of association, calculation of term for the submission of complaint, abusive litigation Summary of claims/Findings The prosecutor file the complaint to the administrative court taking into account the association Vėžaičių bendruomenė request concerning breach of public interests. Association Vėžaičių bendruomenė was involved in a case in status of third party. The essence of the complaint was to abolish the municipality decision concerning detail plan of the dump. The court considered in this case several important issues: (i) the locus standi of the prosecutor and association Vėžaičių bendruomenė to file the complaint. The court decided that both subjects have locus standi in the case; (ii) the calculation of the term to file the complaint. The court referred to the administrative court practice addressing the issue on calculation of the term when the complaint is filed for the protection of public interests and considered that several elements are important: firstly when the claimant received sufficient data/information about the breach of public interests; secondly, when the data/information about the breach of public interests ought to be or might be collected. The court decided that term for the filing the complaint was overdue and noticed that in this case is very important circumstance that association Vėžaičių bendruomenė was fully aware that the term was overdue and did not provide the relevant information to the prosecutor. Therefore, association Vėžaičių bendruomenė by such behaviour abused its rights. It should be noted that in case in the area of consumer protection the Supreme of Administrative Court of Lithuania (2008-06-03, A/143-910/2008) decided that the starting date for the calculation of term for provision of complaint should be calculated not taking into account the circumstances related to the claimant (association filing the claim for the purpose to protect public interests – consumer interests), but to the persons (consumers) for which interest the complaint is submitted. |
| Reference | |
| Subject area Environment | |
| Dispute resolution method Protection of public interests | |
| Court or tribunal Court | |
| Cross-border character/ implications, if any N/A | |
| Opt-in/out N/A | |
| Type of funding N/A | |
| Costs General rules applied. | |

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| Abusive litigation YES. | Outcomes Settlement: No Remedy: N/A Amount of damages awarded: N/A Distribution of damages:N/A |
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| Case name Supreme Administrative Court of Lithuania, 2013-09-23, A/520-211/2013 Reference Subject area Environment | Keywords Protection of public interests, locus standi of association Summary of claims/Findings Country community „Lumpėnų strazdas“ filed the complaint to the administrative court asking to abolish the decision of the municipality concerning detail territory plan. The court considered locus standi of the country community in this case. The court noticed two criteria which should be evaluated considering locus standi of the association in the field of environmental protection, i.e. firstly should be examined whether association is established pursuant to the laws, secondly, whether the association encourages environmental protection and helps to solve the landscaping issues. The court stressed that by evaluating the second criteria should be examined whether the association real acts in the environmental area and this activity was fulfilled in time of submission of the complaint. In this case the court decided that the country community did not prove that it really encouraged environmental protection and helped to solve the landscaping issues at time of submission of the complaint. The fact that country community after submission of the complaint has started to communicate with the institutions concerning the issues raised in the complaint is not sufficient to conclude about the real activity of the community in the area of environmental protection. |
| Dispute resolution method Protection of public interests Court or tribunal Court | Outcomes Settlement: No Remedy: N/A Amount of damages awarded: N/A Distribution of damages:N/A |
| Cross-border character/ implications, if any N/A | |
| Opt-in/out N/A | |
| Type of funding N/A | |
| Costs N/A | |
| Abusive litigation N/A | |

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| Case name | Keywords |
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| Supreme Court of Lithuania, 2013-01-16, 3K-3-112/2013 | Protection of public interests, group action, locus standi of association |
| Reference | Summary of claims/Findings |
| Subject area Environment | Claimants (several natural persons and several country communities (associations)) filed the claim to the general competence court by requiring to abolish the IPPC permit (Permit of Integrated Pollution Prevention and Control) and to declare the company activity unlawful and to oblige company to terminate its activity. The claim encompassed remedies of different nature – both administrative and civil. Taking into account that civil remedies prevail, the general competence court examined the case. The court inter alia considered the locus standi of the associations and the possibility to submit the claim taking into account that it is clear lack of rules for group action. The court declares the claimants locus standi considering international legal norms and requirements of European Union law. Moreover the court constituted that the fact that legal norms on group action mechanism are not elaborated in the laws cannot prevent the persons to apply for the protection of collective interests. The claim was satisfied. |
| Dispute resolution method Protection of public interests | |
| Court or tribunal Court | |
| Cross-border character/ implications, if any N/A | Outcomes Settlement: No Remedy: Injunction and declaration of the activity of the company unlawful and obligation to terminate the activity. |
| Opt-in/out N/A | Amount of damages awarded: N/A |
| Type of funding N/A | Distribution of damages: N/A |
| Costs General principles applied | |
| Abusive litigation No | |

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