



# International Comparative Jurisprudence



## THE ROLE OF QUASI-COURTS IN CONTROLLING THE LEGALITY OF PUBLIC ADMINISTRATION: PREREQUISITES FOR SYSTEMATISATION OF PRE-TRIAL TAX DISPUTE RESOLUTION IN LITHUANIA

Eglė Bilevičiūtė<sup>1</sup>

*Mykolas Romeris University, Lithuania*  
*E-mail: [eglutebil@gmail.com](mailto:eglutebil@gmail.com)*

Birutė Pranevičienė<sup>2</sup>

*Mykolas Romeris University, Lithuania*  
*E-mail: [praneviciene@mruni.eu](mailto:praneviciene@mruni.eu)*

*Received: 5 May 2020; accepted: 10 November 2020*

*DOI: <http://dx.doi.org/10.13165/j.icj.2020.12.006>*

**Abstract.** In many countries today, the practice of establishment, a kind of hybrid of the judiciary and public administration, and the so-called quasi-courts - various commissions, tribunals, etc., have recently become common practice of administrative justice functions implementation not only in courts, but also in quasi-courts. Proceedings in such institutions are commonly referred to as quasi-judicial; as the administration of administrative justice in quasi-courts follows, a procedure similar to those in administrative courts and ensuring of the basic principles of judicial proceedings, e.g. the principle of legality, the principle of the right to be heard, and so on. The aim of the authors' research is to reveal the preconditions for the systematization of quasi-judicial control of the legality of the activities of public administration entities and the settlement of tax disputes in Lithuania. To achieve the goal, the following tasks were singled out: 1) to present the concept of quasi-court and to reveal the essential characteristics of quasi-court; 2) to disclose the essence of the control of the legality of the subjects of public administration and the possibility of quasi-courts to exercise the control of the legality of the administration; 3) to present a case study: the problems of the status and legal regulation of the Tax Dispute Commission of Lithuania. The main results of the research: the concept and characteristics of quasi-judicial institutions were clarified and the advantages of such institutions and directions of improvement were identified.

**Keywords:** quasi-court, pre-trial investigation of administrative disputes, tax disputes

### Introduction

Only two types of decision are possible in the public sphere of the state: administrative and judicial. This follows from the doctrine of separation of powers, which is enshrined in the legal systems of all democratic states, including Article 5 (1) of the Constitution of the Republic of Lithuania, which states that “In Lithuania, state power shall be executed by the Seimas, the President of the Republic and the Government, and the Judiciary”. The principle of separation of powers is based on the checks and balances of the different branches of the government, their close links, mutual control, and their roles in serving as important components of a complex mechanism that prevents unlimited, indivisible, and uncontrolled concentration of power. This doctrine creates a framework in which the legislative branch creates laws, which are then exercised by the executive branch and the courts.

<sup>1</sup> PhD in Social Sciences, professor at Law school, Institute of Public Law, Mykolas Romeris University (Lithuania), Vice-chair of Lithuanian Administrative Disputes Commission.

<sup>2</sup> PhD in Social Sciences, professor, Head of Law department of Public Security Academy, Mykolas Romeris University (Lithuania), Vice-chair of Lithuanian Administrative Disputes Commission for Kaunas district.

Depending on who applies the law, administrative and judicial models of law are distinguished (Wroblevski, 1992, 6). Administrative law is usually applied in the absence of a conflict, or when conflict exists but the facts are clear and do not require further investigation or the conflict itself is considered to be of minor importance to the public interest (Mikelėnienė & Mikelėnas, 1999, 49).

Today, many countries have established quasi-courts, which are hybrids between the judiciary and the public administration, and include various commissions, tribunals, agencies, etc. For example, in the United Kingdom, there are tribunals, which deal with the complaints of individuals in the field of social security, immigration, taxes, special education needs, disability, etc. (more about the system of tribunals in U.K. in Bradley et al., 2018, 573-574). The United States of America operates many administrative agencies (such as the Environmental Protection Agency) and services (such as the United States Citizenship and Immigration Services) which have the power of adjudication in specific matters of public administration. These kinds of quasi-judicial bodies provide “a built-in dispute resolution mechanism under more sympathetic procedures” (Harter, 1983, 7). Such practices have made it so that administrative justice functions are exercised not only in courts but also in quasi-courts, and litigation in such institutions is commonly referred to as quasi-judicial, since administrative justice in quasi-courts follows a similar procedure to administrative courts and guarantees the basic principles of judicial process, e.g. the principle of legality, the right to be heard, and so on. However, it must be acknowledged that the term ‘quasi-court’ (quasi-judicial institution) is still new in the Lithuanian legal system and it is natural that discussions on the legal status of quasi-courts are ongoing among practitioners, scholars, and politicians alike. According to Hilaire Barnett (1996), even though the principle of separation of powers goes hand in hand with the rule of law and is very important in every modern state, strict and absolute separation of powers basically does not exist anywhere. Therefore, some authors suggest interpreting the principle of separation of powers as follows: the essence of this principle lies not in the fact that one authority cannot perform the functions of another authority, but rather in the fact that neither authority acts arbitrarily and uncontrollably (Vile, 1967, 84-85). Consequently, certain types of cases can be heard by authorities which are not formally attributed to the judiciary branch, as long as, the powers and foundations of such authorities are outlined by the law.

Such a provision is directly related to the rule of law, which emphasizes the importance of creating opportunities for a person who is defending his rights to seek out an independent and impartial arbitrator and to protect his violated rights in a real way rather than formally. The Constitutional Court of the Republic of Lithuania has repeatedly shown that, under the Constitution of the Republic of Lithuania, the legislator has a duty to establish such legal regulation that all disputes regarding violation of individual rights or freedoms could be settled in court; pre-litigation dispute resolution may also be established, but no legal regulation may be established that would deny a person who considers that his or her rights or freedoms to be violated the right to defend his or her rights or freedoms in court (The Constitutional Court of the Republic of Lithuania, 2012a, 2012b). Thus, although the court is considered to play a key role in the defense of human rights and freedoms, the establishment of pre-trial (quasi-judicial) disputes between individuals and public administration does not contradict the court’s objective. It is important that legislation establishes a regulatory framework that allows dispute resolution entities to have real procedural opportunities to defend violated individual rights or legitimate interests and to ensure everyone's right to a fair administrative process.

Certain issues of pre-trial investigation of administrative disputes in Lithuania were investigated by the following scientists: L. Paškevičienė (2018, 2019), B. Pranevičienė (2003), D. Bereikienė, T. Gagys, J. Ramanauskaitė (Bereikienė et al., 2019). It is noteworthy that recently the Lithuanian Institute of Pre-trial Administrative Dispute Resolution has been strengthened in order to optimize and improve efficiency of the settlement of all types of administrative disputes at all stages of the administrative process: in 2019 a working group on the extension of the competence of the Lithuanian Administrative Disputes Commission, formed by the Ministry of Justice of the Republic of Lithuania, prepared a package of proposals regarding the Law on Administrative Proceedings of the Republic of Lithuania (2020), Law on the Procedure of Pre-trial Administrative Disputes of the Republic of Lithuania (2016), Law on Civil Service of Republic of Lithuania (2019), and Law on Tax Administration of the Republic of Lithuania (2004).

These circumstances determine the relevance of the topic under discussion and imply the necessity to re-examine the aspects and practical problems of relevant legal regulation, taking into account the opinion of some authors that “although legislative measures seek to solve various social problems, the formation of legal provisions in public policy and the administration of its implementation in Lithuania have an interface, but also demonstrate significant gaps between the two processes” (Urmonas, 2019). The last version of proposals (package of aforementioned legal acts’ projects) was officially registered by Lithuania Ministry of Justice on 2020-05-28. On 09-11-2020, The Law and Law Enforcement Committee of Seimas adopted these projects. If Seimas adopted the projects, these would be in force from 01-01-2022.

The purpose of this article is to reveal the preconditions of the systematic control of the legality of activities of quasi-judicial public administration entities and the settlement of tax disputes in Lithuania. The objectives of this article are:

1. Introduce the concept of quasi-court and reveal the essential characteristics of quasi-court.
2. Disclose the essence of the control of public administration entities and the ability of quasi-courts to exercise administrative control.
3. To present a case study: the issues of the status and activities of the Tax Disputes Commission.

Given that the legislation of the Republic of Lithuania does not use the term “quasi-judicial”, while the term is already widely used in the scientific literature, this article will consider quasi-court to be any institution dealing with the proceedings of administrative disputes at the pre-trial stage, and quasi-judicial litigation will be considered synonymous with pre-trial administrative litigation.

## **1. The Concept and Features of Quasi-Court**

‘*Quasi*’ is used as a prefix to adjectives and adverbs. For example, the term “quasi-judicial” is widely used in legal literature. This term describes an act that is specific to the operation of the courts, but that is performed not by a court, but rather by a non-judicial authority (The American College Encyclopedic Dictionary, 1952). Some sources describe quasi-judicial bodies as having some of the characteristics and powers of a court, such as leading a case investigation and so on (The Living Webster Encyclopedic Dictionary of the English Language, 1967). In Merriam-Webster's academic dictionary, the meaning of the term “quasi-judicial” is as follows: “quasi-judicial – partially judicial, i.e., an institution with quasi-judicial powers can investigate and conduct contentious claims and to make decisions in a similar way that a court can. Thus, in terms of its activities, such an institution is similar to a judicial institution, even though under the Constitution it will not be part of the judiciary” (Merriam-Webster's Collegiate Dictionary).

*Quasi* is not a very clear, precise word. On the one hand, it shows similarity, and, on the other hand, implies the existence of differences between the two objects. In legal language, this term is used to indicate that one thing or phenomenon is similar in some respects to another thing or phenomenon it is compared to, but at the same time, there is also a substantial and important difference (s) between the two.

There were many reasons for the emergence of quasi-courts. As public relations changed and diversified, the role of the state in people's lives changed as well. The need to intervene and regulate complex commercial and social relationships by law became more apparent. Scientists note that the biggest leap in administrative law and legislation was seen in the 19th and 20th centuries when the adoption of legal norms became very intensive (Pierce et al., 1992; Breyer & Stewart, 1985; Kelman, 1981; Weidenbaum, 1981, Peterschuk, 1982).

It has been observed that the more the state intervenes in the socio-economic relationships, the more the number of claims against it increases. As a result, the courts could no longer cope with the abundance of complaints. At the same time, it was difficult to ensure effective protection of human rights because, while being an important guarantor of human rights in every country, the court proceedings are complex, formal, time-consuming, and

costly to litigants. Additionally, for many people, litigation is inaccessible and frightening due to many factors, such as, financial opportunities, education, stress from the process, etc. (Cane, 1996).

Changes in administrative justice have been driven by a growing need in society to resolve conflicts efficiently, more cost effectively, and rapidly and to avoid, whenever possible, formal and tedious litigation. The search for rationality in the legal system encouraged countries to develop alternative mechanisms for resolving administrative disputes and to seek new ways of resolving conflicts between administration and citizens, leading to two paths in many states: firstly, the existing administrative authorities were given the power to deal with disputes, in other words, they received quasi-judicial powers; and, secondly, special institutions were set up with the purpose (usually the only one) of dealing with administrative disputes.

These institutions, known as quasi-courts, were supposed to relieve the financial burden on not only the state but also the victims of the actions of the administration, since litigation in quasi-courts is considerably cheaper than in ordinary courts. One of the most important reasons for the emergence of quasi-courts was the desire to provide a clear, rational, accessible, informal, prompt, and specialized way of resolving disputes (Cane, 1996).

Quasi-court is best described as an institution similar to, but not identical to a court. Consequently, quasi-court has some intrinsic qualities that are also characteristic of the court, but at the same time, it also possesses fundamental differences, making them non-identical.

The most important feature that makes quasi-court similar to an actual court is that quasi-court acts as an institution for the protection of human rights. In many states, quasi-court is generally seen as an element of the administrative justice system, and, therefore, it is also intended to protect human rights against unjust decisions and arbitrariness by government officials. As it is stated in joint vision statement by the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals of U.K.: “Tribunals are an essential component of the rule of law. They enable citizens to hold the state and employers to account for decisions that have a significant impact on people’s lives. The hallmark of the tribunals system is the delivery of fair, specialist and innovative justice” (Transforming Our Justice System, 2016).

Human rights and their protection are a priority for every democratic state. It is, therefore, understandable that courts, as the main institutions for the protection of human rights, are an integral part of the rule of law. However, it must be acknowledged that it is not only courts that can effectively help to protect citizens’ rights – in many modern states quasi-courts can also do so.

Regarding measures to improve the accessibility of legal defense, recommendation No. R(81)7 adopted by the Council of Europe Committee of Ministers on 14 May 1981 (Council of Europe Committee of Ministers, 1981) points out that there are three main obstacles impeding the access to justice: the complexity and formalism of litigation, the length of legal proceedings, and high litigation costs. Recommendation No. Rec (2001)9 adopted on September 5<sup>th</sup>, 2001 by the Council of Europe Committee of Ministers (Council of Europe Committee of Ministers, 2001) regarding alternative means of dispute settlement between public authorities and private individuals also points out that the ever-increasing number of administrative cases in the courts makes it difficult to examine a case within a reasonable timeframe established by the article 6 part 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Council of Europe Committee of Ministers recognizes that choosing to pursue judicial procedure is not always the most appropriate way of resolving an administrative dispute.

Article 6 (1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms states that “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”. It should be noted that the term “tribunal” (Latin *tribunal*) is sometimes translated into Lithuanian as a special court (Vaitkevičiūtė, 2001). According to Ingman, “Every court is a tribunal, but not every tribunal is a court” (Ingman, 1996).

An analysis of the case-law of the European Court of Human Rights (ECHR) reveals that generally states have the discretion to determine the institutional framework for the exercise of jurisdictional function (with the sole exception of the obligation to set up a two-tier system for criminal cases), therefore, any institution created to resolve certain legal disputes, whether called a court, a tribunal, a commission, etc., in the context of the European Convention on Human Rights and Fundamental Freedoms, will be considered a court if it has the following essential features (European Court of Human Rights, 1984, 1985, 2000, 2002, 2010): 1) The institution can make binding decision (*Bentham v. the Netherlands*, 1985); 2) The institution is established by law (*Coeme and Others v. Belgium*, 2000); 3) The institution is independent (*Campbell and Fell v. UK*, 1984, *Urban v. Poland*, 2011); 4) The institution is impartial (*Lavens v. Latvia*, 2002).

Concerning the structural aspects of the court (tribunal), the ECHR states that the court (tribunal) must be constituted by law and its organizational structure must also be regulated by law and not be subjected to the discretion of the executive (*Coeme and Others v. Belgium*, 2000).

“Principles of judicial and quasi-judicial independence are fundamental to all democracies” (Comtois, de Graaf, 2013). In regards to the independence of the court / tribunal, the ECHR sets out certain criteria for assessing whether a court / tribunal can be considered independent: the procedure for appointing members; term of office; safeguards against external influences in decision-making.

So, in essence, we are talking about two types of criteria: institutional, which include independence, term of office, permanent presence, etc. and functional, which include administration of justice, dispute resolution, and adjudication.

The Court of Justice of the European Union (the CJEU) assesses whether an institution is independent through determining its independence regarding the main proceedings, the executive, and the legislature (for example, in the case of *Kollensperger and Atzwanger* (The Court of Justice of the European Union, 1999), the relationship between the reference for a preliminary ruling to the CJEU and the authorities concerning the nature and place of the act providing for the establishment of the authority in the hierarchy of legislation, the procedure for appointing judges, etc. was analyzed).

Thus, summing up the analysis above, we can conclude that quasi-courts must be established by law, meet the institutional criteria, which include independence, tenure, standing, and so on., and the functional criteria, which include administration of justice, dispute resolution, and adjudication. Since 1999, there are pre-trial dispute resolution institutions in Lithuania that meet the above-mentioned criteria - Lithuanian Administrative Disputes Commission and Tax Disputes Commission under the Ministry of Finance of the Republic of Lithuania.

## **2. The essence of the control over the legality of public administration and the role of quasi-courts in administrative control**

While reviewing a complaint of infringement of rights made by a natural or legal person against a decision or a conduct of an administration, the quasi-court is also conducting a review of the legality of administration's actions.

The Lithuanian administrative law doctrine does not have a well-developed and generally accepted theory that clearly distinguishes between control and supervision; therefore, this article considers the term “control” to be most appropriate for analyzing the ways of ensuring the legitimacy of an administrative action, as ‘supervision is a type of control’ (Current Lithuanian Language Dictionary, 1993).

The term “control” is derived from the French word “*contrôle*”, which means to check something (Current Lithuanian Language Dictionary, 1993). So, control over the actions of the administration means evaluation of the actions of the administration according to the established requirements and rules. The entities performing the control seek to find out whether the administration was functioning properly or improperly.

All this indicates that the control always has the following elements: the subject of control (the controlling), the object (the controlled), certain rules, standards, and requirements that the controlled must comply with. During the control, the actual situation is compared with the required one in order to evaluate how the object of control and its activity complies with the established rules, standards, and requirements.

Control of the legitimacy of the actions of the executive authorities and their officials is essential for consolidation and upholding of the rule of law's main priority - protecting human rights. According to A. Dziegoraitis, "The rule of law must guarantee a genuine and effective protection of its citizens against the administrative authority's encroachment of their administrative rights" (Dziegoraitis, 1997). In addition, the system of judicial review of the legality of administrative actions contributes to the efficiency of public administration.

Tax administration is one of the broadest and most important areas of public administration. Controlling the legality of tax administration is complex and special, and many complex disputes exist in this area that require an appropriate state model and an efficient institutional framework. For example, some countries even have separate tax or fiscal (Germany, Austria, and Italy) (Whitehead, 2018; E-Justice Portal). Meanwhile, Lithuania has opted for a different model – together with the two-tier administrative courts of special justice, there is also a two-tier system of pre-trial tax litigation. Tax disputes over rulings by territorial tax administrations must be examined by the Central Tax Administrator, while appeals against decisions of the Central Tax Administrator may be dealt with by the Tax Disputes Commission under the Ministry of Finance of the Republic of Lithuania. Meanwhile, other pre-trial tax disputes are resolved either by the Central Tax Administrator itself through the administrative procedure established by the Law on Public Administration of the Republic of Lithuania (2020) or by another quasi-judicial body - the Lithuanian Administrative Disputes Commission. Article 2 (15) of the Law on Tax Administration of the Republic of Lithuania (2004) provides that tax administration is the fulfillment of the functions of the tax administrator, as well as the fulfillment of the duties and rights of the tax administrator and the taxpayer. Clearly, the tax administrator's primary function is to calculate and administer taxes, rather than to settle tax disputes. The latter is performed by the Tax Disputes Commission. Below we will discuss in more detail the issue of legal regulation of the activities of the Tax Disputes Commission.

### **3. Legal Issues of the Tax Disputes Commission under the Ministry of Finance of the Republic of Lithuania**

Article 27 (3) of the Law on Administrative Proceedings of the Republic of Lithuania (2016) states that "The necessary pre-litigation of tax disputes shall be determined by tax laws". Article 148 (2) of the Law on Tax Administration of the Republic of Lithuania (2004) (hereinafter LTA) defines that "the purpose of this tax commission is to objectively investigate a taxpayer's complaint and to make a lawful and reasoned decision". Government of the Republic of Lithuania September 2 2004 resolution no. 1119, "On the Approval of the Regulations of the Tax Disputes Commission under the Government of the Republic of Lithuania" (hereinafter also the Regulations of the Tax Disputes Commission) regulate the competence of the Commission, procedure of its formation, organization of work, and recruitment and working conditions of public servants and employees (Government of the Republic of Lithuania, 2004).

Article 145 (1) of the Law on Tax Administration of the Republic of Lithuania (2004) provides that this law shall establish and regulate a mandatory pre-litigation procedure for tax disputes. This provision is without prejudice to the right of the taxpayer to bring an action directly before the courts following a decision of the relevant central tax authority concerning a tax dispute. The tax litigation procedure provided for in this Law shall also apply to the appeals of the taxpayer against the decision of the tax authorities not to exempt them from payment of fines and / or penalties and to the deduction of the taxpayer's overpayment by the tax administrator. Under Article 147 of the Law on Tax Administration of the Republic of Lithuania, tax disputes are heard by the central tax administrator, Tax Disputes Commission, and the court. Pursuant to Article 150 of the Law on Tax Administration of the Republic of Lithuania, tax disputes between a taxpayer and a local tax authority are settled by a central tax administrator. Article 151 of the same law provides that Tax Disputes Commission shall deal with: 1) tax disputes arising between the taxpayer and the central tax administrator; 2) tax disputes between the taxpayer and the central

tax administrator regarding the decisions of the central tax administrator after the consideration of taxpayers' complaints against the decisions of the local tax administrator; 3) tax disputes between the taxpayer and the central tax administrator, when the central tax administrator has not taken a decision on the tax dispute within the terms established by this Law (Law on Tax Administration of the Republic of Lithuania, 2004).

Thus, the Law on Tax Administration of the Republic of Lithuania establishes that the Tax Disputes Commission only deals with tax disputes, while Article 2 (22) of the Law on Tax Administration of the Republic of Lithuania provides that tax disputes are disputes between the taxpayer and the tax authority concerning the approval of the inspection report or other similar decision whereby the new tax is calculated and is ordered to be paid by the taxpayer as well as disputes regarding the tax administrator's decision to refuse to refund the tax overpayment (Law on Tax Administration of the Republic of Lithuania, 2004). Thus, the Law on Tax Administration of the Republic of Lithuania (2004) states that Tax Disputes Commission only deals with tax disputes, while Article 2 (22) of the Law on Tax Administration of the Republic of Lithuania (2004) provides that tax disputes are disputes between a taxpayer and a tax authority concerning the approval of an inspection report or other similar decision whereby the taxpayer the tax is calculated and ordered, as well as the tax authority's decision to refuse to refund (offset) the excess tax (difference) (Law on Tax Administration of the Republic of Lithuania, 2004).

Consequently, tax disputes are a narrower concept than disputes over taxes, so disputes which do not fall within the definition of tax disputes but are disputes regarding taxes may be dealt with by other pre-litigation administrative bodies, such as, Lithuanian Administrative Disputes Commission. Such a situation implies that a person who has not yet initiated a tax dispute, but already disagrees with the tax authorities' preliminary assessment of specific taxes, cannot solve the dispute by complaining about the tax authority's relevant writings and actions until after the tax inspection. It is noteworthy that the tax authority uses phrases such as "must pay" or "required to pay" when sending various letters to the taxpayer, but does not explain that such letters are not binding instructions of the tax administrator, but rather only informative letters that do not result in any legal consequences. Likewise, such letters do not explain to the taxpayer that appealing against these letters does not initiate a tax dispute and that the resolution of the complaint will not resolve the tax issues.

The Supreme Administrative Court of Lithuania noted that the purpose of the institute for Pre-trial Administrative Dispute Resolution is to enable the competent authorities to examine and resolve a legal issue (administrative dispute) to the maximum extent and under the same conditions as in the Administrative Court. This means that the purpose of such method of dispute resolution is not to obstruct the defense of the allegedly violated rights or interests, but, on the contrary, to establish an additional mechanism that could solve the mentioned legal conflicts (Supreme Administrative Court of Lithuania, 2010). Therefore, assigning all tax disputes solely to Tax Disputes Commission would simplify the process and allow the taxpayer to defend its allegedly infringed rights more efficiently and quicker. The double appeal procedure provided for in the Law on Tax Administration of the Republic of Lithuania is currently confusing the taxpayer and should be amended.

The pre-litigation phase of any administrative dispute is designed to resolve the dispute quickly and at low cost, thus avoiding the long and often costly litigation of the same dispute. However, the two-tier pre-litigation system established by the Law on Tax Administration of the Republic of Lithuania does not meet this objective, as it usually takes several years to resolve the dispute and the taxpayer loses the funds frozen by the tax administrator. Furthermore, the two-tier pre-litigation system fails to comply with the Supreme Administrative Court of Lithuania principle that a person may apply to the pre-litigation authority provided for by law only once before the pre-trial dispute resolution procedure. Repeated referral to the pre-litigation institution regarding the same matter may be regarded as an inadequate remedy (Supreme Administrative Court of Lithuania, 2009a, 2009b).

The dual system of pre-trial settlement of tax disputes and the unclear procedure for appealing against decisions of the tax administrator established by the Law on Tax Administration of the Republic of Lithuania are inconsistent with the previously mentioned practice of the Supreme Administrative Court of Lithuania and the legal principles enshrined in Article 3 (2) of the Law on the Legislative Framework of the Republic of Lithuania of clarity (legal

regulation must be logical, coherent, concise, understandable, precise, clear and unambiguous) and systematics (the rules of law must be compatible with each other; lower-ranking legal acts must not conflict with higher-level legal acts). Therefore, it would be efficient and logical to process all tax disputes in Tax Disputes Commission's.

Tax disputes are a type of administrative dispute, but because of their complexity, they are classified into a separate category, whose resolution requires not only legal but also economic education. According to Tax Disputes Commission's Annual Activity Report 2018 (Tax Disputes Commission under the Government of the Republic of Lithuania, 2018), in 2018 Tax Disputes Commission had investigated 202 complaints and 129 claims. Of the 202 complaints examined, 94 decisions of the Central Tax Authority were annulled, modified, or remitted either entirely or partially, meaning that 46.5 percent of the decisions were unreasonable. Of these, 59 percent were not contested by the parties, meaning that they were satisfied with the decision of Tax Disputes Commission.

Although the handling of a tax dispute by a central tax administrator is considered to be a pre-litigation procedure, such a procedure does not comply with the principles of impartiality and independence since the central tax administrator is a public administration entity. Law on Public Administration of the Republic of Lithuania (2007) states that public administration is the activity of public administration entities regulated by laws and regulations for the purpose of implementation of laws and other legal acts: adoption of administrative decisions, control of implementation of laws and administrative decisions, provision of services, administration of public services, and internal administration of a public administration entity. It does not, therefore, include the quasi-judicial function, namely the independent pre-litigation procedure. The Law on Administrative Proceedings of the Republic of Lithuania (2016) only provides for the Institute of Administrative Procedure, which determines that administrative procedure is a mandatory action taken by a public entity under this Act to investigate a complaint of alleged violation of the rights and legitimate interests of a person complained of by acts, omissions, or the decision of that administrative procedure. The current legal framework gives certain entities of public administration the right to deal with pre-litigation complaints, as is the case with Law on Tax Administration of the Republic of Lithuania (Law on Tax Administration of the Republic of Lithuania, 2004). However, it is necessary to distinguish between public administration and pre-trial litigation, as these activities are neither identical nor over Law on Administrative Proceedings of the Republic of Lithuania (2016) ping, so pre-trial tax litigation must be conducted by independent quasi-judicial bodies such as Tax Disputes Commission. Tax administration and pre-trial litigation cannot be governed by the same law, as they are two different activities that serve two different functions. And the public administration entity, in this case the tax administrator, can only deal with complaints under the administrative procedure set up by the Law on Administrative Proceedings of the Republic of Lithuania (2016), since Tax Disputes Commission is a quasi-judicial body, acting as an independent arbitrator—something that cannot be said about the public administration itself. Because of Tax Disputes Commission's independence and the objectives it pursues, it would be expedient to establish a mandatory pre-litigation procedure for a tax dispute with Tax Disputes Commission by law, rather than keep the current practice of obligatory hearing by the central tax administrator and only optional role of Tax Disputes Commission.

To date, all pre-trial litigation of tax disputes is governed jointly by Articles 26 and 27 of Law on Administrative Proceedings of the Republic of Lithuania (2016) (Law of Administrative Proceedings of the Republic of Lithuania, 2016), Chapter 9 of the Law of Tax Administration of Lithuania (Law of Tax Administration of Lithuania, 2004) and Law of the Republic of Lithuania on the Procedure of Pre-trial Administrative Disputes 2020). Meanwhile, the settlement of tax disputes is governed by Articles 145, 147, 148 and 150-160 of the Law on Tax Administration of the Republic of Lithuania (Law on Tax Administration of the Republic of Lithuania, 2004) and by-laws: Tax Disputes Commission Regulations and Tax Disputes Commission Rules of Procedure (Tax Disputes Commission under the Government of the Republic of Lithuania, 2004). Tax Disputes Commission's regulations over Law on Administrative Proceedings of the Republic of Lithuania (2016) as they relate, and the complaint handling process at MGK in a very laconic and incomplete state; for example, there are no grounds for terminating cases and there are other important procedural issues. The current regulation is inappropriate in terms of legislative principles, as the settlement of tax disputes is enshrined in the law, which is intended for tax administration as a public administration activity and only in secondary legislation, This situation is at odds with the principles of legislative



clarity and systematicity, since, as mentioned above, tax administration is an entirely different activity and does not involve a quasi-judicial function.

As stated above, it is essential that all tax disputes are dealt with by a single quasi-judicial body, Tax Disputes Commission, and that such disputes are clearly separated from the functions of the tax administrator. It is also important to distinguish between tax authorities and an independent quasi-judicial body. A separate law must be enacted to ensure Tax Disputes Commission's independence and proper handling of tax disputes. Such a law should consist of two main parts: the first would consolidate and define the status and independence of Tax Disputes Commission's members, requirements for Tax Disputes Commission members, the selection process, their general rights and obligations, social guarantees, etc.; and the second would establish the stages and characteristics of the pre-litigation dispute settlement procedure. We could also draw on examples from other countries, for example, Austria even has a separate Tax Code (Whitehead, 2018). In Lithuania, however, the status of an institution such as Tax Disputes Commission is not explicitly enshrined in the laws that govern the administration of individual taxes. Furthermore, in Lithuania, the pre-trial administrative dispute resolution and the status of the Lithuanian Administrative Disputes Commission are clearly separated by a separate law, rather than enshrined in the Law on Public Administration of the Republic of Lithuania (Law on Public Administration of the Republic of Lithuania, 2020). For the sake of consistency, only general provisions on the procedure for appealing against decisions of the tax authorities should remain with the Law on Tax Administration of the Republic of Lithuania, analogous to the provisions of Article 36 of the Law on Public Administration of the Republic of Lithuania.

The status of Tax Disputes Commission has been upheld by the European Court of Justice in its judgment of 21-10-2010 in case no. C385 / 09 *Nidera Handelscompagnie BV v State Tax Inspectorate* under the Ministry of Finance of the Republic of Lithuania (European Court of Justice, 2010). The European Court of Justice noted that Tax Disputes Commission is in fact 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 European Court of Justice has stated that it takes into account all circumstances: whether the body is established by law, is operating on a permanent basis, has binding jurisdiction, has an adversarial process, applies legal rules, and is independent (Judgment of the Court of 17 September 1997 in Case C 54/96, *Dorsch Consult*, ECR I 4961, paragraph 23 and the case-law cited). The European Court of Justice has held that the Tax Disputes Commission has the necessary independence to be considered a "court" within the meaning of Article 234 EC. However, the CJEU 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 above-mentioned European Court of Justice ruling emphasized the importance of Tax Disputes Commission's independence from the Ministry of Finance, which exercises the rights and duties of the owner of the tax administrator (Customs Department and State Tax Inspectorate) (Government of the Republic of Lithuania, 2004).

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 Tax Disputes Commission's status and competence. Tax Disputes Commission must become a fully independent quasi-judicial body dealing with all types of disputes concerning taxes, not just tax disputes. For disputes concerning taxes, a separate special law should be adopted, consisting of two main parts regulating Tax Disputes Commission's status and selection of members, ensuring Tax Disputes Commission's independence from the executive (especially the Ministry of Finance, which also controls tax administrations), labor rights, and procedures for pre-litigation tax disputes. Tax Disputes Commission must become the only mandatory quasi-judicial body for pre-litigation tax disputes, as the current practice of handling such disputes by the tax authority itself is flawed and contrary to the principles of independence and impartiality.

## Conclusions

1. Quasi-court can be described as an institution similar to a court, but not identical to it. It has certain intrinsic characteristics similar to a court, but at the same time has substantial differences. The purpose of setting up quasi-courts was to relieve the financial burden from the state and from the victims of the actions of the administration, since litigation in quasi-courts is considerably cheaper than in ordinary courts. Quasi-courts, as an integral part of administrative justice, perform the functions of administering justice and controlling the activities of the administration. After analyzing the case law of the European Court of Human Rights and the European Court of Justice, it can be concluded that quasi-court can effectively fulfill its assigned role as long as it meets the institutional criteria covering independence, term of office, permanent activity, etc. and the functional criteria, which include the justice function, the dispute resolution and the adjudication.
2. The control exercised by the quasi-courts extends to various areas of administration. Control of administration actions requires evaluation of the actions of the administration according to the established requirements and rules. Quasi-courts seek to answer whether the administration is functioning properly or improperly. Tax administration is one of the most important and quite broad areas of public administration. Controlling the legality of tax administration is complex and special, and there are many complex disputes in this area that require an appropriate state model and an effective institutional framework.
3. One of the most important reasons for the emergence of quasi-courts was to seek clear, rational, accessible, informal, fast, and specialized ways of resolving disputes. An analysis of the relevant legislation in the Republic of Lithuania suggests that in order to meet these objectives, it would be best if the settlement of disputes between taxpayers and tax authorities would be entrusted to the Tax Disputes Commission under the Government of the Republic of Lithuania. Accordingly, it would be appropriate to adopt a separate special law such as that governed by other quasi-judicial bodies, Activities of the Lithuanian Administrative Disputes Commission (Law on the Procedure of Pre-trial Administrative Disputes of the Republic of Lithuania), which could regulate analogously the status of the Tax Disputes Commission under the Government of the Republic of Lithuania; This would allow for the more successful implementation of the principles of systematicity and clarity enshrined in the Law on Legislative Framework of the Republic of Lithuania.

## References

- Barnett, H. (1996). *Constitutional and Administrative Law*. London: Cavendish Publishing Limited.
- Bereikienė, D., Gagys, T., & Ramanauskaitė, J. (2019). Greito proceso administracinių ginčų komisijoje koreliacija su asmens teise į teisingą procesą. *Visuomenės saugumas ir viešojo tvarka*, 23, 17-32.
- Bradley, A.W., Ewing, K.D., & Knight, C.J.S. (2018). *Constitutional and Administrative Law*. London: Pearson.
- Breyer, S., Stewart, R. (1985). *Administrative Law and Regulatory Policy. 2nd edition*. London: Little, Brown and Company.
- Cane, P. (1996). *An Introduction to Administrative Law, 3rd Edition*. Oxford: Clarendon Press.
- Collins dictionary* (n. d.). Retrieved from <https://www.collinsdictionary.com/dictionary/english/tribunal>.
- Comtois, S., & de Graaf, K. J. (2013). *On Judicial and Quasi-Judicial Independence (Governance & Recht, no. 7)*. Den Haag: Eleven International Publishing.
- Council of Europe Committee of Ministers (1981). Recommendation No. R(81)7 of the Committee of Ministers to Member States on Measures Facilitating Access to Justice. 1981. Retrieved from <https://rm.coe.int/168050e7e4>.
- Council of Europe Committee of Ministers (2001). Recommendation rec(2001)9 of the Committee of Ministers to member states on alternatives to litigation between administrative authorities and private parties. Retrieved from <https://rm.coe.int/16805e2b59>.
- Current Lithuanian Language Dictionary [Dabartinės Lietuvių kalbos žodynas]* (1993). Vilnius.
- Dziegoraitis, A. (1997). Įstatymų karas (3). *Justitia*, 1(25).
- E-Justice Portal (n. d.). Retrieved from [https://e-justice.europa.eu/content\\_specialised\\_courts-19-de-lt.do?member=1](https://e-justice.europa.eu/content_specialised_courts-19-de-lt.do?member=1).
- European Court of Justice (2010). Judgment of 21-10-2010 in case no. C385 / 09 Nidera Handelscompagnie BV v State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania. Retrieved from: <http://curia.europa.eu/juris/liste.jsf?language=lt&jur=C.T.F&num=C-385/09&td=ALL>.
- European Court of Human Rights (1984). Case of Campbell and Fell v. The United Kingdom (Application no. 7819/77; 7878/77) 28 June 1984. Retrieved from: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57771%22%5D%7D>.
- European Court of Human Rights (1985). Case of Bentham v. the Netherlands (Application no. 8848/80) 23 October 1985. Retrieved from: <https://opil.ouplaw.com/view/10.1093/law/ihrl/54echr85.case.1/law-ihrl-54echr85>.

- European Court of Human Rights (2000). Case of Coëme and others v. Belgium (Applications nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96) 22 June 2000. Retrieved from: [https://www.legislationline.org/download/id/4076/file/ECHR\\_Coeme\\_Belgium\\_2000.pdf](https://www.legislationline.org/download/id/4076/file/ECHR_Coeme_Belgium_2000.pdf).
- European Court of Human Rights (2002). Lavents v. Latvia (Application No. 58442/00) 28 November 2002. Retrieved from: <https://www.globalhealthrights.org/human-rights/right-to-family-life/lavents-v-latvia/>.
- European Court of Human Rights (2010). Case of Henryk Urban and Ryszard Urban v. Poland (Application no. 23614/08) 30 November 2010. Retrieved from: <https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/23614-08-henryk-urban-and-ryszard-urban-v-polska-521918610>.
- Government of the Republic of Lithuania (2004). Resolution no. 1119, 2-09-2004. On the Approval of the Regulations of the Tax Disputes Commission under the Government of the Republic of Lithuania. Register of Legal Acts. Retrieved from: [https://www.e-tar.lt/portal/lt/legalAct/TAR.C6EB74A3BC3D/TAIS\\_270301](https://www.e-tar.lt/portal/lt/legalAct/TAR.C6EB74A3BC3D/TAIS_270301).
- Harter, P. J. (1983). *Dispute Resolution and Administrative Law: The History, Needs, and Future of a Complex Relationship*, 29 Vill. L. Rev. 1393. Retrieved from <https://digitalcommons.law.villanova.edu/vlr/vol29/iss6/6>.
- Ingman, T. (1996). *The English Legal Process*. London: Blackstone Press Limited.
- Kelman, K. (1981). *Regulating America. Regulating Sweden: A Comparative Study of Occupational Safety and Health Policy*. Boston: The MIT Press.
- Law on Administrative Proceedings of the Republic of Lithuania No. VIII-1029. Recast No XII – 2399 (consolidated version as of 11 – 07-2020) (2016). Register of Legal Acts. Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/TAR.67B5099C5848/asr>.
- Law on Civil Service of Republic of Lithuania No. VIII-1316. Recast No. XIII-1370 (2018) (consolidated version as of 01-11-2020). Register of Legal Acts. Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/TAR.D3ED3792F52B/asr>.
- Law on Public Administration of the Republic of Lithuania No. VIII-1234. Recast No. XIII-2987 (2020) (consolidated version as of 01-11-2020). Register of Legal Acts. Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/TAR.0BDDFFD850A66/asr>.
- Law on Tax Administration of the Republic of Lithuania No. IX-2112 (2004) (consolidated version as of 10-09-2020). Register of Legal Acts. Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/TAR.3EB34933E485/asr>.
- Law on the Procedure of Pre-trial Administrative Disputes of the Republic of Lithuania No. VIII-1031. Recast No. XIII-350 (2020) (consolidated version as of 23-06-2020). Register of Legal Acts. Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/TAR.594F129CE9AD/asr>.
- Merriam-Webster's Collegiate Dictionary* (n. d.). Retrieved from [www.britanica.com](http://www.britanica.com).
- Mikelėnienė, D., Mikelėnas, V. (1999). *Teismo procesas: teisės aiškinimo ir taikymo aspektai*. Vilnius: Justitia.
- Paškevičienė, L. (2018). Išankstinio administracinių ginčų nagrinėjimo ne teisme institutas Lietuvoje: idėjiniai ir vertybiniai pagrindai. *Teisė*, 108, 51-69.
- Paškevičienė, L. (2019). Išankstinio administracinių ginčų nagrinėjimo ne teisme institutas Lietuvoje: teisinio reguliavimo aiškinimo problematika. *Teisė*, 111, 67–91.
- Peterschuk, M. (1982). *Revolt Against Regulation: The Rise and Fall of the Consumer Movement*. LA: University of California Press.
- Pierce, R. J., Shapiro, S., & Verkuil, P. R. (1992). *Administrative Law and Process, 2nd Edition*. University Textbook series, N.Y., Westbury: The Foundation Press. Inc.
- Pranevičienė, B. (2003). *Kvaziteismai administracijos kontrolės sistemoje: monografija*. Vilnius: Lietuvos Teisės Universiteto Leidybos centras.
- Supreme Administrative Court of Lithuania (2009a). Supreme A143-191 Order of 06-02-2009 in Administrative Case No. AS525-64 / 2009.
- Supreme Administrative Court of Lithuania (2009b). SAT Order of 30-10-2009 in Administrative Case No. AS143-596 / 2009.
- Supreme Administrative Court of Lithuania (2010). 02-09-2010 administrative case A143-191 / 2010.
- Tax Disputes Commission under the Government of the Republic of Lithuania (2004). Tax Disputes Commission Rules of Procedure. Order no. 1-14, 25-11-2004. Register of Legal Acts. Retrieved from: <https://www.e-tar.lt/portal/lt/legalAct/TAR.A50FDA9FA411>.
- Tax Disputes Commission under the Government of the Republic of Lithuania (2019). 2018 Annual Report No. VD-54 [2018 metų veiklos ataskaita. 2019-02-28 Nr. VD-54.]. Retrieved from [http://mgk.lrv.lt/uploads/mgk/documents/files/2018%20m\\_%20veiklos%20ataskaita.pdf](http://mgk.lrv.lt/uploads/mgk/documents/files/2018%20m_%20veiklos%20ataskaita.pdf).
- The American College Encyclopedic Dictionary, Volume II* (1952). Edited by Clarence L. Barhart, Chicago: Spencer press, Inc.
- The Constitutional Court of the Republic of Lithuania (2012a). 3 July 2012 Resolution “On the Compliance of Paragraph 5 of Article 4 of the Law on the Implementation of the Law Amending the Law on the Civil Service of the Republic of Lithuania with the Constitution of the Republic of Lithuania”. Retrieved from: <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta123/content>
- The Constitutional Court of the Republic of Lithuania (2012b). 10 December 2012 Resolution “On the Compliance of Paragraph 1 (wording of 7 July 1999) of Article 48 of the Law on the Organization of the National Defense System of the Republic of Lithuania and Military Service with the Constitution of the Republic of Lithuania”. Retrieved from: <https://www.lrkt.lt/lt/teismo-aktai/paieska/135/ta136/content>.
- The Court of Justice of the European Union (1999). Case number = C-103/97. Josef Köllensperger GmbH & Co. KG and Atzwanger AG v Gemeindeverband Bezirkskrankenhaus Schwaz. 4 February 1999. Retrieved from: <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=C-103/97&td=ALL>.
- The Living Webster Encyclopedic Dictionary of the English Language, ed. Mario Pei* (1967). Chicago: The English-Language institute of America.
- Transforming Our Justice System* (2016). By the Lord Chancellor, the Lord Chief Justice and the Senior President of Tribunals, U.K. Retrieved from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/553261/joint-vision-statement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf).

- Urmonas, A. (2019). Teisėkūros sąveikų su viešąja politika ypatumai Lietuvoje. *Public policy and administration*, 18(1), 100–117.
- Vaitkevičiūtė, V. (2001). *Tarptautinių žodžių žodynas [Dictionary of International Words]*. Vilnius: Žodynas.
- Vile, M. J. C. (1967). *Constitutionalism and the Separation of Powers*. Clarendon.
- Weidenbaum, M. (1981). *Business, Government, and the Public, 2nd Edition*. Englewood Cliffs.
- Whitehead, S. (2018). *Tax Disputes and Litigation Review (sixth edition)*. Law Business research Ltd.
- Wroblewski, J. (1992). *The Judicial Application of Law, eds.: Z.Bankowski, Z., MacCormick, D. N.* Dordrecht: Kluwer Academic Publishers.

---

Copyright © 2020 by author(s) and Mykolas Romeris University

This work is licensed under the Creative Commons Attribution International License (CC BY).

<http://creativecommons.org/licenses/by/4.0/>



Open Access